

# Section 38/278 Review

Seeking Best Practice

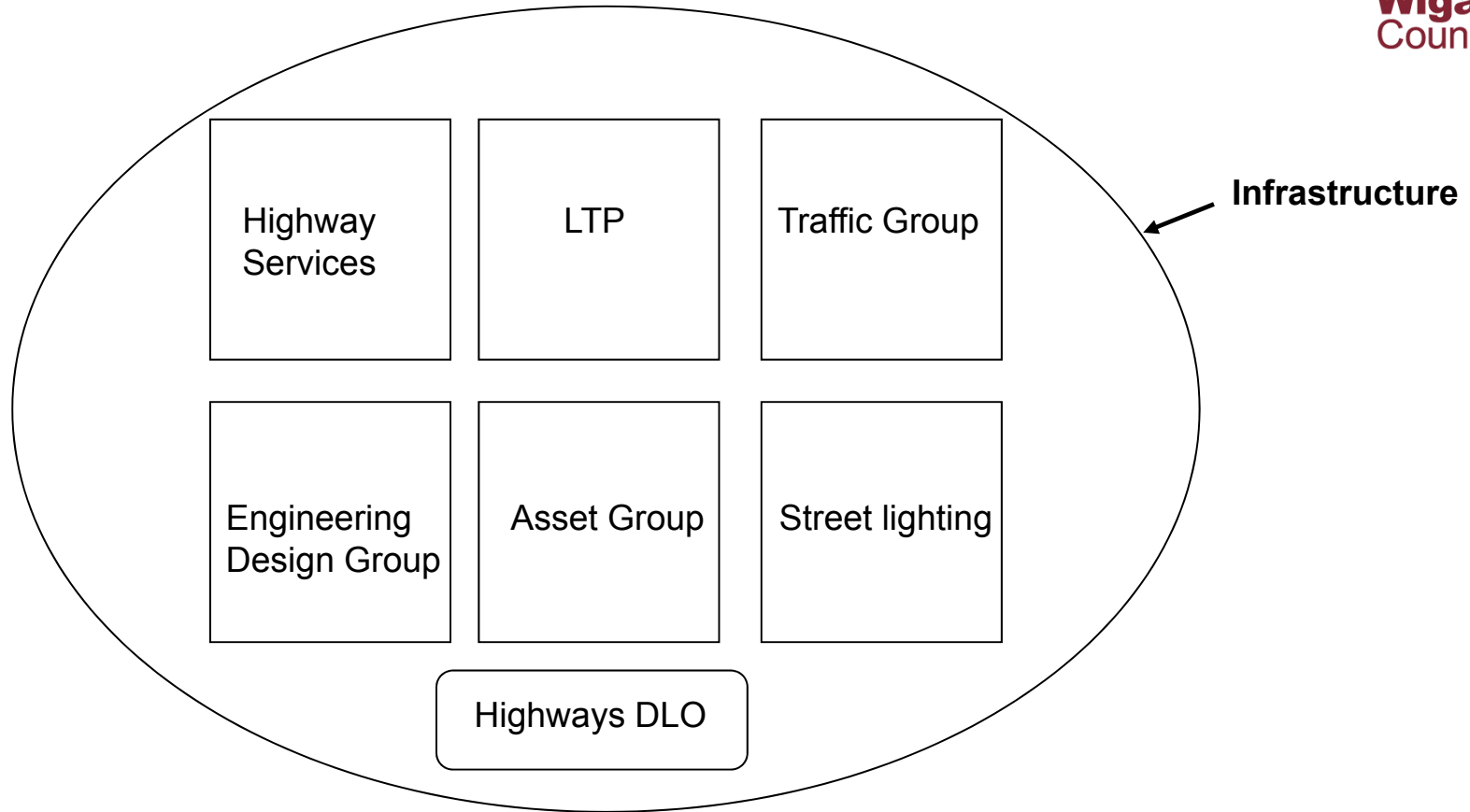
21 September 2011

John Williams – [john.williams@wigan.gov.uk](mailto:john.williams@wigan.gov.uk)  
Places Directorate

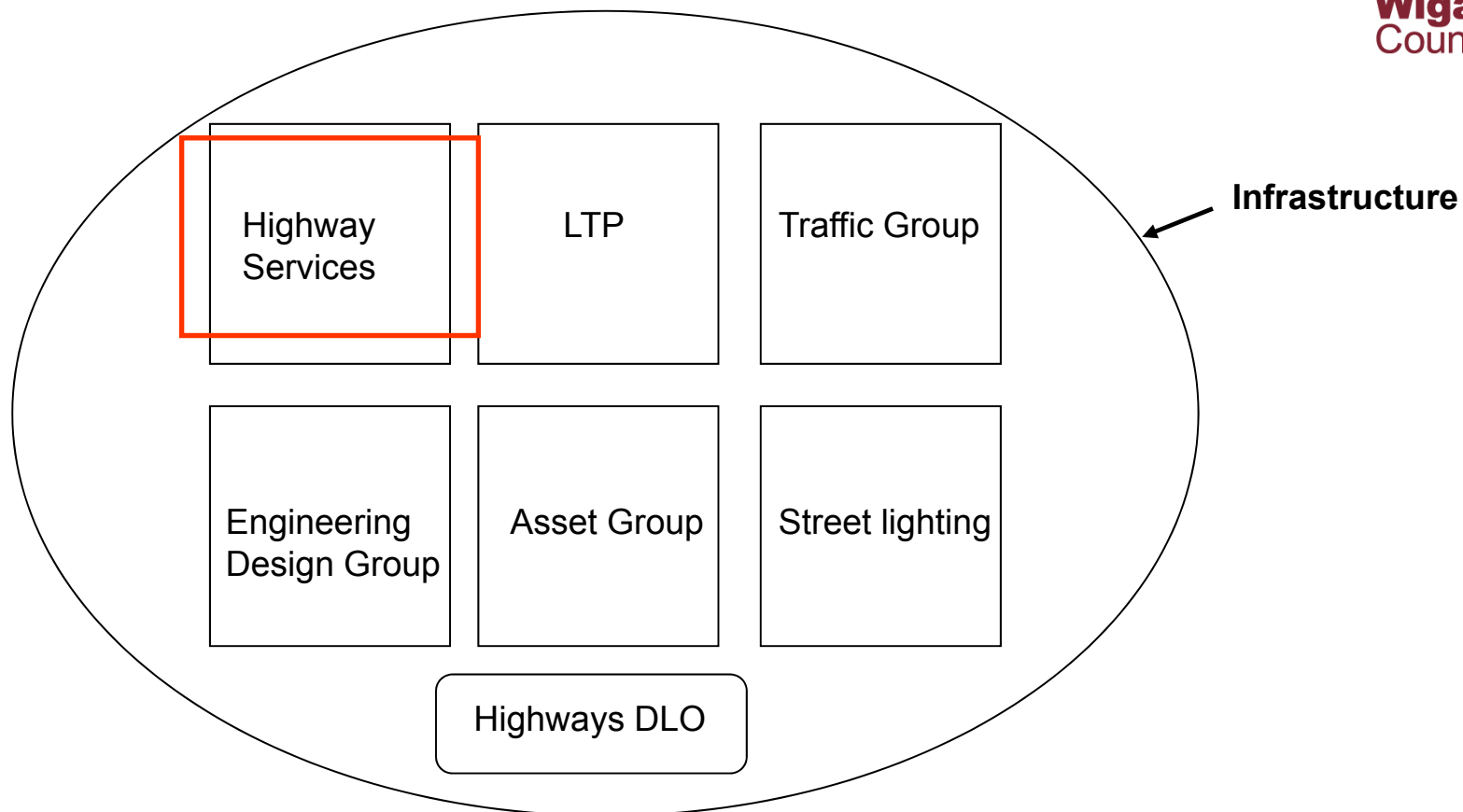
# Agenda

- Highway Services Group
- Background
- Current Situation
- Options and Difficulties
- Summary
- Questions

# Highway Services Group



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Carriageway Resurfacing	
Footway Resurfacing	
Development Adoptions	NRASWA Inspections
Preventative Maintenance	Highway Weed Control

# Highway Services Group



Carriageway Resurfacing	
Footway Resurfacing	
Development Adoptions	NRASWA Inspections
Preventative Maintenance	Highway Weed Control

# Background

# Highways Act 1980



- Protects future owners / residents from the liability of private street works charges
- Ensures a systematic approach to the adoption of private streets
- Maintains appropriate standards of construction





**Highway  
Authority**

**Owners /  
Residents**

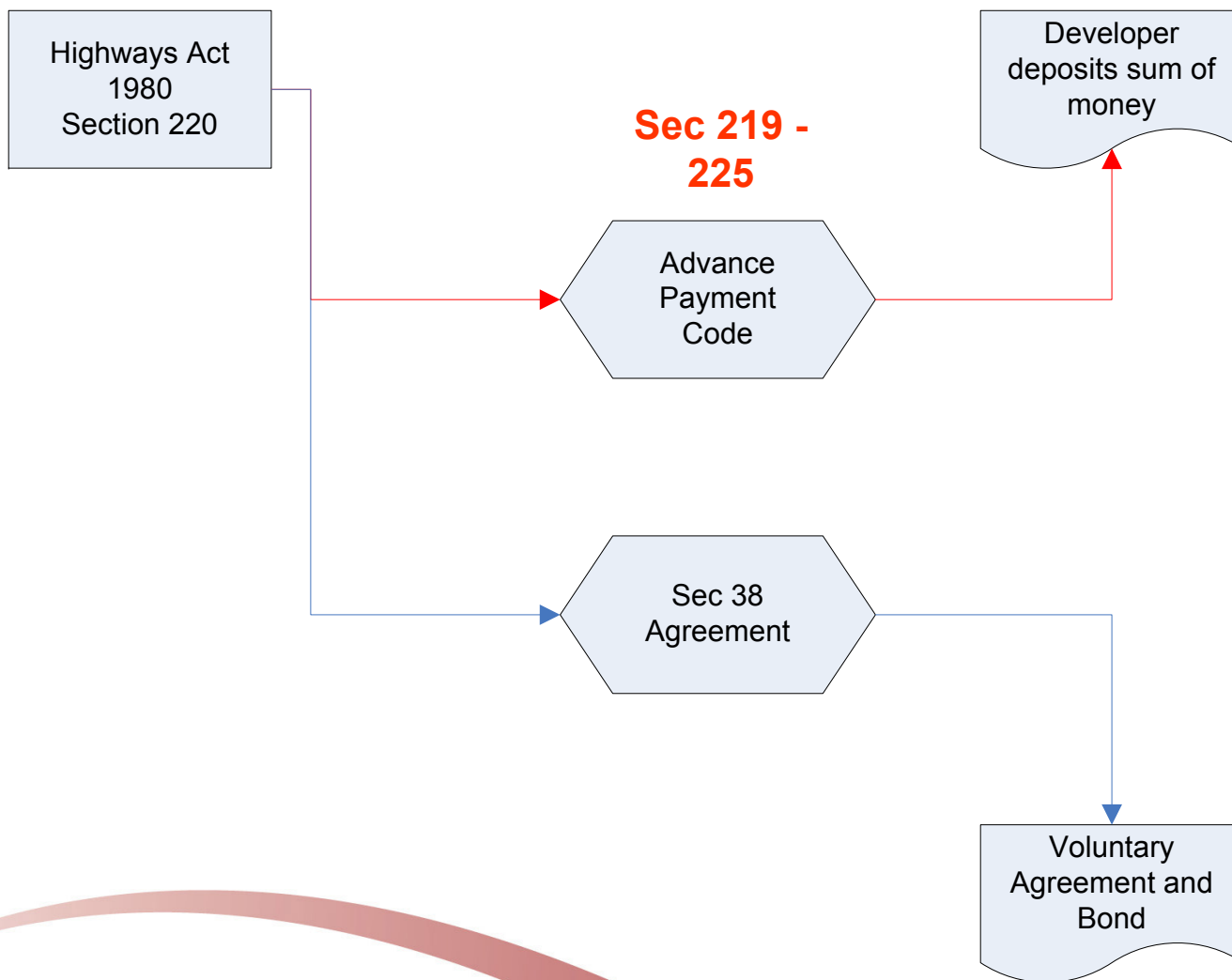
**Developer**

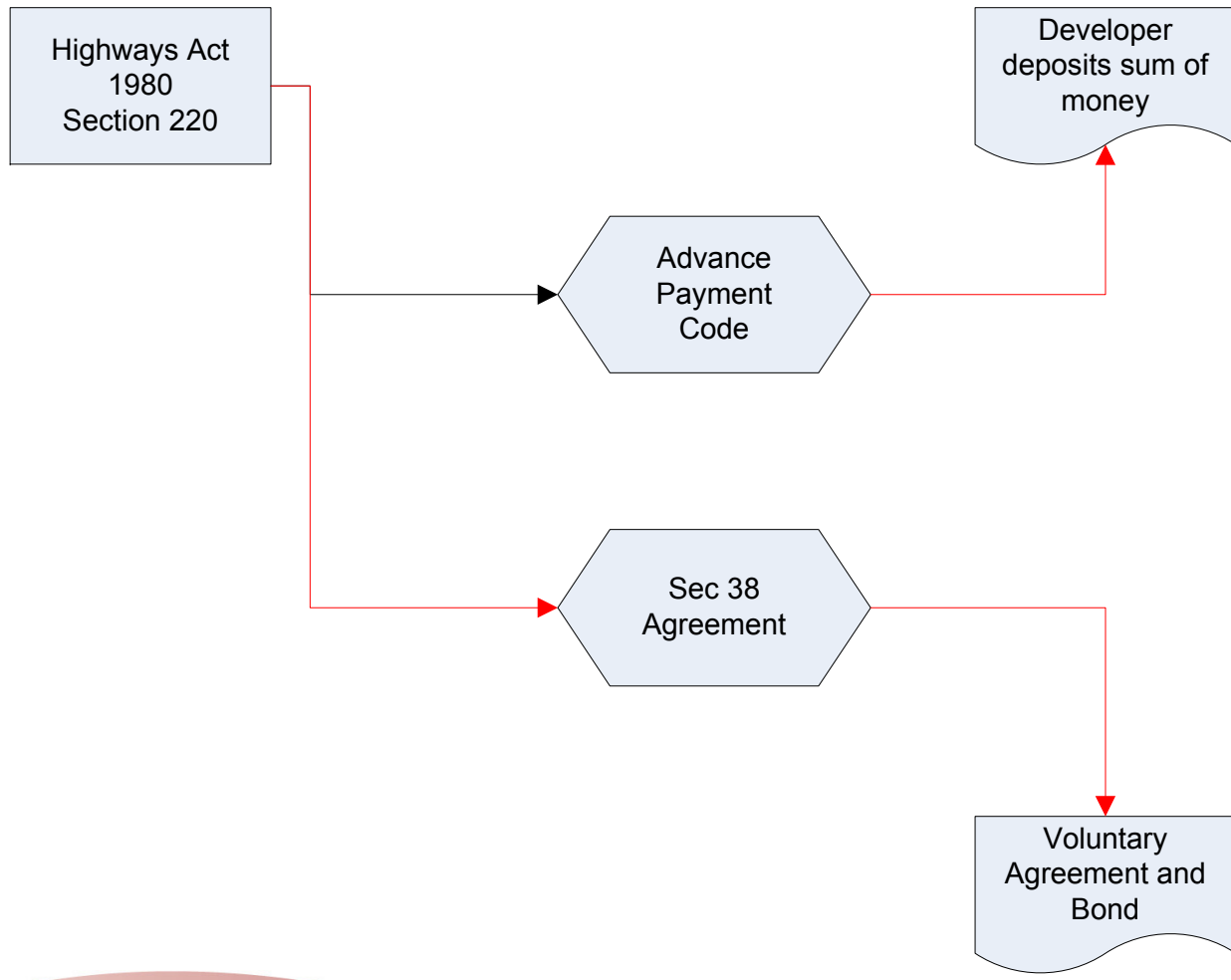
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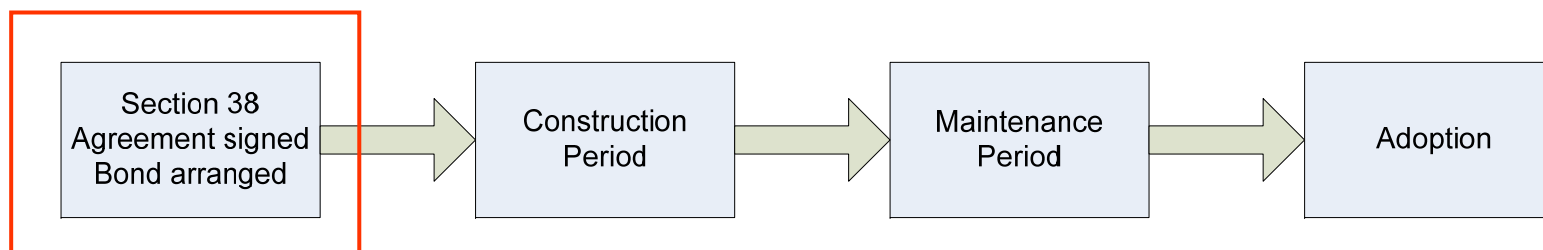
# Highways Act 1980

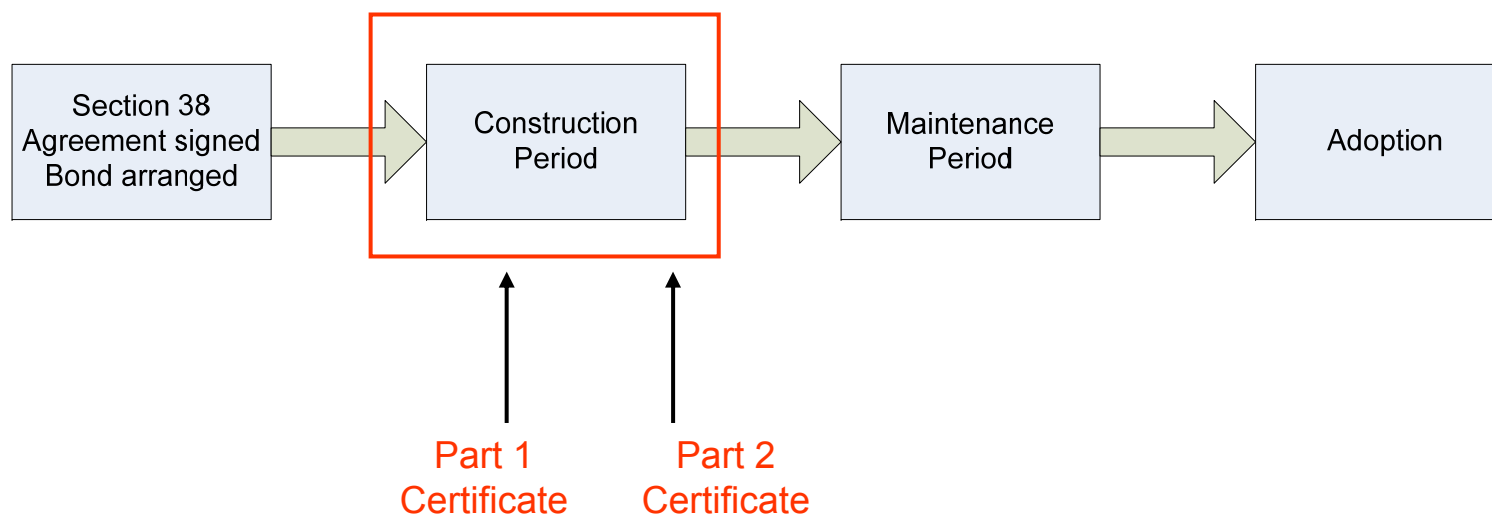


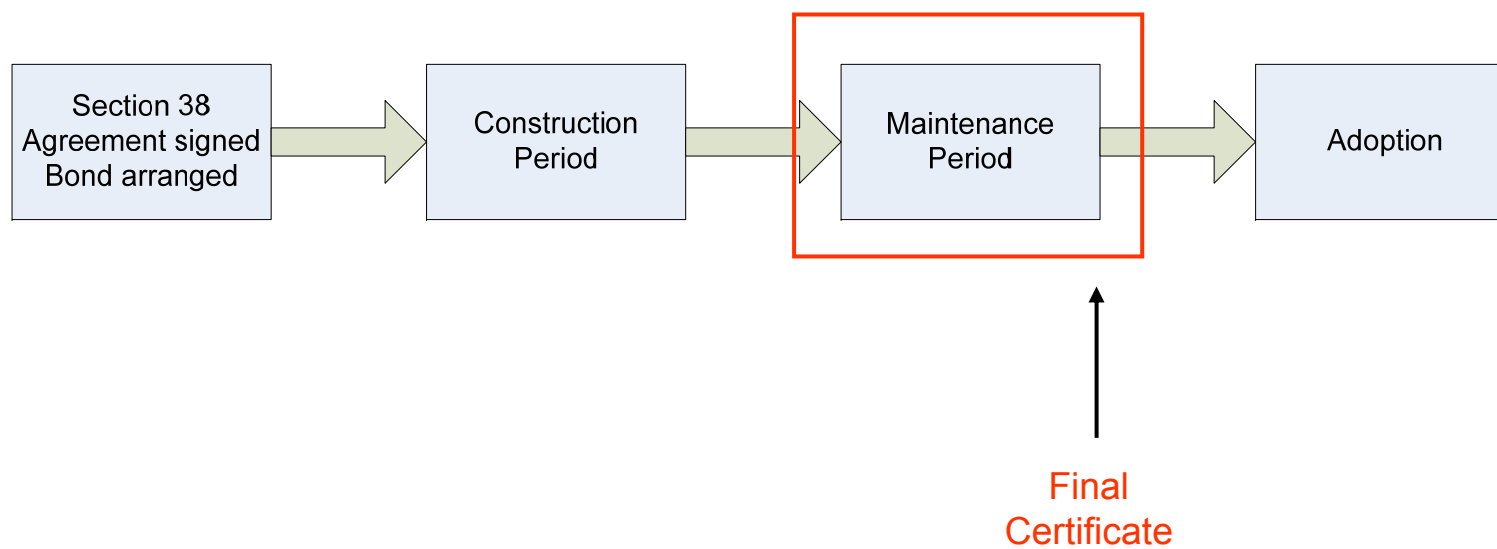
- Advance Payments Code (Sec 219 -225)
- Highway Adoption – Sec 38

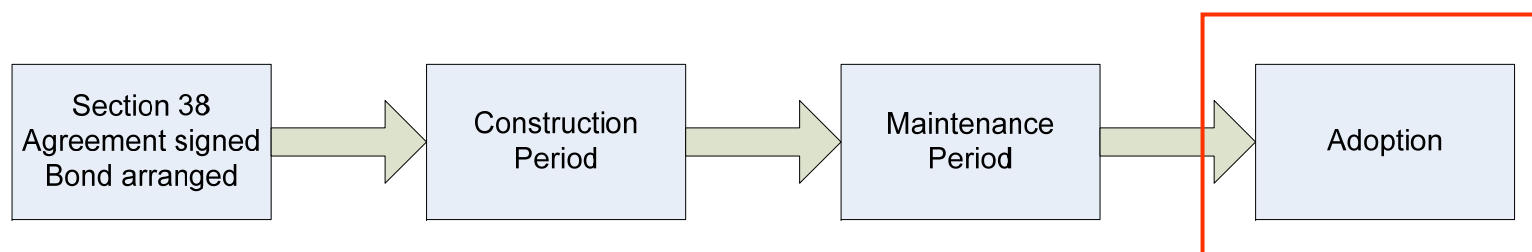








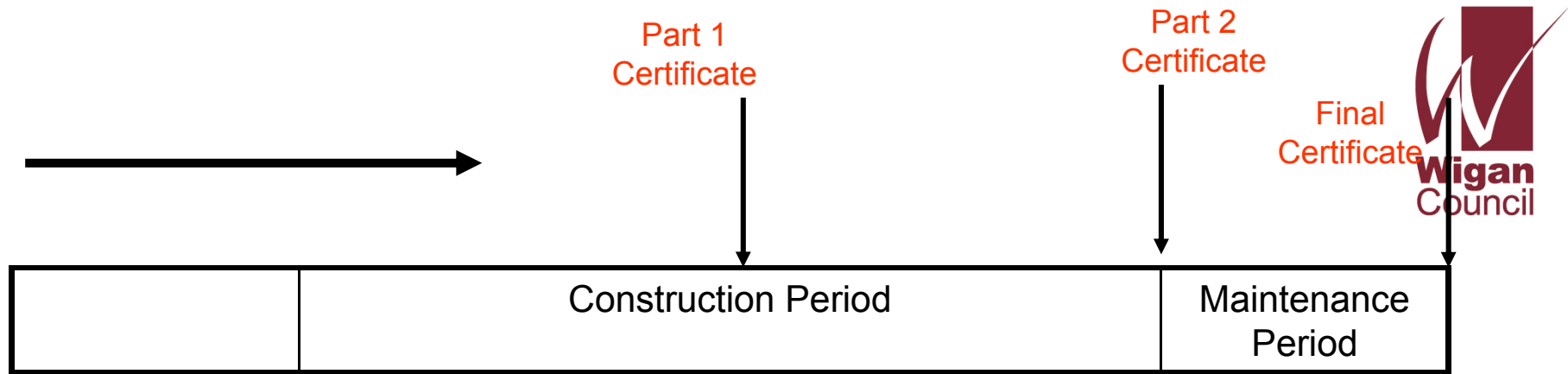


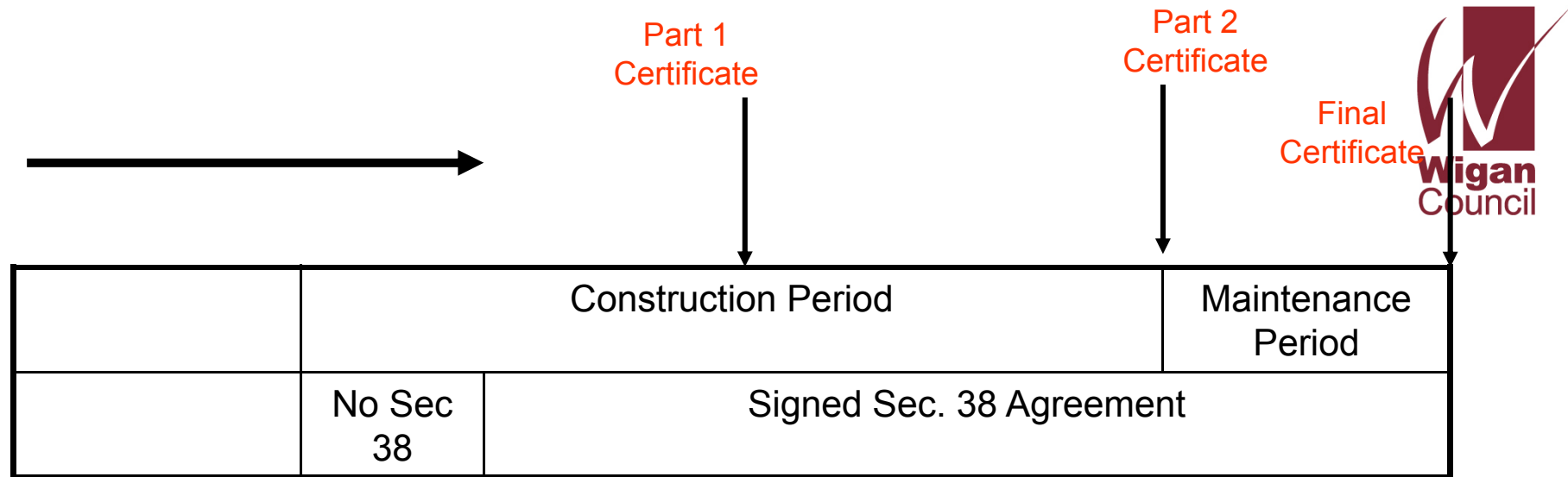


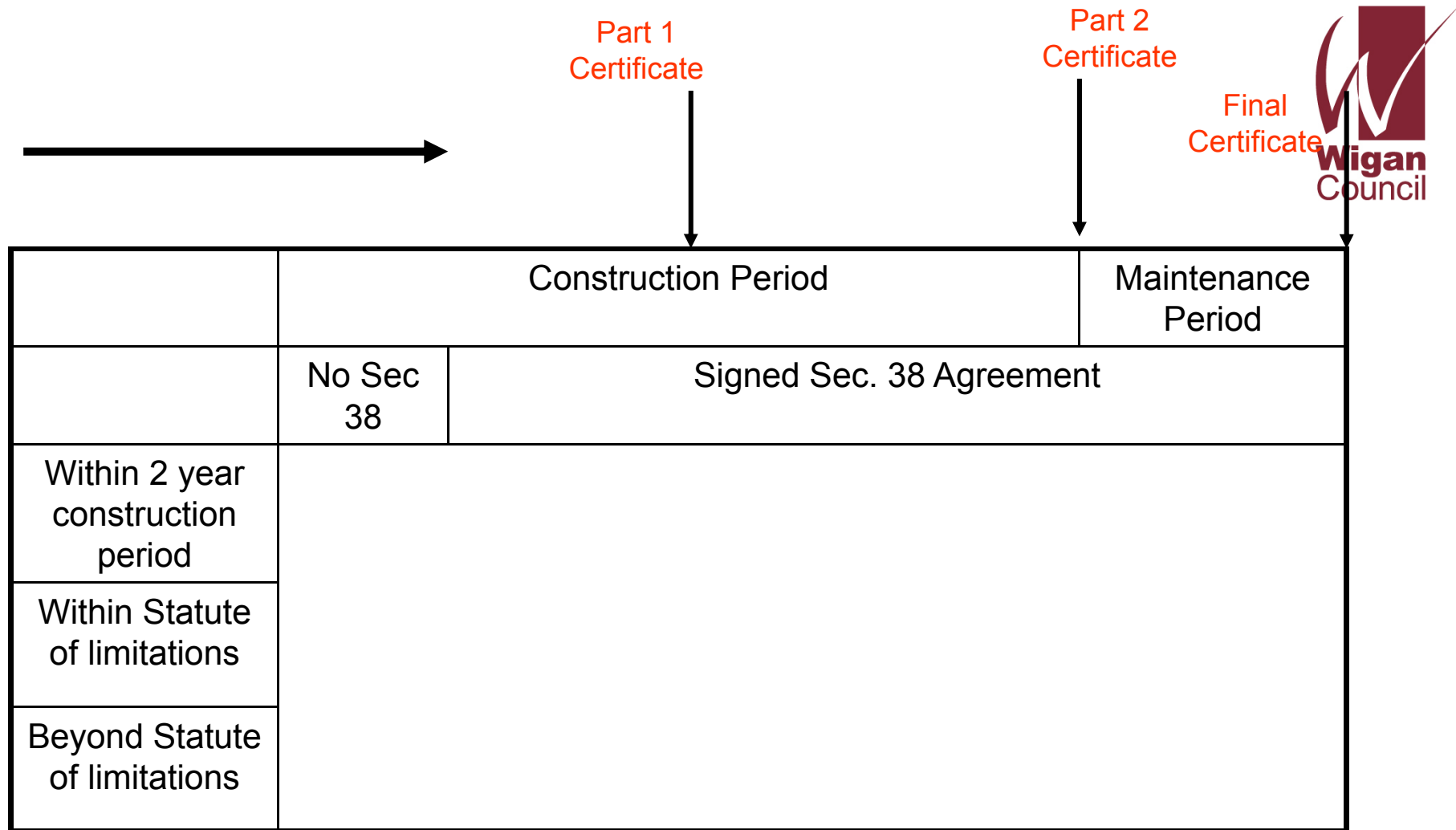


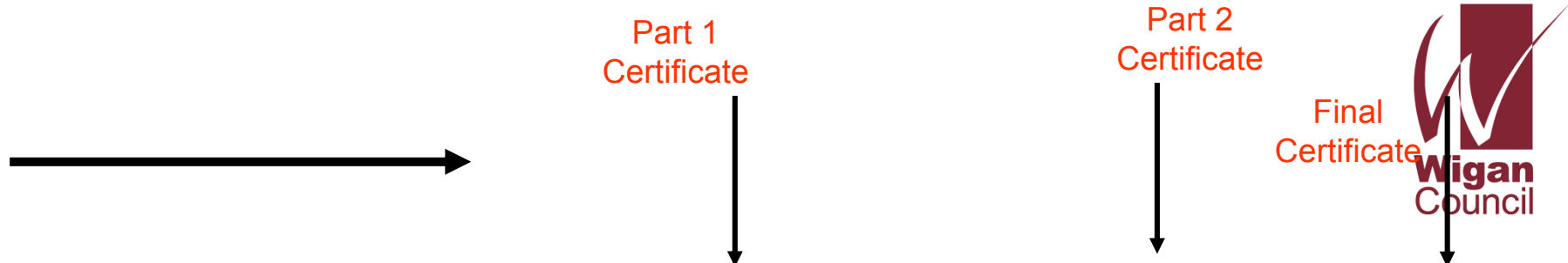
# Current Situation

- Private developers not understanding S220 notices.
- Work commencing without Sec 38/220 bond in place
- Delays in signing the Sec 38 Agreement
- Current administration of Sec 38 Agreements, timescales
- Too flexible with developers?

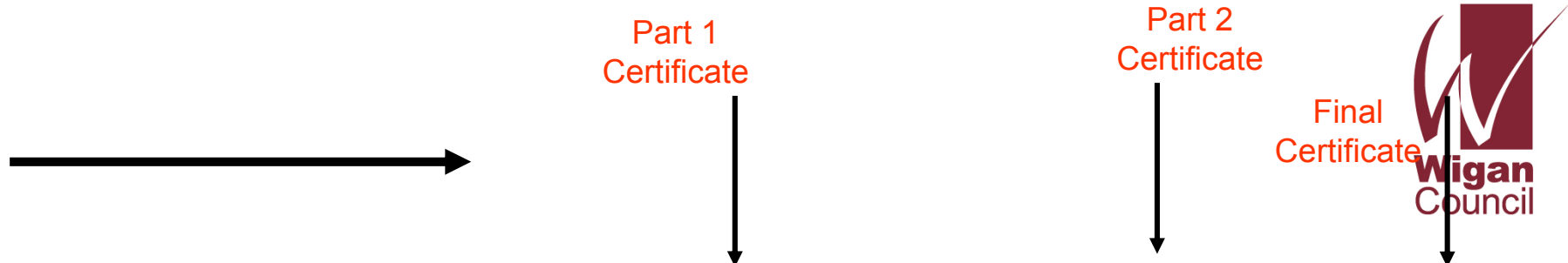








	Construction Period			Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement		
Within 2 year construction period	A	B	B	C
Within Statute of limitations		D	D	E
Beyond Statute of limitations		F	F	F



	Construction Period			Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement		
Within 2 year construction period	A	B	B	C
Within Statute of limitations		D	D	E
Beyond Statute of limitations		F	F	F

# Site A – No S38 in Place

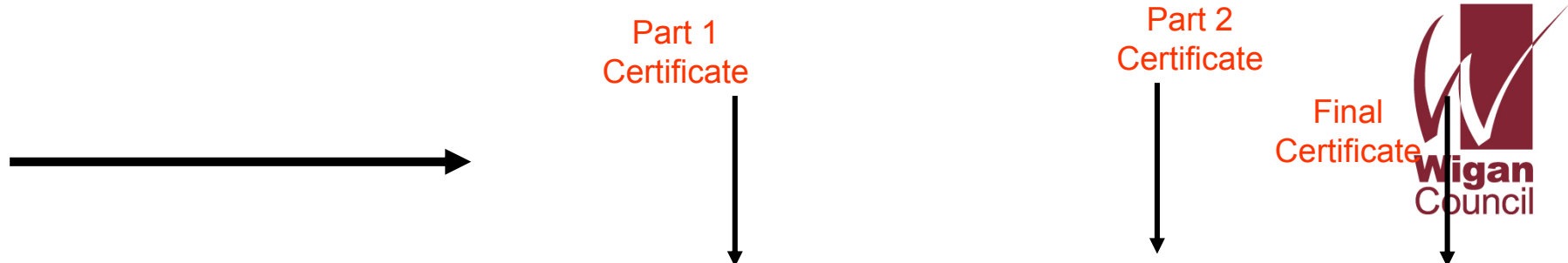


# Proposed Strategy



- No work to commence on site until Sec 38 Agreement is signed or Bond deposited
- Chase existing developments to ensure Sec 38 is signed as quickly as possible
- Continue to monitor developments on site
- Move towards adopted status once agreement is in place and remedials corrected





	Construction Period		Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement	
Within 2 year construction period	A	B	B C
Within Statute of limitations		D	D E
Beyond Statute of limitations		F	F F

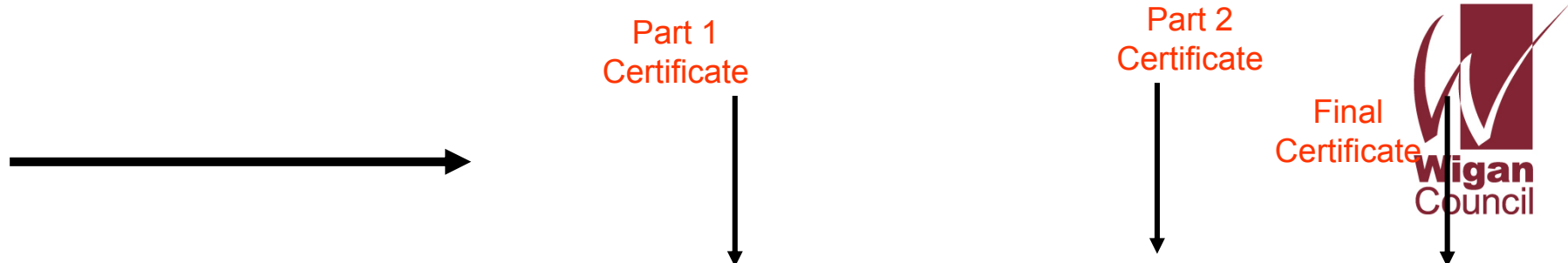
# Site B – Within Timescales



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# Proposed Strategy

- Proactive adherence to Sec 38 time limits
- Write to the developer reminding them that Part 1 / 2 Certificate are approaching and request a site meeting to discuss remedials
- How to deal with outside influences?
- In certain cases extend Sec 38 Agreement
- Use the Bond in cases where progress is unsatisfactory



	Construction Period			Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement		
Within 2 year construction period	A	B	B	C
Within Statute of limitations		D	D	E
Beyond Statute of limitations		F	F	F

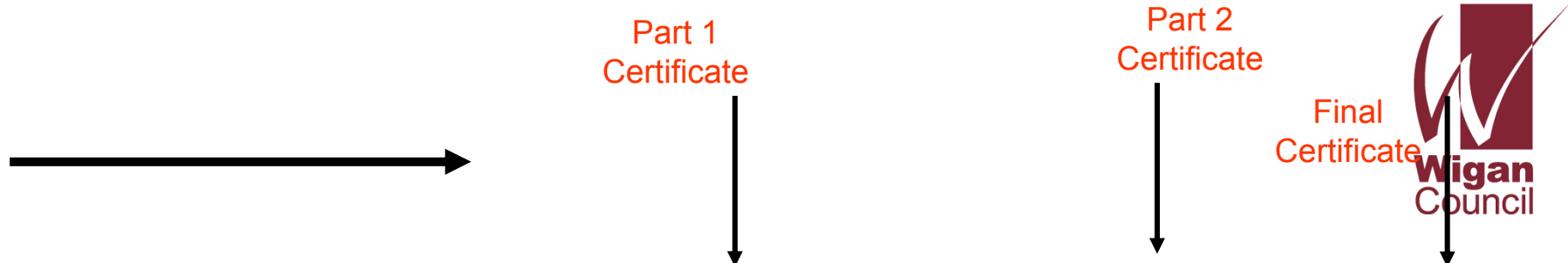
# Site C – On Maintenance



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# Proposed Strategy

- Proactive adherence to Sec 38 time limits
- Write to the developer reminding them that their Final Certificate is approaching and request a site meeting to discuss remedials
- How to deal with outside influences?
- In certain cases extend Sec 38 Agreement
- Use the Bond in cases where progress is unsatisfactory



	Construction Period		Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement	
Within 2 year construction period	A	B	C
Within Statute of limitations		D	E
Beyond Statute of limitations		F	F

# Site D – Timescales Exceeded

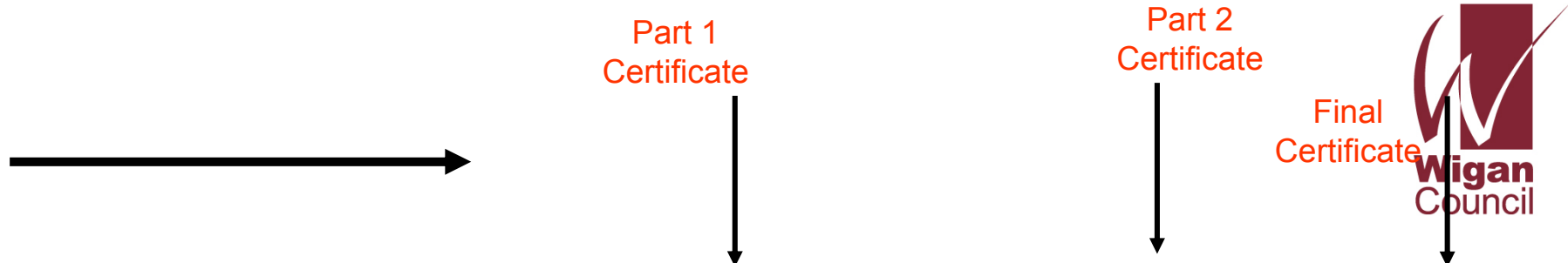


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# Proposed Strategy

- Proactive adherence to Sec 38 time limits
- Write to the developer and ask for adherence to Part 1 / 2 Certificates
- Request outstanding works carried out within 3 months
- What to do if houses not built?
- How to deal with outside influences?
- In certain cases extend the Sec 38
- Use the Bond in cases where progress is unsatisfactory



	Construction Period			Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement		
Within 2 year construction period	A	B	B	C
Within Statute of limitations		D	D	E
Beyond Statute of limitations		F	F	F

# Site E – Approaching 8 Years

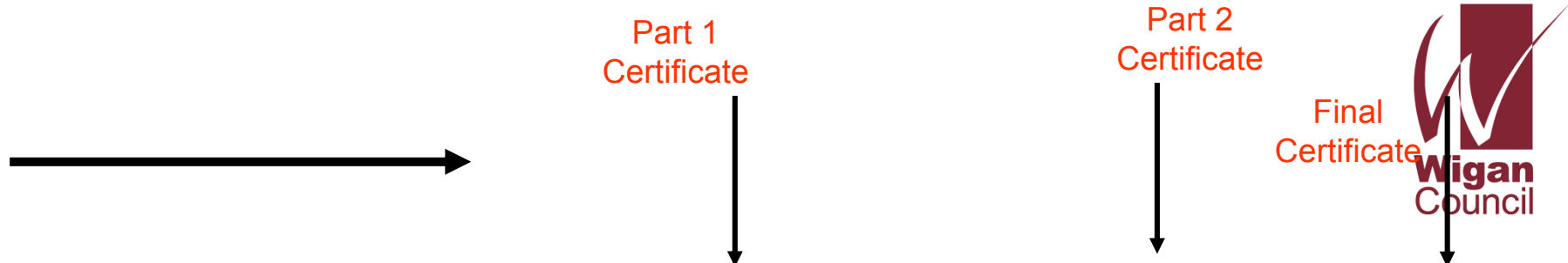


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# Proposed Strategy



- Proactive adherence to Sec 38 time limits
- Write to the developer and ask for adherence to final Certificate timescales
- Request remedial works carried out within 3 months (if it doesn't breach 8 years)
- Use the Bond in cases where progress is unsatisfactory



	Construction Period		Maintenance Period
	No Sec 38	Signed Sec. 38 Agreement	
Within 2 year construction period	A	B	C
Within Statute of limitations		D	E
Beyond Statute of limitations		F	F

# Site F – Old Sites



# Proposed Strategy



- Prevention! New strategy adopted
- Ascertain the extent of outstanding / remedial works
- Write to the developer and ask for remedial works to be completed
- Pragmatic approach to adoption on a site by site basis

# Summary

- Developing a new strategy going forward
- Consultation with other authorities
- Consultation with I.T to develop better software applications
- Better proactive communication with developers
- Rigid administration of Sec 38 Agreements
- Flexibility only in special cases
- Plan for dealing with legacy schemes



# Questions ?