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Partnership, Collaboration & Joint Venture Practice Guide

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Registered Social Landlords in Wales are developing and diversifying their businesses. They are increasingly looking towards collaborative models with partners in order to build capacity and drive growth. As RSLs develop and diversify, the opportunities to engage proactively with private sector developers, with local authorities, with investors and with each other, are growing all the time, along with the range and type of partnerships.

This introductory guide highlights the key factors and considerations that RSLs should be thinking about when reviewing their partnership options. Prepared by Savills and Devonshires, drawing on their experiences of working on new models across the UK, we hope this will provide a helpful guide for RSLs seeking to grow in collaboration with others.

Here are the Key Questions we often get asked:

1. **What are the benefits of collaboration?**
2. **What different forms can partnership and collaboration take – particularly based around Development Delivery?**
3. **If collaboration involves the creation of a new entity or body, what are the options for that entity?**
4. **What are the key issues for RSLs to bear in mind in connection with proposed collaboration?**

RATIONALE: WHY COLLABORATE?

All RSLs have their own business plans focused on development and growth in their own areas.

Traditionally, delivery of development has focused on established approaches to contracts, procurement and management. But in growing further, many find that there are limitations on their growth ambitions – these limitations can be addressed through partnership.

Fundamentally, partnership and collaboration can simply be about making things happen that might not otherwise happen. Here are the top 5 reasons for considering collaboration.

OPPORTUNITY – access to new opportunities, new markets, new tenures, new funding routes, and opportunities to up-scale delivery.

CAPACITY – marrying your skills with those of your partners to bring increased capacity across the partnership: skills, expertise, resources.

DELIVERY – access to skills, expertise around delivery of different types of schemes, development of and access to supply chains, keeping costs as low and as predictable as possible in a challenging market.

RISK SHARING – sharing funding, and sharing the risks of development: planning, delivery and sales.

LEARNING FOR FUTURE GROWTH – the chance to learn new skills and experiences which can be harnessed within the RSL for future growth.

WHO WITH AND WHAT FOR

There is now a wide and ever increasing range of partnerships and collaborations that RSLs (and RPs) across the UK are outing together. The most common formats are the following four.

RSL and Private Sector Developer/Contractor

For many years, these have been focused on scheme-specific deals, entered into in order to develop out one site. Most RSLs are very familiar with this model – the developer does the building, sells the private market units and the RSL acquires the affordable homes. The scheme completes and partnership closed.

The modern development world has seen the emergence of longer-term, programme-based partnerships, stretching out over longer periods, a number of sites with a key driver towards driving long-term development of growth, the supply chain and therefore value for money.

RSLs with each other

Key examples are emerging across the UK of RPs and RSLs collaborating with each other to enhance deliver capacity, share risk and rewards and operate on a larger scale, accessing larger sites and schemes, and delivering across several programme areas.

RSLs with a local authority or local authorities

Before the lifting of the HRA debt cap for local authorities in England and Wales, there was the incentive for authorities to work with RSLs to lever in finance and work collaboratively towards the delivery of affordable housing. Now, RSL/LA partnerships are diversifying widely, sharing risks and rewards across different tenures, over longer periods, and complementing development management with longer term management and maintenance services.

The emergence of Combined Authorities, city deals and the like, give an extra impetus to seek partnership and collaboration over a wider area and access to new potential funding opportunities.

RSLs with an investor

Primarily as a means of raising finance, partnerships are taking the form of leases, or management arrangements for investor-owned affordable homes in local markets. Typically, investors fund the delivery of new homes and look to RSL partners to offer the services to tenants when the homes are completed/ The scope for the investment of new private monies into affordable housing in the UK is enormous and many RSLs (and RPs) are actively pursuing conversations with investors to lever in new forms of funding.

WHAT FORM?

Partnerships can take many different forms. For collaboration around development delivery and growth, this guide focuses on the two main approaches that RSLs are able to adopt.

CONTRACTUAL ARRANGEMENT – formal collaboration in which the partners set out in one or more legally binding contracts the obligations that each accepts to achieve the intended project or goal.

CORPORATE JOINT VENTURE - where a new vehicle (corporate entity) is established in which the partners are members and in which the activity, typically development activity, is undertaken.

These two main forms are discussed in more detail below, focused on the delivery of development, as this tends to be the main area in which we see formal collaborative structures.

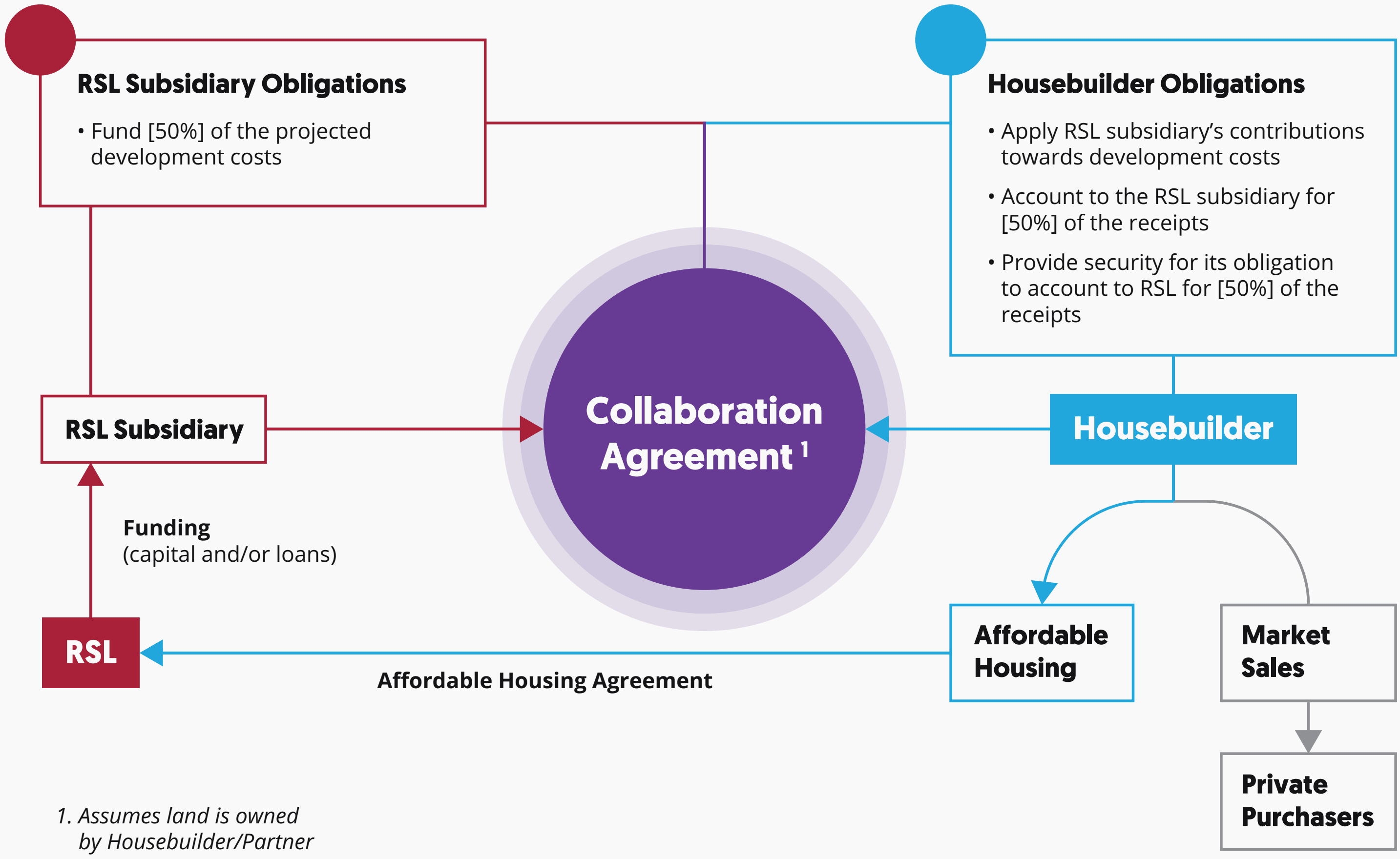
CONTRACTUAL COLLABORATIONS

The focus is on sharing risk and rewards through a suite of documents or contracts which are legally binding. The contracts set out who is responsible for delivery what within the programme, the costs and the sharing of revenues.

The RSL and the contractor/developers can share in every aspect of the programme: split funding between them, deliver different aspects according to how well placed they are to do so, share the rewards from market sale profits and share the value gained through subsidising the delivery of affordable homes.

In its simplest form, a RSL shares funding input to acquire land and develop the scheme, provides a guarantee on taking the affordable homes when built, the contractor/ developer undertakes the construction taking a normal construction margin and takes the risk on sales. Revenues are shared according to the risks taken and the RSL ends up with the affordable homes.

It is usual for RSLs to establish a subsidiary in order to enter into such collaborations. We see these collaborations work best when the focus is on a small number of sites or schemes.



1. Assumes land is owned by Housebuilder/Partner

The key considerations for RSLs considering enter into such arrangements are whether the RSL should set up a subsidiary group company to enter into the contractual obligation, the basis upon which the RSL can justify involvement in terms of its aims and objectives and the impact of the regulatory regime within which RSLs operate?

For a group of RSLs seeking such collaborations with one or more developer/contractors, a key factor is the need for there to be a single party to contracts – so one of the RSL partners will need to effectively be the contracting party. This can place additional overheads onto one partner which would need to be reflected in the rewards structure.

CASE STUDY

Loftus Garden Village

Pobl Group's Loftus Garden Village is based on the site of the former Royal Ordnance Factory and STC and Pirelli Cables Factory in Newport, and was delivered in partnership with Welsh Government, Newport City Council and Lovell.

The land for the site was owned by Welsh Government and after long negotiations sold at a reduction on the agreed value - £2.15m against a value of £3.15m. This effective £1m subsidy allowed Pobl to deliver the site without any Social Housing Grant, and ensured a high proportion of affordable homes.

The site features 250 high quality homes – ranging from one bedroom apartments to four bedroom family homes – for open market sale, shared ownership, social and intermediate rent on a 16 acre brownfield site near the city centre. The development includes:

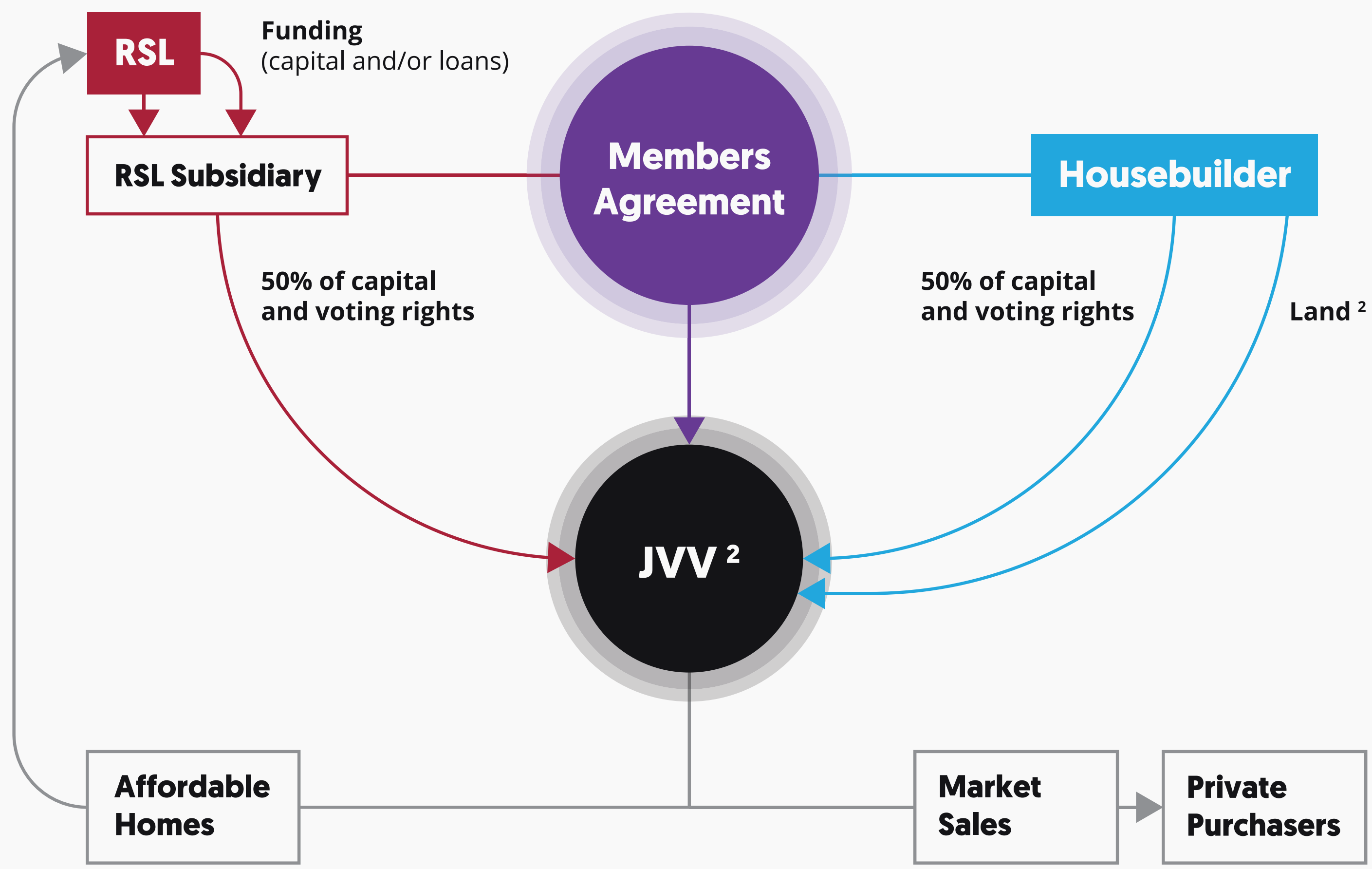
60%
affordable housing

32 social rented homes

A housing co-operative of
19 homes
at the heart of the village

It was recently awarded Best Residential Development at the Wales Property Awards.

CORPORATE STRUCTURES



2. Assumes land is owned by Housebuilder/Partner but is transferred into the JVV

The focus is on establishing a new entity, a corporate vehicle, typically called a **Joint Venture (JV)**.

There are a number of forms that the JV vehicle could take, these are discussed below. For longer term programmes and more complex development scenarios, JV structures have emerged as they key way of RSLs (and RPs) capitalising on the opportunities.

In short, JV's have become an established market standard. However they can be different and we hope the commentary below helps navigate the key considerations for different types of opportunity.

OVERVIEW CONSIDERATIONS

A RSL (or RSLs) proposing to get involved in a corporate structure collaboration will need to consider the following five themes:

1. **What is the best corporate form for the joint venture vehicle (labelled JVV below) – is this a Share Company, a Limited Partnership or a Limited Liability Partnership?**

2. **Should the RSL participate directly in the JVV or should a subsidiary group company be set up or used to be the participant in the JVV?**

3. **What is the proposed governance structure for the JVV?**

4. **What is the basis upon which the RSL can justify involvement in the JVV collaboration – how does it further the meeting of its aims and objectives?**

5. **What is the impact of the regulatory regime within which RSLs operate?**

CASE STUDY

The Welsh Housing Partnership

The Welsh Housing Partnership is an innovative partnership of four housing associations in Wales: Pobl Group, Coastal Housing Group , Hendre and Grŵp Cynefin. The Partnership was developed with support from Welsh Government and the Principality Building Society to:

- **Increase the supply of quality affordable rented homes**
- **Establish an ethical rental model, offering long term quality rentals to tenants**
- **Make efficient use of public finances**
- **Create financial capacity for the housing associations by holding the funding in a separate company**

pobl

COASTAL Housing Group

The Partnership is funded by 25% of equity funding, invested by the four housing associations, with the remaining 75% of funding coming from private finance. By operating as a separate joint venture, it does not affect the financial capacity of the individual housing associations and ensures that all homes delivered through the model are additional to their ongoing internal development programmes.

Since its inception in 2011, it has delivered 1159 homes throughout Wales at intermediate rent levels, to support households on low to middle incomes who demonstrate an unmet housing need. The acquisition of homes is driven by the individual associations who have strong local knowledge of the need and types of housing required in the areas in which they operate, with the overall Partnership administered by one of the partner associations.

In 2017, a refinancing exercise attracted long term funding from the capital markets which will allow the Partnership to set leases over a longer period in line with the objectives of establishing a long term ethical rental model.

1 CORPORATE TYPE

Generally, the best option for a RSL is likely to be a limited liability partnership (LLP). This is because it offers:

- **Limited liability for the participants – so core regulated assets are not out at risk.**
- **A more tax efficient structure when compared to a share company structure – tax transparent nature of LLPs means that the partners (members) deal with their won tax affairs outside of the LLP directly – this enable RSLs to take advantage of gift aid options and the ultimate charitable status of the parent RSL.**
- **Greater scope, when compared to a Limited Partnership, for the participants (or a number of them) to participate in the day to day management of the JVV. LPs are popular with investors where funds are invested and day to day management is operated by contracted organisations.**

There is a technical appendix we set out in more detail the characteristics of each of the options for the corporate form that the JVV could take and the pros and cons of each.

2 IDENTITY OF THE PARTICIPANT

Given the tax transparent nature of LLPs, it is likely that if a JVV is to be established as a LLP, that a RSL will be best advised to participate via a wholly owned trading subsidiary. RSLs considering establishing a subsidiary to participate in a JVV should check that there are no restrictions in their loans on the forming or acquiring of a subsidiary or on their ability to make investments or make loans to group companies or joint venture vehicles.

This is because the tax transparent nature of LLPs means that the participants' share of the profits generated within the LLP is deemed to be received in the hands of the participant. If the participant is the RSL itself, the profit will be treated as trading profit and subject to corporation tax.

However, if the participant is the RSL's trading subsidiary, the trading subsidiary will have the ability to mitigate its corporation tax liability through the making of gift aid payments to its RSL parent.

3 POWERS / VIRES FOR RSLs TO PARTICIPATE IN A JVV

A RSL will need to provide funding to the LLP (whether directly) or through its group member.

If the focus of the JVV's activities is market sale development, the RSL, assuming it has charitable objects is unlikely, except in limited circumstances, to be able to satisfy itself that its participation (or support) will enable it to directly further its charitable objects.

RSLs therefore need to consider the extent to which it is able to justify its participation on the basis of a financial investment. Where that is problematic (for example, where the projected financial returns on its investment in the JVV is not sufficient to comply with the RSL's investment policy), consideration will need to be given to reliance upon the new social investment power available to charities. This allows charities to participate in activities which are designed, in part, to deliver a financial return for the charity and, in part, to directly further the charity's objects.

Most RSLs are charitable entities, whether established as registered charities or as exempt charities (entities which are established as registered societies under the Co-operative and Community Benefit Societies Act 2014). If the RSL's constitution is based on one of the versions of the CHC Model, its objects are likely to be:

- **The association is formed for the benefit of the community. Its objects shall be to carry on for the benefit of the community:**
- **The business of providing and managing housing, including social housing, and providing assistance to help house people and associated facilities, amenities and services for poor people or for the relief of aged, disable (whether physically or mentally) or chronically sick people;**
- **Any other charitable objects which is connected with or ancillary to the provision of housing that can be carried out from time to time by a registered society registered as a provider of social housing with the regulator.**

Assuming the RSL's constitution is based on one of the versions of the CHC Model, it will have a general power in its rules to:

"Do anything that a natural or corporate person can lawfully do which is necessary or expedient to achieve its objects, except as expressly prohibited in [its] rules".

In addition, the RSL may also have an express power to invest the funds of the association.

However, even in the absence of an express power within its constitution, all charities have the power to invest surpluses where the intention is to generate a return on the investment which it can then apply to further its charitable objects.

A RSL that is a registered charity is likely to have similar objects and powers.

4 GOVERNANCE ARRANGEMENTS

If the JVV is established as a LLP, the rights and obligations of the participants of the LLP will be set out in a Members Agreement, which will cover for example:

- **Voting, quorum arrangements and meetings**
- **Member defaults**
- **The initial and subsequent funding requirements of the LLP**
- **The rights for members to exit the LLP**
- **How disputes are to be resolved**

These apply whether the partnership is between single or multiple RSLs, single or multiple local authorities or investors/developers.

The Members' Agreement will typically provide that each participant can appoint one or more representatives through whom the participants' can manage the LLP. These representatives often comprise what is referred to as a "management board".

The voting rights of the members (and their representatives) will, as indicated above, be set out in the LLP Agreement and would commonly be linked to the amount of capital or loan finance contributed by each member.

Typically the members of the management board will meet monthly or quarterly and will take decisions on behalf of the members. It is important, therefore, that those on the management board have the requisite skills.

Certain matters will be reserved for all participants to approve, such as changes to the business plan, the admission of new members, undertaking new developments, entering into loans and increasing financial commitments.

Representatives on a management board are not directors and, as such, do not owe the same fiduciary duties to the LLP as the directors do to a company. However, the LLP agreement will, typically, contain provisions to deal with potential conflicts (for example where a participant in the LLP may also be providing services to the LLP).

Participants will need to give consideration to whether members should have the right to exit unilaterally and realise their investment. It is common for there to be a period (often referred to as a lock-in period) during which no member has a unilateral right to exit. How long the investment is tied up for is likely to form part of the RSL's assessment of the appropriateness of the investment – depending on the scale of the investment required.

5 REGULATORY CONSIDERATIONS

RSLs must have regard to the Regulatory Framework and, in particular, the performance standards comprised within the Framework.

The performance standards that are particularly relevant in the context of a collaboration are

- **PS.3: "before taking on any new liabilities, [the board] ensures obligations are fully understood and demonstrates consideration of how the likely impact on current and future business and regulatory compliance will be managed"**
- **PS.5: a strategic approach to value for money**
- **PS.7: "adheres to all regulatory requirements" – if a RSL is to participate in the LLP via a subsidiary, the group structures circular (05/08) will be relevant**
- **PS.8-9: these are financial-based performance standards, including ensuring loan covenants are complied with, sufficient liquidity is maintained and the organisation is financially secure**

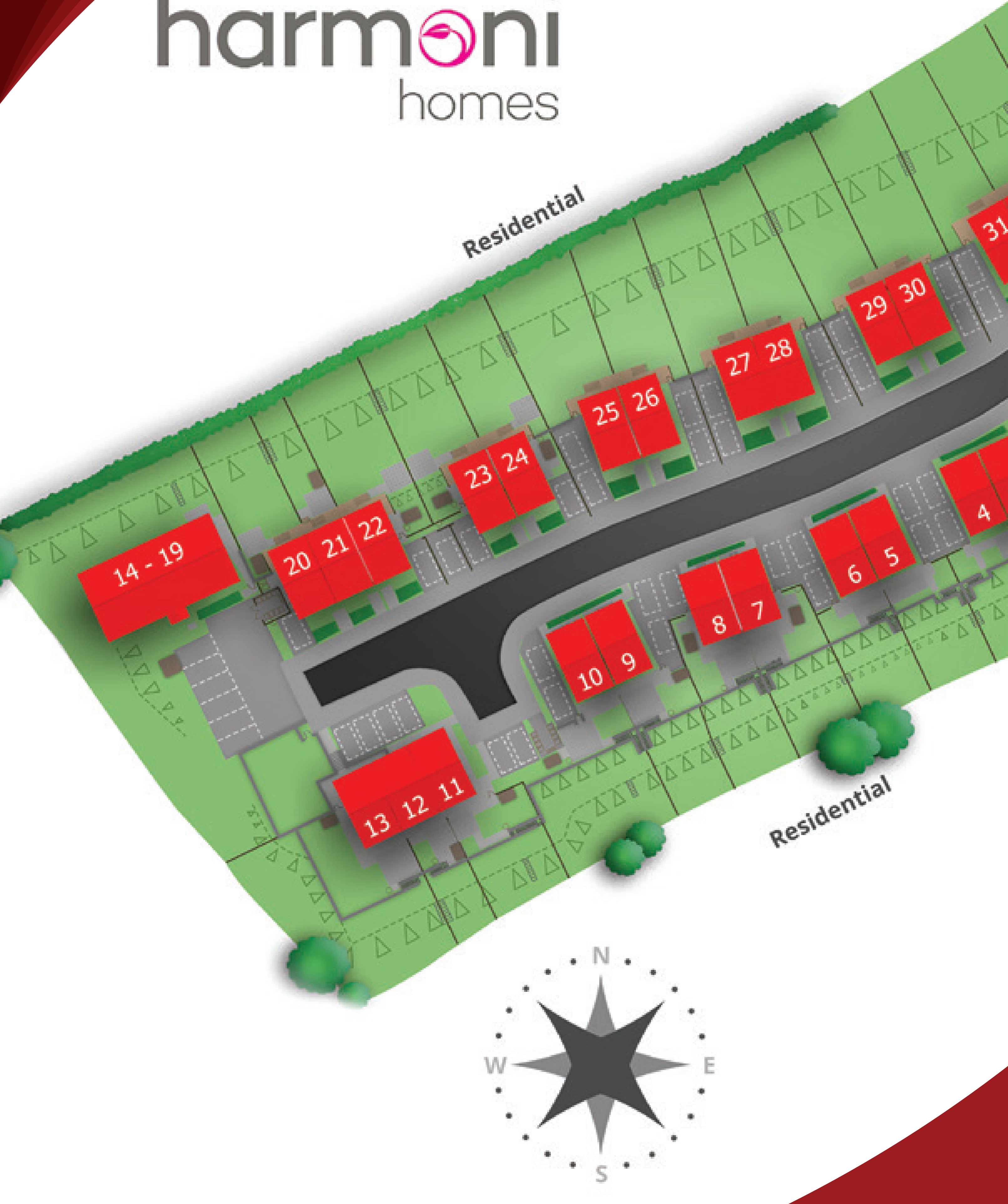
The regulatory considerations, it can be seen, overlap somewhat with the vires considerations – i.e. any investment in the joint venture will need to be prudent; and a RSL will need to consider

- **Whether the investment fits with its strategic plan and investment policy**
- **The extent of its investment and how it impacts on its liquidity and ability to manage the risks inherent in its core activities (i.e.: is it prudent?)**
- **What the impact of any underperformance in the proposed investment will mean on its financial covenants with lenders**

At present, the Welsh Government's 05/08 circular precludes a RSL from establishing a subsidiary without the Welsh Government's consent. We understand that this circular (along with others) is likely to be replaced (to coincide with the deregulatory measures agreed to ensure that RSLs can be reclassified to the private sector). For those who do not already have a trading subsidiary, however, it would be advisable for consideration to be given to

- **Checking existing loan covenants to ascertain what limits apply on on-lending or the making of investments or acquiring or establishing a subsidiary or participating in a joint venture vehicle**
- **Commencing discussions with the Welsh Government regarding the merits of creating a trading subsidiary for the purposes of facilitating the housing accelerator proposals**

CASE STUDY



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Beech Tree Gardens

Beech Tree Gardens in Caerphilly is an example of a Local Authority and a Registered Local Authority working in partnership to deliver affordable housing.

The development comprises 34 homes, including 16 homes for sale and 18 homes for rent, close to the centre of Caerphilly, and is a true partnership between Caerphilly County Borough Council and the United Welsh Group. The agreement will enable more homes to be constructed on land which is currently owned by Caerphilly County Borough Council.

The scheme saw development on land owned by Caerphilly County Borough Council, with profits from the market sale properties being used to help fund the construction of the affordable rented homes.

The homes for sale, which were sold under United Welsh 'Harmoni Homes' brand, provide a capital land receipt for the Council. The Local Authority further benefits from an annual revenue return, from the rental income on the homes, where United Welsh provide a guaranteed minimum return (based on a pre-agreed yield).

This innovative housing model facilitated uplift in the number of affordable housing on the site, from the 35% planning policy requirement to 53%. This level of affordable housing would typically attract around £1.3m to deliver in this locality; the actual grant received to deliver the scheme was £350,000.

In addition to delivering much needed affordable housing with minimum grant, this collaborative approach enabled the provision of training opportunities for people; creating opportunities for 20 people to gain training and experience of working on site.

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