

*To the All Party Committee on the Constitution re Property Rights
12th June 2003*

The following report is the submission from Feasta, the Foundation for the Economics of Sustainability on the issues of property rights within the Irish constitution.

Executive Summary

Introduction

Change to the Constitution re property rights is not legally necessary for social equity and sustainability. All the powers required reside in the current provisions – if broadly interpreted and fully and fairly utilised. A debate to reinforce important principles and dispel misunderstanding is more necessary than an amendment.

1. Sustainability is an important element of the ‘common good’.

An amendment to the constitution could usefully include the explicit inclusion of aims relating to *sustainability* i.e. intergenerational equity and the protection of the environment over the long term, the need for which was not as apparent to the original draftsmen as it is to us today as we reach the limits of global exploitation.

2. Failure of the Old ‘Property Ownership Rights’ model

The ownership rights model of property utterly fails to incorporate an understanding of property rights as inherently limited both by the property rights of others and by public policies designed to ensure that property rights are exercised in a manner compatible with the common good as enunciated in the Constitution. Derived from Roman/Norman concepts, the ownership rights model has a built-in bias towards greater inequality of power relations and concentration of wealth.

3. Usefulness of a *Social Relations Model of Property*

A better concept of property is that of a set of social relations; - a system composed of entitlements which shape and are shaped by social relationships. Such a concept can better frame distributive issues that should enter our decisions about the initial allocation of property rights, as well as their definition and limitation over time. A number of reasons warrant this new model not least that it accords better with the older Gaelic concept of property in land as inseparable from the people of the land (tuath = tuatha).

4. *The intrinsic difference between Natural and Man-made Capital or Property.*

The phrase ‘the right to private property’ in the Constitution does not recognise the fundamental differences within classes of property – in particular that between property in *natural* and *man-made capital*.

5. A *Common Share in Natural Capital* arises from Human Consciousness

The provisions relating to ‘private property’ and the ‘common good’ in the constitution is insufficient to describe the complex relations between private rights and community rights in natural property. In particular, the concept of *common share* arises in all property in natural capital even before the use rights are constrained by the common good.

6. *Common Share* in Natural Capital arises from Value Added by the Community

The second community claim to an interest in property in natural capital comes from value added by the community at national and local level. Most if not all value in natural property depends on and is derived from community need and investment. This is very clear in the case of land, which is fixed in location and limited in supply. Land in a remote area with no infrastructure and low population is of much lower value than that in a populous area with adjacent infrastructure and convenient services.

7. The community's *Common Share* of natural resources should be collected through various *Annual Land Value Taxes* in the case of land, and appropriate user charges, taxes and royalties in the case of other natural resources.

The fundamental cause of the problems that have prompted this review of the constitution is the failure to recognise the interests of the community sufficiently in property in land and other natural resources. Feasta holds that this common share of natural capital in land should be recognised in an annual rent or tax paid by the landowner to the community as part of a 'tax shift' from income taxes.

9. Compulsory Purchase

Compulsory Purchase should be an instrument of last resort to deliver essential infrastructure development or environmental protection for the common good and sustainability. Compulsory purchase is intrinsically difficult to apply consistently and as such is not appropriate as a general instrument to deliver affordable housing or sustainable settlement development. When a justifiable case can be made for CPOs, compensation should be for existing value and use only but should also include a sum in recognition of compulsion.

10. The Zoning of Land

The zoning of land for development is necessary for efficient infrastructure provision and the development of sustainable compact settlements. Zoning, infrastructure provision and planning permission add considerable value to land. This value should be recouped on behalf of the community that created it by an annual site value tax on designation or permission.

11. The Price of Development Land

The price of development land, unacceptably and unsustainably high in the Irish market, is a direct result of the current property system that fails to recognise the fixed nature of land and the *common share* in the social relations governing property in land. This can be addressed even under the current provisions of the constitution by means of an annual site value tax.

12. The Right to Shelter

The right to a *common share* of the National natural resources is a fundamental universal right based on the individual existence. It implies a right to shelter irrespective of need which is a stronger and less divisive than a simple 'right to shelter' with its concomitant risk of moral hazard and lack of limits. The lack of good affordable housing in sustainable integrated settlements is caused by the nature of the current property ownership system that does not fully recognise *common share* in natural resources .

13. Infrastructure Development

Infrastructure Development by the local and central government is necessary for well-planned, efficient and sustainable development. That it generally benefits the common good is not sufficient reason to fail to recoup the very significant gains by private landowners as part of *common share* arising from such community investment.

14. House Prices

House prices and rent levels in the private rented sector are a continuing cause of concern in terms of social and intergenerational inequity. Demand side measures such as a community land tax on all property owners as part of a tax shift from income taxes to dampen price and rent inflation are now inescapable.

15. Access to the Countryside

The controversies around access to the countryside for recreation arise from the fundamental misunderstanding of property rights described earlier. Given the history of the land struggle in Ireland and high subsidisation of farming, the *social relations* model of property rights suggests that public access rights to uncultivated farmland be recognised in the constitution both through the *common share* and common good concepts. In addition, a community land tax on farmland would provide an effective framework for sustainable agriculture and rural regeneration.

**Submission to the All Party Oireachtas Committee on the Constitution
Concerning Property Rights.**

12th June 2003

Feasta

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Introduction

Change to the Constitution re property rights is not functionally or legally necessary for social equity and sustainability. All the powers required reside in the current provisions – if broadly interpreted and fully and fairly utilised. A debate to reinforce important principles and dispel misunderstanding is more necessary than an amendment.

The information campaign and debate leading to a referendum to change the Constitution concerning private property is more necessary than a successful amendment. The necessary principles are already implicit in the subordination of the rights of private property to the ‘*common good*’ in the Constitution. A campaign would challenge the exclusive meaning of the rights of private property promulgated by powerful vested interests which has grown to dominate - to the point where serious social, economic and environmental damage has been done to the fabric of the country.

An economic system of property in land has evolved which results in high and rising prices that impact adversely on the vast majority of Irish people and from which only a minority gain greater material wealth. Not only is this wealth, generated by the simple ownership of land, unearned in the strict economic sense, it is necessarily gained at the expense of others. Successive governments have taken various steps to try to mitigate these losses and protect various categories of loser. These measures are never enough. That is because the norms and internal dynamics of the land ownership system that drive these inequalities remain intact. Feasta is asking the Government and the Dáil to address the problem at its roots. This requires imagination and political will.

The principles which should guide our thinking in relation to property and which need to be debated and agreed are outlined below. Then follows suggestions of amendments to the Constitution, which although not strictly necessary would include these principles and clarify this new understanding. The final sections of this submission illustrate these principles in relation to the subject areas listed in the call for submissions.

1. Sustainability is an important element of the common good

An amendment to the Constitution could usefully include the explicit inclusion of aims relating to sustainability i.e inter-generational equity and the protection of the environment over the long term, the need for which was which was not as apparent to the original draftsmen as it to us today as we reach the limits of global exploitation.

- 1.1. Sustainability is a well-defined term first used in the Bruntland Report “ i.e. *the meeting of the needs of the present generation without compromising the needs of future generation.*” This is a core principle of global and international application. It forms part of the state’s international commitments made through UN forums including the Rio Earth Summit and the Johannesburg World Summit on Sustainable Development. It has been incorporated in Irish legislation in the Planning and Development Act 2002 and is a guiding principle in the EU Treaties.
- 1.2. The principle of sustainability is implicit in a broad interpretation of the term ‘*common good*’ but it has been interpreted narrowly to infer the *common good* of the existing generation of citizens as judged by the needs of today without regard to future scenarios based on the exercise of the rights in question. For instance, farmers claim that their welfare and that of rural communities gives them the right to benefit from the development of dispersed one-off houses. The sustainability test would project this interpretation of property rights into the future to reveal that this option will not be possible for later generations because of the cumulative effect of numbers of houses within objective spatial and economic limitations.

2. Failure of the Old ‘Property Ownership Rights’ model

The *ownership rights* model of property utterly fails to incorporate an understanding of property rights as inherently limited both by the property rights of others and by public policies designed to ensure that property rights are exercised in a manner compatible with the *common good* as enunciated in the Constitution. Derived from Roman/Norman concepts, the *ownership rights* model has a built-in bias towards greater inequality of power relations and concentration of wealth.

- 2.1. The *ownership rights* model of private property structures legal doctrines in a rule-exception format to the effect that owners win in a dispute unless specified conditions are established.
- 2.2. The property ownership concept sometimes creates an assumption that sets of rights are bundled and must be owned by the same person.
- 2.3. Calling something a property *ownership right* creates an implication of a strong moral claim to immunity from non-consensual loss or harm and places a heavy burden on those seeking to regulate the property right.
- 2.4. The idea of property *ownership rights* creates a perception and presumption that the right is alienable (can be bought and sold) in the market place and conversely, that non-alienable rights (that can’t be bought and sold i.e. human rights) do not count as property rights.

3. *Usefulness of a Social Relations Model of Property*

A better concept of property is that of a set of *social relations*; - a system composed of entitlements which shape and are shaped by social relationships. Such a concept can better frame distributive issues that should enter our decisions about the initial allocation of property rights, as well as their definition and limitation over time. A number of reasons warrant this new model not least that it accords better with the older Gaelic concept of property in land as inseparable from the people of the land (tuath = tuatha).

- 3.1. Property rights can be bundled in different ways and multiple models exist for defining and controlling property relationships.
- 3.2. Property rights must be considered as contingent and contextually determined – as is clear in ‘nuisance doctrine’. The context in which property rights are exercised and their actual effects on others has always been of crucial importance.
- 3.3. Property law and property rights have an inescapable distributive component. The prevailing norms of private property, as has operated in most developed countries including the United States, have always contained a tension between the norm of protecting the rights of title holders (however defined) and the norm of shaping property rules to ensure widespread access to the system by which such titles are acquired.
- 3.4. Property law helps to structure and shape the contours of human relations and can only be adequately understood in that light. Non-property rights based on equality, liberty and human dignity have always limited property rights and recent international law requires that property rights should also be limited by the constraints of environmental sustainability.
- 3.5. Finally and not least, our concept of property should include the fact that owners have obligations as well as rights dictated both by enlightened self-interest of the owners themselves and by considerations of justice.

4. *The intrinsic difference between Natural and Man-made Capital or Property.*

The phrase ‘the right to private property’ in the Constitution does not recognise the fundamental differences within classes of property – in particular that between property in *natural* and *man-made capital*.

- 4.1. *Natural capital* is that which is ‘God given’; - the Earth’s resources of land water, minerals, the electro magnetic and radio spectrum, ecosystems, diversity of life forms, genetic codes and also includes the collective of human knowledge and culture.
- 4.2. *Man-made capital* is that which is primarily created by individuals albeit using natural capital as a necessary input; - physical property such as homes, factories, offices, machinery, tools, roads, railways, automobiles, agricultural products, livestock etc. and non-physical property such as businesses, company shares, specific patents, copyrights, brands etc.
- 4.3. Property rights in *man-made capital* derive from the labour, ingenuity and risk invested by individuals in their creation, which is widely recognised culturally and socially by democratic States. Even so the use of these rights must be constrained by the overarching goals of the *common good* and a more clearly stated objective of *sustainability*.

5. The Common Share in Natural Capital arises from Human Consciousness

The provisions relating to ‘private property’ and the ‘common good’ in the Constitution is insufficient to describe the complex relations between private rights and community rights in natural property. In particular, the concept of *common share* arises in all property in natural capital even before the use rights are constrained by the *common good*.

- 5.1. Property rights in natural capital are not founded on individual effort and investment in their creation (they are by definition pre-existing). As individuals have not created natural goods, no individual can lay full claim to them. However, this does not infer that humanity, *as a whole* has no claim to the Earth’s bounty. Collectively, humanity has a claim recognised in all religions and spiritual traditions, which derives from its unique attribute of consciousness. But, although humanity’s birthright to the Earth is collectively based, it must be shared fairly by every human individual for *sustainability*. The reasons for this are practical and urgent;-
- 5.2. As the Earth’s only conscious entity and one which is impacting adversely on the global ecosystem, humanity now has to chose between a short-lived wasteful and carbon energy dependant mono-culture mining the Earth’s natural capital or, a long-term diverse ecosystem, stewarded by humanity and sustained by the Earth’s natural solar income.
- 5.3. By recognising our common share in the Earth’s resource and our individual responsibility, we can create the dynamic to switch to this necessary stewardship role. This is beginning to be recognised at many levels; - globally through the Rio and the Johannesburg Summits on Sustainable Development, in EU Directives and Nationally in Irelands Policy for Sustainable Development.
- 5.4. The capacity of the atmosphere to absorb greenhouse gases requires a global governance to ensure equitable and sustainable management through the global Kyoto agreement. In many other instances, such as for land and mineral resources, the nation state is the appropriate management and distributive agent.
- 5.5. The Irish citizen’s right to a *common share* of inheritance in national natural capital should be recognised in property rights and ensured by the Constitution.

6. Common Share in Natural Capital arising from Value Added by the Community

The second community claim to an interest in property in natural capital comes from value added by the community at national and local level. Most if not all value in natural property depends on and is derived from, community need and investment. This is very clear in the case of land, which is fixed in location and limited in supply. Land in a remote area with no infrastructure and low population is of much lower value than that in a populous area with adjacent infrastructure and convenient services.

- 6.1. All natural property includes a balance of public and private rights that are contingent and contextual as the *social relations* model of property illustrates.

These relations must be constantly reviewed in terms of economic efficiency, social equity and environmental *sustainability*.

- 6.2. Economic efficiency requires that the community's interest in property in land and other natural resources be recognised and factored into market transactions to prevent capitalisation of 'economic rent' into damagingly high land values or wasteful and profligate use. Economic efficiency also requires that the community gets a return from investment in infrastructure from the consequential rise in rents and capital values in land
- 6.3. Social equity requires that ownership of land and other natural resources be possible for all citizens, which is clearly not currently the case for aspiring farmers and first time house buyers. The monopoly characteristic of land operating un-modified within the market system, concentrates ownership in the hands of fewer and fewer people until social or economic breakdown drives major redistributive adjustments i.e. the Great Hunger followed by the Land Acts. Modifying social relations in natural property by including recognition of the *common share* as part of title fosters continual turnover, redistribution and wider possession thus obviating major upheavals.
- 6.4. Environmental *sustainability* requires that all resource use be reduced recognising its real limitations in supply or capacity. In particular, land use must be made more efficient by creating more integrated compact settlements as urban and rural sprawl is rapidly devouring resources and reducing transport and energy options for the future.

7. The community's *Common Share* of natural resources should be collected through appropriate taxes, charges and royalties on the use of natural resources and particularly on land.

The fundamental cause of the problems that have prompted this review of the constitution is the failure to recognise the interests of the community sufficiently in property in land and other natural resources. Feasta holds that this *common share* of natural capital in land should be recognised in an *annual rent* or tax paid by the landowner to the community as part of a 'tax shift' from income taxes.

- 7.1. An *annual site value tax* should be levied on owners of development land including housing development land. This tax should be a percentage of the increased value due to zoning, infrastructure provision and the increased needs of the community. Where un-zoned land is given Planning Permission for a higher use (such as agriculturally zoned land for housing use), the tax should be a multiple of the annual site development tax. This tax could reduce taxes on transactions which inhibit turnover such as stamp duties and even capital gains taxes.
- 7.2. Local rates currently levied on commercial property should be replaced by a dual system comprising a *community land tax* on the land value of the site (ignoring the building or other man-made property) and a separate charge for services similar to the successful local dual tax in Pennsylvania US.
- 7.3. Immediate notice should be given of a *community land tax* on the site value of all existing residential property owner-occupied, holiday and investment to be levied within a short time frame. The *community land tax* should displace tax on income and should not be an additional burden on the normal working

family. It should include measures to mitigate the effects on recent buyers of over-priced housing.

- 7.4. Other charges, royalties or taxes should recompense the community for the use of natural resources; - natural gas, minerals, water, the capacity of the atmosphere to absorb gases (carbon taxes), and the capacity of the land to absorb waste etc on a user or polluter pays principal.

8. Suggested Amendments to the Constitution Incorporating Principles:

Article 40.03

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen (add: including that of their common share in the natural resources of the Nation.)

Article 43

1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external (add man-made) goods. (add: and private use rights and a common share in the natural resources of the Nation and the Earth)

Article 45

The State shall, in particular, direct its policy towards securing:

That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

That the ownership and control of the (add man-made) material resources of the community may be so distributed amongst private individuals (omit: and the various classes) as best to subserve the common good (add: and that the benefit and enjoyment of natural resources may be shared so as best to serve equity and sustainability).

That, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities and natural resources of the nation in a few individuals to the common detriment and unsustainability.

That in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.

That there may be established on the land in economic security as many families as in the circumstances shall be (omit practicable) (add: sustainable to subserve the common good.

9. *Compulsory Purchase*

Compulsory Purchase should be an instrument of last resort to deliver essential infrastructure development or environmental protection for the *common good* and *sustainability*. Compulsory purchase is intrinsically difficult to apply consistently and as such is not appropriate as a general instrument to deliver affordable housing or sustainable settlement development. When a justifiable case can be made for CPOs, compensation should be for *existing use only* but should also include a sum in recognition of compulsion.

- 9.1. The rights to possession and enjoyment are an important entitlement of property and a fundamental human right. The case outlined above for recognition of community rights in property in *natural capital* is not an argument for widespread State appropriation of land of existing private titleholders - even with compensation. It has been applied notoriously inconsistently with different treatment of developer landowners and farmer landowners under Part V. The preferential treatment of farmers for compensation for compulsory acquisition for road projects is another illustration of its vulnerability to special pleading and political pressure. . A CPO ‘use it or lose it’ policy can not be fairly enforced in the current situation where too much land is zoned in some locations (urban areas) and too little is zoned in others (most rural villages with no Area Plans).
- 9.2. Compulsory Purchase should only be considered where development is required of a scale requiring land covering a number of properties where the existing owners are not capable of the collective action to develop it themselves for the benefit of the community. More effort should be made by the government to obviate the need for compulsory purchase for sustainable settlement development by promoting Community Land Companies / Trusts for example by removing stamp duty on the transfer of freehold private property into its equivalent in company shares.
- 9.3. Compensation for compulsory purchase is a separate issue and one that does touch on the concept of *common share*. The question arises whether the compensation for land value should be that of the *existing value* before the needed development takes place or *potential value* of the land following development. Where an effective annual land tax is charged, the difference would be significantly reduced. In any case, the landowner should not be paid more than *existing value* following the logic that the community has itself created the increased value in the land. However, Feasta recommends that along with *existing value* and relocation expense compensation, a further sum should be paid to the landowner arising from the compulsory nature of the transaction. Compensation moreover should be adjudicated quickly and paid promptly to minimise harmful impact to the landowner
- 9.4. In general, it can be argued under the *social relations* and *common share* principles that individuals have rights to the existing (previously socially negotiated) use rights to their land but not automatically to new, previously unused use rights. Under this reasoning for instance, the individual property owner has no rights in relation to previously unused space deep under his land that is needed for a tunnel or rail system and should not be compensated for them. Nor, under this reasoning, does the land owner have automatic rights

to housing, industrial or other development on land previously used and zoned for agriculture.

- 9.5. The fact that compulsory purchase under the Kenny report or under a 'use it or lose' basis is being considered by the Government is testament to the poor functioning of the market based on a flawed property ownership model and the lack of annual rent or taxes on land.

10. *The Zoning of Land*

The zoning of land for development is necessary for efficient infrastructure provision and the development of sustainable compact settlements. Zoning, infrastructure provision and planning permission add considerable value to land. This value should be recouped on behalf of the community that created it, by an *annual site value tax on designation or permission*.

- 10.1. Attempts to capture the betterment value created by zoning, infrastructure provisions and planning permission by way of development site tax or other CGTs or planning gain on development and sale have always failed. The nature of land is that it is fixed in location and supply and thus competition is limited. Landowners can and will withdraw their land from development where their profit expectations are disappointed. Demand then builds up and political pressure is brought to bear to eliminate the offending tax or regulation. Attempts to raise the 20% CGT on development land after the 'temporary' period elapsed for this concession was stymied by this inherent set of relations. With interest rates at a historic low, the costs of holding land can be negligible if the land was bought some time in the past. By recouping the *common share* on an annual basis through an annual site value tax, the government can rebalance the relative strengths of buyers and sellers, increase land sales turnover and lower land values within the current market system without onerous regulation.

- 10.2. Development Plans typically zone lands for need far in excess of their 5-year timeframe in order to ensure that an acceptable level of development is carried out and (according to elected representatives) to distribute the benefits of such designation to as wide a group as possible. This has led to leapfrog development and excessive sprawl, as those landowners with least economic power to wait (in the least favoured locations) will develop first. Economically powerful landowners (often with land in the best locations) will wait until conditions are optimum before selling or developing. Sprawl and premature development places a cost on the community and on the environment.

- 10.3. An *annual development site tax*, levied at zoning would ensure that the benefit of designation is partly captured by the community. This tax, based on the value of the land (thus higher for more valuable locations), would ensure that the best-located sites are developed early where the community has already made the investment in infrastructure and services. Less pressure for premature zoning from landowners on planners and elected representatives would lead to Development Plans with a more compact footprint and greater credibility

10.4. Zoning is not a necessary condition for the betterment value created by the community to be captured by private landowners. Nearly 38% of all new housing is built on un-zoned land in the countryside availing of publicly provided and maintained roads. The granting of planning permission creates this value and estimates of its total value are €810 million per annum. Furthermore, the landowners selling such sites are exempt from Part V of the Planning and Development Act, which provides for some distributive element to the community. Given that the annual servicing of scattered dwellings will place further burden on the community this seems a particularly anomalous exception. In the very limited cases where the granting of planning permission for housing or other development on un-zoned land is sustainable, a very high multiple of the tax should be exacted on such land sales so that the intent of the *annual site value tax* on zoned land is not undermined .

11. *The Price of Development Land*

The price of development land, unacceptably and unsustainably high in the Irish market, is a direct result of the current property system that fails to recognise the fixed nature of land and the *common share* in the social relations governing property in land. This can be addressed even under the current provision of the constitution by means of an *annual site value tax*.

- 11.1. Economists will describe how the high cost of housing land is related to the demand and supply in housing. Housing demand is high because of demographic change, low interest rates and economic growth. A shortfall in housing supply allows sellers to extract a high if not the maximum price from buyers. Land price is a residual of the market price less construction, fees and finance costs. Land now represents 60% of the total cost of the housing unit compared to 10-15% before the boom. The larger part of developer's profits derives from the increase in land values from the time they bought it to the time they sell. Thus, developers try to amass a land bank well in advance of their capability to build - adding to scarcity.
- 11.2. The government introduced measures to increase supply through tax relief's and incentives directed at landowners and developers - with mixed effects. Equally if not more effective, would be measures to increase supply by preventing land hoarding and land banking through *an annual site value tax*. In the latter case, the revenue would accrue to the community that created the value.
- 11.3.** As well as reducing prices in the medium term through increasing supply, an *annual site value tax* would reduce the price of land in the short term through its capitalisation into calculations by intending buyers, as Part V did when it was introduced under the Planning and Development Act.
- 11.4. It is not necessary to introduce new compulsory purchase powers to ensure a ready supply development land at an affordable price as shown above. It is also impractical given the sheer level of land purchase involved if the CPO powers were not to discriminate to some landowners over others.
- 11.5. Furthermore CPO acquisition would still leave the problem of the mechanisms for the appropriate allocation of the land to new developers and of ensuring they or the subsequent purchasers of the housing do not make windfall gains at either the community's or earlier landowner's expense.

- 11.6. Finally, the impact on the general housing market, on developers who develop promptly in good faith (on land they bought at full price for instance), would be very problematic. On the other hand, a general site value tax on all designated development land would be fair and simple, would reward efficient and prompt housing development and foster competition in design and construction quality.

12. The Right to Shelter

The right to a *common share* of the National natural resources is a fundamental universal right based on the individual existence. It implies a right to shelter irrespective of need which is a stronger and less divisive than a simple ‘right to shelter’ with its concomitant risk of moral hazard and lack of limits. The lack of good affordable housing in sustainable integrated settlements is caused by the nature of the current property ownership model that does not fully recognise *common share* in natural resources which can be redressed by appropriate taxation.

- 12.1. The social housing sector and others involved in social and community developmental work have put forward a compelling case for a ‘right to shelter’. Feasta supports much of their argument but suggests that a more fundamental right that of *common share* would deliver both shelter, sustainable settlements and access to the resources for a sustainable livelihood without the potential unintended consequences of a ‘right to shelter’.
- 12.2. The term ‘right to shelter’ suggests provision based on need. History has shown the difficulties of basing rights and supports on need without at the same time creating a perverse incentive not to provide for oneself, of creating further markers of social difference and exclusion of recipients and of undermining the general tax payer support necessary for sufficient investment.
- 12.3. The ‘right to shelter’ is also somewhat problematic in terms of *sustainability* as it could be interpreted to privilege existing individuals at the expense of future generations and it does not acknowledge the limits of natural resources. Feasta accepts that the promoters do not intend that interpretation, but we have seen how narrow interpretation of broad concepts has led to inequality and environmental damage in the past. Absolute rights are appropriate for rights dependent only on human will i.e. justice, free speech etc. Rights that relate humans to finite natural resources are better framed within the limits of those resources.
- 12.4. Irish housing policy has historically focussed on providing housing directly by local authorities for those in need and this is widely acknowledged to have led to problems of ghetto-isation and exclusion. Recent development by housing associations and social rental co-operatives to deliver wider housing provision have been constrained by lack of funding and their charitable remit. Part V of the 2000 Planning and Development Act has introduced yet another sector of housing provision and recipient; - the affordable house and eligible buyer. All of these sectors are mutually exclusive with little movement of users between tenures, categories and local authority areas. The system to support each sector is getting more unwieldy

and complicated. There is also no easy way to cross compare each sectors effectiveness and value for money.

- 12.5. The Rental Supplement programme, introduced very much as a stop-gap measure, provide some flexibility to housing benefit recipients and some element of social mix. But as the rent supplements were paid to tenants in an unregulated private residential rented sector and as they had no effective competition from the not-for-profit sector (because of sectoral barriers described above), they inflated rents at the bottom end of the market. The government had to cap rental supplements as costs grew out of hand.
- 12.6. A single housing benefit or voucher paid directly to the recipient, usable for all sectors would give much needed choice and flexibility and help create more heterogeneous communities. All other supports and tax reliefs should be removed. *The community land tax* (see below) would provide ample resources for a universal single housing benefit. Even better would be a broader single benefit (more like a citizens income) usable for all public services, housing, health and education.
- 12.7. In general, the tenant / home purchaser would pay the open market rent or price for the housing. But it may also be possible to provide reductions arising from the retention of land in community ownership provided under Part V for all tenures. (See Feasta submission on Part V).
- 12.8. Under such an universal, transparent system, there would be no fundamental reason why all housing sectors;- public, private and third (not-for-profit) sector should not provide housing for all social groups. Indeed such competition would be necessary so that the housing benefit would not simply inflate prices and rents as happened in the rental supplement scheme. Each sector would bring their particular ethos, sources of capital finance, efficiencies and skills to their task and competition would ensure quality and innovation.

13. Infrastructure Development

Infrastructure Development by the local and central government is necessary for well-planned, efficient and sustainable development. That it generally benefits the *common good* is not sufficient reason to fail to recoup the very significant gains by private landowners as part of *common share* arising from such community investment.

- 13.1. Infrastructure development can range from small water schemes to elaborate public transport projects. All add value to land that should be recouped in annual rent or tax for the community. The recovery of the actual costs of the infrastructure should not be the basis to recoup the community for its *common share*. The value added often comprises more than the cost of the construction and other direct costs as it includes the value of government powers to consolidate land, create way leaves and rights of way etc.,
- 13.2. Conditions to planning permissions or development charges requiring payment for infrastructure provision is an unsatisfactory method of capturing *common share* for a number of reasons. It is almost impossible to work out the exact cost of the relevant infrastructure relative to a single site bearing in mind further development sites will also benefit. Existing developed property owners who equally benefit in many cases from new infrastructure get a free

ride. The huge variation in the level of these charges between different local authorities and different projects undermines its legitimacy and creates damaging uncertainty. An *annual site value tax* on all landowners benefiting from new infrastructure is a fairer, simpler method to recoup betterment value as part of the *common share* in property.

- 13.3. The cost of major transport infrastructure projects has led the government to consider Public Private Partnerships financed by taxes and tolls on users. It is unfair to require the community to pay all the costs of these projects while the millions of capital value added to private property is largely untouched. In fact, were the government to decide to capture this value through an annual site tax or levy or bond on benefiting landowners, the PPP process might be unnecessary as the government might well be able to finance the project on the projected tax income stream.

14. House Prices

House prices and rent levels in the private rented sector are a continuing cause of concern in terms of social and intergenerational inequity. Demand side measures such as a *community land tax* on all property owners as part of a *tax shift* from income taxes to dampen price and rent inflation are now inescapable.

- 14.1. With modest economic growth and even taking into account the supply side effects of an *annual site tax* on development land, the demand for and therefore the price of housing in Ireland might remain relatively high for some time. This is because of our young and growing population and the fact the second hand house market also impacts on general price levels. In a low inflation environment (unlike in the past) high initial costs of housing will remain high over time impacting on social capital. Young people will suffer while older people who have bought their homes or investment property some time ago will continue to gain disproportionately. A further *community land tax* on all owners of property including residential should be considered urgently. This would immediately reduce the capital value of all housing in the marketplace including that of investment property and as a residual, the value of development land as described before. This measure would have to be well flagged in advance and introduced sensitively to mitigate the burden on recent housing purchasers. It should not increase the total tax burden on the average family but should be undertaken as part of a ‘tax shift ‘ from income taxes to environmental taxes of which land is an important element. (For further detail see Feasta’s submission on Part V.)

- 14.2. If instead as is more likely, we face economic stagnation (see Economist report in Irish Time 29/5/03) and house prices fall, a *community land tax* as part of a tax shift from income tax is still indicated. Taxes on labour and capital dampen investment in these factors and thus economic growth but not annual taxes on land. This is the up-side of the fixed and pre-existing nature of land – in a virtuous circle, the higher the annual taxes on land, the more it is brought into production rather than the opposite with labour and capital.

- 14.3. The drop in the value of people’s homes may lead to lower consumer confidence and borrowing (it has no effect on the quality of the housing) but this would be largely offset by higher investment in construction. With

buoyant tax receipts from the *annual site value tax* and *community land tax* and with extra levies on benefiting landowners form infrastructure, the government could maintain its infrastructure development programme (advisedly with more emphasis on public transport) and thus further compensate for consumer caution.

- 14.4. Substantial landowners with investment property may well be net payers under this shift but as land-owning as an activity does not add to GDP, negative macro effects would not arise. However, Feasta recognises that senior citizens dependant on rental income without offsetting income tax savings will lose. For this and other reasons (see Feasta's policy on Renewable Energy and book; - Ireland's Transition to Renewable Energy shortly to be published), we recommend programmes to encourage private and public pension funds to invest in renewable energy generation- which Feasta believes will deliver the most secure returns to investors in the energy-scarce times ahead.
- 14.5. It might seem counter intuitive that a tax on land under your property would reduce and not raise land prices but this is the nature of 'land rent' as first outlined by the economist David Ricardo in the 19th C. The fundamental choice is simply this, either the State captures the *common share* value in land for the community or the private landowner does. If the State does, then the opportunity arises for a reduction in other taxes and an orderly regulation of land prices. If it does not, then land prices will rise in tandem with economic growth and will collapse as growth falters, the balloon bursts and everyone loses (except the very wealthy who invariably win within the present system.)
- 14.6. Ideally, the *site value tax* and *community land tax* should be raised by the local authority and used to provide housing and other local services supporting sustainable settlements and lifestyles. Local authorities need an independent source of funding to carry out their duties effectively and to ensure genuine local accountability within a democracy.
- 14.7. It is worth reiterating again that the *community land tax* differs from old fashioned rates in a very important respect; - it does not tax the buildings or improvements that the developer or householder has made with their labour and investment but simply the existing but not now acknowledged *common share* of the value of the land.

15. Access to the Countryside

The controversies around access to the countryside for recreation arise from the fundamental misunderstanding of property rights described earlier. Given the history of the land struggle in Ireland and high subsidisation of farming, the *social relations* model of property rights suggests that public access rights to uncultivated farmland be recognised in the constitution both through the *common share* and common good concepts. In addition, a community land tax on farmland would provide an effective framework for sustainable agriculture and rural regeneration.

- 15.1. The property ownership concept of property in land creates an image of as single owner with absolute power within rigidly defined spatial boundaries. However, this not an accurate description in contemporary life. The spouse and children have rights that are not mentioned in the title but are

protected by law. Nuisance law regulates considerably what the owner can do with his property. If it is mortgaged the mortgage company or bank has clear rights to the property. The most central right associated with property is the right to exclude yet current legislation limits the right of owners to exclude members of the public on an invidious basis such as race or cultural background. The *social relation* model is a better conceptual tool to address issues of access and use.

15.2. Landowners today forget that their title was gained at the expense of earlier titleholders under the Land Acts following the famine. Those earlier titleholders gained at the expense of the Norman and Gaelic chieftains who held land in trust for their clan. The purchase price paid by the lucky tenant farmers was discounted by a considerable percentage and payment was not immediate nor was it in cash. Tenant farmers, big winners under the Land Acts, benefited again from the operations of the Congested District Board and later Land Commission. The few landless labourers who survived the famine, got a meagre 3/4 acre for a county council cottage after a long campaign. Urban tenants got nothing. This illustrates the point made previously that property rights are not fixed but contingent and contextual. They have been amended in the past to respond to urgent social conditions and the time has come again to do so.

15.3. Until very recently the custom was to pass the farm to only one child in the family, usually a son. The dis-inheritance of the other children was necessary for farm viability but nevertheless represented loss to them. The remittances from the non-inheriting family emigrants were big factor in keeping the farmer on the land when times were hard. Therefore, the property in land farmers now enjoy was partly paid for by others within the community. The situation is no different today as 80% of farmer's income comes from the check in the post paid for by taxpayers. The current Fischler Proposals entail 'decoupling' of farmer supports from agricultural production which recognises, under 'modulation', the other values and uses of farmland for which it is willing to pay. These uses include recreational use by the community, which infers recognition of a general public right to access. Without access to enjoy the Irelands wonderful landscapes and environmental bio-diversity the potential for rural enterprises based on catering for visitors will be irreparably damaged. Therefore, Feasta maintains that the general right of public access of non-cultivated farmland is underpinned by both the principles of *common share* and of *common good*.

15.4. Public access to land alone is not sufficient to deliver *the common share*; - it should also be reflected in a *community land tax* in common with all property in land. A notional land tax for farmers was floated in the 80s but vanished without proper consideration. It should be seriously considered again in the light of the high costs of collection and low returns of income tax and the high cost of farmland. High land costs prevent entry of new farmers with energy, imagination and appreciation of a rural lifestyle. Organic, low energy and diversified farming supplemented by other rural enterprises including renewable energy generation is the model showing most *sustainability* given the looming shortage of cheap oil. Both the traditional family farmer and the green 'downshifter' fit this model and both would be supported by an appropriate tax system based on the quality of the land. No further tax should be levied on the farming enterprise. This would favour

genuinely efficient farmers with low external inputs and reduce the price of farmland (as described before in the case of housing) to allow new entrants and competition on an equal basis.

15.5. A community land tax would also provide a framework for a new legitimacy for EU payments to farmers in the event of complete 'de-coupling' from production. The community could see that it was getting a portion of the value of the payments with the farmer's primary role changing from that of food producer to steward or custodian of the land on their behalf.

15.6. A *community land tax* on farmland would also provide a fair framework for restrictions on use under environmental conservation designations. Farmland comprising high scenic views and bio-diversity under use restrictions gives a lesser use value to the private owner but a higher use value to the community. Therefore the *community land tax* paid by the owner to the community should be substantially reduced if not relieved altogether. Under this scenario, farmers would actively care for the environment and some landowners might even campaign to have their area designated.

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