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**Co-designing long-term agreements for  
Landscape Recovery**

**Report of template agreement co-design and  
testing workshops**

***Milestone 4 report***

*Environmental Land Management Test and Trial  
for DEFRA*

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## Executive Summary

This report presents an overview of findings from the template long-term agreement (LTA) co-design and testing workshops and interviews, held as part of the ELM Test and Trial: Co-designing long-term agreements for landscape recovery. The aim of these was to test, with participants, elements of the template LTA that has been drafted. The workshops and interviews allowed the research team to further co-design and refine the template agreement according to participants' feedback.

During this phase, two two-hour online workshops were held with a total of seventeen non-farming stakeholders. These were followed by in-person farmer group interviews, with six participants<sup>1</sup>. Invitees who were unable to attend either of the stakeholder workshops were given the chance to comment on the draft template via email correspondence or by contributing to online Miro boards for a period of two weeks after the workshops. Farmers were given the opportunity to comment on the draft report before this was submitted to Defra. Additionally, the research team supplemented this data collection by attending a workshop organised by Southern Water, at which we had the opportunity to present our T&T findings and capture the views towards LTAs of five large estate owners and their agents.

The workshops and interviews employed a mix of discussion and participatory techniques, in order to elicit in-depth information according to the pre-designed protocols. Key areas discussed were:

- The agreement's structure and governance, including a discussion of cooperative vs contractual law
- The principles in common
- Financial matters, including options for the distribution of funds
- The management agreement, including monitoring and evaluation
- Options for ensuring the long-term security of environmental outcomes
- Modifications and discharges

For stakeholders and farmers alike, some of the **principles in common** that would be necessary to underpin participation in a collaborative agreement were of concern. In particular, the issue of **joint and several liability** caused debate in one stakeholder workshop and amongst farmers; ensuring clarity on scheme delivery and penalties for non-compliance can mitigate such concerns to some extent.

In previous Test and Trial workshops, we discussed the likely need for Landscape Recovery applicants to form a **single legal entity** amongst their group. During these workshops, we explained the particular vehicle that had been chosen as the basis for the template LTA – a **company limited by guarantee** – and the reasons behind this choice. This dovetailed with a discussion of **cooperative and contractual law**, and the options available for the LTA based on each; Strutt and Parker have used contractual law as the basis for the template agreement in this case. This decision was informed by the requirements of both farmers and potential investors, as elicited in previous workshops of the T&T. Primarily it was felt that a company limited by guarantee, operating according to contract(s), would be able to attract a wider range of investors into the T&T's hypothetical Landscape Recovery project. Further, such an entity would allow land managers to withdraw any **profits** made from their participation; this is crucial in the context of the farmers we have worked with, for whom agricultural production is a key part of their farm businesses. Likewise, our advisor from Strutt and Parker believes that contractual law would

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<sup>1</sup> The workshop/interview groups will be referred to hereafter simply as 'stakeholders' and 'farmers' for ease of reading. We of course recognise that farmers will be key stakeholders in Landscape Recovery agreements.

best suit the LR scenario developed in this T&T due to the potential complexities of profit sharing amongst the group and because of its inherent provisions for **dispute management**.

Options for securing environmental outcomes were also discussed with farmers and stakeholders, and despite the potential barriers to the adoption of a **conservation covenant** (for details, see Barkley, Short and Chivers, 2022: 13-26), it was broadly agreed by stakeholders that this is currently likely to be the best model for ensuring permanent land use change. Although some stakeholders were concerned about the potential cost to funders of putting a covenant into place, there are also clear benefits regarding the security to outcomes. Strutt and Parker are awaiting further guidance about the development of conservation covenants in England, but are exploring the possibility of using covenants of limited duration – for example, 30 years to match the span of proposed LR schemes – in order to encourage uptake of LTAs and to allow some flexibility for land managers once a LR scheme ends.

As in previous phases of the T&T, this one also involved discussions of the need for **flexibility** within agreements. Whilst it is acknowledged that agreements should seek to safeguard environmental outcomes for the long-term as far as possible, it will be necessary to provide options for **modification or discharge** of an agreement; this applies from both a land manager and funding body point of view. **Review points** have consistently appeared in the T&T as especially important for agreements of a long-term nature, not least to maximise the environmental benefits that a scheme can deliver. **Monitoring and evaluation** of a scheme would go hand-in-hand with such reviews, and the approach and tools for monitoring would need to be clearly set out in an LTA before parties could agree to it. Related to this, the template LTA also contains clauses dealing with issues of GDPR, and farmers felt strongly that they should retain access to and ownership over any data collected during the M&E of a scheme.

Based on this, and the previous phases of the T&T so far, it appears that LTAs – especially of a multi-party/collaborative nature – are currently likely to be unachievable in a LR context. There are many factors contributing to this conclusion, but there is a clear need for greater guidance and clarity from government, especially surrounding conservation covenants and blended finance. In addition, the multiple sources of risk involved need to be mitigated as far as possible, to provide reassurance to all parties who might be considering an LTA.

## Introduction

This report presents an overview of findings from the template long-term agreement (LTA) co-design and testing workshops and interviews, held as part of the ELM Test and Trial: Co-designing long-term agreements for landscape recovery. The aim of this phase of the T&T was to test and refine, with participants, elements of the template LTA that has been drafted.

The initial draft of the LTA produced by Strutt and Parker was, as far as possible, based on feedback received from participants in previous phases of the T&T. Additional elements were decided based upon desk research into LTAs (see Barkley, Short and Chivers, 2022) and the specialist knowledge of Strutt and Parker. The stakeholder workshops allowed the research team to test specific clauses of this initial draft, and to co-design the template agreement further. The refined agreement was then presented to farmers, and a further stage of testing, co-design and refinement was undertaken before the template agreement was handed to Defra.

This report contributes to answering the following policy questions:

1. How to construct long-term agreements (30+ years), potentially incorporating conservation covenants, to safeguard investments in land use change and associated environmental outcomes?
2. How to blend public and private finance in funding projects?
3. How to incentivise land manager participation and collaboration in Landscape Recovery projects and determine appropriate payment mechanisms?
4. What is the best implementation option for bringing in private finance?
5. How can payments be structured over the life of the blended finance agreement to allow land managers to achieve high quality and quantity of environmental outcomes while balancing stability of revenue and investor return?

## Methods

The research team collaborated to draft a template LTA for a Landscape Recovery project based on the Natural Flood Management scenario that was co-designed with participants in phase three of the T&T (see Barkley, Chivers and Short, 2022). As far as possible, the clauses within this agreement reflected the preferred options of participants as elicited during previous workshops of the T&T. Other clauses were based upon the desk research done during the Rapid Evidence Assessment for the T&T (see Barkley, Short and Chivers, 2022) and the specialist knowledge of Strutt and Parker.

Participants for the workshops and interviews were mainly recruited from those with whom we had pre-existing contact from previous phases of the T&T. In addition, some participants were new contacts of the research team or invited through word of mouth. Before the workshops began, participants who were new to the project were given information sheets and informed consent sheets to sign. Those who had attended previous workshops were reminded of the overall aims of the project. All workshops and interviews were audio recorded and have been transcribed verbatim, to allow the research team to carry out in-depth analysis of the findings.

The first stage of this phase of the T&T involved holding two two-hour online workshops with stakeholders, to discuss the initial draft of the LTA. A workshop protocol was developed for these, and employed a mix of discussion and participatory techniques such as Miro boards. Some preparation materials were also collated and sent to participants before the workshops, so that they had chance to read some of the example clauses in depth in order to better reflect on them during the workshops

themselves. Seventeen participants in total attended across the two workshops, most of whom had been involved in previous phases of the T&T. These stakeholders included representatives from the National Trust, Southern Water, local government, local wildlife trusts and a green investment company. In addition, advisors on natural capital and property law also attended. Invitees who were unable to attend either of the workshops were given the chance to comment on the draft materials via email correspondence or by contributing to the online Miro boards for a period of two weeks after the workshops. At the end of this time, the research team reflected on the data generated during the workshops and used this to further refine the template agreement.

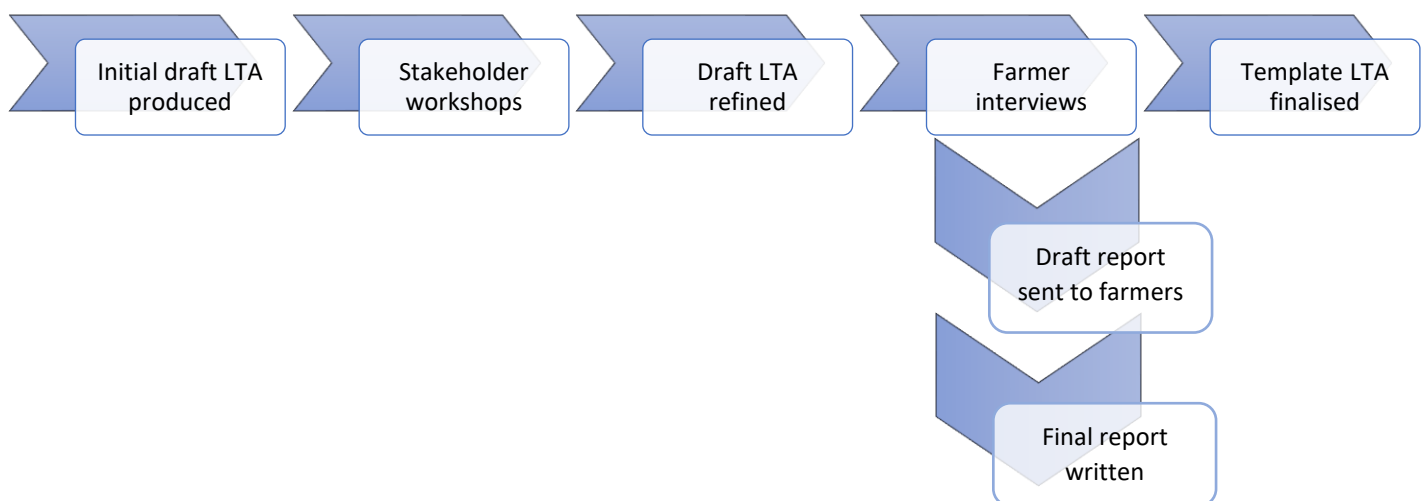
Group interviews were then held with farmers in Arundel, West Sussex. A protocol for these was once more developed by the research team, using a mixture of discussion and participatory techniques; like the draft LTA, this protocol was refined based on insights gained during the stakeholder workshops. For these, we interviewed six participants, all of whom had attended at least one of the previous workshops for the T&T. Prior to the interviews, participants were sent a brief overview of the planned topics, as well as a few example clauses from the Principles in Common, management and financial agreements.

Of the six interviewees:

- Five are farmers, while one has a family farming background but currently works for a nature recovery charity.
- Four out of the five farmers both owned and rented land, with areas ranging between 77 ha and 450 ha, and 12 ha to 81 ha respectively. One farmer is a tenant only.
- Three farmers are members of a farmer cluster, two are not.
- Three farmers are currently signed up to a Defra AES; two are in receipt of BPS only.
- Two farmers are also involved in accreditation agreements.

After the interviewees were complete, the research team analysed interviewees' contributions to further iterate the draft agreement, and thus produce a finalised template LTA. The draft of this report was also distributed to interviewees in order that they could provide further feedback before its submission to Defra.

Figure 1: Template LTA co-design and testing process for this stage of the test and trial



In addition, the research team attended a workshop in January organised by Southern Water, which considered options for creating and funding LTAs for environmental outcomes in the West Sussex area. At this workshop, we had the opportunity to present our T&T findings to a group of five large estate owners, their agents and other stakeholders. During discussions and a Q&A session, we were able to capture the views of participants at this workshop. This supplementary data enabled us to compare and contrast the opinions of larger landowners with those of the smaller landowners and land managers who made up the T&T's core farmer participants.

## Findings

### *Stakeholder workshops*

Due to the composition of participants in these workshops, each session focused on different elements of the draft LTA. In addition to discussion, we used Miro boards to capture participants' thoughts on various aspects of the draft agreement. Examples of these can be found below.

The first workshop involved stakeholders from the National Trust, wildlife trusts and Local Nature Partnerships, and they shared their experiences with land manager collaborations. Much of this workshop was focused on discussing the **Principles in Common** that would have to be adopted by signatories to a **collaborative agreement**. Key points that were discussed can be found in Figure 2, which shows a completed Miro board from the workshop.

In particular, stakeholders felt that the issue of **joint and several liability** will be '*controversial, quite difficult to agree with landowners or land managers involved in a scheme*'. Another stakeholder agreed:

*'I don't think that they would want to be jointly and severally liable for stuff that happens... [T]hey should be responsible for what happens on their land, but I think it is unfair and they would be unwilling to sign up to an agreement where they were jointly liable for something that happened on land that's not owned and controlled by them.'*

As the Test and Trial's consultant from Strutt and Parker explained, using the Natural Flood Management scenario developed in the previous phase of the T&T as an example,

*'If you turn that on its head, if they benefit from the scheme: say they're able to put their beautiful glamping tents across the beautiful valley that's been created on somebody else's land... there are also benefits from having the scheme on somebody else's land that you gain...from.'*

Thus, while being jointly and severally liable for any under performance in an agreement involves an element of shared risk, it might also go hand in hand with jointly benefiting from any potential profits that other scheme participants may make; this is where the **financial plan** component of the template LTA needs to be considered, to ensure potential participants are able to benefit from **disbursed payments** if that is desired by all parties. As the team member from Strutt and Parker detailed,

*'If you were to take this scenario...there'll be significant benefits perhaps generated...upstream. But the actual beneficiaries are downstream... And there could be the opportunity as a collective to say, well, we've enhanced the entire area, the tourist benefit to you as individuals are such that actually there should be a payment...for those*

assets to be able to be distributed within the entire body that are working to the single goal.'

Figure 2: Completed Principles in Common Miro board, from the stakeholder workshops



In addition, Strutt and Parker consider that many funders will be of the opinion that within a **single legal entity**, all parties are equally responsible for scheme delivery, even if the management plans in place vary across different land parcels.

Although stakeholders expressed concerns over the willingness of land managers to enter into a single legal entity – and the associated contractual clauses that would be required to formalise an LTA – some also saw opportunities inherent in such agreements:

*'You're changing the value of that land. Now, that actually could be a reduction in the land value as much as an increase. But what you're also giving is a future source of income, long-term income, on that bit of land. [T]hat [could be] an asset for that land, that you've got guaranteed income for 25, 30 years.'*

Figure 3: Completed financial plan Miro board, from the stakeholder workshops



The second stakeholder workshop had more of a legal focus, with experts in property law and natural capital in attendance; in addition, one participant had experience with cooperative law and economics. This workshop also included representatives from Southern Water, who were able to share crucial information about aspects related to the **private or blended financing** of LTAs. Much of this workshop was focused on discussing the respective advantages and disadvantages of taking a **contractual vs. cooperative law** approach to the template LTA. One stakeholder commented,

*'Cooperative law is designed for multi-party agreements. It allows for a much more sophisticated form of adaptation to deal with uncertainty and change'.*

Whilst Strutt and Parker have explored options for using a cooperative law framework, they believe that contractual law offers better security for all parties in terms of dispute resolution, and mechanisms to enforce penalties and obligations. However, the Test and Trial's research team also acknowledges that:



*'Some of it has to be collective and value-based. There has to be an element of this project, whereby together, you're coming together to cooperate and deliver something... At its nub is Landscape Recovery ... I'm concerned that we're still framing this in the way of agri-environment schemes. Landscape Recovery is about delivering the 25-Year Environment Plan. One of the six objectives is beauty, heritage and engagement. Unless we engage people with nature, they won't value it. So we can't be stuck in the box of agri-environment schemes... If we start from the point [of farmers wanting to individually sign up to a scheme] I don't think Landscape Recovery's for them.'*

A farmer interviewee echoed this sentiment, saying, *'if you're not going to enter into it in the right spirit with everybody else then it doesn't work anyway.'*

The stakeholder from Southern Water also emphasised the importance of effective and continued collaboration amongst agreement holders, especially in the context of mitigating some of the risks involved with non-compliance or agreement holders withdrawing:

*'So much of our risks are in the human, **social capital** space as much as the natural capital. So it's how do we maintain and foster continuing engagement and continuing favourable land management.'*

The other key area of discussion for both stakeholder workshops surrounded **conservation covenants**, and other possible approaches to securing long-term land use change.

*'[There is] this conflict between needing the commitment to a long-term venture, whilst having a mechanism that enables review or amendment when it's absolutely necessary, such as on a death, and being able to dispose of the landholding but with some commitment to keep going... So I think there needs to be some acceptance that the **modifications and discharges** are necessarily going to be limited to only the exceptional circumstances, otherwise the whole purpose of the venture is under threat.'*

A stakeholder from a local wildlife trust detailed his experiences discussing biodiversity net gain agreements with land managers, and noted,

*'If people ask about **break clauses** then we just say, "this isn't for you"... If they're asking about break clauses, it's just not the right thing for them for their land...and we stop our conversations actually... That's a policy decision that we've made. BNG, it's got to be forever really.'*

As the representative from the National Trust said,

*'You can't ignore the potential of a conservation covenant, because otherwise, how are you going to assure that that land use change is permanent and transcends...20 years? ... And this is where we need to kind of interrogate Landscape Recovery in more detail in terms of what it's aiming to achieve... Conservation governance...is about longevity.'*

From the perspective of a potential LTA **funding body**, the stakeholder from Southern Water commented,

*'You have to have confidence in the agreement structure that it will have a lifetime that extends into the future, and wouldn't be at risk of whatever kind of uncertainties come*

*down the tracks... So that is a real concern ... It would be nice to have that single transaction of a conservation covenant that secures in perpetuity change, however, my gut feeling is the cost of that would be very expensive if you're going to try over a large scale.'*

A stakeholder who works on property law added,

*'Where those long-term investments are needed, perhaps in some cases it's not appropriate to rely on private individuals or companies to make those. And that's actually where the public element has to come in, because those long-term investments really are more suitable for public bodies to be making.'*

Southern Water's representative also noted: *'it would be nice to have a vehicle that has a clear long-term ambition and vision and structure for an area. [Having] some kind of **legal underpinning** to that also would be really valuable'*. This latter comment emphasises that there is a balance to be struck – for land managers and funding bodies alike – between allowing for adaptation to be made to agreements where necessary yet seeking long-term security so all parties have a clear sense of their commitments from the outset. In addition, stakeholders felt that if a voluntary approach to getting greater environmental commitments from land managers does not prove effective, then **regulatory changes**, enforced by government, may be the only way in which this space can contribute to tackling the climate emergency.

### **The Farmer Interviews**

After the stakeholder workshops, the draft LTA was refined in line with stakeholders' feedback. In addition to discussion, during the farmer interviews we also used a 'RAG' (red, amber, green) rating exercise to capture participants' feelings towards the principles in common. The research team presented interviewees with a table, where the clauses we expected to be most problematic were highlighted in red, those that were potentially problematic were marked amber, and those we expected to be unproblematic were marked green. Interviewees were asked to give each clause their own 'RAG' rating; this allowed us to compare our own expectations with those of farmers, and also to compare ratings amongst the farmer group. This gave us important information as to barriers and enablers to participation in an LTA, and allowed us to focus on finding possible solutions to those clauses that were most likely to deter participation. An example of this exercise can be found below.

As in the stakeholder workshop, the issue of joint and several liability was the most concerning to farmers, with all interviewees ranking this principle in common as 'red'. Such liability is deemed necessary by Strutt and Parker to be included in a collaborative LTA, to ensure all parties work towards fulfilling the scheme's goals. However, ensuring full clarity on scheme delivery and any penalties for non-compliance are built into the agreement from the outset can mitigate such concerns to some extent. Thus, ensuring the regulations and governance of an LTA – to cover all eventualities – is detailed in full should provide protections for all parties. One important aspect of agreement **governance** is ensuring all parties to the agreement have some kind of involvement in its operation from the outset:

*'If you don't get all the farmers involved in the board or the [responsible] body when you set it up, you're gonna have serious problems getting everyone in [to the agreement].'*

Figure 4: An example of a completed Principles in Common RAG rating chart from the farmer interviews

Principles in Common exercise We have rated these green (unproblematic), amber (potentially of concern) and red (likely to cause concern), based on our previous workshops. Do you agree, or would you change any? Please tick the columns on the right to indicate your thoughts.		I would rate this (please tick):		
Principle		Green	Amber	Red
All agreements to be co-terminus with management agreement. <i>?</i> <i>Difficult</i>				<input checked="" type="checkbox"/>
Management agreement will contain both management & implementation plans. It will act as a live document to be reviewed and adapted over the management agreement period. The fulfilment of the management agreement will be the legal responsibility of the Landscape Recovery Body (LRB). <i>what if both parties cannot agree?</i>			<input checked="" type="checkbox"/>	
Management plan: a separate management plan will be created for each landowner and/or tenant setting out the requirements for works and management with opportunities for change. <i>?</i> <i>can't be co-terminus then?</i>			<input checked="" type="checkbox"/>	
Variation of terms: require to be set within the terms of all agreements. The right to vary terms will be agreed within the membership articles of the LRB and the method of communication and consequences to be agreed.			<input checked="" type="checkbox"/>	
Joint and Several liability: Where the parties are not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into the LRS shall be jointly and severally liable for the obligations and liabilities arising under the Agreement.				<input checked="" type="checkbox"/>
General Data Protection Legislation and successors – data security for large schemes will be critical to maintaining trust <i>what about small / All schemes?</i>			<input checked="" type="checkbox"/>	
Compliance with current and future legislation: all parties agree to comply with legislation relating to all land matters such as Control of Pollution; cross compliance; Health and safety and payment schemes.		<input checked="" type="checkbox"/>		

Some farmers believed there was a need for, and a value to be gained, from operating within a collaborative agreement, but saw a need for a professional **facilitator** to oversee all parties to an agreement:

*'If you had 17 different people all completely divorced from each other, it'd be a flipping nightmare. So you need to have some continuity and some organisation, and you would have to have people with passion who really wanted to do it.'*

*'But it would go through the facilitator, the facilitator would organise it just like your agent. So your facilitator would organise your person to do it, and you'd have a service fee. And if there's any problems, you'd go through the facilitator.'*

Overall, land managers appeared to be overwhelmed by the bureaucratic and administrative complexities that an LTA could present. This seems to be a key barrier to participation, and making agreements as simple as possible would likely increase participation rates. This is true of large estate owners – as stated in the Southern Water workshop – as well as the smaller farmers and landowners who have participated in the T&T. A summary of the main concerns towards LTAs that were discussed by the five estate owners present at Southern Water's workshop can be found in Figure 5. Many of these echo the findings of the T&T to date, and demonstrate that even without the requirement to include multiple landowners in one agreement, there would still be a number of concerns that would have to be addressed in order to secure landowner participation in an LTA.

Other clauses that the research team had rated amber – potentially problematic – were downgraded to green by some farmers during the RAG rating exercise. These included:

- compliance with current and future legislation
- risk assessments
- methods to remedy breach of agreement or non-performance (all farmers rated green)
- all parties agree to be involved in evaluation of the LR scheme (all farmers rated green)
- third party rights (all farmers rated green)

Linked to these issues was a discussion of **risk**, and farmers felt that the **unintended consequences** of a Landscape Recovery scheme could be significant. In exploring all eventualities from a scheme – including how a scheme might impact upon third parties – it was felt that many LR projects would suffer from a lack of ambition, because smaller-scale and less dramatic changes would generally carry a smaller risk both to land managers and to land outside scheme.

*'The changes you make will probably not be as dramatic as you desire. Because the changes that you desire, have other elements of risk that you need to manage.'*

This can be compared to the comment from the second stakeholder workshop, where the expert in property law noted that voluntary environmental schemes such as LR may not, alone, produce the desired level of benefits required to mitigate climate change and other natural emergencies; regulatory change may therefore be required, to provide bigger impacts.

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- Tax implications
  - Impact on land value
  - Multi-party nature of agreements
  - Bureaucratic and administrative complexity
  - Need for extensive baseline and natural capital measurements
  - Ability to retain multiple functions in a landscape
  - Need for public education regarding land use and landscape change
  - How to secure ongoing funding for the length of the agreement
  - Opportunity costs

Figure 5: Large estate owners' key concerns about LTAs

While cautious of the risks involved in such widespread and long-term land use changes, farmers are also able to see **opportunities** – both for maintaining the viability of their business and income, and for providing significant environmental benefits in the long-term – as long as LTAs are workable for them:

*'The coastal erosion is happening, the river's going to break down, all these things are going to happen. And so this is an opportunity to try and do something different, better, whatever with that land, and try and have a benefit. And there's money that people are going to have to be spending on these things. So it's actually trying to find the machine, the solution to bring it all together.'*

*'The five year schemes at the moment are hopeless because nature gets a hold and then it's all gone again... We're trying to preserve, save whatever, do the best that we can with that land that we've got [for the long-term] ... And we've got to make sure that we can all survive and make something out of it.'*

*'I think we are all fed up with the short-termness of many of the agreements we've entered into.'*

In addition, there is a sense among some farmers that the **public goods** deliverable under a LR scheme might include an economic benefit to others, for example by creating local job opportunities:

*'Part of your management will involve rangers, will involve environmentalists, will involve ecologists as part of working and managing that land. So you are creating an awful lot of job opportunities in a completely different way on the land that we have been used to traditionally, with all the other country pursuits that we haven't got so much of anymore; it's a different way. And there might even be the same people who are retraining and who love the land and want to look after the land.'*

Strutt and Parker have modelled the template LTA around a company limited by guarantee; this would be the **'single legal entity'** required by Defra for entry into LR. While a Community Interest Company (CIC) and Charitable Incorporated Organisation (CIO) were considered by Strutt and Parker, the farmer participants in this T&T are all production landholders. They would, therefore, require the opportunity to make and withdraw profits from any LR scheme or similar environmental LTA, especially if a change of land use was required which reduced their productive capacity. Thus, a corporate body is deemed more suitable than a charitable in the context of this T&T. As one farmer noted,

*'It's land that would have been farmed commercially, and it's now going to be into a scheme.... So the money is to replace what you were doing with it before, so profits are not a bad thing... You need to be able to direct your profits wherever, and not always roll them back in.'*

While farmers generally welcomed the ways in which agri-environment schemes have recently been opened up to allow **tenant farmers** more rights to enter a scheme without landowner permission, they are also wary of the potential consequences of such:

*'If you're on a shorter tenancy, you might have the right to do it but if you piss your landlord off, because they don't want you to, you're basically negating any future extension of your FBT. Because they didn't want to do it, you forced the issue because*

*you're allowed to, and actually reality's the end of your FBT, you're getting the boot and someone else is coming in. So just because you can, doesn't mean you should. There's a lot of politics going on in the background isn't there'.*

Likewise, it is likely that many tenants could find themselves responsible for the delivery of a LR or other long-term environmental project yet without management control either of land or the LTA and its associated entities.

Issues of **monitoring and evaluation** were also discussed by stakeholders and farmers. One stakeholder working with a local wildlife trust explained the different options they are considering for M&E:

*'We're looking at doing a range of different monitoring and auditing things according to the risk...we see with each individual contract. So if it's [the Wildlife Trust] who owns the land, and they've got a really sounds management plan in place, naturally they might self-report...more frequently than the land manager who has demonstrated less experience for habitat creation and management.'*

Matters of data protection and ownership will be crucial to any LR scheme or similar LTA, and farmer participants emphasised the need for agreement holders to maintain ownership over, and access to, any data generated from environmental schemes that are taking place on their land.

## **Conclusions**

Based on this, and the previous phases of the T&T so far, it appears that LTAs – especially of a multi-party/collaborative nature – are currently likely to be unachievable in a LR context. There are many factors contributing to this conclusion, but there is a clear need for greater guidance and clarity from government, especially surrounding conservation covenants and blended finance. The various sources of risk involved need to be mitigated as far as possible, to provide reassurance to all parties who might be considering an LTA. Moreover, with the uncertainty surrounding the emerging natural capital markets, many land managers are wary of forestalling future opportunities, and require further guidance about any likely future regulations surrounding the stacking of multiple benefits and outcomes in a landscape.

Overall, land managers appeared to be overwhelmed by the bureaucratic and administrative complexities that an LTA could present. This seems to be a key barrier to participation, and making agreements as simple as possible would likely increase participation rates. While smaller landholders of the T&T have repeatedly expressed the sentiment that LR, with its minimum 500 ha requirement, seems designed for larger landholders only, the estate owners at the Southern Water workshop also had real concerns about entering into an agreement of this nature. Clearly, the added complexity of securing an agreement with multiple parties is a key disincentive to participation. It may be that transacting agreements with single parties beneath an overarching LR project – although likely to incur higher transaction costs – would lessen both the administrative complexity of LTAs and reduce the perceived risk to land managers by eliminating the need for joint and several liability.

## Summary of findings

This section briefly summarises the findings of Milestone 4 of the Test and Trial, in response to the five policy questions addressed in this phase.

1. How to construct long-term agreements (30+ years), potentially incorporating conservation covenants, to safeguard investments in land use change and associated environmental outcomes?

Constructing LTAs around a **single legal entity** should help to ensure continuity within an agreement's aims and membership over time. However, review mechanisms and other structures would be in place to allow new members to join an agreement where appropriate, and others to leave when absolutely necessary. As a result, in the final phase of the T&T we will reflect on the tension between needing flexibility but also the clear requirement for robust structures and safeguards. This process of reflection will take place both within the project team and in discussions with stakeholders. Agreeing to the principles in common of the T&T's template LTA would require agreeing to carry **joint and several liability** among all agreement holders. Whilst understandably troubling for many land managers, ensuring full clarity on scheme delivery and any penalties for non-compliance are built into the agreement from the outset can mitigate such concerns to some extent. In the final phase of the T&T we will explore options to reduce and mitigate these concerns, potentially by linking liability to specific aspects of the LTA through a process of ring fencing. Such a clause, and associated structuring of the LTA, helps provide security towards fulfilling the scheme's environmental goals whilst also providing security for all sides that the project is not at risk of non-delivery. Indeed, Strutt and Parker believe that many funders will want to work with a single legal entity for this reason.

Although some participants expressed concerns over the willingness of land managers to enter into a single legal entity, others believed there is a need for, and a value to be gained, from operating within such a collaborative structure. It is, however, likely that a professional facilitator will be required to oversee any multi-party LTA such as this one. The vehicle chosen by Strutt and Parker to underpin the T&T's template LTA is a company limited by guarantee, as the ability to make and withdraw profits in such a structure best suits the financial needs of the production landholders that we have codesigned the agreement with. Similarly, whilst Strutt and Parker have explored options for using a **cooperative law** framework, they believe that **contractual law** offers better security for all parties in terms of dispute resolution, and mechanisms to enforce penalties and obligations. Again, this should help safeguard investments and ensure ongoing scheme compliance.

There is an ongoing tension among T&T participants over the need for **conservation covenants** to be included in LTAs. Although they made provide a sense of certainty over long-term land use for funding bodies, these companies also expect them to be prohibitively expensive to use at scale. A balance therefore needs to be struck between seeking long-term security and allowing **modifications and discharges** to occur in exceptional circumstances. Moreover, covenants can only be transacted with landowners, so if tenants want to participate in a scheme that requires them they will only be able to do so with landowner permission.

Whilst the governance and regulations surrounding LTAs will be crucial to their success, the impact of ongoing agreement holder **engagement** must not be underestimated; if engagement and ambition can be sustained, environmental outcomes are much more likely to be secured in the long-term. Efforts at knowledge transfer and social capital building have a role to play here.

2. How to blend public and private finance in funding projects? AND
3. What is the best implementation option for bringing in private finance?

Having a conservation covenant-style agreement or other designation in place can encourage private investment by adding security of land use change. However, as in previous workshops of the T&T, Southern Water's representative again emphasised that many businesses will only be able to commit to a **funding cycle** of 3-5 years. In such a space, upfront capital investments might be easier for funding bodies to commit to than ongoing payments.

Additionally, stakeholders and farmers discussed the relative areas that public and private bodies might finance, and there was general consensus that '**public goods**' – especially public access to land – should be paid for by public money. On the other hand, aspects such as water quality improvement or flood risk alleviation are felt to be more natural investment areas for private bodies such as water companies. **Offsetting requirements** might also encourage other types of business to invest in LR projects.

4. How to incentivise land manager participation and collaboration in Landscape Recovery projects and determine appropriate payment mechanisms? AND
5. How can payments be structured over the life of the blended finance agreement to allow land managers to achieve high quality and quantity of environmental outcomes while balancing stability of revenue and investor return?

Stakeholders and farmers alike are keen to stress their **willingness** to participate in environmental agreements, including those of a long-term nature. However, it should be recognised that there are many limitations to their ability to plan for the long term (including those mentioned in answer to policy questions 2 and 3, above). One key unanswered question for farmers remains the issue of **taxation**, especially if land is being taken out of agriculture. Uncertainty also remains over: future government and private environmental schemes; **additionality**, including the stacking of different environmental outcomes from the same parcel of land; and emerging natural capital markets. These all contribute to land manager caution, and affect their ability to definitively calculate the opportunity costs of various options. There are areas here in which greater government clarity could allay some of these fears and encourage LR and/or LTA adoption.

In terms of **financing**, many land managers are wary of payment by results (PBR), but are also keen to be able to secure bonus payments for over-performance against agreed targets. It is clear that some outcomes are more suited to a PBR model than others, and the approach taken to payment mechanisms will depend on what is being measured. With current inflation rates, a one-off capital payment for an LTA is currently an unattractive prospect for many land managers, who see this as gradually depreciating their income over time; rather, annual payments – preferably adjusted in line with CPI – would add a sense of fairness and security to the question of financing. In contrast however, capital payments are likely to be the preferred option of many funding bodies.

Land managers appear to be overwhelmed by the **bureaucratic and administrative complexities** that an LTA could present. This seems to be a key barrier to participation, and making agreements as simple as possible would likely increase participation rates. Removing the need for a **single legal entity** to which all are signatories might remove some of this complexity and alleviate some concerns over liability.



There is also a balance to be struck between creating larger LR projects and giving land managers – especially smaller farmers and tenant farmers who rely on an agricultural income – the opportunity to participate in environmental schemes that may be less ambitious in scope or long-term in nature. The farmer participants in the T&T all express strong environmental and land stewardship values, yet individual circumstances may preclude them from entering into an LTA. For some land managers, making smaller changes to their land management, and being able to enter/leave agreements more freely and regularly will be more suitable; for these, schemes such as SFI or Countryside Stewardship will undoubtedly be more attractive. There is, however, widespread recognition that more dramatic changes to land management practices are required in order to meet urgent climate targets. Some farmers believe the more ambitious ideas will fail to go ahead because of the increased **risk** involved in these. Similarly, some stakeholders believe that large-scale change will only occur when the **regulatory environment** also changes, in order to greater incentivise participation and perhaps move away from schemes of a voluntary nature.

Overall, evidence from this T&T suggests that LTAs – especially of a multi-party/collaborative nature – are currently likely to be unachievable in a LR context. Transacting agreements with single parties beneath an overarching LR project – although likely to incur higher transaction costs – would lessen both the administrative complexity of LTAs and reduce some of the perceived risk to land managers by eliminating the need for joint and several liability. Additionally, there is a clear need for greater guidance and clarity from government, especially surrounding conservation covenants and blended finance. Moreover, with the uncertainty surrounding the emerging natural capital markets, many land managers are wary of forestalling future opportunities, and require further guidance about any likely future regulations surrounding the stacking of multiple benefits and outcomes in a landscape.

## References

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