



Co-designing long-term agreements for Landscape Recovery

Head of Terms Template Agreement

*Environmental Land Management Test and Trial for
DEFRA*

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Purpose of document

This document **provides Heads of Terms (HoT) guidance for drafting the terms for a long-term agreement (LTA) to enter into a Landscape Recovery (LR) project** with Defra and other private sources of funding, should a blended finance approach be adopted.

The template HoT has been **informed by a combination of desk research, workshops and interviews with land managers and other stakeholders, and the expert knowledge of Strutt & Parker**. After an initial review of literature on existing forms of LTA (see Barkley, Short & Chivers 2022), we carried out eight workshops and a series of group and individual interviews with a total of 35 participants (see Barkley, Chivers & Short 2022a, 2022b and 2023). During these, we sought to better understand the key barriers and enablers to participation in LTAs for LR. We also co-designed, with participants, a hypothetical Natural Flood Management (NFM) scenario, around which the template LTA is framed. Initial drafts of clauses for the HoT agreement were shared with participants at workshops and interviews, and final revisions have been made to the document as a result of participant feedback from these sessions.

We focused on developing, with participants, an **agreement that could meet the needs of agriculturally productive land managers in a lowland, multi-party context**. In this document, we detail the clauses that would likely need to be included when drawing up an LTA in this context. By presenting these clauses as they are shown here, we illustrate the many variations that may arise when working with different land managers and stakeholders, each of whom are likely to have differing requirements of an agreement.

Abbreviations

Abbreviation	Definition
AHA	Agricultural Holdings Act 1986
ATA	Agricultural Tenancies Act 1995
BNG	Biodiversity Net Gain
CAAV	The Central Association of Agricultural Valuers
CGT	Capital Gains Tax
CIC	Community Interest Company
CIO	Charitable Incorporated Organisation
CPO	compulsory purchase order
CS	Countryside Stewardship
EA	Environment Agency
FBT	Farm Business Tenancy
HoT	Head of Terms
IHT	Inheritance Tax
IT	Income Tax
LR	Landscape Recovery
LRRB	Landscape Recovery Responsible Body
LTA	Long-term agreement
MRICS	Member of the Royal Institution of Chartered Surveyors
NFM	Natural flood management
SPV	special purpose vehicle
T&T	Test and Trial

Glossary

Term	Definition
Breach	Does not meet the agreed targets and terms as set out in a legal document
Capital works	Fixed permanent works
Definition of Agriculture	As defined by the AHA 1986, “Agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.
Derogation	Agreed temporary relaxation from specified requirements within the management prescription
Diversification	Non- farming options – outside the definition of Agriculture
Force majeure	A breach of your agreement caused by unforeseeable circumstances or events beyond your control which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice.

Key considerations

In drafting these HoT, we have made three assumptions in order to meet Government advice at the time of drafting. These are:

- to ensure the scheme passes with the land (not the individuals)
- to ensure that agreements, both in part and in full, are enforceable
- to ensure that agreements allow for modification – including as a result of monitoring – and discharge

We have not drafted a proposal between funders and the Landscape Recovery Responsible Body (LRRB) as these will be subject to individual contractual requirements. However, we have taken into consideration some of the likely requirements in drafting this template agreement.

Legal Structure

This is a widely debated topic as it can encompass multifaceted components and concepts:

1. By its nature, it is anticipated that all parties involved will be required to co-operate with each other. The advantages and disadvantages of utilising a **co-operative structure** versus simple **contract law** for the landscape recovery responsible body were discussed within our Stakeholder and Land Manager groups. Whether a formal co-operative model is adopted, the parties will need to co-operate and agree to be bound by contractual obligations. It is acknowledged that a form of contract law will be required in managing change and performance no matter what type of special purpose vehicle (SPV) is formed by the LRRB: a co-operative, community interest company (CIC), charitable incorporated organisation (CIO) or a formal trading body (limited partnership or limited company), for example. Choosing the right format for each LRRB will be subject to the individual entities' requirements – guidance can be found at [Charity types: how to choose a structure \(CC22a\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/charity-commission) and on the Charity Commission website (<https://www.gov.uk/government/organisations/charity-commission>). For alternative co-operative or corporate decisions there is a lot of guidance on Companies house (<https://www.gov.uk/government/organisations/companies-house>).

It is recommended that financial and legal advisers are included in this decision-making process.

2. **Landscape Recovery Responsible Body (LRRB):** A responsible body of some description will be required to provide the governance for the overall scheme. This entity may be set up as a cooperative, a community interest company (CIC), a charitable incorporated organisation (CIO), a limited partnership, or a company limited by shares or by guarantee (see point 1, above). Those holding ownership or occupancy rights over the land subject to the LR agreement could become a shareholder, member or partner, and therefore voting rights as part of the SPV (depending on the structure used). The allocation of rights or shares will need to reflect the relationships of the legal owners/occupiers and their stakes in the LRRB.

Areas to be covered within the LRRB constitution:

- Purpose
- How it is constituted
- How it is operated
- Financial management (see HoT, below)
- Brokerage for funding
- Apportionment of commitments; divisible income and penalties
- Management prescriptions (physical management of the landholdings) including monitoring and evaluation of performance
- Process for changes to policy and other decision-making

- Process for shareholder/membership changes, including following disposal or death
3. **Legal ownership and occupation:** Land can have multiple stakeholders, for example the freehold owner, an agricultural tenant with long-term occupation rights, an agricultural tenant with short-term occupation, commercial or common law arrangements plus graziers and other forms of land users. All stakeholders will need to be 'on-boarded' as part of the scheme, with obligations and income allocated accordingly (see Figures 1 and 2, p.6).
 4. **Contractual conversation:** The funding/financing and land management plan form a crucial part of the contractual documentation:
 - **Land management plan:** This is discussed in detail within these HoT. The land management plan will set out the prescriptive requirements to deliver the outcomes specified within the LR agreement. It is required to be more flexible to change than a contractual element; this allows for modifications to be made, especially as a result of data led reviews. It can also be used where stacking³ or bundling⁴ are included within the LR programme.
 - **Financial plan:** Terms to be considered are set out in this document. The ability for the LRRB to provide funding to landholders for a specific purpose will be detailed according to the Divisible Asset (see point 6, below). This vehicle will be used to determine what or if surplus can be divided between members or shareholders, as well as dealing with all other forms of remuneration.
 5. **Funding:** it is widely anticipated that funding will be derived from a combination of public and private bodies with differing agendas and timescales for payment; at the moment, blending public and private funds is not widely occurring in practice. One possible way of achieving blended financing might be if LR projects replicate existing carbon credit schemes (such as the Woodland Carbon Code): i.e. the LR project produces credits, each of which are paid for by a single company, co-terminus with the timescales of the scheme. These credits can either be annual or capitalised for the period of the scheme.
 6. **Divisible asset:** An opportunity for individual entities/participants to share (divided) the monetary rewards/income (asset) generated by the scheme. The scheme will require detailed management plans, one of which will set out what/how the landholder will obtain money (either for carrying out agreed management actions or by delivering agreed results). The Divisible Asset is the total of the funding split across all parties in an agreed proportion. This will allow for the complications of additionality of funding to be treated fairly between all shareholders or members.
 7. **Conservation Covenants:** Under Part 7 of the Environment Act 2021, there is the opportunity to tie the land parcel to the scheme for a period of at least 30 years; the rights will transfer on disposal. A Conservation Covenant is a private voluntary agreement between the contracting parties. It will be attractive for both public and private funders, as it can provide certainty with regards the longevity of land use change/land management.

³ Stacking allows several different land management agreements to be put in place on the same parcel of land. Provided they offer different environmental outcomes, concerns over additionality should be allayed. These agreements may be made with different funding bodies.

⁴ Bundling allows several different land management agreements to be put in place on the same parcel of land, with the purpose of these agreements working towards the same environmental outcome. These agreements may be made with different funding bodies. Questions of additionality may arise in the context of bundling.

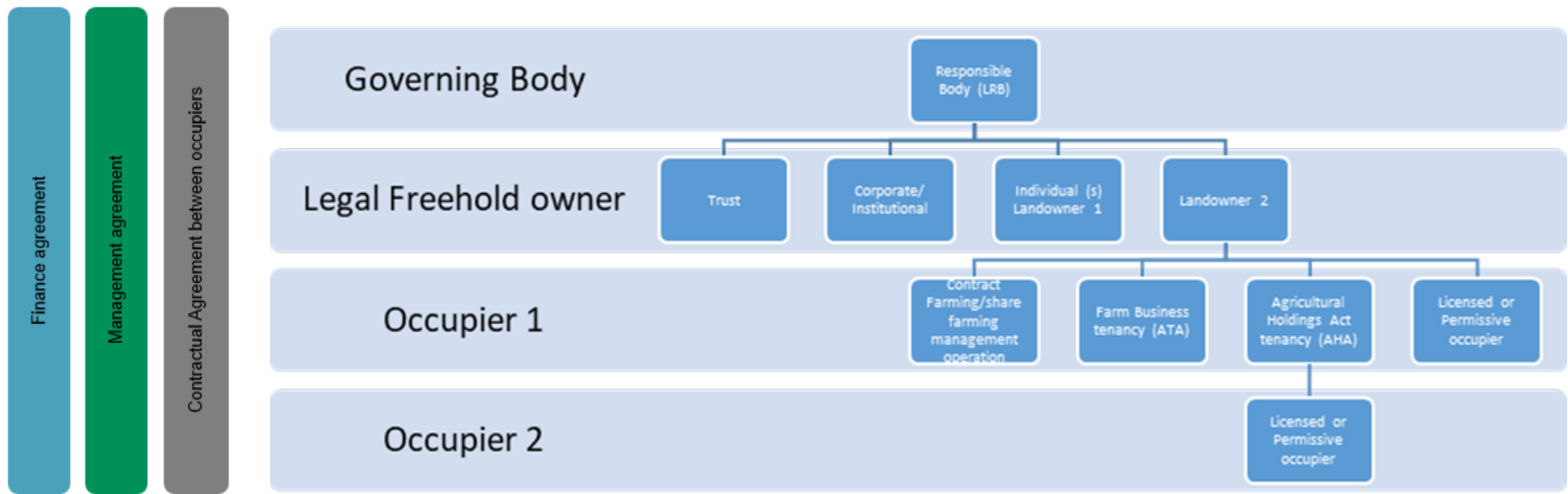


Figure 1: Diagram illustrating various types of occupation and the agreements envisaged between parties.

Agreements	
LRRB	Membership agreements
LRRB – Freehold landowners	Collaboration agreement: contractual arrangement; financial agreement & management prescriptions
Freeholders – AHA tenant/ ATA tenant (FBT)	
Freeholders – other occupancy (GL/ horse/ commercial)	
Contract/Share Farming Clauses	

Figure 2: List of agreements to be put in place

8. There are **additional concerns** at the time of writing (not an exclusive list):
- Relevant details regarding the registration of responsible bodies who would oversee conservation covenants are lacking thus far, with responsible bodies also firstly needing to be approved by the Secretary of State.
 - Stacking/layering payments: guidance is becoming clearer as to how schemes might allow for additional payments, for example, use of the land for different environmental outcomes such as nutrient neutrality alongside carbon sequestration.
 - Green Finance strategy – The 2019 Green Finance Strategy set out a comprehensive approach to greening financial systems, mobilising finance for clean and resilient growth, and capturing the resulting opportunities for the UK. Currently it is in consultation for an update. The updated Green Finance Strategy will take stock of progress so far and set out how the UK can better ensure the financial services industry is supporting the UK's energy security, climate and environmental objectives.
 - The **definition of agriculture**: any changes to this have far-reaching **tax implications**, and will also affect agricultural tenancies. There is specific determination on what is 'agricultural property', and the current definition does not provide for land within environmental schemes – i.e. land taken out of productive agriculture. However, certain activities such as tree planting or the creation of ponds do currently remove the land from being considered as for agricultural use. Tax legislation provides some reliefs that are only applicable to agricultural holdings. For example, Inheritance Tax (IHT): some agricultural property can be passed on free of IHT. Questions also arise regarding Income Tax (IT), such as will the earnings from the LR scheme form part of one's IT calculation? Will exemptions be applied? Various reliefs from Capital Gains Tax (CGT) are also available to agricultural property sales: is there an opportunity to offset part of the land into the LR scheme as a capital asset?

Table 1: Contractual agreement between LRRB and landholders

The purpose of the following tables is to set out the main terms to consider when working with partners to create the scheme. In these tables we also highlight how the input of land managers and other stakeholders throughout the T&T has helped co-design these HoT.

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
Parties	<p>This might be complex dependent on the chosen structure. In this example we have concluded there is a Landscape Recovery Responsible Body (LRRB) which includes members/allocated shareholders.</p> <p>Freehold landholders, leasehold landholders & their successors</p> <p>Must also consider other parties, such as tenants, communities...</p>	<p>Where land is let for longer than seven years it is important to include the leaseholder in any agreement. Freehold landholders will be obligated to ensure any occupant performs the management prescriptions</p> <p>It is critical to include any person or entity that succeeds to the land on disposal or transfer</p>	<p>It was felt that all parties with management control will need to form part of the LRRB.</p> <p>A co-operative would allow the membership to change more easily than a contractual relationship that would need Variations or completely new and costly changes; however, the obligation to perform (and penalties for non-performance) would be harder to maintain in a co-operative arrangement.</p> <p>The landowners in particular were keen to ensure that they had control. The issue of joint and several liability will</p>	<p>Parties agreed that longevity and continuity was key to the success of a scheme and, therefore, involving all parties with an interest in the land is critical to its success.</p>

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
			need to be considered as part of the conversation.	
The Landscape Recovery agreement	Clearly identifies the Purpose, Outcomes and land included within the Landscape Recovery Agreement.		<p>The overarching vision and purpose of the scheme LR agreement must be clear, but the agreement must also be able to change, for example, depending on the requirements of the funding (private or public).</p> <p>In the scenario around which this agreement is based, the overarching vision would be an NFM project.</p>	Participants agreed that the clarity of the overarching scheme is critical to its success.
The Property	Plan of the land included within the scheme. Detailed plan of ownership and occupancy. Detailed plan of works.	Identify existing schemes, records of all other existing rights such as easements and wayleaves, public rights of way etc. Planning permission and other	Identification and retention of property integral to the scheme's success is key. For example, land involved in creation of new meanders and banks to retain water	Potential funders and other stakeholders were keen to identify core land and its (current and proposed) functions. It was acknowledged that some funders will only be able support certain schemes for up to five years at a time.

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
	<p>The LRRB shall not be or become entitled to any easement, right, quasi-easement or quasi-right except those rights (if any) set out in Schedule 2 and section 62 of the Law of Property Act 1925, on land that is excluded from this Agreement.</p>	<p>restrictions should be included. Non-statutory occupants such as graziers will also be identified.</p> <p>Ideally a live GIS website could be developed to manage all access and works so all parties have access to and understanding of restrictions and opportunities within the scheme area.</p>	<p>(meadows/scrapes etc.), as a core function of the LR project, will need to be identified on a plan and tied for the duration of the LR agreement.</p> <p>Duration of land involved: it was agreed that landholders needed to retain the ability to apply for additional schemes (stacking/bundling); the timescales of these could vary. A nutrient management scheme could start, for example, five years after the capital works for the NFM project. Meeting the targets of the overarching LR agreement must be ensured.</p>	
<p>Collaboration Agreement (prior to and during LR agreement)</p>	<p>The LRRB and landholder will enter into a Collaboration Agreement to:</p> <p>(a) Work within the remit of the LR agreement, to:</p>	<p>Basic terms to agree as an addendum or side agreement to main agreement. It is useful to establish this prior to LRRB membership, so that all parties are in agreement for the</p>	<p>Implied through workshop discussions.</p>	

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
	<p>i) maximise the value of receipts to both the LRRB and landholder; and</p> <p>(ii) improve the environmental benefits of the Land, including without limitation through e.g. climate change mitigation, the promotion of carbon sinks, biodiversity and nature based solutions</p> <p>(b) work together to produce an expression of interest and to submit it to the entity administering the LRS (Administrator);</p> <p>(c) if accepted into the Scheme, covenant to:</p> <p>(i) comply with the terms of the Scheme;</p> <p>(ii) not carry out any Prohibited Activities on the Land</p>	<p>common goal and to establish means to address conflict of interest.</p>		
<p>Obligations – practical management of land</p>	<p>Management plan for the land</p>	<p>Clearly identifying the specific delivery requirement(s).</p>	<p>The mechanism for monitoring and evaluation was highly debated.</p>	<p>All participants agreed that clearly defined management practices and obligations are necessary for all parties to understand the practicalities of the agreements.</p>

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
		Map of land and works required for each landholder. Monitoring specifications such as base level data and access for further surveys. Stating what is a breach of the obligation. Reinstatement requirements. Specific restrictions on behaviours; allowance of public access or sporting tenants etc.		
Obligations – agree to adhere	Agreement holder to fulfil obligations set out in the collaboration agreement.	Landholder to agree to fulfil those obligations and not to act or omit to act in a way that compromises them.		
Agreements	Single agreement between LRRB and landholder that contains obligations to adhere to changes in tenancy agreements, flexible land management agreement & financial agreement	Landholder to agree to all parts of the agreement. Having a single agreement between LRRB and landholder is key to generating trust. Financial plan to be co-terminus with contractual agreement	Membership of the Scheme will require a single agreement, with the understanding that management agreements with combined financial agreements will fluctuate and move dependent on financial arrangements (i.e. new funding bodies	Participants were keen to have certainty of outcomes, whether from the perspective of a landholder providing services or a funder knowing the results of their investment. Change management was debated hotly. The ability to add other schemes and change the scheme to suit means that flexibility in

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
		but subject to amendments. Management plan may vary.	replacing old ones, or changes in payment rates). Included in this agreement will be the ability to change ownership structure, but retaining obligations to perform to the same standard as before.	practical management and payments will be key.
Consents required	Sets out the ability for LRRB to apply for necessary consents for the purpose of the scheme	It could be the scheme requires other consents such as planning permission, EA permits and other consents - including with non-participating neighbours - such as access. This HoT would provide permission for the LRRB to apply for these consents on the landholders' land.	Landholders may wish to control or restrict the type and/or number of applications on their land. The ability for landholders to either stack schemes or have private alternative use on the land will need to be considered.	Uncertainty in provision of rights combined with liability of performance has meant that clearly stating from the outset what can be agreed with funding bodies and local bodies on the landowners' property is important.
Additionality/stacking of funding	Included within the Financial Plan. The ability for landholders to stack or have additional schemes on the land already in LR.	LRRB may wish to obtain full control of the land and any other schemes entered into at a later date could be included as part of the Divisible Asset.	Striking the right balance between freedom of individual businesses and the outcomes of the LRRB will be critical to the success of the joint venture. What if a land managing party to an	Requirement for both flexibility and certainty of an ability to stack and the likely outcomes of this

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
			agreement wants to diversify on land outside the agreement and other parties object to it as they think it could damage the purpose of the LR project?	
Current arrangements	Provides a list of existing agreements on the land	Plan and prescriptions for existing schemes	Example of existing schemes: CS, carbon credits, BNG, planning agreements such as s106, option agreements for development of land, grazing licences or other forms of occupation.	Do not wish the scheme to hamper or quash any existing income.
Term	Provides length of scheme on the land parcel and any opportunity for break clauses	Length of agreement: start and end date. Any prior works timeline and any mechanism for extension or renewal.	Agreements are required to be at least 30 years. The nature of the agreement may make it unlikely that parties will be able to agree resumption or early termination of the whole land parcel. There could be an agreement for areas of land not critical (i.e. non-core) to the scheme for resumption in part. Discussion about additions to schemes and how they can be tied to either a co-	Requirement for flexibility and certainty

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
			terminus arrangement between parties or the ability to extend the arrangements between the LRRB and the landowners; together with the creation of single, simple management plan for each land parcel.	
Conservation Covenant	Parties could agree that in creating an LR agreement, all qualifying land will be included as part of a conservation covenant. This would be in addition to the contractual agreements. The LRRB and each landholder will provide a restrictive (conservation) covenant to the other.	Identifies the terms of the covenant and obligations to perform. Any modification is controlled under the s130 Environment Act. Includes plan and parties.	Whilst it might not be necessary for the parties to have one in place, funders who are investing in the longevity of the agreement will seek to ensure that the land will remain as part of the LR agreement irrespective of Disposal. In addition, it would limit any change in development without the consent of the LRRB and/or other landholders involved. There are concerns about tying the land in for long periods in respect of changing the identity of the land from agricultural to 'environmental' and the potential for creating	Farming stakeholders were uncertain about the effect on the capital value, IHT and other tax benefits going forward.

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
			difficulties for future land owners.	
Insurance	Cover to be agreed by LRRB and premium included as part of management costs.	<p>Public access will engender its own requirement for insurance. Variety of insurances required: public and professional liability, safety and financial.</p> <p>Consider Buffer provision within the LRRB agreements.</p> <p>Anticipated that landholders will have their own insurance for the purpose of works carried out for their own purposes. Buffer allows funders to draw down on additional benefits should the identified benefits not meet obligations.</p>	Did not discuss as part of agreement.	Experience from similar agreements such as CS: these have a requirement for insurance to be specified to protect all parties involved in the scheme.

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
Review	<p>Mechanisms to monitor, review and modify any terms within the agreement to be addressed within HoT:</p> <ul style="list-style-type: none"> - Set interval - Triggerable if change occurs - Recourse to third party such as CAAV or ecologists - Reference to Dispute Resolution 	<p>Parties agree to regular reviews to consider the obligations in the spirit of adaptive management, such as every 3/5 years; to be set out in the management plan.</p> <p>Parties to be paid for the works to be undertaken with bonus structure for additional results.</p> <p>Consideration to be given for the following events:</p> <ul style="list-style-type: none"> - Force majeure - Disposal: either via transfer on death or sale - Compulsory Purchase: acquiring authority serves notice to either purchase or use the land included within part or whole of scheme 	<p>Concerns about baseline measurements and validity, and the covering of costs to monitor and evaluate were a common theme. These HoT try to keep the mechanism simple but with recourse to management of disputes and change mechanisms.</p> <p>Payment on results vs payments for works carried out was a common theme. In this scenario, the long-term nature of the NFM scheme could mean that there is no significant event (flood) for a number of years and therefore, landholders required payment for the works undertaken and improvements from the baseline data. In the circumstance of an event, the results would be evident in the reduction of flow and production of water held areas.</p>	<p>Change management and success measures formed part of most farmer and stakeholder engagement exercises.</p> <p>Baseline data and ground trothing key to providing success measures for the funders and perhaps to ensure future funding.</p> <p>CPO: which would have greater influence on the landscape, and how to manage that dictated our thought process</p>

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
			CPO – in the event of a CPO or pipeline scheme interrupting the NFM scheme; it was felt that the LR agreement would need to be mitigated to ensure the net result does not reduce its impact.	
Dispute resolution	Provision for arbitration or expert witness on any matter that arises in dispute	<p>Encouragement for alternative dispute resolution such as mediation, with final resort being within the framework of the Arbitration Act.</p> <p>Expert determination may be considered for certain aspects of the agreement such as ecological or tenure aspects.</p>	These should be dealt with in hand in the first instance and handled by the required expert – flood engineer, ecologist or MRICS for example, according to the dispute.	Experience from other AES.
Breach and penalties	LRRB/landholder has breached one or more of Covenants within contract or landholder has not met targets or prescriptions within Management Agreement: either party to	Requirement to establish veracity of breach and opportunity to remedy breach. Penalties to be final recourse if not able to remedy or one that frustrates project.	Please see commentary on joint and several liability for performance.	This was hotly debated and widely agreed that without baseline data and ability to record success, non-performance would be difficult to prove. A mechanism that allows third party involvement at some point will be necessary.

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
	<p>notify other party in writing of the alleged breach, to remedy breach and for an agreed action plan to be prepared to remedy the alleged breach (if considered necessary) within reasonable timescale. Termination of agreement by written notice shall be enforced if either party has failed to remedy the breach as outlined in the Notice or where a breach is incapable of remedy clause</p>	<p>Who obtains final penalty payment?</p> <p>Repayment schedule.</p>		
Force Majeure	<p>Sets out mechanism to claim force majeure</p>	<p>Ability for LRRB to claim compensation either from landholder or body or to provide a force majeure process with funder. Landholder to have appropriate insurance in place.</p>		<p>Experience with other AES.</p>
Disposal (transfer of freehold or leasehold interest in land)	<p>Successor in title to be obligated to provide same standards and to sign up to the management agreement. Landholder</p>	<p>Should successors be offered the opportunity to amend the agreement to fit within their proposed business? This</p>	<p>Not changed as a result of participant input – it was acknowledged that the likelihood of parties needing to change the</p>	<p>Not changed as a result of participant input – it was acknowledged that the likelihood of parties needing to change the agreement due to death or other circumstances will need to be covered.</p>

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
	obligated to notify LRRB of any sale or transfer of rights providing third party details.	will need to be answered within the collaboration agreement	agreement due to death or other circumstances will need to be covered. Please see notes above about the core land parcels that need to be included as part of the scheme. Any change in circumstance should protect the core land within the scheme.	
Further encumbrances to Title	Landholder shall not create any further encumbrances to the Title of the land from the date of the agreement without prior written agreement of the LRRB	This may be viewed as burdensome for the landowner (e.g. if LO wanted to secure borrowing against the land).		Landowning stakeholders were keen to understand the impact on their land holding.
Liability	Identify areas where parties are joint and severally liable and where they are not, and a mechanism for action if non-performance occurs.	If members are liable for other members' non-performance this will need to be identified. Also, should the LR project affect third party land or negatively affect members' land, there is a requirement to identify a method to address this in form of reinstatement	Action on non-performance: notice served to remedy within timescales. After which, can members of LRRB enter land to remedy breach? – this will be a difficult clause for members to agree to third party to enter their land. LRRB to cover the cost of remedying breach?	Farming stakeholders stated that they would seriously consider not entering into a scheme if they were responsible for another's actions on their land and vice versa. A proposal to maintain a working relationship for the core land was met with interest but inherently matters to eradicate the liabilities and fall back on requirement for penalties for non-performance.

Term name	Clause	Discussion on the clause	Further information or considerations as a result of participant input	How/why we have drawn this conclusion
		<p>and compensation via adequate insurance. Example areas for joint liability: members of the LRRB jointly responsible for payment against the agreed financial plan to the individual party. The LRRB will be obligated to pay the divisible asset/financial agreements; therefore, as a member of the LRRB landholders could find themselves personally obligated to fund the scheme if other members/funders do not meet expectations. Conversely, within the financial plan, areas will be identified where each party is responsible for their proportion of payments/ management prescriptions (obligations).</p> <p>Another example is if one member caused</p>	<p>– will this be within the insurance documentation?</p> <p>This is the area that is most likely to cause consternation amongst fellow members of the LR project; however, areas for liability will need to be addressed, perhaps in the form of a chart identifying key areas where entities agree to perform and hold each other to account.</p>	<p>It was concluded that should a party benefit from the LR project (the example used being the establishment of a glamping site overlooking the restored water meadow) this was a benefit akin to CS agreements and other neighbourly arrangements. Although payment of proportion of the profits did appeal to individuals, it was felt a LR agreement that encompasses a single landowner would be more easily managed.</p>

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		<p>damage to the LRRB (by non-performance) then it could be the responsibility of all members to either rectify or compensate the funders (pay for penalty) for the non-performance.</p>		
<p>Extension of term</p>	<p>Parties within LRRB will agree to extend the term of the agreement if all members agree to the proposal</p>	<p>Please note there may be reinstatement requirements or further requests for funding to ensure the scheme is maintained. Reference to the Conservation Covenant is necessary.</p>	<p>See notes above.</p>	<p>Ability to have flexibility.</p>

Table 2: Financial management agreement

Term name	Term	Discussion	Further information or thoughts	How/why drawn this conclusion
Divisible asset	All monies held within the LRRB to be apportioned to all members of the LRRB.	<p>Critical to the apportionment is the method to determine how it is to be divided and paid.</p> <ul style="list-style-type: none"> - Payment on results? - Payment for agreed management plan? - Lump sum payment to all members or periodic payments? - Index linked – increases annually? 	<p>To be included as part of the plan: Divisible surplus</p> <p>Individual schemes will need to identify areas where dividing the benefit could assist in the trust between neighbours and therefore be beneficial to the outcome of the scheme.</p>	Participants’ opinions were mixed as to whether a profit share agreement could be accommodated. An example was used of glamping sites benefiting from the creation of water meadows on neighbours’ land. There was an acknowledgement that there would be running costs for the LRRB and a proportionate payment from benefit/profit could assist with these.
Direct payments	Prescribed payments – defined acknowledged payments set out within plan	<p>Direct payment for capital works undertaken on behalf of LRRB – agreed rates for works prior to commencement of works.</p> <p>Direct payment for adherence to management plan: prescriptive works such as lower density grazing derives £x per ha.</p>	Each member to agree rate (unless determined by third party such as DEFRA) and paid via a claim method potentially similar to existing CS agreements.	It was agreed that clarity on payment rates and methods is key to the success of the agreement for individual farming businesses.
Divisible Surplus (Net Margin)	Shall mean the surplus from the part of the LR project, including any	Depending on the type of SPV there may be a requirement to either divide the surplus	Outgoings will include (not exclusive): fees and charges, insurance, administrative costs (office,	

Term name	Term	Discussion	Further information or thoughts	How/why drawn this conclusion
	additional schemes and compensation not agreed to as part of the Direct payments, after paying for all expenses and outgoings as part of the LR project.	funding between members (profit model) or reinvest (charity model). Private members may also want to build up a fund as a buffer (for later distribution). Apportionment to be agreed on % basis	electricity, personnel etc), rates/levies, interest and bank fees, penalties, legal costs and amounts invested for the better performance of the scheme (as minuted by the LRRB). Determination of % payment could be based on land area included within the scheme.	
Profit Income	Sets out how landholders are to provide additional funds to LRRB as a direct result of scheme	Depending on the scheme a member/landholder may benefit from diversification or otherwise as result of the LR project, and therefore it would be deemed appropriate to 'share' that element of profit as part of the LR agreement.	% pre-tax profit to be provided.	
How to claim funding	Set out payment claim form and timetable for payments and claims to be made			Clear processes to provide certainty
Additionality and stacking/ bundling	Sets out the proportion of funds that are attributable to the LRRB.		Additional payments for land parcels within the scheme. See above commentary in this HoT: a list of inclusions / exclusions should be part of this agreement to avoid disputes.	Participants agreed there would be a benefit to the LRRB, however it is dependent on legislation that may be put in place.
LRRB responsibilities	Specifies the proportion of the annual management costs incurred by the LRRB	LRRB will have costs involved for the management of the scheme as whole.	Costs include monitoring and verification of results. Ability to modify. Control of funds – accounting and administration costs.	Clarity is required to ensure all members understand their obligations (liabilities)

Term name	Term	Discussion	Further information or thoughts	How/why drawn this conclusion
	that the landholder will be responsible for.	Will be required to set out a budget and then report against budget within the year.		
Penalties	The management agreement will set out the methodology of proving and appealing non-performance. This agreement will determine the quantum of penalties.			Certainty for non-performance from the outset, for funders and all members.
Reinstatement	No compensation to be paid for reinstatement of land within scheme.	Identifies if payments may be required to allow for reinstatement. This might include where capital works have been carried out utilising land not included within scheme – compound areas.	Depending on the works and potential developers involved, a bond could be considered – reference to the Conservation Covenant may be necessary (if used). Extension of the term of the agreements will need to be considered.	Did not form part of wider participant discussions.
Non-payment by LRRB	A mechanism to obtain funds from LRRB or funders on non-payment	What happens if money not available long-term – for example, if developer no longer exists?		Certainty of income.
Insurance	Premium to be identified as part of costs for management of the Scheme	Proportion of premium to be paid by member or shareholder or landholder (i.e. as part of management costs).		
Evaluation	All parties agree that they can be involved in the evaluation of the	Funding bodies will require lessons learnt and evaluation of methodologies during and post LR agreement.		

Term name	Term	Discussion	Further information or thoughts	How/why drawn this conclusion
	Scheme during or post LR agreement			
Additional Benefits	Agreement between parties for percentage profit as a direct result of participation in LR agreement.	Where individual landholders benefit directly from the scheme, e.g. via a form of diversification, agreement for % to be provided to LRRB to support those whose land is not open to these opportunities.	e.g. glamping site overlooking newly created water meadow (previously arable field)	

Table 3: Land management agreement

Term	Discussion	Further thoughts or information	How/Why reached conclusion
Purpose	Purpose of the management agreement is to set out the practical management prescriptions for each land parcel and landholder.	Tied to the contractual agreement which obligates the parties to perform in accordance to the management plan.	Clarity of vision and understanding of what the landholder is to achieve/perform.
Term	Final start and end points will be co-terminus with the contractual agreement, however, individual management plans together with reviews will be determined separately.		It is possible that funders such as water companies will only be able to adhere to five-year plans and therefore, require a refresh. In addition, the review and monitoring regime will require a refresh of both prescriptions and timelines.
Capital Works	Agreement to undertake significant works to property	Specific details for each landholder with obligation to perform within a set timescale. Payment rate to be included as part of financial management plan – inflationary measures will need to be covered. In-house labour may require separate invoices between parties.	Examples include fencing, digging scrapes or creating a meander in stream. Specific details to be provided and backed with evidence.
Management prescriptions	Agreement to use the land in a particular manner on a year-to-year basis	Specific details for each landholder with obligation to perform. Payment rate to be included as part of the financial management plan	Examples include reduced fertiliser application, not cropping etc.
Indicators of success	Specific parameters determined and agreed	Forms part of the review and monitoring process. Opportunity	Publicity opportunity. Measuring and recording success will be key to

Term	Discussion	Further thoughts or information	How/Why reached conclusion
		for bonus payments or additional divisible surplus to be considered – please note commentary on joint and several liability and the effect on divisible surplus.	future funding (see commentary on baselines).
Access	Agreement to allow public access or have open days.	Allowing access must be deemed to be permissive	Landholders will have concerns about Town Greens, creating commons or additional public rights of way.
Monitoring	Baseline data provided within plan. Ongoing monitoring to be allowed as part of participation in scheme. Reports to be ownership of both LRRB and landholder	Specific details of tests required Who is responsible for monitoring and who does it? What happens if the monitor changes? Dates/stages/what is monitored/ methodology/recommendations and modifications. Actions and considerations.	Continuity of results and measurements will be key to analysing success of scheme. Changes will need to be considered. Reports to be provided to all successors in occupations/ ownership.
Mechanism for derogation (control of breach)	The ability for a landholder to apply to the LRRB (for LRRB to take upwards) for a derogation on basis of items outside of their control		Similar to derogations under existing CS agreements

Table 4: Tenant heads of terms

Tenant Heads of Terms – clauses to be considered to include as part of the negotiations. It is important to recognise that all parties have obligations to perform and tenants will be an integral part of the LRRB.

Term/clause for consideration	Clause	Comment	How/ why conclusion reached
Management Plan adherence	Tenant hereby agrees to manage and maintain the Land in accordance with the Management Plan and the terms of this Agreement for the duration of the Management Plan Period. Provision of records – tenant to be obligated to provide record of works or discussion on non-adherence to The Management Plan. May be amended throughout the Management Plan Period as agreed in writing between the Parties	Tenant obligated to adhere to Management Plan – but provide records of work agreed to perform on annual basis.	Ensuring performance in respect of Landlord as well as the scheme will be critical. See commentary about membership.
Delivery	Tenant agrees to deliver the capital items and the yearly management options/agreements in accordance with the standard and requirements set out in the Management Plan and in the agreed locations as identified in the Management Plan plans/maps.	Tie into whole scheme.	See comments about continuity.
Termination of tenancy	By agreement with both parties, the landlord agreeing to the land within the tenancy & tenant’s membership within the LR agreement does not constitute	Under s64 AHA tenants have the right to claim compensation for improvements during the term of the tenancy. Clarity that the tenant’s Agreed Division as part of the Financial Agreement will be deducted from	Experience gained with other AES.

Term/clause for consideration	Clause	Comment	How/ why conclusion reached
	an improvement as defined within s64 AHA	<p>the overall improvement payment should be agreed. Any additional improvement will be treated outside of this agreement. Conversion from arable to pasture will need additional thought in respect of the change of use – is this an improvement under the Act? Improvements to the overarching soil fertility and/or nutrient neutrality and carbon neutral farming (either as direct result or ancillary result of scheme) will need to be scoped and agreed between parties.</p> <p>Landlord claims for dilapidations will also require some thought. For example, perceived degradation of the productive capacity of the holding (regenerative farming) as a result of the scheme should not be held against the tenant.</p>	
Tenant Right	As above under s77	Tenant should only seek compensation for inputs over the management prescriptions set out in the Management Plan. (Items such as soil improvers, manure etc are compensated on termination of tenancy).	Experience with other AES.

Term/clause for consideration	Clause	Comment	How/ why conclusion reached
Dispute Determination		Set out in Statute under the Agriculture Act 2020. Advised LRRB agreements align with the Act to ensure disputes can be dealt with in streamlined manner (addressing both landlord and tenant issues alongside any LR project).	
Tenant right to demand entry to ELMS		Under Agriculture Act 2020, tenants have the right to request for landlord to allow grant funding.	
Rent and Reviews	The parties agree the LR agreement contribution as part of the Divided Asset/financial agreement will form part of the assessment of the rent	See commentary about split to landowner and downwards agreement to remain between parties or ability for tenant to make a payment claim as part of the Divided Asset agreement within the financial management agreement. See above about treatment of improvements as a result of the LR project. Grant funded improvements as part of the LR project will need to be disregarded as part of the calculation.	Transparency between all scheme members will be key. Trust between landlord and tenant may be harder to reach and negotiate but critical for the success of the scheme.
Diversification/ Definition of agriculture	Consider a surrender and re-grant for alternative agreement or acknowledge proportion of tenancy used and remains agricultural.	Currently, the definition of agriculture will not encompass much of the management prescriptions that are likely to be determined within a full LR project. Minor prescriptions akin to CS (or equivalent) will remain within the definition, however large-	Significant nervousness among T&T participants was shown in this clause

Term/clause for consideration	Clause	Comment	How/ why conclusion reached
		<p>scale landscape changes are likely to be viewed as diversification under the Act. If the majority of the land within the tenancy is included this could be seen as a breach and a resulting Case D notice for termination could be served, albeit the Agriculture Act 2020 may preclude but this interpretation has not been confirmed by the government.</p> <p>This may have CGT and other tax implications.</p>	
Access to land within Management Plan	Permission rights to inspect for compliance with scheme. Tenant will allow access to the Land on reasonable notice to duly authorised employees/contractors of LRRB	Reasonable notice to be determined	T&T participants agreed this would be necessary
Doubling up/ duplication or other activities	Tenant will not carry out any Additional Activities on the Land without the written consent of the other [and to pay the other party the Agreed divisible surplus (as set out in financial agreement) during each year of the Scheme].	It is currently understood that stacking or bundling schemes will be allowed. Public and private funding duplication may occur as well, but it is heavily caveated that it must not disadvantage the existing ELMS. Decisions between what is specific to the farming or company entity and what should be included as part of the wider LR project will be required as part of the LRRB articles.	Further guidance has come out from DEFRA in the course of this T&T.

Term/clause for consideration	Clause	Comment	How/ why conclusion reached
Surrender and re-grant	Upon success, LRRB commencement parties agree to negotiate a surrender of the AHA agreement and create a new business tenancy	Depending on the amount of work/change to the tenancy the LR project influences could render the tenancy obsolete in respect of the obligations under an AHA. Both parties may agree that a change in the occupation (subject to loss of succession rights and CGT implications) may warrant a change in the type of tenancy to place it on more commercial terms with the ensuing freedom of contract. Please note that the new tenancy could be one of a Farm Business Tenancy or Business tenancy under 1954 Act dependent on whether the land would meet the ATA conditions.	
Costs	The parties will meet their own costs in connection with these HoT and the Collaboration Agreement. The Collaboration Agreement will record that the parties will each meet the costs of complying with the Scheme so far as it exclusively relates to their Land but that costs associated with the Scheme as a whole shall be borne in accordance with the Agreed Division	Clearly identifying areas of contribution and costs as set out in the Financial Agreement will prevent dispute. Some of the arrangements between landlord and tenant will be subject to private contract between the parties; however, for the LR project to succeed, disclosure of responsibilities and consideration will be key. Ensuring how the costs are managed as part of the overall rent and productive capacity of the holding will be critical to the relationship between landlord, LRRB and tenant	T&T participants agreed clarity would be required in all these transactions

Term/clause for consideration	Clause	Comment	How/ why conclusion reached
Responsibilities/Liabilities	The parties accept the liabilities and responsibilities as set out in the LR agreement management documentation for the land included within this agreement. The division of performance and responsibilities are set out in the framework schedule.	It is essential that where management prescriptions are decreed for financial gain within the pooled land, the areas of responsibility and or liability are identified and divided. A framework should be drafted setting out the circumstances that could result in loss or damage to the other party's land or to the party who secures the carbon or environmental offset, or where one party does something which results in a breach of the scheme or offset.	T&T participants expressed even more nervousness as to the liabilities of individual entities to perform.

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- Barkley, L., Chivers, C. & Short, C. (2023) 'Co-designing long-term agreements for Landscape Recovery: Report of template agreement co-design and testing workshops', produced for Environmental Land Management Test and Trial for DEFRA, February 2023.
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