

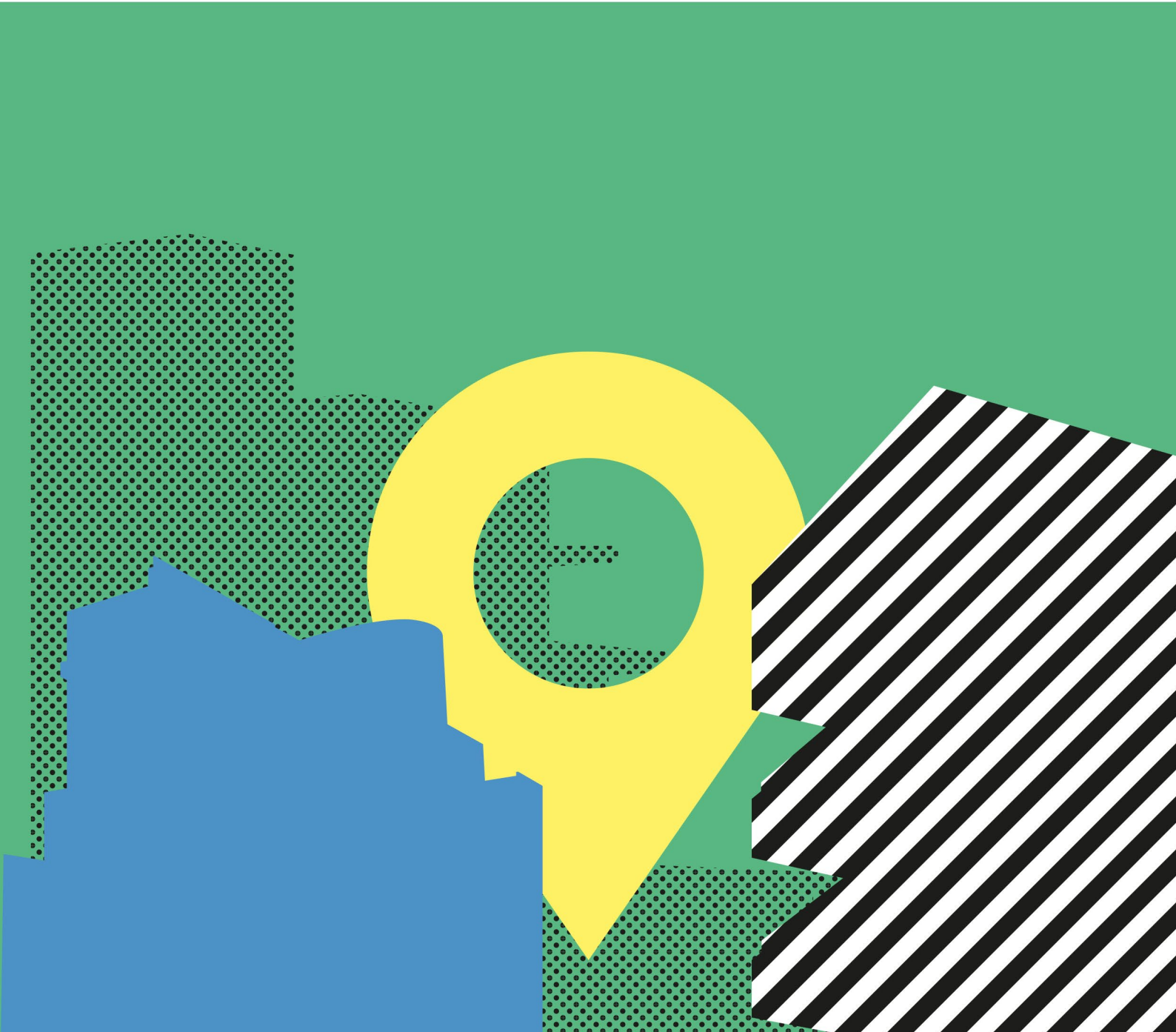
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London Development Toolkit

Guidance Note 2

Partnership and delivery structures



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Partnership and delivery structures

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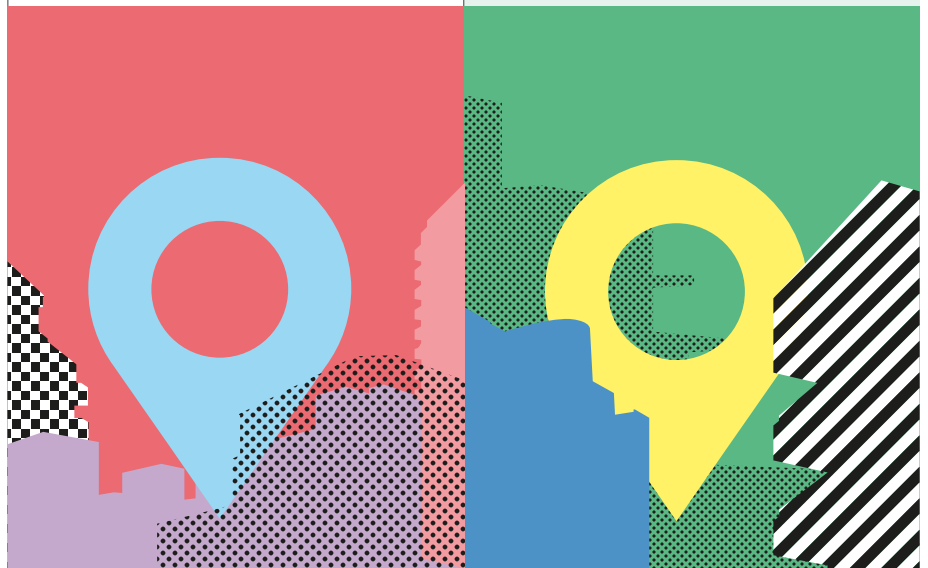
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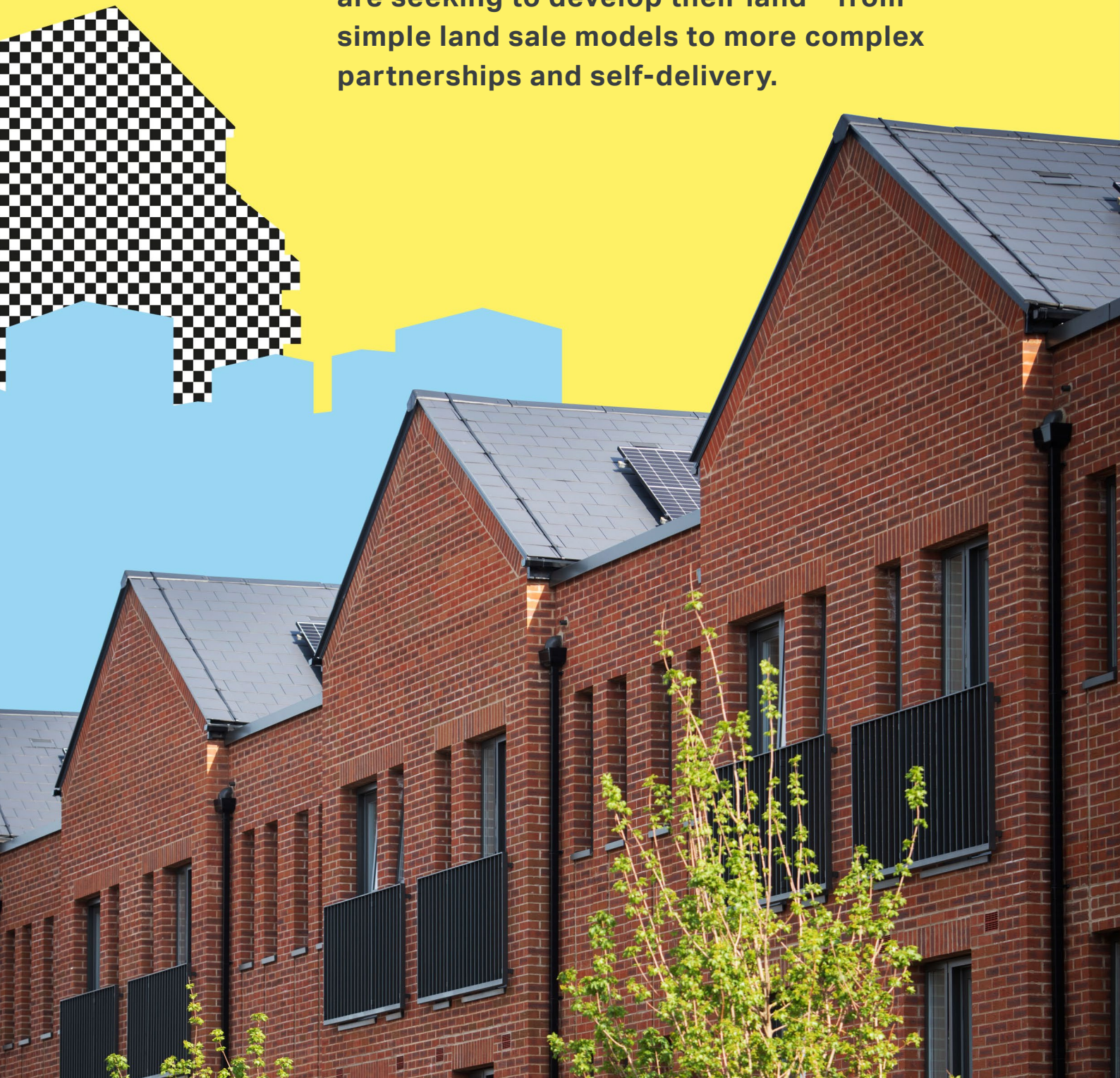
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Introduction

This guidance note explores the key partnership and delivery structures available to public landowners when they are seeking to develop their land – from simple land sale models to more complex partnerships and self-delivery.



This note aims to support decision-making, exploring the key things to consider when developing a delivery structure for a project.

This guidance is aimed at public landowners involved in progressing development projects on their land – most notably project and regeneration managers and their teams, as well as anyone involved in decision-making and governance for those projects, including colleagues in property, estates, finance and procurement.

This guidance note does not recommend a delivery structure for any given project. Instead, it sets out some available options; their relative characteristics; and what to consider when making a decision on a preferred delivery structure.

Consideration of delivery structures ought to start from the very beginning of a project's scoping. However, generally speaking, the detailed assessment of the preferred delivery structure will take place once there is clarity on the objectives for the project, and the opportunity is scoped.

This means, for example, when the extent of the site is understood; there is a clear red line and an agreed project vision; and feasibility work, to understand the scale and composition of the opportunity at a high level, has been completed (see guidance note 1, project feasibility and objectives).

There must be clarity on what the landowner is trying to achieve through a project, to accurately assess which delivery structure is most likely to achieve those objectives and respond to known site characteristics and constraints.

This guidance note does not constitute commercial or legal advice and landowners should take their own advice when planning development on their land.



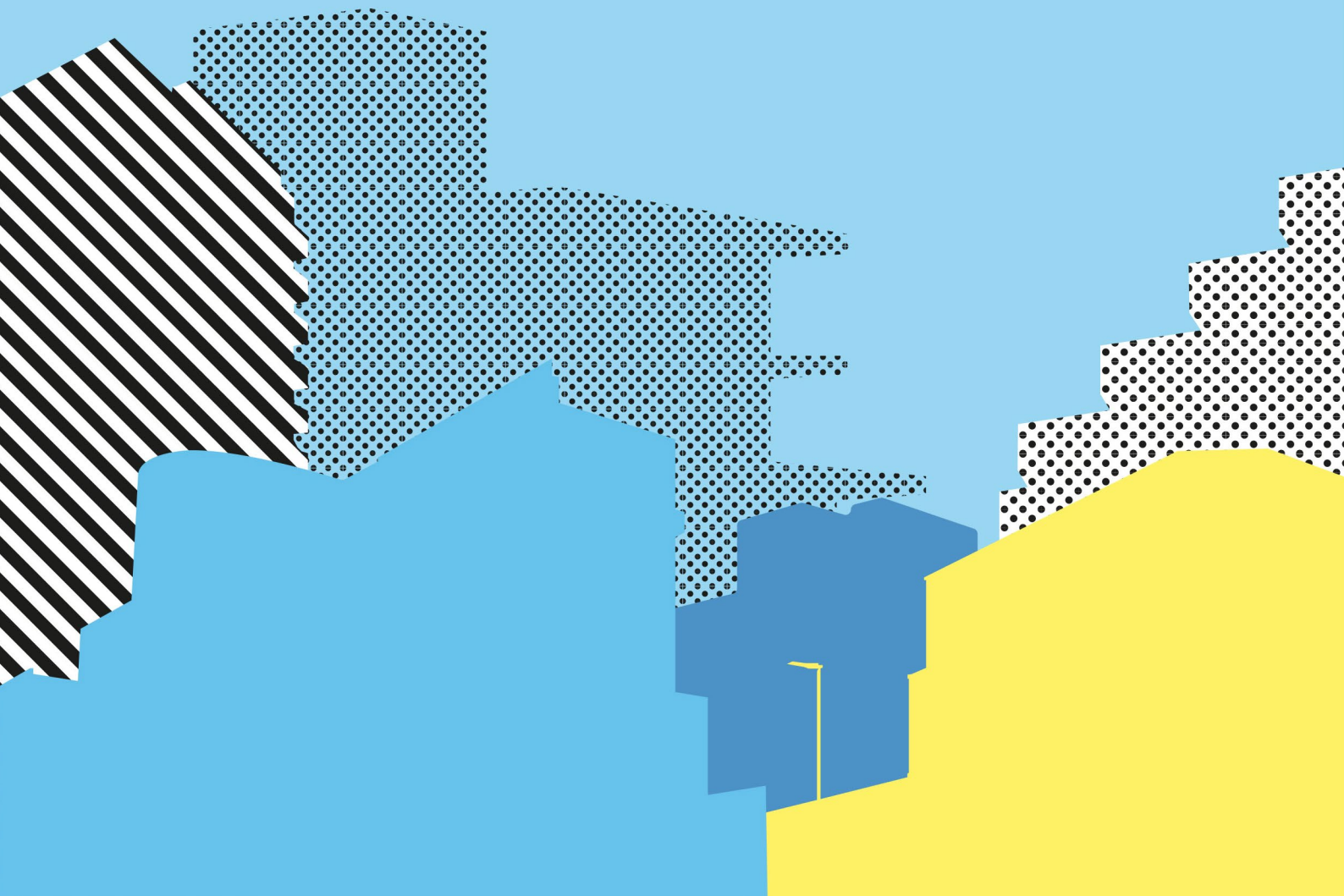
There must be clarity on what the landowner is trying to achieve through a project, to accurately assess which delivery structure is most likely to achieve those objectives and respond to known site characteristics and constraints.



1

Partnership and delivery structures

There is a range of partnership and delivery structures that a public landowner may adopt to deliver development.



In this chapter, we have identified five principal options for consideration:



Conditional
land sale



Development
agreement



Joint venture

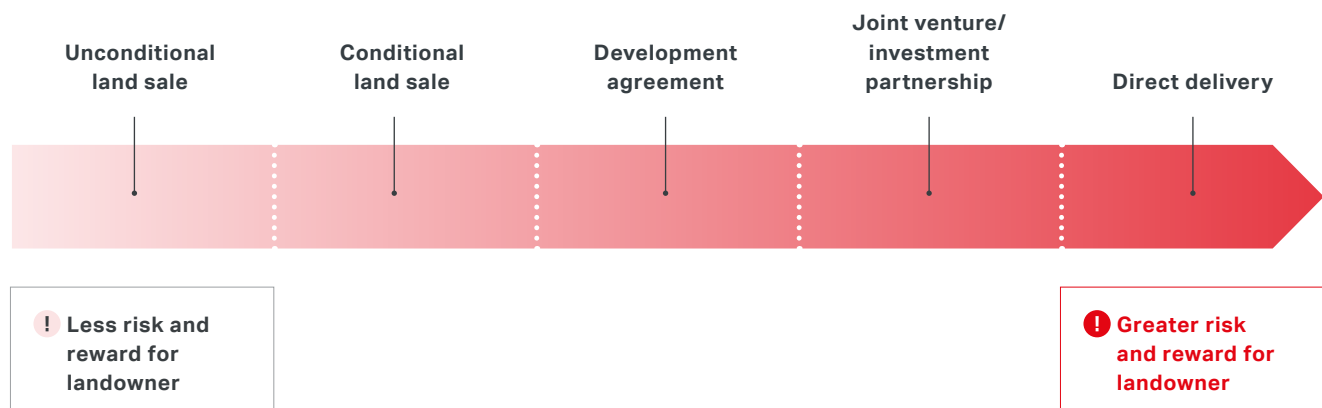


Investment
partnership



Direct delivery

These structures, in very simple terms, could be viewed on a scale, representing varying levels of risk, reward and resource requirements for the landowner.



On the next few pages is a short summary of what each option comprises, followed by a table analysing their relative characteristics and advantages in more detail.

In reality there are grey areas, overlaps and variants of these five options. This is explored in [chapter 2](#).

Chapter 3 goes on to explore how landowners might choose a preferred structure.

Landowners should take legal and commercial advice when considering which delivery structure to adopt.

Conditional land sale

In this relatively simple arrangement, the landowner and developer enter a conditional sale agreement, under which the land will be transferred or let to a developer. This is subject to the developer paying for the land and satisfying 'conditions' – usually, securing satisfactory planning consent and demonstrating it has the funding or finance to deliver the project.

The developer is responsible for all activities in terms of designing, planning, constructing and selling the completed homes. It is shouldering all associated risk, and will therefore expect to retain the income from a project, less the land payment. Upon completion of the sale, the landowner typically has no further direct involvement in the delivery of the project.

This option presents limited financial risk to the landowner and can be relatively resource-efficient. It may be suitable for the disposal of smaller or less strategically important sites, where financial return is the priority.

The landowner may also be able to control the timing of the planning submission and approve the application; and set some high-level scheme parameters in the sale agreement (e.g., minimum number of homes and the proportion of affordable homes).

However, the landowner's ability to control the form, pace and quality of the subsequent development is limited. The landowner cannot impose 'positive obligations', compelling the developer to

do something, unless the developer partner has been procured through a regulated procurement procedure ([see guidance note 3, procurement strategy](#)).

The landowner will also have limited ability to control delivery and milestones following completion of the sale. However, if the agreement is drafted correctly, the landowner might be able to include a negative control, allowing it to buy back the land if certain milestones are missed, without triggering a regulated procurement. This would be subject to negotiation with the developer.

Legal advice should be taken on what landowner controls are appropriate in a conditional sale agreement.

The Greater London Authority's Small Sites Small Builders Programme¹ offers support to public landowners who are seeking to dispose of their smaller scale sites for residential led development.

The programme provides the convenience of land auctions with some of the delivery and quality control of a development agreement, without the need for procurement. This is achieved through a standardised conditional lease structure where the successful developer will receive a long lease of the site, subject to securing planning consent and demonstrating development finance. The lease includes covenants limiting the use of the site to affordable and/or community-led housing.

1. [Making small sites available to small builders | London City Hall](#)



The Greater London Authority's Small Sites Small Builders Programme¹ offers support to public landowners who are seeking to dispose of their smaller scale sites for residential led development.

Development agreement

This is an agreement between a landowner and a developer to deliver a project in partnership through a set of legal controls.

Like the conditional land sale agreement, the development agreement (DA) allows the developer to purchase the land and build the development, subject to satisfying several conditions. These typically include:

- securing planning consent for the development
- demonstrating finance/funding to deliver the project
- entering a building contract for the project
- paying for the land (usually in instalments, with some form of security for future payments).

Under a DA, the developer is responsible for most activities in terms of designing, planning, constructing and selling the completed homes. It is shouldering all associated risk and will therefore expect to retain the income from a project, less the land payment and subject to any overage arrangement.

A DA typically includes several controls for the benefit of the landowner:

Form and quality

- The DA will stipulate the landowner's minimum requirements, which the developer must deliver – e.g., at least [x] number of homes, [x] per cent affordable homes, specified design and sustainability standards, defined social-value outcomes.
- The landowner can participate in, and influence, the design process.
- The landowner can approve the planning application for the project, as well as the subsequent consent.

Pace

- The DA can include target, long-stop and drop-dead milestones, which the developer must meet (e.g., deadlines to submit a planning application, start on site or complete the development).
- Missing these milestones will have consequences for the developer, where ultimately the landowner can end the agreement where progress isn't made.

Certainty

- The landowner will typically secure a fixed payment for the land through the DA – this can be via instalments. Landowners can include planning, sales and/or profit overage provisions to share in any uplift realised beyond agreed thresholds.

- The DA includes a process for dealing with non-performance of the developer's obligations, beginning with the opportunity to remedy a breach and culminating in termination of the agreement. The developer's funders can have the ability to step into the agreement.
- The land interests are granted to the developer in a manner that allows the landowner to claw back the land where there is non-performance. When the agreement is unconditional, the developer is granted interests that restrict the use of the land to the delivery of the development. These convert to longer, unrestricted interests at practical completion.

Given the array of positive obligations placed on the developer via the DA, they need to be procured following a regulated procedure.

Both the procurement process and the management of a DA require significant, multi-disciplinary input and resourcing on the public landowner side.

✓ © East Wick (LLDC) by Edward Bishop



Joint venture

Where a landowner wishes to participate in the risk and reward offered by a project, but does not wish to build the development themselves, a joint venture (JV) partnership with a developer can be considered.

Typically, the landowner and developer form a 50:50² jointly owned company, specifically to deliver the project.

Most commonly, the land is provided to the company as the landowner's equity; and the developer provides its half of the required equity, to deliver the project, from its own reserves or financing. If the public landowner's land value is not sufficient equity to meet its 50 per cent share, it would typically be required to also invest cash, to match the developer's stake. As such, the valuation of land is critical and needs to be carefully considered.

In this arrangement, the developer brings its expertise to the table; and will usually procure and manage the contractor to deliver the scheme (if not delivering it themselves). It would take a development management fee for this role.

Profit generated from the project would be split between the parties, in accordance with the JV agreement.

2. If the landowner took a greater control/shareholding, the JV could be deemed a subsidiary of the landowner, and therefore itself a contracting authority, subject to procurement regulations; so advice needs to be taken.

Given the 50:50 nature of a standard JV, the landowner has continued substantial influence on a project; and takes on an equal share of the risk, profit and decision-making. The last of these is via dedicated JV governance procedures, separate from the internal decision-making of any individual JV partner.

Though shared, this approach requires significant resource commitment from the landowner; and the landowner's equity in the company is at risk. It may be required to stump up additional equity to support the delivery of the project.

In this arrangement, the JV partner will usually need to be procured through a regulated procedure, and legal advice should always be taken on this.

Investment partnership

An alternative form of joint venture structure is an investment partnership where the landowner sets up a company ("Investco") with a developer partner, to explore opportunities across the landowner's portfolio or across a certain geography, rather than seeking progression of an identified scheme.

Under this arrangement, InvestCo partners work together on development opportunities; procuring works and services; and setting up requisite company structures to deliver a range of outcomes, from sale of land (e.g., after design/planning) through to direct delivery.

To progress projects, land is usually included as the landowner's equity, matched by cash from the developer.

These structures can potentially be set up without triggering public procurement regulations, if the initial partnership is limited to investment only. Any projects brought forward thereafter are on the basis of property transactions only, with no obligations for delivery or mandated specifications.

The company's activities are set in accordance with an agreed business plan. If there are obligations for delivery or specifications for works, the procurement regulations are likely to be triggered.

The project's eventual profit would be split between the parties at a pre-agreed percentage (likely proportionate to investment), with the landowner maintaining continued influence on progressing opportunities through joint decision-making.

Direct delivery

Going a step further, a landowner could consider delivering a project itself, usually through public financing arrangements or a wholly owned housing company set up within the landowner's organisation.

In simplest terms, the landowner will procure and pay a construction contractor to design and/or construct the development. The completed development belongs to the landowner, and they would sell/let/occupy the development.

This route offers the landowner greatest control in delivery and managing/protecting outcomes because it is the sole decision-maker in progressing the development with complete authority over specifications, design, the approach to planning, delivery and phasing, etc.

Likewise, as delivery rests solely with the landowner, so does the financial risk and resource required. The landowner provides all funding (from internal resources or by sourcing debt), for which it may not earn a return. It could even make a loss if the scheme does not perform well.

Direct delivery also requires expert, dedicated personnel to manage the project effectively and make all of the decisions described above. Alternatively, it could buy this in (at further expense) by appointing development managers.

Relative characteristics and advantages of each structure

The table below compares the characteristics of the above structures – including which projects they may be suitable for; the landowner’s role; controls and resources required to support them; and the landowner’s risks and returns.

	! CONDITIONAL LAND SALE	✓ DEVELOPMENT AGREEMENT	⌘ ‘STANDARD’ JOINT VENTURE PARTNERSHIP	£ INVESTMENT PARTNERSHIP	📍 DIRECT DELIVERY
DESCRIPTION	A landowner and developer enter a conditional sale agreement, under which the land will be transferred/ let to a developer, subject to the developer satisfying ‘conditions’ – usually the developer securing planning consent. Developer selected via private treaty or tender process.	Agreement allows the developer to purchase the land and build the development, subject to satisfying a number of conditions set by the landowner. Developer is responsible for most activities including designing, planning, constructing and selling the completed homes. Landowner retains substantial control over the form, quality and pace of the project through the agreement.	Landowner forms a jointly owned company with a developer partner to deliver a development project. Landowner provides its land as its equity stake, plus additional cash investment if the land value is insufficient to meet its funding share. Project decisions made jointly via the JV board. Profit is split between the parties through a pre-agreed percentage.	Landowner sets up a company with a developer partner, to explore opportunities across a portfolio/ geography rather than mandating progression of an identified scheme. When a project is to be delivered through the partnership, land is included as the landowner’s equity stake matched by cash from the developer partner. Partners have an investment opportunities appraisal role, with actual development taking place via land transactions with no associated delivery obligations. Profits split between the parties at pre-agreed percentage.	The landowner will procure and pay a construction contractor to design and/or construct the development. The completed development belongs to the landowner and they would sell/ let/occupy the development. Usually delivered through public financing arrangements or a wholly owned housing company set up within the landowner’s organisation.
NATURE/SCALE OF PROJECT	Often suitable for straightforward sites of small to medium scale, where: • there is an established planning policy position (e.g., site allocation) that aligns with the objectives of the landowner. • the landowner does not require significant controls over the project to be delivered.	Suitable for sites where the landowner has clear objectives, and wishes to ensure their delivery, without directly investing in the project. Typically 250+ units. Suitable for phased development. Suitable for sites where a good level of due diligence has been carried out before taking it to market.	Mainly suitable for larger, complex projects where the landowner and market are seeking to share project risk. Typically 500+ units.	Mainly suitable where landowner has a portfolio of potential development sites, perhaps with some sensitivity around policy, objectives and future use. Typically 500+ units.	Project size varies but typically tends to be relatively small scale, in comparison to projects where other structures are used.
DIVISION OF ROLES AND RESPONSIBILITIES	All responsibility for the site and its development is passed to the purchasing developer once the sale completes.	Typically, developer secures own planning consent, and develops scheme under the terms of the agreement. Landowner retains control of form/ quality/pace through provisions in the agreement.	Developer typically provides majority, or all services to the JV (e.g., design, securing planning consent, construction, development management), for a fee. Officers from the public landowner’s organisation will participate in project decision-making via the JV’s board, potentially with additional subsidiary working group representation or similar.	InvestCo partners work together on development opportunities, procuring works and services and setting up requisite company structures to deliver a range of outcomes, from sale of land (e.g., after design/ planning) through to direct delivery. Governance structures can be relatively bespoke.	Relies on landowner’s in-house resource and experience to deliver the project, or this can be outsourced to an external development manager.

	! CONDITIONAL LAND SALE	✓ DEVELOPMENT AGREEMENT	⌚ 'STANDARD' JOINT VENTURE PARTNERSHIP	£ INVESTMENT PARTNERSHIP	📍 DIRECT DELIVERY
LANDOWNER RESOURCE REQUIRED	- Resources required to prepare the site for market and review offers – could include surveys, title review, marketing materials, agent fees, and commercial advice. - Legal costs for preparing and executing the sale agreement. - Some costs/resource requirement to manage the conditional agreement until it becomes unconditional, or later if buy-back or overage mechanisms are included.	- Resources required to prepare the site for market and procure the developer – could include surveys, title review, planning and design work, marketing materials, preparing/managing the procurement, agent fees, commercial and design advice. - Legal costs during the procurement and in preparing, negotiating and executing DA and subsequent building leases. - Resource required to implement/ manage the agreement until the project completes.	- Similar to DA, resources required to prepare for and manage the developer procurement. - Legal costs and commercial advice for setting up the JV company and the various JV agreements. - Dedicated long-term resource required to service the JV including significant officer/board member time. - Potential requirement for additional equity investment into the company.	- Material resource, time and cost demands on landowner in setting up and managing/servicing the partnership. - Can potentially be set up without triggering procurement regulations if the initial partnership is limited to investment only, and any projects brought forwards thereafter are on the basis of property transactions only, with no obligations for delivery or mandated specifications.	- Significant resource requirements – landowner to provide (or procure) resources to manage the project. - Landowner funds all project costs.
LANDOWNER CONTROLS	Likely limited to control of the timing of the planning submission and some high-level scheme parameters in the sale agreement, unless purchaser is procured through a regulated procedure.	Landowner has a good level of control over form, pace and quality of the development, by reference to parameters set in the DA. Developer partner otherwise makes project decisions and may request changes to the project which the landowner will need to respond to (taking procurement advice when doing so).	Landowner has continued substantial influence on project and participates in joint decision-making.	Landowner has substantial influence on the company, its projects and the outcomes but the model relies on trust (both ways) as there is no compulsion on either partner to deliver.	Landowner retains full control over the project.
MANAGING AND PROTECTING QUALITATIVE OUTCOMES AND EMBEDDING QUALITY	Ability to set conditions around planning submission and high-level scheme parameters (e.g., affordable housing levels). Housing could be set at a requirement greater than policy if required, but with negative controls only. However, control over design and quality predominately left to the planning system.	Landowner has ability to set and prescribe specifications through the procurement and in the DA. Following that, it largely has reactive controls only, in the form of approval rights (e.g., planning submissions). Ability to include soft governance (e.g., project steering group) in the DA.	Landowner's participation in the JV's governance provides a good level of ability to influence the project and the qualitative outcomes. Requirements can also be prescribed when the JV partner is procured.	Landowner has shared participation in the company's governance and decision-making, although won't be able to mandate detailed specifications or requirements unless procured under the procurement regulations.	Landowner retains full control over project objectives and outcomes.
REALISATION AND TIMING OF LAND VALUE/INVESTMENT	Landowner is usually paid a deposit on exchange and receives payment for the land upon conditions being satisfied and completion of the sale agreement. There is potential for overage but security for this will need to be considered.	The landowner is usually paid a deposit on exchange of the DA with the balance of the land payment made when the contract is unconditional (when building lease is granted) or could be deferred, depending on commercial terms set out in DA. Potential for overage. Developer is shouldering all project risk and will therefore expect to retain the income from a project, less the land payment and any overage.	Returns come from sales income, i.e., only after delivery and sale of the development.	Typically works as per JV partnership.	Returns come from sale/ rental income, i.e., only after the sale/ letting of the completed development.

	! CONDITIONAL LAND SALE	✓ DEVELOPMENT AGREEMENT	⌘ 'STANDARD' JOINT VENTURE PARTNERSHIP	£ INVESTMENT PARTNERSHIP	📍 DIRECT DELIVERY
LANDOWNER RISK AND CONSEQUENCES OF DEFAULT	Low risk to landowner but any financial uplift will belong to the developer, subject to any overage arrangements. May offer higher land value than under a DA because there are less obligations on the developer. Limited ability for landowner to take back control of the land in the event of developer default, unless a buy-back pre-emption is included in the sale agreement (even then, this right is still likely to be subservient to a funder's similar right to step in).	Low risk to landowner; but any financial uplift will belong to the developer, subject to any overage arrangements. Typical ability for landowner to step in (after any third-party funders)/ claw back the land/terminate the agreement in the event of developer default.	Material financial risk to landowner's invested equity (land and, if required, cash) as returns are at risk and depend on the project's success. Typically, landowner has ability to step in (after any third-party funders) in the event of developer default.	As per JV partnership.	Most project risk (including planning, construction and sales risks) rests with the landowner. The building contract should include remedies/processes where the contractor is in default.
EXIT STRATEGY	Landowner usually exits the arrangement when the sale agreement is unconditional, and the land is transferred or let to the developer.	DA will come to an end on completion of the development and delivery of all DA obligations, unless terminated earlier (see above re: default).	JV will come to an end on completion of development and delivery of all JV obligations, unless terminated earlier (see above re: default).	Typically, landowner can exit at the expiry of a pre-agreed term, or upon agreement that there are no further opportunities to pursue.	Project concludes once the development completes.
DEVELOPMENT MANAGEMENT ARRANGEMENT	Development management lies with the developer once the sale is complete.	Developer would provide majority of development management services.	Developer partner typically provides majority of, or all services into the JV (e.g., development management), for a fee.	Typically, the investment partner provides the majority of, or all of the services into the company (e.g., development management), at a fee, though this can be provided by a third party.	Landowner manages the development, which is a significant call on its resources (although this can be outsourced).
CONTRACTUAL/PROCUREMENT COMPLEXITY	Relatively simple transaction with fewer contractual obligations compared to other structures. No procurement requirement unless positive obligations are placed on the developer in the agreement.	Typically a relatively simple and well-understood structure in the market. Complexity can increase for phased developments. Developer needs to be procured through a regulated procedure. This could be a simple restricted procedure or a more complex procedure with dialogue and/or negotiation. See guidance note 3, procurement strategy, for more detail.	A well-understood delivery structure. Procurement can be lengthy and complex to work through legal agreements and commercial complexity.	Lesser-known structure. May not require a regulated procurement to set up or operate.	Contractor will need to be procured via a regulated procedure.

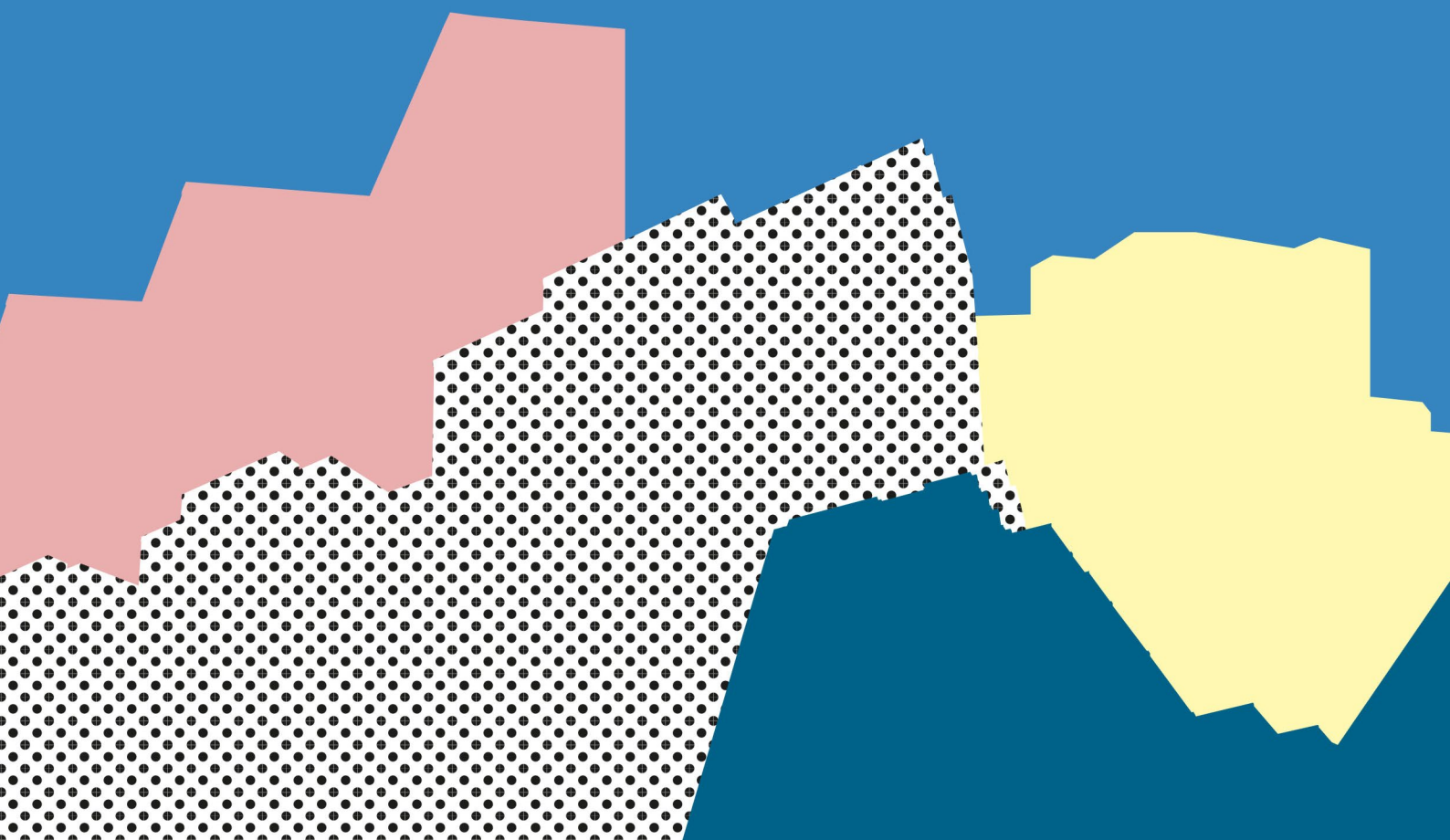
	! CONDITIONAL LAND SALE	✓ DEVELOPMENT AGREEMENT	⌚ 'STANDARD' JOINT VENTURE PARTNERSHIP	£ INVESTMENT PARTNERSHIP	📍 DIRECT DELIVERY
PROJECT TIMING	A developer can be selected and a sale agreement entered relatively quickly.	Procurement process can take a long time, depending on the complexity of the project, requirements and the process. Landowner can stipulate project milestones in the DA to promote delivery at pace.	Procurement process can take a long time, depending on the complexity of the project, requirements and the process. Joint business planning with the developer partner provides opportunity to influence timescales. Ongoing joint governance provides regular oversight and input into milestone delivery.	This is a longer-term arrangement that can be set up without a regulated procurement. It may take longer to see delivery, as business plans are put forward by partners and typically worked up for multiple sites.	Typically depends on resourcing and in-house capacity. Landowner will be responsible for all project activities including planning, contractor procurement, sales etc.
SUMMARY OF PROS	• No material financial risk to landowner, who will usually receive a deposit on exchange of the sale agreement and the remainder of the land payment on completion. • Capital receipt typically in shortest timeframe, compared to the other structures. • Landowner not responsible for design, planning, construction or sales and the associated risks. • Wide potential market of developers.	• As per conditional land sale although land receipt may be realised later if deferred, and the pool of potential developers is more limited. • Offers some landowner controls, including the ability to set, and require the delivery of, minimum requirements. Allows landowner to deliver objectives beyond those set in planning policy. • Some opportunity for shared governance. • Makes full use of developer's expertise and resources. • Relatively simple and well-understood structure.	• Landowner has continued substantial influence over what, how and when the project is delivered. • Project risk is shared with the developer partner. • Landowner shares in the project's success, profit and uplift. • Potential for higher returns than other models. • Typically, most upfront investment is funded by developer partner. • Landowner benefits from developer partner's expertise and resources.	As per standard JV partnership, and: • can be relatively quick to set up, given simplified company structure and potential for no procurement • landowner does not need to grant site, works or services exclusivity up front.	Provides greatest level of control to the landowner compared to other structures. • All returns belong to the landowner – no share of profit with a partner.
SUMMARY OF CONS	• Loss of landowner control of asset and wider outcomes. • Majority of financial upside will belong to the developer, subject to any overage arrangement.	• Can be complex and resource-intensive to procure and manage. • Landowner controls/influence limited to those set out in DA. Landowner does not participate in general project decision-making. • DA 'fixed' at point of exchange and subsequent changes are limited due to procurement regulations. This makes the DA approach challenging for longer-term projects, where circumstances may necessitate changes to the project. • Landowner does not share in development profit beyond land payment/overage as no risk participation.	• Substantial set-up costs – can be challenging and lengthy to set up. • Landowner's land and other equity is at risk. • Significant ongoing resource requirements from landowner to manage the JV. • Potential need for (unknown) additional cash to top-up equity dependent on land value. • Political risk if company fails.	• Landowner's land and other equity is at risk. • Potential need for additional cash to top up equity. • Risk of challenge should landowner procure works or services outside of regulated procurement. • The model relies more substantially on trust (both ways) and value-for-money checks during operation, given that limited detail on business planning, works and services is agreed upfront. This in itself creates programme lag.	• All project risk sits with the landowner. • No partner support. • Requires significant ongoing resource and expertise from landowner.

2

Variations and other delivery structures

As noted, there are grey areas, overlaps, variants and options within the five principal delivery structures set out in chapter 1. These are explored in more detail below.

The most appropriate structure and approach for a given project varies. The factors a landowner might consider are summarised in chapter 3.



Joint venture flexibilities

Chapter 1 described a typical JV structure where a 50:50-owned company is set up by the landowner and its developer partner to deliver a project. There are variants on the approach which are considered below.

Landowners should take legal and commercial advice when considering which delivery structure to adopt. This is especially true when adopting a JV structure, as this is a complex area.

Contractual JV

JVs can be contractual rather than corporate. This means that the relationship and partnership arrangements between the landowner and developer exist in legal documentation only; and that there is no separate JV company established.

Rather than the partners providing land and/or cash into a JV company, contracts will instead govern the transfer of assets between the parties and responsibilities for funding the development.

This means that, whilst there may be governance arrangements within the JV contracts, formal decision-making will remain with the internal governance of the respective JV parties, rather than in a separate company with its own autonomy.

(However, it can be helpful to have a separate company with a mandate for delivery of a specific site or programme, separate from normal operations.)

The accounting of the asset and cash transfers between the parties will also be captured within the respective organisations, rather than in a separate entity off the member parties' own balance sheets.

Typically, these JVs are substantially similar to the corporate approach in terms of the roles and responsibilities of the parties. At their most basic, contractual JVs could more closely resemble conditional land sales – but with shared investment and profit share. In other words, they can be relatively 'hands-off' in terms of control and governance from the public landowner perspective.

The advantage of the contractual approach is that it is less complex to establish than a corporate vehicle, the latter involving a degree of bureaucracy and expense to incorporate a new company.



Landowners should take legal and commercial advice when considering which delivery structure to adopt.



Minority interests

JVs do not have to be equally owned (50:50) between the landowner and developer. One party could have a minority interest, taking returns proportional to its investment.

Typically, this would also mean the minority party does not have an equal say in project decisions. However, the governance and management arrangements can be highly bespoke, and dependent on the opportunity/market.

This could be an appropriate approach if a landowner is only willing to invest its land, and the land value is less than 50 per cent of the project's equity requirements. In this way the landowner can participate and share in at least some profit, without investing cash.

However, in public-private partnerships this approach is less common, given one of the key advantages of JVs (joint decision-making and control) are, potentially, significantly diluted.

50:50



JVs do not have to be equally owned (50:50) between the landowner and developer. One party could have a minority interest, taking returns proportional to its investment.

Portfolios

Landowners might consider a structure that delivers development across several sites at once rather than a single defined opportunity. The landowner would need to ensure that disposal of multiple sites in a single lot would add value compared to dealing with each individually. If so, the DA, JV or investment partnership structures could be used as a framework across multiple sites.

Applying a single structure across multiple sites may increase their appeal, given the increase in the scale of the opportunity, and can be much more efficient in procurement terms.

It's likely that the sites packaged together will need to be broadly comparable in their scale, proposed uses, potential built typologies and the price points of completed development, to attract a single developer to the portfolio.

Otherwise, there is a risk that, for some of the sites, better outcomes (design quality, product more suited to the local market, value for money, etc.) could have been achieved if those sites were tendered separately to other developers whose business models were better suited to the particular site's characteristics.

In terms of potential risk, in this scenario the landowner is reliant on a single developer to deliver a portfolio. If that developer fails, there will be significant consequences for delivery of development across the landowner's portfolio.

Advancement of planning

Landowners could consider securing planning consent(s) for development on their site(s) before selecting a developer partner and putting a delivery structure in place. This is applicable to all of the delivery structures in this guidance note.

This approach would allow the landowner to secure a consent that it deems appropriate, before passing over some or all delivery control over to a developer partner. This helps the landowner to shape the development, and its design and quality outcomes. It also helps to de-risk the site, which should improve the value of the land.



Landowners could consider securing planning consent(s) for development on their site(s) before selecting a developer partner and putting a delivery structure in place.



However, this approach has some potential disadvantages to consider:

- Substantial time and financial resources are required to secure planning consent(s).
- Consents secured by the landowner may not optimise the site in commercial terms, which may result in reduced returns compared to a developer-led permission.
- If the consent does not appeal to developers, there is a risk it actually decreases interest in a site. Detailed work may be abortive, as an incoming developer might need to make adjustments to meet their particular requirements or ways of working.

Securing outline rather than detailed consent may offer a compromise that helps to mitigate some of these concerns. Alternatively, the landowner could work with the local planning authority to agree a site development brief; or secure a site allocation in the local plan for the intended use. Both of these would help to de-risk the site.

The landowner should always seek planning and property advice if considering this approach to determine the optimal strategy. In doing so, the landowner should consider the project objectives and emerging preferences on delivery structure.

Master developer/ land promoter

For very large sites and strategic opportunities that may span multiple sites, a master developer model may be appropriate.

In this approach, a developer is primarily focused on establishing a de-risked development platform (site), for other third parties to then undertake the actual build-out. It would do this by establishing the project vision and scope, securing planning consents, and potentially delivering site enabling works. It would then sell serviced parcels onwards to other parties specialised in delivering those particular uses or buildings.

This approach is less common, as it tends to only be appropriate for opportunities with the scale and variety of uses to justify a division of development responsibilities.

This variant is more about the role of the development partner rather than a distinct delivery structure in itself. This approach can be established via a DA or JV model.

When considering whether a master developer approach may be appropriate, the landowner's decision should be based on the project objectives, scale and diversity of uses etc. The optimal delivery structure decision can follow.

Unconditional land sale

An unconditional land sale is a straightforward method of disposal where a landowner sells its land without any conditions attached.

Unconditional deals tend to have the shortest timescales to completion, and are lowest risk to landowners. This is because the land payment is received upfront, on completion of the sale, with no renegotiation or recourse.

However, the landowner has no control over the land and its subsequent development following disposal.

The price achieved for an unconditional disposal would typically be lower than for a conditional sale. This is because the developer will price in any risks that might otherwise have been mitigated in a conditional land deal, e.g., securing planning consent.

This option is mentioned as a variant as it can be useful to consider within an options analysis. It has minimal resource, timing and cost implications for landowners and won't require a procurement.

However, it is rarely an appropriate route for a public landowner seeking to deliver development, due to its lack of control over outcomes.

It may, however, have a useful role in the context of a portfolio of sites where there is some advantage in realising some quick receipts, where the land in question may have little potential to deliver any of the landowner's development objectives.

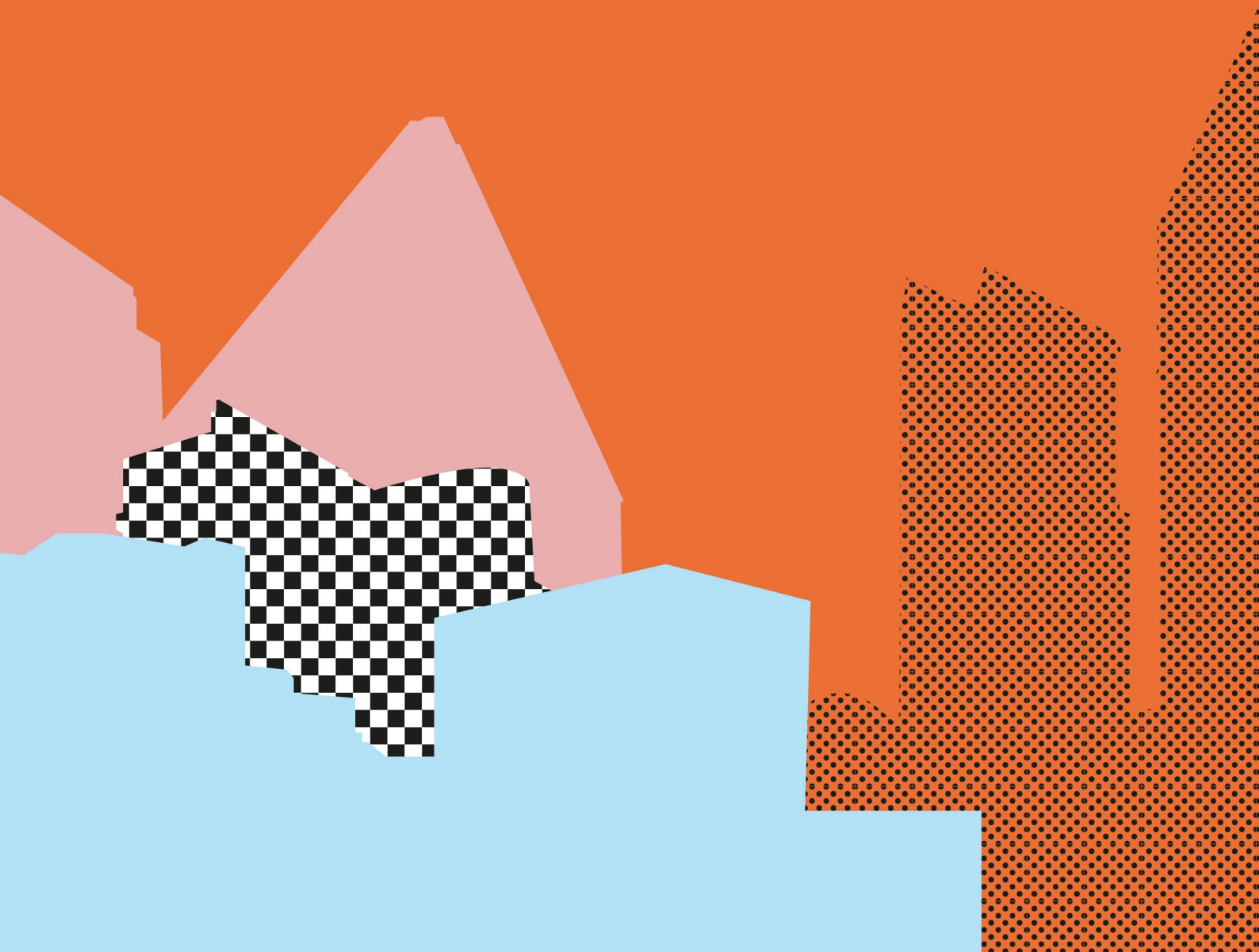


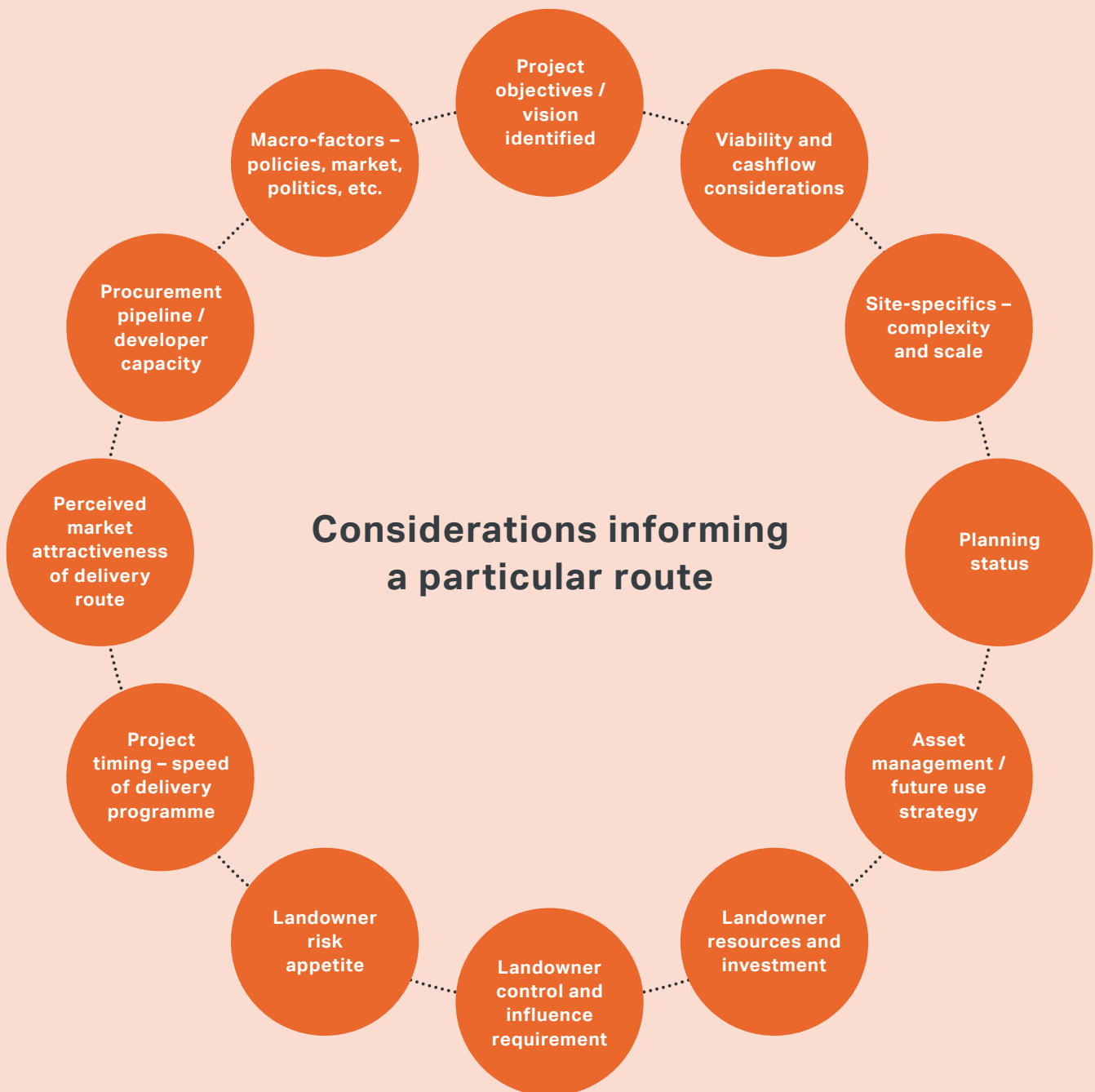
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Selecting a delivery structure

Considerations

Landowners will consider a range of factors when devising or choosing a delivery structure for a project.





Each of these are considered in more detail below:

- **Project objectives and vision** – what outcomes does the landowner want to achieve through a project? These can include development, regeneration, design, environmental, social, economic and financial outcomes. They are critical in informing which delivery structure might be appropriate.
- **For simpler projects** – e.g., where a landowner wants to take an early land receipt, and doesn't require oversight or control over what is delivered on a site – then a simple unconditional sale structure might be appropriate. For projects where a landowner is seeking to influence/control certain outcomes, and to invest with a developer partner and share risk, a JV structure may be preferable.

- **Complexity and scale** – these factors will also influence thinking when choosing a structure. Large-scale, multi-phase, complex projects may warrant some of the more complex and resource-intensive JV structures. For simpler, smaller-scale projects, a landowner may decide to dispose of the site with or without conditions, preserving its resources for more complex projects.
- **Financial resources and appetite for commercial risk** – is the landowner able/willing to invest its land, and potentially cash, into the delivery of the project? Financial modelling and due diligence will help to establish the **viability and likely returns** from any investment and inform whether a landowner is willing to invest. However, in many of the structures explored in this note, returns are at risk and depend on the success of the project, which can itself be influenced by **external economic and/or political factors**, beyond the landowner's control.

A landowner's equity may also need to be subordinate to any third-party debt in the project. This means project income is used to repay lenders before any remaining income is shared between the landowner and developer.

- **Skills, expertise and human resources** – the structures in this note vary greatly in terms of the skills, capacity and time commitment required from the landowner's organisation to procure,

transact and manage a project.

The appropriate teams, expertise, programmes, budgets and governance structures will need to be in place to facilitate the successful delivery of the project.

- **Project timing, programme and speed of delivery** – the different structures will deliver land payments, returns and development at different points. The landowner's ability to influence or control these factors also varies across the structures.
- **Planning status** – whether a site has a planning consent before it is sold, or a developer partner is selected, might influence which delivery structure is most appropriate. For example, a site with consent is, to an extent, de-risked; and so a landowner may decide to sell it unconditionally (perhaps appropriate for smaller sites where firm control over delivery/quality is not required). In a larger, more complex project with an existing consent, a landowner may be comfortable to invest more/take on greater risk in the delivery of the scheme, with or without a developer partner.
- **Procurement pipeline** – when considering a delivery structure for a project, the landowner will need to consider its wider programme of development sites to ensure its resources are allocated appropriately to service each project. It may not have the capacity to manage the

procurement of several complex structures for different sites at the same time.

- **Developer/market appetite** – the perceived attractiveness of the various structures in the market can change, and links to the economic circumstances or outlook at the time. In challenging economic circumstances (e.g., where values are stagnant/suppressed and/or costs are increasing, developers may prefer opportunities where risk is shared with the landowner (e.g., through a JV). In those circumstances, the market may not be interested in structures where the entire project risk sits with the developer (e.g., a DA). This can be explored early through pre-market engagement.
- **Asset management/future use** – the delivery structure for a project can be influenced by the landowner's requirements in the longer-term holding and management of the completed development. Where it is seeking to own/manage the completed asset, it could choose to deliver the project itself (direct delivery); or include the ability to buy back the completed development in another structure.

The relationship between project objectives and the delivery structure

A landowner will likely have a range of qualitative and commercial objectives for a project.

Qualitative objectives might include design, social and environmental outcomes. Guidance note 1, project feasibility and objectives, explores how a vision and qualitative objectives for a project might be established.

Commercial objectives might include: securing a fixed or income-linked return on the land or cash invested; retention or disposal of land and developed assets.

There may be competing objectives, creating a need for trade-offs or prioritisation. Striking the right balance is best achieved through open dialogue between the relevant stakeholders within the landowner's organisation. Decision-makers would be able to adjudicate between these and decide on the priority objectives. This is often best achieved in a workshop format, with key decision-makers in the room, to ensure transparency and buy-in to the outcomes.

There is an important synergy across a project's vision, objectives and its delivery structure. The latter plays a critical role in the landowner's ability to deliver and control a project's outcomes.



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The qualitative/commercial objectives should therefore be considered alongside potential delivery structures; or, where the vision/objectives have already been established, reviewed against emerging preferences on delivery structures.

The project's objectives may need to be revisited, as thinking on a preferred delivery structure evolves. For example, potential adjustments may include:

- amendments to the red-line boundary of the site, and whether there could be scope for land assembly with adjoining owners to create a more comprehensive or attractive development opportunity.
- whether other sites could be included with the subject site, to create a portfolio opportunity or a simple packaging of sites that could increase efficiency or market interest.
- whether the landowner has any aspiration to retain any assets or operations in the completed scheme; and if so, how these should be specified and funded.

Analysing and selecting a delivery structure

Delivery structures can be analysed against a project's objectives to help determine a preferred structure.

One option could be to score the characteristics of each delivery structure against the project objectives, to determine the best overall option. The table below illustrates this.

This can be enhanced by weighting the different objectives, drawing on any prioritisation exercise carried out earlier. Minimum scores could also be set for some objectives.

This analysis might quickly identify a clear preferred structure; or the outcome may be more nuanced. In the latter case, this may require more detailed analysis or consideration of hybrid or variant structures.

It will almost always be appropriate to test emerging preferences on structure as part of the project's pre-market engagement. Guidance note 3, procurement strategy, has more guidance on pre-market engagement.

	DELIVERY STRUCTURE 1	DELIVERY STRUCTURE 2	DELIVERY STRUCTURE 3
LANDOWNER CONTROL OVER QUALITATIVE OUTCOMES	1/5	3/5	5/5
LANDOWNER CONTROL OVER DELIVERY TIMESCALES	1/5	3/5	5/5
SETUP COSTS AND TIME	5/5	3/5	2/5
LANDOWNER RISK EXPOSURE	5/5	4/5	1/5
COMMERCIAL RETURN POTENTIAL	2/5	2/5	5/5
TIMING OF RECEIPTS	5/5	3/5	4/5
TOTAL SCORE	19/30	18/30	22/30



Critical questions

To support the above analysis, the table below sets out some critical questions landowners can ask themselves. These may assist in identifying potential delivery structures. These should be taken as an indicative guide only, as each project

is different and there may be specific circumstances running counter to the general guidance in this note. As noted, landowners should seek commercial and legal advice whenever making a binding decision on delivery structure.

CRITICAL QUESTION	YES Delivery structures that may be appropriate	NO Delivery structures that may be appropriate
Is the landowner prepared to be exposed to market risk (i.e., potentially failing to secure anticipated receipts, due to market movement) in securing a return for its investment?	• JV • Investment partnership • Self-delivery	• Conditional land sale • DA
Does the landowner have funds to invest in the project beyond its land value?	• JV • Investment partnership • Self-delivery	• Conditional land sale • DA
Will the planning process likely be sufficient to secure the qualitative objectives for the project?	• Conditional land sale • DA • Investment partnership	• DA • JV • Self-delivery
Is the landowner willing to undertake a regulated procurement process to find a development partner?	• DA • JV	• Conditional land sale • Investment partnership
Does the landowner require a land receipt upfront?	• Conditional land sale • DA	• JV • Investment partnership • Self-delivery • DA

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Common pitfalls

When analysing delivery structures, several common pitfalls need to be considered.



To assist landowners in making robust decisions, advice around some common mistakes is set out below:

- **Avoid pre-existing biases towards certain routes (internal or in advisory team)** – intentionally or unintentionally, conscious or unconscious, we all have our biases. Whether through learned experience or perception, it is easy to allow such biases to affect decision-making. Structures should be assessed in a rigorous, objective and open way to ensure the most appropriate delivery option is identified.
- **Ensure the assessment is market-facing** – potential delivery structures need to be assessed in the context of the market reality surrounding the project. This includes considering factors such as:
 - development viability (i.e., is it viable; how much land value/equity is available; how much development profit does it make; and is that sufficient to reflect the risk profile?)
 - funding needs and availability (debt, equity and grant)
 - demand/interest from prospective construction or development partners.



Potential delivery structures need to be assessed in the context of the market reality surrounding the project.



As such, these factors must be continually assessed throughout the options-testing process. Pre-market engagement can be conducted, potentially with the input of external advisers, to ensure the landowner has explored available options and identified the most appropriate approach. Landowners must be confident there is a feasible and viable solution possible within the parameters it is setting for a project, before progressing (whether delivering itself, via partnership, or disposing).

- **Consider long-term resourcing implications** – it is natural that the preparation for, and procurement of, the preferred delivery structure receives the most attention. However, quite often, too little attention is given to the successful operation of the chosen structure – particularly when



The landowner should ensure sufficient internal time, personnel and budget is ringfenced to administer and manage a contract after it has been signed. In partnership contexts, developer partners will welcome a properly resourced public-sector partner, as it supports efficiency and effectiveness of decision-making.



it comes to ongoing resourcing and cost implications.

- **Bring your stakeholders with you** – it is essential to ensure that the selected delivery structure is properly understood by corporate and political stakeholders within the landowner's organisation. If the approach's limitations aren't properly understood, this can create many issues around successful implementation and operation. It may even leave the public sector vulnerable in terms of meeting contractual or wider statutory obligations. Potential delivery structures need to be socialised and explained to all relevant stakeholders during the

options-testing and decision-making stages, and the operational phases that come afterwards.

- **Lay the ground for demonstrating best consideration** – it's not uncommon, in the current market, for viability to be challenging under any delivery structure. This then creates challenges around demonstrating "best consideration" (Section 123 of the 1972 Local Government Act) later down the line, if and when land is to be sold.

Early-stage consideration of this is important, as different structures will create different circumstances for how and when land is valued and sold. These circumstances should be factored in when considering commercial terms for delivery, governance requirements, and forecast critical paths/programme.

Guidance note 4, setting a brief and managing a procurement, includes more details of best consideration.



