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**Agriculture and Natural Capital Roadshow
A Case Study**

February 2024

introduction

Adam Corbin

Partner | Barrister | FAAV

Speakers



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Partner
Tax, Trusts & Succession



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Specialist Real Estate



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Plan



Timetable

13:50-13:55	Adam Corbin	Intro
13:55-14:15	Helen Hutton / Harriet Grimes	Planning policy and Biodiversity Net Gain or Nutrient Neutrality implementation
14:15-14:35	Julie Sharpe / Richard Walford	Options and development deals
14:35-14:55	Ben Sharples	Freeing the opportunities and sales
14:55-15:00	Adam Corbin	Questions
15:00-15:20		Break
15:20-15:40	Iwan Williams / James Frampton	Tax
15:40-16:00	Vivienne Williams / Rachel O'Connor	Obtaining vacant possession and dealing with successions
16:00-16:20	Josie Edwards / Caroline Baines	Landscape scale recovery
16:20-16:40	Adam Quint	Corporate structuring
16:40-17:00	Adam Corbin	Questions

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agriculture & natural capital
roadshow scenario



Scan here to enter
your questions for
presenters



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- Event agenda
- Presentation
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section one

Planning policy and Biodiversity Net Gain
or Nutrient Neutrality implementation



Helen Hutton
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Specialist Real Estate



Harriet Grimes
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Biodiversity Net Gain (BNG) & Nutrient Mitigation Planning Policy & Implementation

Topics for discussion:

- Legislation, Policy & Implementation - BNG
- Calculating the gain
- Off-site gain developments / Habitat Banks
- Legally securing the gain
- Nutrient Neutrality

Scenario – overview of key points for planning purposes

- The Lion Estate and neighbouring land owned by Fred (“Land”) – Agricultural use
- There is currently no planning permission for a change of use of any part of the Land
- Part of Fred’s land (Development Land 2) is subject to an existing option (soon to expire) for housing development, but he is considering other opportunities
- Building a significant number of homes (up to 1,000) on the parts of the Land next to the existing town (Development Land 1 and Development Land 2) is a possibility – local planning policy and procurement of BNG and NN credits will need to be considered carefully
- Areas of Land could potentially be used for BNG and NN credit sites
- The Land is situated in the catchment area of the River Rift Valley identified as being “at risk” by Natural England
- Part of the Land is in a Local Nature Recovery Strategy area

Biodiversity Net Gain - Implementation

Town & Country Planning Act Developments

- 12 February 2024 – commencement for all except exempted plus small sites. Development of the parts of the Land for housing would almost certainly be caught by this new regime.
- April 2024 – commencement for small sites – defined as:
 - (i) For residential: where the number of dwellings is between 1 and 9, or if this is unknown, the site area is less than 0.5 hectares
 - (ii) For non-residential: where floor space created is less than 1,000 square metres or total site area is less than 1 hectare

2008 Planning Act Developments (NSIPS)

- From November 2025

Biodiversity Net Gain: Statutory Framework

Primary Legislation – The Environment Act 2021

- BNG mandatory requirement – general BNG condition
- England only
- Amends Town & Country Planning Act (TCPA) and 2008 Planning Act (NSIPs)
- Minimum 10% gain & approval of net gain plan (LPA can vary upwards)
- Off-site & significant onsite habitat secured for a least 30 years from completion of the habitat works
- Biodiversity Gain Hierarchy
- Statutory biodiversity Metric
- National BNG register for off-site net gain sites – Natural England
- Local Nature Recovery Strategy areas

Biodiversity Net Gain National & Local Planning Policy

National Planning Policy Framework (NPPF)

- Paragraph 185 of the National Planning Policy Framework states, to protect and enhance biodiversity and geodiversity, plans should among other things identify and pursue opportunities for securing measurable net gains for biodiversity.

Local Policy

- Local planning authorities (LPAs) can set policies to support BNG.
- Plan-makers may seek a higher percentage than the statutory objective of 10% biodiversity net gain.
- Supplementary planning documents (SPDs) can be used to build upon and provide more detailed advice or guidance on policies in an adopted local plan

Biodiversity Net Gain

How is the biodiversity gain objective of at least 10% calculated?

The biodiversity gain objective of at least a 10% gain is measured against the pre-development biodiversity value of the onsite habitat. The objective is met if this value is exceeded by at least 10% through any or a combination of:

- onsite biodiversity gains
- registered offsite biodiversity gains
- the purchase of statutory biodiversity credits
- Biodiversity Gain Hierarchy
- Statutory Biodiversity Metric
- Local nature recovery strategies identify the places and habitats that are most beneficial for nature and get 15% more biodiversity units than the same habitat created elsewhere.

Biodiversity Net Gain

Off-site gain & Habitat Banks

Is planning permission required?

Exempt from BNG requirement

Off-site net gain register

Legally securing the gain

Biodiversity Net Gain

Legally securing the gain

Section 106 Agreements (planning obligations)

Conservation Covenants

Off-site & significant onsite habitat secured for a least 30 years from completion of the habitat works

Parties

Binds successors in title

Nutrient Neutrality

- Situated in the catchment area of the River Rift Valley identified as being “at risk” by Natural England
- Habitats Regulations
- Offsetting schemes
- Permanent mitigation will need to be kept in place “in perpetuity” i.e. for a minimum of 80 years and up to 125 years
- All mitigation solutions need to be provided within the affected catchment. For rivers, mitigation needs to be upstream of the development.

sectiontwo

Options and development deals



Richard Walford
Partner
Transactional Real Estate



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Scenario – overview of key development considerations

- An area of Larry's land adjoining Lionsgate, within the land let to Beefy Joe is expected to be allocated for development in the Local Plan (Development Land 1).
- Fred granted an option 19 years ago to Developit for a term of 20 years (Development Land 2). No allocation has been made to date but it is looking likely and permission is thought to be fairly certain but not for another couple of years.
- Developit want an extension of the option term, but Fred suspects he could do better and Greenscope Developments are looking to develop land in the area. He would like to use other land to generate BNG and nutrient neutrality credits to support any development.
- Larry's and Fred's sites are circa 10 hectares each and could accommodate up to 1000 dwellings. Estimated returns are up to £15 million each should planning be secured.
- The Rift Valley is within the Local Nature Recovery Strategy Area.

Fred's Existing Option with Developit

Market Value the price at which the Option Land as at the date of service of the relevant Price Notice could reasonably be expected to be sold unconditionally for cash consideration by private treaty on the open market calculated in accordance with the RICS professional standards and guidance, global standards Valuation of development property 1st edition, October 2019 and the RICS Valuation – Global Standards 2017 (Red Book Global Standards) incorporating the International Valuation Standards (IVS), in particular IVS 104, current Today and updated from time to time and any replacement of it and having regard to the terms of the Relevant Planning Permission and any Planning Agreement and for the avoidance of doubt:

(a) taking into account the cost of acquiring any Access/Third Party Land;

Third Party Land such third party land through which easements or rights are to be granted (including sight lines and/or visibility splays) or through which any rights easements or covenants are to be surrendered released waived or varied which is or are necessary to develop or facilitate access or for the provision of services to any land within a Planning Permission such land may be allocated at their absolute discretion.

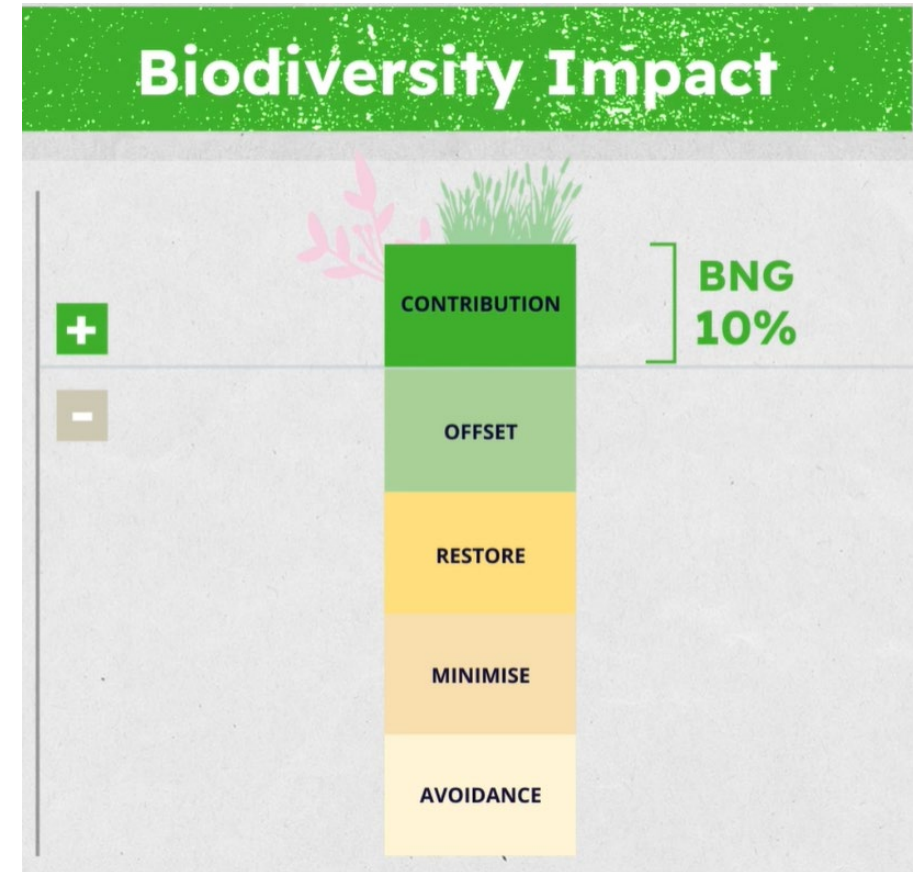
DATED 3 February 2005

- (1) FRED FARMER
- (2) DEVELOPIT LIMITED

OPTION AGREEMENT
relating to
Land to the East of Lionsgate Road, Lionsgate

Should Fred renegotiate with Developit?

- Ability to secure allocation. New Option Premium/ better terms. No delays for finding and negotiating with new party.
- How will Developit deal with BNG?
 - mitigation hierarchy.
 - incorporate BNG mitigation on site
 - purchasing offsite land to generate BNG credits/ purchasing credits/ statutory BNG credits
- NDA of scheme heavily diluted to allow for onsite BNG. Affect on minimum return?



Should Fred agree new terms with Greenscale?

- Greenscale are looking to secure land in the area and will pay a good premium. They wish to enter into a simultaneous Option with both Fred and Larry.
- Collaboration agreement to share costs and equalise return.
- Problems in ending the existing Option with Developit.
- Can a better deal on BNG/ NN requirements be achieved? How can the parties document this in the agreements?

Future Proofing Option Agreements in respect of BNG

- Clauses which set out a route map of options for satisfying BNG requirements.
- Landowners agreeing to make nearby land available or incentivise developers to go down the off-site route while developers may prefer purchasing biodiversity units with a one-off payment.
- Allow for the deduction from the price of BNG acquisition costs, landowner approval of such costs and BNG cost-sharing provisions may emerge.
- Contracts which are conditional on securing of off-site BNG land.
- Long stop provisions which recognise that additional time may be needed to secure third party land interest that is required for BNG.
- Flexibility in requirements for a minimum number of units to be achieved.
- Overage clauses with provision for future enhancements in value to be shared.

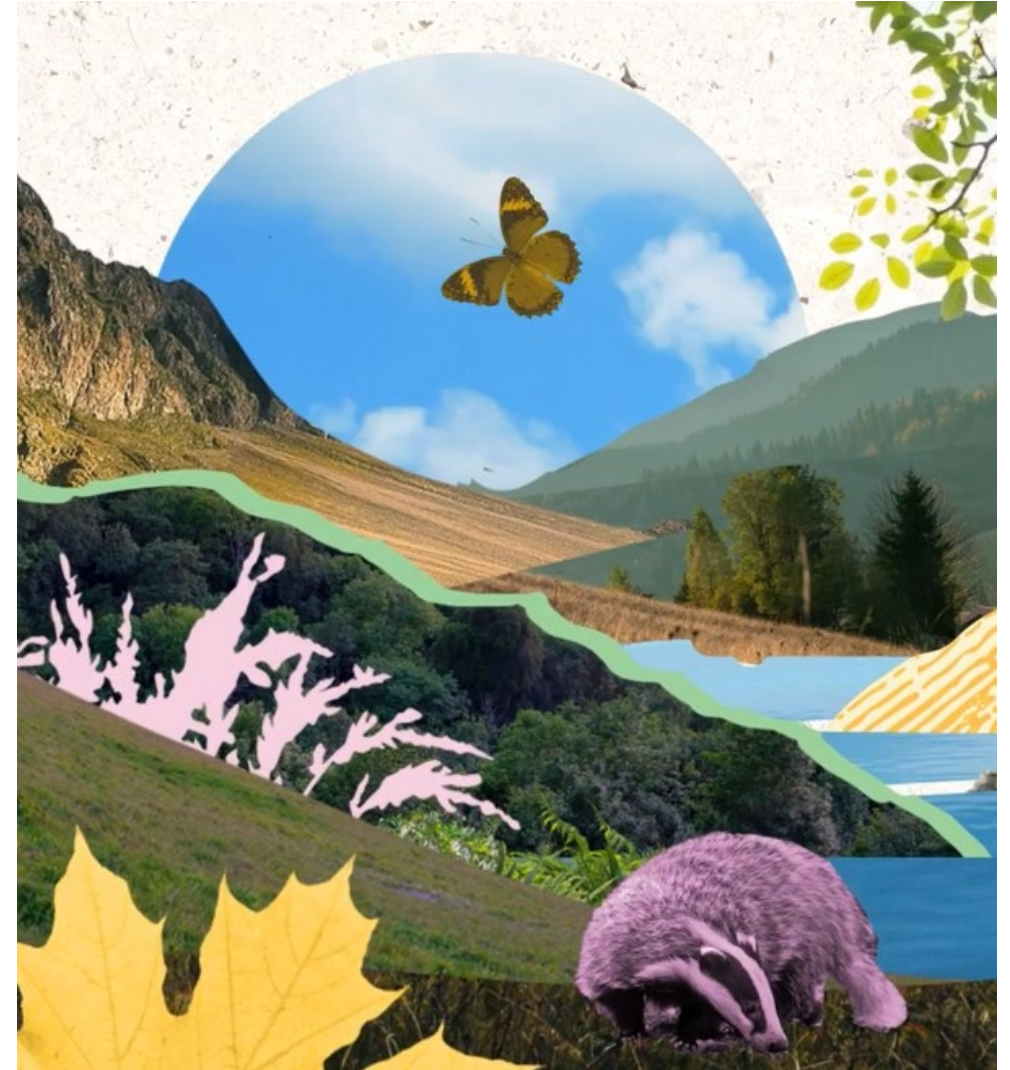
Collaboration Considerations

- Fred and Larry successfully entered the Rift Valley into the ELMS Tier 3 “Landscape Recovery” scheme
- The Rift Valley is also already earmarked by the LPA for its Local Nature Recovery Strategy.
- Mitigation hierarchy
- Benefit in BNG Defra Metric
- Control, cost and direction.
- Future sales and use of retained land
- Encourage developer to accept.



Equalisation

- Strategic value
- Liability
- Due diligence
- Habitat management
- Timings
- Share receipts
- Carve up costs



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sectionthree

Freeing the opportunities and sales



Ben Sharples FRICS FAAV FCIArb
Partner
Head of Natural Capital

Plan



Opportunities

- BNG
 - Nutrient Neutrality
 - Landscape Recovery
 - Corporate ESG
-
- Commerciality
 - Timing
 - Phasing
 - Stacking

Opportunities - BNG

- Land adjacent to development land - strategic
- Bacon & Beef land
 - proximity to site
 - commercial in terms of LNRS uplift and “blue land” extension potential
 - tenancy issues
- Fred’s and Larry’s upland ownership
 - LNRS uplift but more remote from site
 - LR benefit potential
- Deal with time to target and difficulty – the habitat banking model
- Advanced or delayed action - phasing
- LNRS
 - 10%
 - 15%

Opportunities – Nutrient Neutrality

- LURA 2023
- 2030 infrastructure upgrades
- LPA obliged to assume 2030 upgrades will happen
- Stop gap measures

Nutrients from wastewater

Water infrastructure information		
Description of required information	Data entry column	Additional data entry column
Date of first occupancy (dd/mm/yyyy):		
Average occupancy rate (people/dwelling or people/unit):	2.40	
Water usage (litres/person/day):	120	
Development Proposal (dwellings/units):	1000	
Wastewater treatment works:	Blackheath WwTW	
Current wastewater treatment works P permit (mg TP/litre):	8	
Current wastewater treatment works N permit (mg TN/litre):	27	
Post 2030 WwTW P permit (mg TP/litre):	0.25	
Post 2030 WwTW N permit (mg TN/litre):	10	
Final calculation of nutrient load from wastewater		
Description of values generated	Values generated	
Post-2030 Stage 1 Nutrient Loading		
Additional population (people):	2400	
Wastewater by development (litres/day):	288000	
Annual wastewater TP load (kg TP/yr):	23.67	
Annual wastewater TN load (kg TN/yr):	946.73	
Pre-2030 Stage 1 Nutrient Loading		
Annual wastewater TP load (kg TP/yr):	841.54	
Annual wastewater TN load (kg TN/yr):	2840.18	

Nutrients from current land use

Current land use information				
Description of required information	Data entry Column			
Operational Catchment:	Poole Harbour Rivers			
Soil drainage type:	Slightly impeded drainage			
Annual average rainfall (mm):	750.1 - 800			
Within Nitrate Vulnerable Zone (NVZ):	Yes			
Current land uses				
Existing land use type(s)	Area (ha)	Annual phosphorus nutrient export (kg TP/yr)	Annual nitrogen nutrient export (kg TN/yr)	Notes on data
Pig	100.00	53.60	4343.92	
Totals:	100	53.60	4343.92	

Nutrients from future land use

Future land uses			
New land use type(s)	Area (ha)	Annual phosphorus nutrient export (kg TP/yr)	Annual nitrogen nutrient export (kg TN/yr)
Greenspace	100.00	2.00	300.00
Totals:	100	2.00	300.00

Final nutrient budgets

Total nutrient budget calculations	
Description of values generated	Values generated
Wastewater TP load (kg TP/year):	23.67
Net land use TP change (kg TP/year):	-51.60
P budget (kg TP/year):	-27.93
P budget + 20% buffer (kg TP/year):	-27.93
Wastewater TN load (kg TN/year):	946.73
Net land use TN change (kg TN/year):	-4043.92
TN budget:	-3097.19
TN budget + 20% buffer:	-3097.19
Annual Nutrient Budget	
The total annual phosphorus load to mitigate is (kg TP/yr):	0.00
The total annual nitrogen load to mitigate is (kg TN/yr):	0.00
Pre-2030 Nutrient Budget	
The total annual phosphorus load to mitigate is (kg TP/yr):	947.93
The total annual nitrogen load to mitigate is (kg TN/yr):	0.00

Structuring

- Conservation covenants
- Responsible Bodies
 - Natural England
 - 492 LPAs
 - Fol Act – 11 to 15
- Potential enterprise mix in LR
- Due diligence
 - Minerals
 - Sporting

Stacking

- Stacking of BNG and NN
- Uplands flood prevention – peat rewetting
- ELMS
- Integrating with Landscape Recovery
- Corporate ESG
- Additionality

Additionality

DEFRA see value in private sector

Holistic view of multiple income streams provided separate definable benefits are realised

“additional or different outcomes and not paying for the same outcome twice”
BNG Consultation

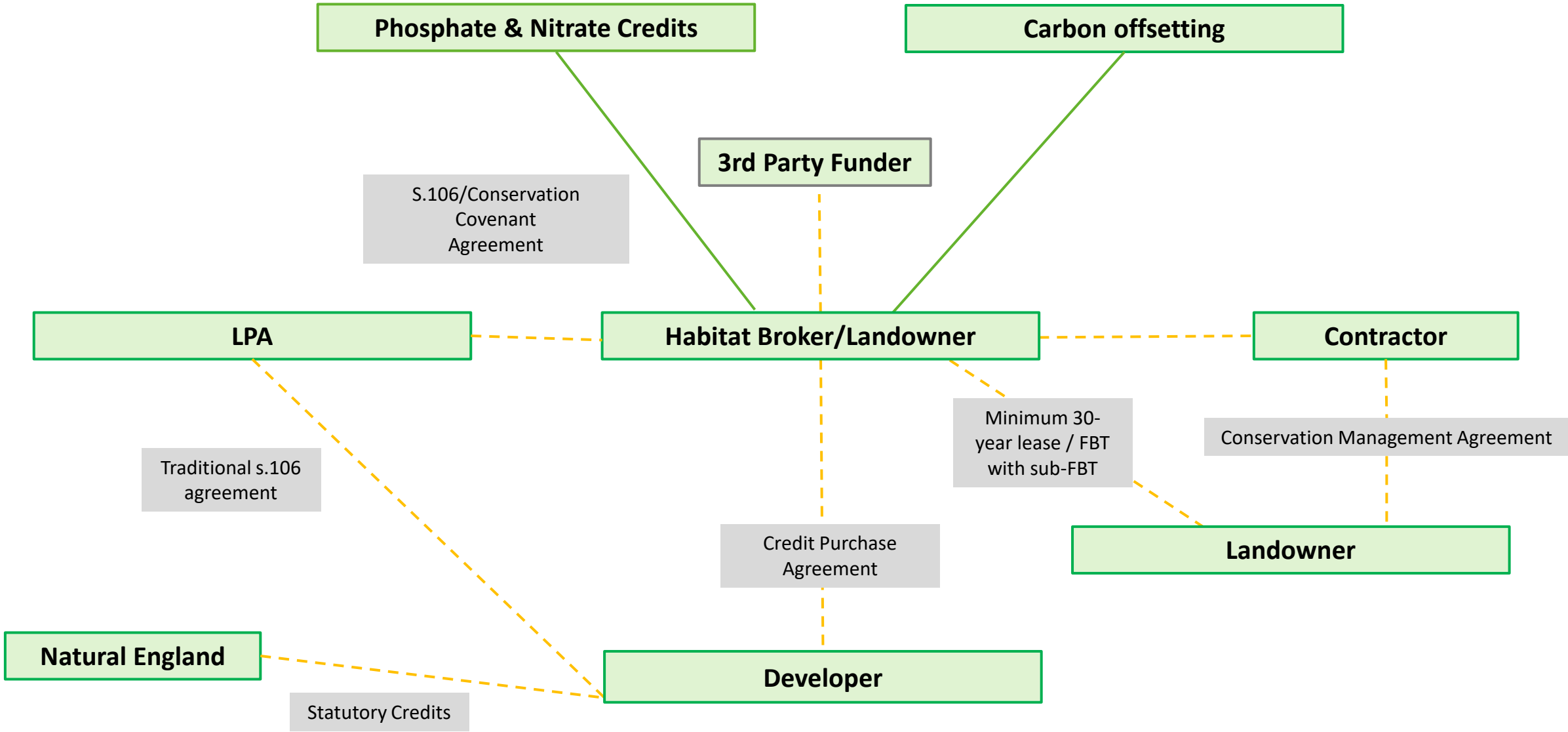
'a real increase in social value that would not have occurred in the absence of the intervention being appraised'. – Treasury Green Book 2018 – definition of additionality

British Standard on BNG

"Property of measures to achieve biodiversity net gain, where the conservation outcomes it delivers are demonstrably new and additional and would not have resulted without it."

Commerciality – Early Movers?

- BNG likely to be a very localised market
 - Initial over supply likely
 - Size of market hard to gauge
 - LNRS will be a key issue
 - Every LPA will be different
- Nutrient Neutrality
 - 2030 upgrades will distort demand
 - National Nutrient Mitigation Scheme will distort price
 - As with BNG – LPA issues of resourcing
 - Conservation covenants would assist but who will be a RB?
 - Same catchment but different LPA – S.33 agreement
 - Septic tank upgrades



any questions?

coffeebreak

sectionfour

Tax



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Tax Considerations

Identifying the opportunities:

- Selling the land
- Exploiting BNG / NN opportunities

Fred the farmer

- CGT on sale of Development Land 2 – Business Asset Disposal Relief and / or rollover relief?
- Making provision for the next generation to improve the IHT position

Tax Considerations

Larry the Landlord

- Surrender of Beefy Joe tenancy – a taxable event
- CGT on sale of Development Land 1 (as per above)
- How to secure Business Asset Disposal Relief?
- Rollover relief

Tax Considerations

Larry the Landlord

- Surrender of Beefy Joe tenancy – a taxable event
- CGT on sale of Development Land 1 (as per above)
- How to secure Business Asset Disposal Relief?
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BNG / NN - Tax considerations

- Availability of APR and BPR
- Taxation of BNG and NN credit sales – nature of receipts by landowner(s): income or capital, and whether receipts are subject to tax or exempt?
- Taxation of corporate structures delivering LSR and BNG / NN or other management (introducing the concept of the SPV, JVs, companies, LLPs, and partnerships)
- Taxation of land value transferred in and out of corporate structures

sectionfive

The Tenancies



Vivienne Williams
Partner
Head of Agriculture



Rachel O'Connor
Partner
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The Tenancies

- **T1**

- Tenant: Beefy Joe
- Commercial beef and cereals

- **T2**

- Tenant : Phil Lamb
- Sheep farming

- **T3**

- Tenant: Rob Bacon
- Outdoor pigs

The Tenancies - T2: Retirement Succession from Phil to Belle

- **Eligibility:**

- Close Relative;
- Principal Source of Livelihood; and
- Commercial Unit Test (up to 1 September 2024)

- **Suitability:**

- Training and/ or practical experience of agriculture;
- Age, physical health and financial standing;
- Landlord's views on suitability.

NOTE- New suitability criteria from 1 September 2024

The Tenancies - T2: Retirement Succession from Phil to Belle

Revised Suitability Criteria from 1 September 2024:

“When determining ... whether a person is suitable to become the tenant of a holding ... the Tribunal must have regard to all relevant matters including—

- (a) the person’s likely capability and capacity to farm the holding commercially, with or without other land, taking into account the need for high standards of efficient production and care for the environment in relation to managing that holding;*
- (b) the person’s experience, training and skills in agriculture and business management;*
- (c) the person’s financial standing and their character;*
- (d) the character, situation and condition of the holding;*
- (e) the terms of the tenancy,*

and having had regard to all relevant matters, the Tribunal must be satisfied that, if the applicant had applied in an open competition for [a 1986 Act tenancy of the holding]..., a prudent and willing landlord could reasonably be expected to regard the applicant as among the candidates to whom they would be willing to grant the tenancy”

The Tenancies - T2: Retirement Succession from Phil to Belle

In view of Larry's plans, why might it be preferable for Phil and Belle to pursue a succession on retirement rather than on Phil's death?

- **Case G- Consent to the operation of the notice to quit:**

S44(1) AHA 1986

“Before giving a direction...[for succession]...the Tribunal shall afford the landlord an opportunity of applying for their consent under this section to the operation of the notice.”

The Tenancies - T2: Retirement Succession from Phil to Belle

Consent to the operation of his Case G Notice to Quit on the following basis:

S27(3)

- a. Good husbandry;
- b. Sound estate management;**
- c. Agricultural research, education, experimentation or demonstration or for the purposes of enactments relating to small holdings;
- d. A purpose desirable for enactments relating to allotments;
- e. Greater hardship would be caused by withholding than by giving consent;**
- f. The landlord proposes to terminate the tenancy for the purposes of the land being used other than for agriculture, not falling within Case B.

And that "in all the circumstances it appears to them that a fair and reasonable landlord would insist upon possession."

Succession on retirement = 'greater hardship' ground only.

The Tenancies - T2: Retirement Succession from Phil to Belle

Key Terms of a New Tenancy for Belle:

- FBT on AHA terms?
- Landlord's access for surveys, intrusive works
- Landlord's consent requirements for entering into environmental schemes

NOTE- Agriculture Act 2020 introduced an amendment to the AHA 1986 to allow AHA tenants to apply for arbitrator's consent to circumvent landlord restrictions on entering schemes under the Agriculture Act 2020. *Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test) (England) Regulations 2021 (SI 2021 No. 619)*

The Tenancies - T3: Obtaining Vacant Possession

Avenues for Obtaining Vacant Possession

Notices to Quit based on tenancy breaches:

- Case E: Irremediable Breach
- Case D: Remediable Breach

Forfeiture

Notices to Quit based on non- agricultural use:

- Case B: Recovery of possession for non-agricultural use requiring planning
- S27(3)(f): Recovery of possession for non-agricultural use not requiring planning

The Tenancies - T3: Obtaining Vacant Possession

Breach of Terms of the Tenancy:

Good husbandry:

"To fulfil the obligations of an occupier to farm in accordance with the rules of good husbandry as set out in section 11 of the Agriculture Act 1947 and to maintain the holding in good heart and condition."

Compliance with legal obligations:

"Not to use the Holding for any illegal purpose or for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, any other tenants of the Landlord or any other owner or occupier of any neighbouring property."

The Tenancies - T3: Obtaining Vacant Possession

Case E Irremediable Breach:

*“At the date of the giving of the notice to quit, the interest of the landlord in the agricultural holding had been **materially prejudiced** by the commission by the tenant of a breach which was **not capable of being remedied...**”*

The Tenancies - T3: Obtaining Vacant Possession

Case B: Recovery of possession for non-agricultural use requiring planning

“The notice to quit is given on the ground that the land is required for a use, other than for agriculture:

a) For which permission has been granted on an application made under the enactments relating to town and country planning...”

NOTE- Access provisions for AHA 1986 tenancies are critical if you are a landlord seeking to acquire planning permission. Unless the tenancy agreement provides otherwise, the tenant's permission is required to undertake the intrusive surveys likely to be required to support an application for planning.

The Tenancies - T3: Obtaining Vacant Possession

S27(3)(f): Recovery of possession for non-agricultural not requiring planning permission

“That the landlord proposes to terminate the tenancy for the purpose of the land’s being used for a use, other than for agriculture, not falling within Case B.”

And that “in all the circumstances it appears to them that a fair and reasonable landlord would insist upon possession.”

The Tenancies - T3: Obtaining Vacant Possession

Case D – Remediable Breach

Non-compliance with notice to pay rent OR notice to remedy breach of the tenancy.

- Failure to pay rent
- Notice to Pay
- Case D Notice to Quit

sectionsix

Landscape Recovery



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Partner
Agriculture



Caroline Baines
Consultant Professional Support Lawyer
Agriculture

Landscape Recovery

- How could it work across this landscape / river valley?
- How do we deal with different stakeholders, with varying interests?
- We will cover:
 - Landlord & Tenant collaboration
 - An introduction to Landscape Recovery
 - Structuring for a Landscape Recovery scheme
 - Use of a Lead Entity

Landlord & Tenant collaboration

For **Tenants**, anything longer than SFI or CSS is going to require consent and cooperation of Landlord

Why?

- Tenancy terms:
 - Covenants preventing non-agricultural use, tree planting, permanent cropping
 - Restrictions against sub-letting, sharing occupation, contracting arrangements
 - Obligations to farm in accordance with the rules of good husbandry: to *“keep permanent pasture properly mown or grazed and maintained in a good state of cultivation and fertility and in good condition”*
- Length of tenancy:
 - BNG schemes – at least 30 years
 - Nutrient schemes – in excess of 80 years
 - Cf. AHA 1986 annual periodic tenancy agreements
 - Very few long, fixed term Farm Business Tenancies

Landlord & Tenant collaboration

What about **Landlords?**

- Reserved rights:
 - Mines & Minerals
 - To enter Natural Capital Schemes
- Derogation from Grant
- Scope to terminate and obtain vacant possession? via:
 - Break rights
 - Case B or Section 27(3)(f) in AHA 1986 context

Won't be plain sailing! Collaborate to unlock potential

Landscape Recovery

Key Features of the Scheme:

1. Large-scale, collaborative projects
2. Long-term: 20 years minimum
3. Bespoke
4. Blended finance: private and public money
5. Lead Applicant required

Will be bespoke, ambitious Projects

Expect sliding scale in terms of complexity.

Rift Valley - possible structure

- 1st building block: **Master Management Plan**

Master Management Plan

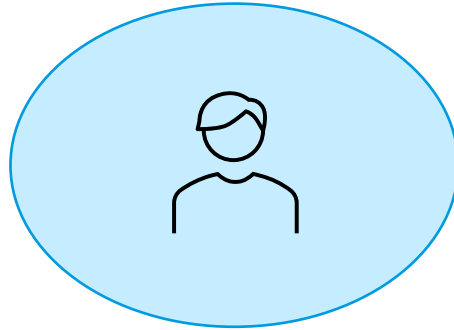
Overarching habitat / landscape management plan

Across whole Scheme Area for duration of Scheme.

- Outlining what Scheme participants intend to do to create and thereafter maintain habitat / enhanced landscape.
- Confirming aims and objectives of Scheme, and anticipated outcomes

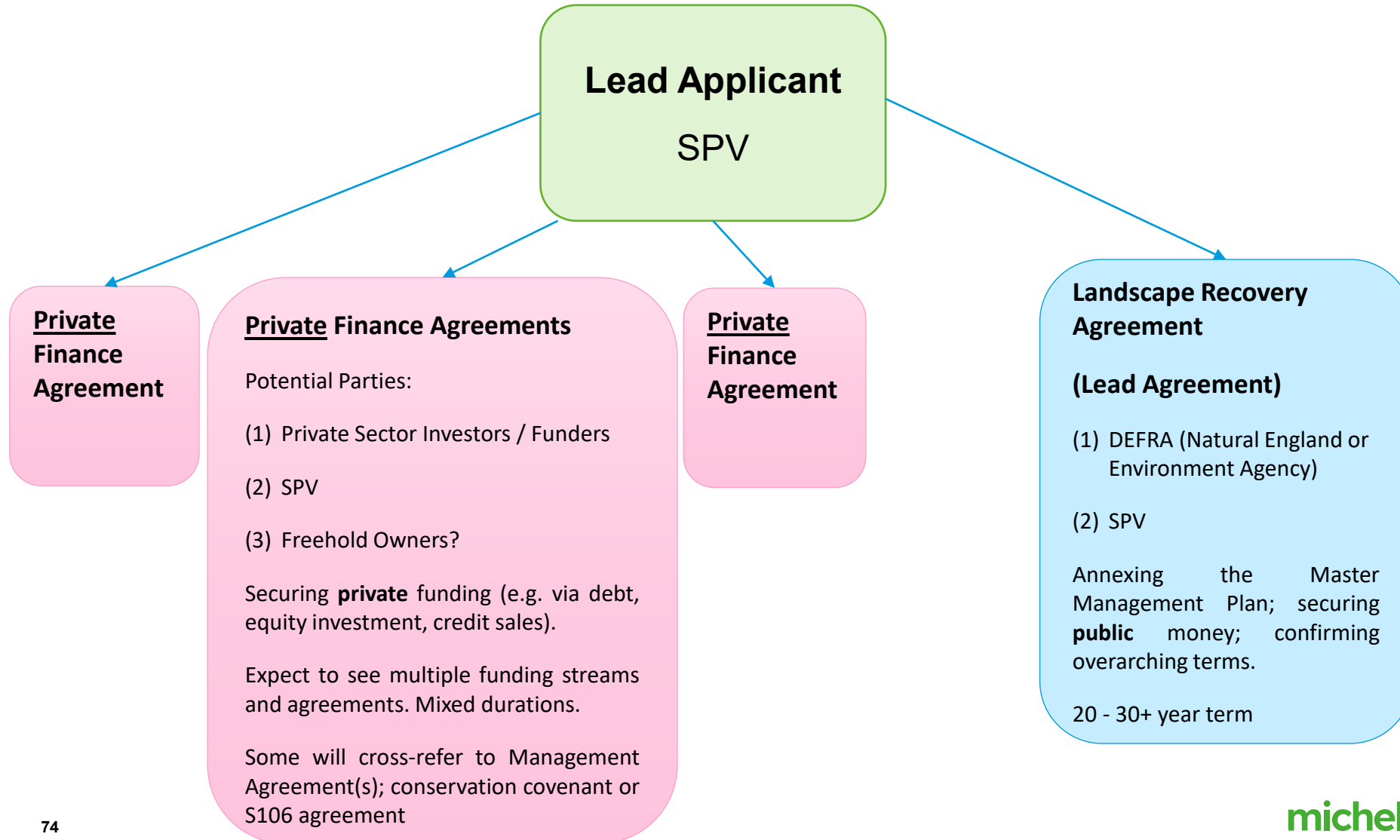
Rift Valley - possible structure

- The Lead Applicant – key for delivery

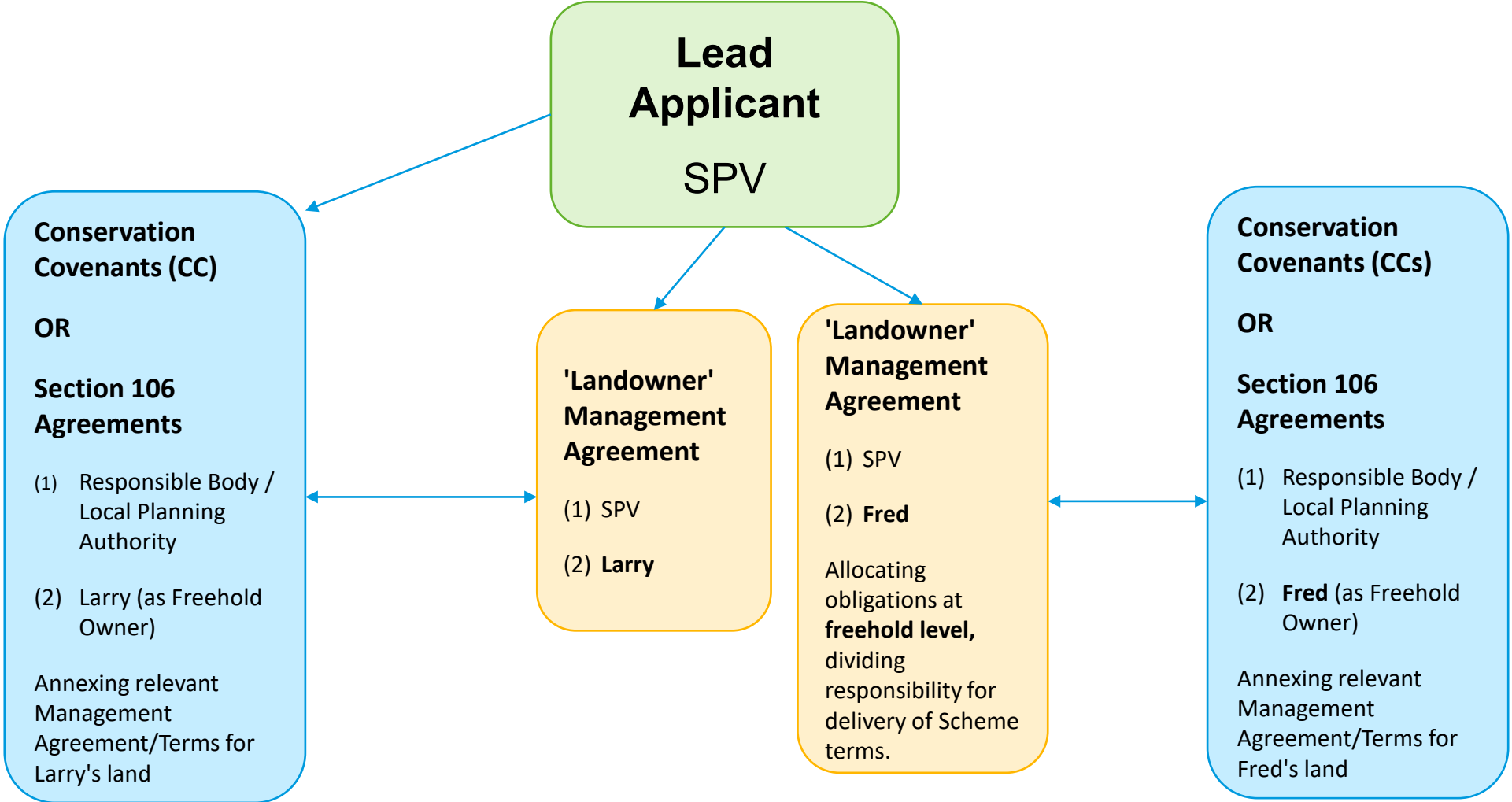


- **Is there a viable Lead Applicant in existence already?**
- **If not, consider creating a collaborative ‘Special Purpose Vehicle’ (SPV)**
- **A single entity to take liability and obligations for Scheme term**

Legal Documents – funding



Legal Documents – land management



Management Agreements / Delivery Contracts

Some key considerations:

- Allocation of funding/income – remuneration for delivery of management
- What must Land Manager deliver in terms of work/actions/inputs?
- On what timescale?
- Payment schedules – tied into delivery of actions? Annual?
- Breach, enforcement, indemnities
- Consider successors: novation provisions
- Step-in rights
- Review / Amendment over Scheme term
- Good faith provisions
- Dispute Resolution process!

Conservation Covenants & S106 Agreements

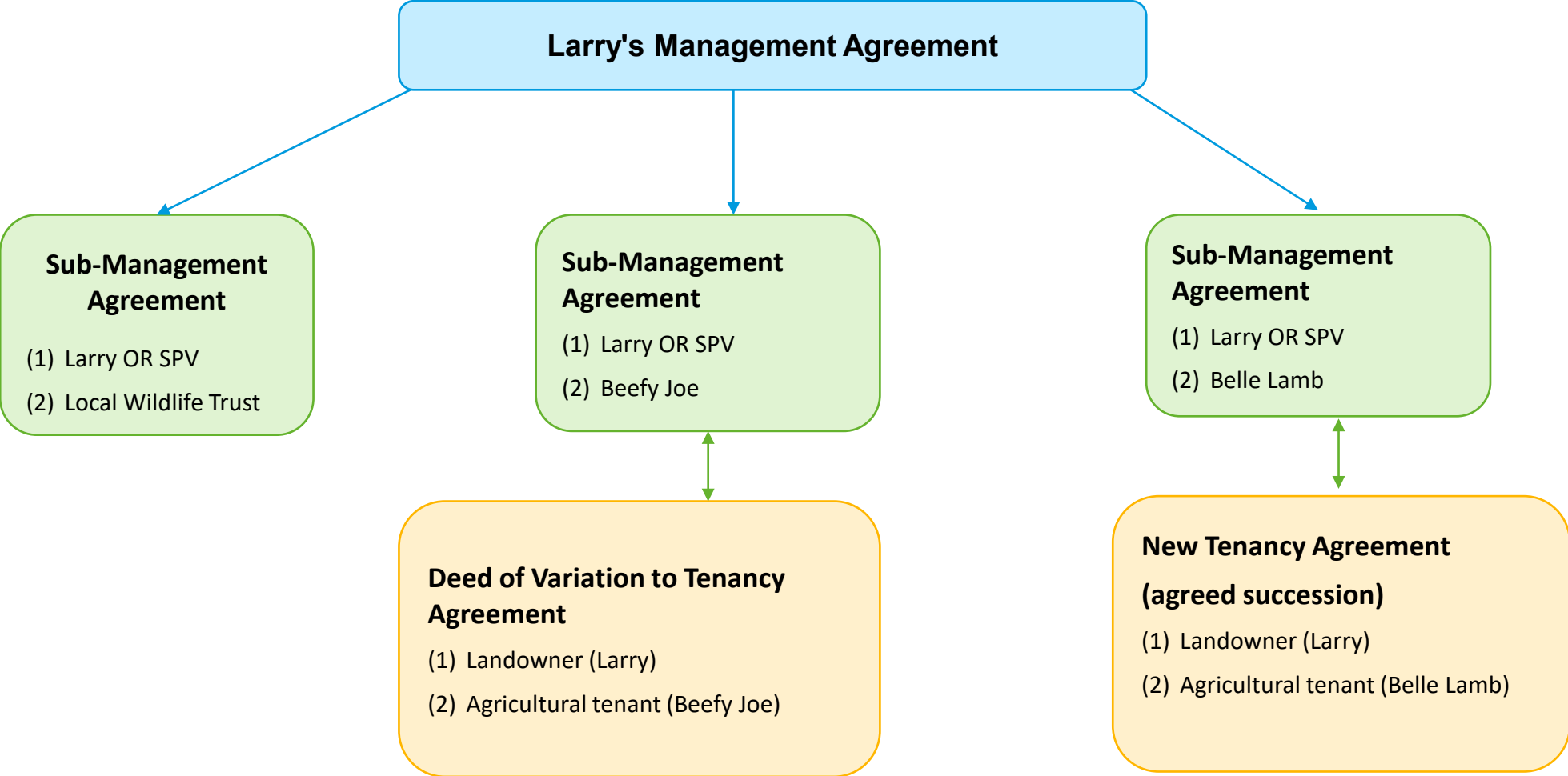
Conservation Covenants:

- Separate CCs for each landowner
- Annexing relevant management terms for specific area of land
- Binding land & successors in title for duration of Scheme
- Key document to secure management obligations in long term
- Registered as Local Land Charge
- Statutory code: *Environment Act 2021, Part 7*
- Big ? still re. Responsible Bodies

Section 106 Agreements:

- Relevant in planning context e.g. BNG, nutrient neutrality
- Use in addition to, or instead of, CCs for some Schemes / parts of Scheme land
- Operate in similar way to CCs.
- LPA = counter-party

Tenanted Scheme Land



Tenancy considerations

- Interaction of Tenancy Agreement and Scheme management / obligations
- Vacant possession or subject to tenancy?
- Contracting arrangements / Delivery Agreements as alternative to tenancies?
- If agricultural tenancies remain:
 - Cross-refer to Scheme terms / Management obligations
 - Break rights if Tenant breaches Scheme management obligations?
 - Breach, penalties, enforcement, indemnities
 - Step-in rights for Landlord?
 - Review/modification mechanisms and dispute resolution process
 - ELMS income

Scheme Land – SPV control

Contractual rights

OR

Lease land into SPV?

Conclusion



RANGE OF POSSIBLE
STRUCTURES



TENANTS AS KEY
STAKEHOLDERS IN RIFT
VALLEY



HUGE SCOPE FOR
FLEXIBILITY

sectionseven

Structuring the landscape recovery scheme



Adam Quint
Senior Associate
Corporate

Structuring the landscape recovery scheme

- Options available for collaboration
- Corporate SPVs
- Why there may be benefit to a corporate SPV
- Governance in the SPV
- How stakeholders will receive the benefit

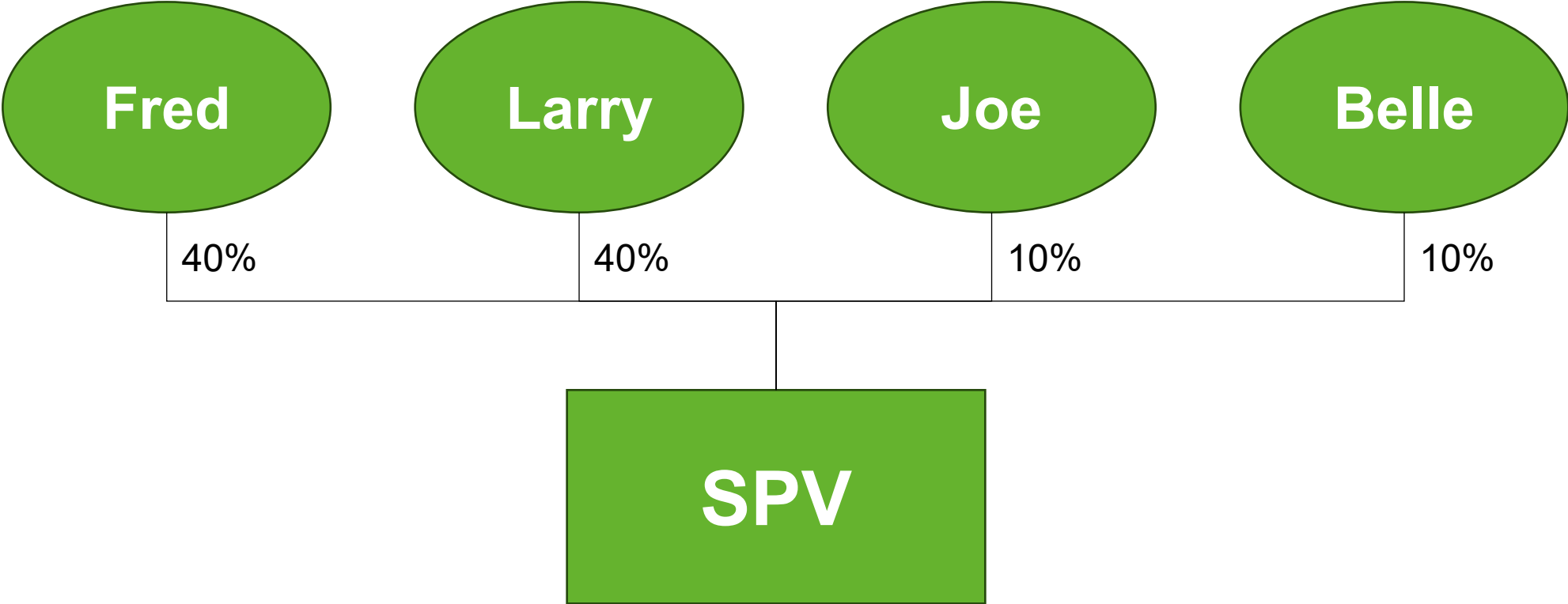
What options are available for collaboration?

Contractual Joint Venture	Corporate Joint Venture (SPV)	No structure
Series of contractual obligations	Separate legal entity bringing parties together	Single landowner
One Lead Applicant takes whole risk	SPV as Lead Applicant	Scheme funded by single landowner
Rely on contractual remedies for any breach	SPV to have all rights required to deliver Scheme and step-in	
No obvious ringfence for security	Ringfence security for debt	
No equity investment	Equity investment	

What vehicles are available for the SPV?

Private company limited by shares	Community interest company
Owned by members / shareholders – strategic decisions	Set up for benefit of a community
Managed by board of directors – day to day decisions	Asset lock
	Dividend limit of 35%
	Assets must be distributed to similar CIC/charity on a winding up

Proposed shareholdings



Governing documents

Articles of Association
and Shareholders'
Agreement

Rules and restrictions
for transfers of shares

- Prevent unknown third-party shareholders
- Link shareholdings to landowning

Reserved matters

- Termination / variation of key contracts
- Enforcement against stakeholders

Dispute resolution /
deadlock

How do stakeholders receive the benefit of the SPV?

SPV running costs

Payment for management obligations

Dividends

Distribution of capital on winding up

Interest on debt

Conclusion

- SPVs useful for collaboration, risk allocation and security external funding
- Will not always be required – case-by-case approach
- Fred and Larry to have ultimate strategic control
- Tenants to have active role in day-to-day management, subject to certain controls
- All shareholders benefit through dividends

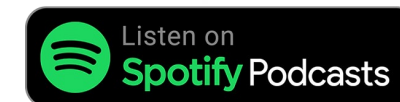
any questions?

Natural Capital Hub

Video resources



Podcast



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