

## Less Than Market Value Guidance

### 1. Introduction

This document provides guidance for requesting a Less than Market Value (LMV) transaction with Crown Estate Scotland. It should be read in conjunction with our [Less Than Market Value Policy](#)

The guidance sets out the type of information and evidence that will be useful to Crown Estate Scotland in considering LMV requests and includes examples of 'additional benefits', related to the five outcomes<sup>1</sup>, that requests for LMV might contribute to.

Each request for LMV will be considered on a case by case basis. The type and amount of evidence and information needed to support a request will vary depending on the nature of the asset, activity and additional benefits, and should be appropriate and proportionate to that request. Similarly, the process set out in this guidance will be applied in a proportionate way and not every aspect of the process may be appropriate for every LMV request.

Some requests for LMV will evolve from discussions with Crown Estate Scotland relating to a market value transaction. In such instances, Crown Estate Scotland may already have some detail on proposals which will help to determine what further information and evidence might be needed.

It is for the person requesting LMV (the 'requesting party') to provide information and evidence to enable Crown Estate Scotland to assess if an LMV transaction is appropriate.

It is the responsibility of the requesting party to seek their own legal and other professional advice to support their LMV request and to meet any additional costs incurred by Crown Estate Scotland relating to the processing and assessing of a LMV rental or sales proposal.

As outlined in the LMV Policy, Crown Estate Scotland will apply its discretion in deciding whether to grant any LMV requests.

Please note that this guidance does not constitute legal advice. This guidance will be reviewed in 2021.

### 2. Assessment process

The starting point for any LMV transaction is to establish market value. Before a request for LMV can be considered, a market rent or price must first be established. Market price is established using existing processes e.g. agricultural legislation, open market tender, agreement by negotiation or, failing agreement, by reference to an external expert for an independent valuation (such as the Valuation Office Agency).

A two-stage process is set out for assessing LMV requests. A request must pass stage one before it can progress to stage two. This helps to ensure that the requesting party does not spend time and resources on proposals that are unlikely to progress.

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<sup>1</sup> The five outcomes are economic development; regeneration; social wellbeing; environmental wellbeing; or sustainable development – as defined in Section 11 of the Scottish Crown Estate Act 2019. The LMV policy defines what is meant by additional benefits.

At stage one, LMV requests will be assessed against the significance of any impact on the value of the Scottish Crown Estate<sup>2</sup>. If this impact is not considered to be significant, compliance with competition law and state aid regulations will be assessed.

Capital value of the Estate is directly related to the revenue generated from agreements, so an LMV lease is likely to reduce the capital value of the Estate.

Crown Estate Scotland will make a full assessment of impact on the value of the Estate at stage one. This will take into account:

- **Direct impact** of the request.
- Any **cumulative impact** the request might have in combination with any other existing LMV agreements.
- Any likely **precedent** an LMV agreement might result in i.e. potential to lead to several similar agreements resulting in an unacceptable cumulative impact on value of the Estate.

**Where assessment indicates that impact on the value of the Estate as a whole will be unacceptable, the request for LMV will not proceed.**

The second stage of assessment requires more detailed information and evidence on an LMV request and how it will deliver additional benefits related to the five outcomes.

### **i) Stage one assessment**

The following information from the requesting party will help to support requests at stage one:

- Details of the proposed tenant or purchaser and agent** (if relevant). This should include contact name(s) and address(es) and where relevant, brief governance arrangements of the party, type of body, and constitution, as appropriate.
- Type of transaction being requested** e.g. purchase, lease or granting of any other right/s in or over the asset.
- Which Crown Estate Scotland asset the LMV request relates to** with location (address, maps, co-ordinates<sup>3</sup>).
- The proposed use of the asset.**
- What additional benefits, linked to the five outcomes, will be delivered.** At stage two, the requesting party will be required to provide information and evidence to demonstrate how these outcomes and additional benefits will be delivered. Examples of additional benefits are set out in the Annex 1 to this guidance.
- The LMV reduction proposed and rationale for that specific reduction.** Requesting parties must demonstrate that the value of additional benefits will be equal to, or greater than, the income that would be foregone by Crown Estate Scotland. The requesting party should set out how that value has been calculated, and why they consider that figure fair and reasonable.
- Long term, self-sustaining benefits** – The [Scottish Crown Estate Strategic Management Plan](#)

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<sup>2</sup> See Paragraph 54 of the [Scottish Crown Estate Strategic Management Plan](#)

<sup>3</sup> For seabed transactions it may be preferable for Crown Estate Scotland to provide the mapping, the affected seabed should already be captured on our GIS system.

states that Crown Estate Scotland, in considering LMV requests, should favour the delivery of

long-term benefits and projects that can be self-sustaining rather than agreements that are likely to require future financial support. LMV proposals should **demonstrate the delivery of additional benefits that are both long-term and self-sustaining**. An indication of this is required at stage one with more detail to be provided at stage two.

- h. **Targeted support** – LMV agreements result in less money going from Crown Estate Scotland to public funds (via the Scottish Consolidated Fund) and reduce the capital value of the Scottish Crown Estate, potentially impacting our ability to invest in generating lasting value for Scotland. Crown Estate Scotland will focus on LMV transactions where the requesting party can **demonstrate that it does not have the means and resources to deliver additional benefits without an LMV agreement**. Information to provide such demonstration will be sought from requesting parties.
- i. Compliance with **state aid and competition law** – Crown Estate Scotland will assess requests for LMV against state aid regulations and competition law requirements<sup>4</sup> only if the impact on the value of the Estate is considered acceptable. To support any assessment of state aid and competition law, the requesting party should provide **any relevant information on how unfair competition will be avoided and on any other financial support for their proposal, to assess whether there may be a state aid issue**.

## ii) Stage two assessment

Should the LMV request be successful at stage one it will progress to the second stage of assessment. Stage two requires information and evidence under the following headings.

### The five outcomes and 'additional benefits'

Requesting parties should provide information and evidence to demonstrate that additional benefits are supported, will be delivered, and how they will be delivered.

Depending on the nature of the request, such information and evidence may include:

- Evidence of support from statutory agencies, businesses, members of the public / community local to the asset.
- A business plan, including an options appraisal and cost benefit analysis, demonstrating that and how additional benefits will be delivered.
- If and how the additional benefits proposed align with local, regional and national policies, plans or strategies.
- Relevant research, survey, market analysis or feasibility study.

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<sup>4</sup> Competition law (Competition Act 1988) will require an assessment of any appreciable impact on markets caused by an LMV transaction. State aid regulations will require an assessment of whether LMV would potentially distort competition and affect trade in the EU.

### **Capacity to deliver**

Crown Estate Scotland will need to be satisfied that should LMV be agreed, the requesting party has the resources, knowledge and experience over the term of the relevant transaction (or the timescale over which additional benefits are to be delivered) to successfully deliver the additional benefits.

Evidence to demonstrate this should be provided by the requesting party and could cover some or all of the following:

- Funding, and staff and/or volunteer resources with the appropriate skills and that such resources are sustainable over the lifetime of the proposal.
- Appropriate governance arrangements.
- That succession plans are in place to ensure sustainability of the delivery of the wider benefits proposed.
- Testimony from stakeholders.
- Information regarding track record of delivery on other projects / activity.
- Ability to access and use professional advisors / consultants to support delivery.

Such evidence could be set out in any business plan provided to support consideration of the LMV request.

### **Long term, self-sustaining benefits**

As stated, Scottish Ministers consider it important that, when considering LMV requests, managers of Scottish Crown Estate assets favour the delivery of long-term additional benefits and projects that can be self-sustaining.<sup>5</sup>

Crown Estate Scotland will therefore look for proposals to demonstrate longevity of additional benefits and long-term financial sustainability, without the need for any further support from Crown Estate Scotland.

Stage one requests an indication of these factors. This should be expanded on with more detail provided at stage two.

### **Delivery and reporting**

Requesting parties will be required to demonstrate how they propose to monitor and report on the delivery of additional benefits including on when they expect additional benefits to start being delivered.

Monitoring and reporting requirements will form part of any agreement.

For LMV sales, Crown Estate Scotland reserves the right to include provisions to recoup foregone capital if anticipated additional benefits are not realised.

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<sup>5</sup> Paragraph 54 of the [Scottish Crown Estate Strategic Management Plan](#)

## Process for requesting parties

Crown Estate Scotland aims to be open, transparent and consistent in all its transactions, whilst respecting commercial confidentiality.

For LMV requests, Crown Estate Scotland will follow a fair procedure, and carry out a proper evaluation of proposals and supporting evidence. Decisions and requests for further information will be communicated in a clear manner with supporting rationale for the final decision.

Crown Estate Scotland reserves the right to consult on matters related to a request, as appropriate.

Decisions will be signed off by Crown Estate Scotland's Chief Executive, acting as the Accountable Officer.

Where a requesting party is keen to pursue an LMV transaction and Crown Estate Scotland agrees that it is relevant, the following process will be followed, as appropriate:

1. A formal request for an LMV lease or sale should be made in writing to Crown Estate Scotland. The request should include all the relevant information and evidence requirements outlined as part of the stage one guidance (section 2(i) a-i above). This should however exclude any information relating to state aid and competition law. A view on these matters will be requested only if impact of the value of the estate as a whole is not considered significant. Requesting parties will be notified of the need for information on state aid and competition compliance.
2. Crown Estate Scotland will confirm receipt of the written request within five working days of receipt.
3. Crown Estate Scotland will contact the requesting party to require any further or missing information or to seek clarification on any of the information provided.
4. Assessment of any request will start once all required information has been provided to Crown Estate Scotland's satisfaction. At this point Crown Estate Scotland will give an indicative timeline for responding to the request, depending on the scale and complexity of the case.
5. For complex proposals, Crown Estate Scotland may consult with other parties affected by the proposal. Crown Estate Scotland will discuss any proposed external consultation or engagement with the requesting party before conducting any.
6. Crown Estate Scotland's Chief Executive will decide on LMV requests. He will:
  - approve a proposal (possibly subject to changes to or additional T&Cs)
  - seek further information
  - or reject a proposal
7. A decision letter setting out the reasons for the decision will be sent to the requesting party informing them of Crown Estate Scotland's decision.
8. Crown Estate Scotland will advise any parties who made written representations on the proposal, of the decision.
9. A summary of the decision will be posted on Crown Estate Scotland website.
10. Should requesting parties consider that they have been treated unfairly as part of the LMV assessment process they have recourse to Crown Estate Scotland's complaints policy found at <https://www.crownestatescotland.com/complaints>.

It is expected that a dialogue will be maintained between the requesting party and Crown Estate Scotland throughout the process addressing any requirements for additional information, clarifications, and agreement on recoverable costs being incurred by Crown Estate Scotland.

LMV agreements will include detail on duration of the agreement and any timeframes for review.

## Annex 1 - Additional Benefit Indicators

The table below provides examples of additional benefits, related to each of the five outcomes, that a requesting party might put forward in support of their request for LMV.

These examples are not exhaustive. Other indicators can be proposed if they clearly relate to one or more of the five outcomes.

No weighting or priority is attached to the five outcomes. LMV can be agreed on the basis of one or a combination of the outcomes.

Five outcomes	'Additional benefits' indicators to consider in submitting requests for LMV consideration
Economic development	<ul style="list-style-type: none"> <li>• Will proposals significantly benefit the national and/or local economy?</li> <li>• Are jobs and new businesses being created or safeguarded?</li> <li>• Is business productivity being increased?</li> <li>• Will proposals contribute to innovation and entrepreneurialism?</li> <li>• Will international export be promoted?</li> <li>• Will local businesses benefit?</li> <li>• Will proposals support the development/expansion of local supply chains?</li> <li>• Will proposals contribute to the circular economy though e.g. reuse of waste products generated by businesses?</li> <li>• Will proposals contribute to inclusive economic growth e.g. living wage, provide opportunities for those who are currently unemployed?</li> <li>• Will proposals provide support for high growth businesses?</li> <li>• The just transition to a net zero economy.</li> </ul>
Regeneration	<ul style="list-style-type: none"> <li>• Will proposals improve, upgrade or repair an asset increasing its value and the benefits it delivers?</li> <li>• Will proposals make an area a better place to live and work in, for example, through providing upgraded housing, bringing empty buildings or unused land back into use, increasing access to greenspace, improving access to services and social and leisure facilities, improving transport facilities etc?</li> <li>• Do proposals extend to collaboration with the efforts of other organisations operating in the same area/area of interest to regenerate an area?</li> <li>• Will the perceptions of an area and sense of place be improved?</li> <li>• Will proposals result in an improved quality of life?</li> </ul>



Social wellbeing	<p>Will proposals contribute to:</p> <ul style="list-style-type: none"><li>• Improved health and wellbeing?</li><li>• Opportunities for physical activity?</li><li>• Support for people living with long-term conditions including mental health issues?</li><li>• Direct provision of care services or improving access to healthcare?</li><li>• Opportunities to build skills development and address skills shortages or better utilisation of existing skills?</li><li>• Promotion of vibrant and diverse cultures?</li><li>• Tangible community benefits being delivered?</li><li>• Activities that bring people together, creating a stronger community spirit, supporting learning, cultural activities, or reducing crime?</li><li>• Creating communities that are inclusive, empowered resilient and safe?</li><li>• Reducing inequalities of outcome which result from socio-economic disadvantage – tackling poverty and associated issues such as health problems, low quality housing and lack of access to services and employment?</li><li>• Supporting people who may be disadvantaged on the basis of age, disability, gender, gender identity/reassignment, race, religion or sexual orientation?</li><li>• Increasing and improving education and learning?</li><li>• Increased participation in cultural activity?</li></ul>
Environmental well being	<p>Will proposals contribute to:</p> <ul style="list-style-type: none"><li>• Activities to improve, protect and enjoy the natural and cultural environment both locally and more widely?</li><li>• Biodiversity enhancement and contribution to natural capital?</li><li>• Reducing pollution and waste and encouraging reuse and recycling?</li><li>• Reducing Green House Gas emissions and support for low carbon outputs and processes?</li><li>• Adaptation to climate change e.g. through flooding resilience?</li></ul>
Sustainable development	<p>Sustainability is generally understood to comprise a balance between the economy, the environment and society. Any contribution to sustainable development should demonstrate how such a balance might be achieved and could draw on the indicators outlined above relevant to the four other outcomes.</p>