

# Future Parks

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## FUTURE PARKS OVERCOMING LEGAL HURDLES

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20 October 2016

# Introduction

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- Background
- The Trust Option
- Different Legal Models
- Key Stages to the Trust Option
- Legal and Practical Issues
- Key Success Factors
- Concluding Remarks

# Background

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- We are all aware of the unprecedented financial challenge facing all local authorities
- Our local authority clients are, however, rising to this challenge and exploring opportunities to deliver services differently
- The Trust option is just one option for delivering differently. It does, however, offer the potential of a long term sustainable solution for these vital public assets

# The Trust Option

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- “Trust Option” is an alternative form of service delivery
- In summary, it means establishing a new legal entity and then entering into partnership arrangements with that new organisation to deliver your vision for the services

# The Trust Option cont'd

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- “Trust” is a generic term
- Correct legal term is “non profit distributing organisation” (“NPDO”)
- NPDOs take different legal forms
- However, there is a range of advantages, regardless of legal form

# The Trust Option cont'd

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- Cultural Advantages
  - Creating a new social enterprise
  - Operate in a commercial / entrepreneurial way but with a clear social purpose
  - Single focused so all resources and energies focused on achieving that single purpose
  - Freedom of operation / ability to make quick decisions to maximise opportunities for growth and expansion

# The Trust Option cont'd

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- Cultural Advantages cont'd
  - Opportunity to redesign service delivery so it is “fit for purpose” going forwards, adapting to changes / needs of users
  - Harness private sector expertise on the board to help achieve business plan objectives
  - Opportunities to expand and diversify, provide services for other public sector partners



# The Trust Option cont'd

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- Financial Advantages
  - Depends on legal model and service
  - Business rate savings
    - Charities – 80% mandatory/ 20% “top up” relief
    - “Not for profit” – up to 100% discretionary relief
    - Local authorities now contribute 50% to reliefs
    - Significant operational saving in relation to a portfolio that includes rateable properties

# The Trust Option cont'd

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- Financial Advantages cont'd
  - Tax exemptions (if charitable)
  - VAT reliefs on sporting activities (“voluntary body”)
  - Purchase support services more cost efficiently
  - Employ new staff on different terms and conditions, including pensions
  - Deliver in a “smarter” way

# The Trust Option cont'd

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- Local Authority
  - Fits with ethos and culture of local authority
  - Not outsourcing or privatising but creating a new strategic partnership
  - Local authority representation on the board
  - Opportunity to transfer other local authority services
  - Proven track record in delivering a range of public sector services
  - Relatively low risk option

# Legal Models

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- Range of potential legal models
- However, two key determining factors
  - Incorporation v unincorporation
  - Charitable status v non-charitable status

# Legal Models cont'd

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- Incorporation v unincorporation
  - Incorporation means limited liability
  - Unincorporated means unlimited liability
  - Always recommend an incorporated entity where assets / liabilities transfer

# Legal Models cont'd

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- Charitable v non-charitable
- Significant advantages
  - Recognised and trusted brand
  - Regulated by Charity Commission
  - Tax exempt including corporation tax
  - Also tax attractive
    - Gift aid
    - Donations
    - Charitable grants
    - Legacies
  - Maximising finite public sector resources

# Legal Models cont'd

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- Charitable v non-charitable cont'd
- Potential disadvantages
  - Regulated by the Charity Commission
  - Restricted to charitable activities
  - “Asset lock”

# Legal Models cont'd

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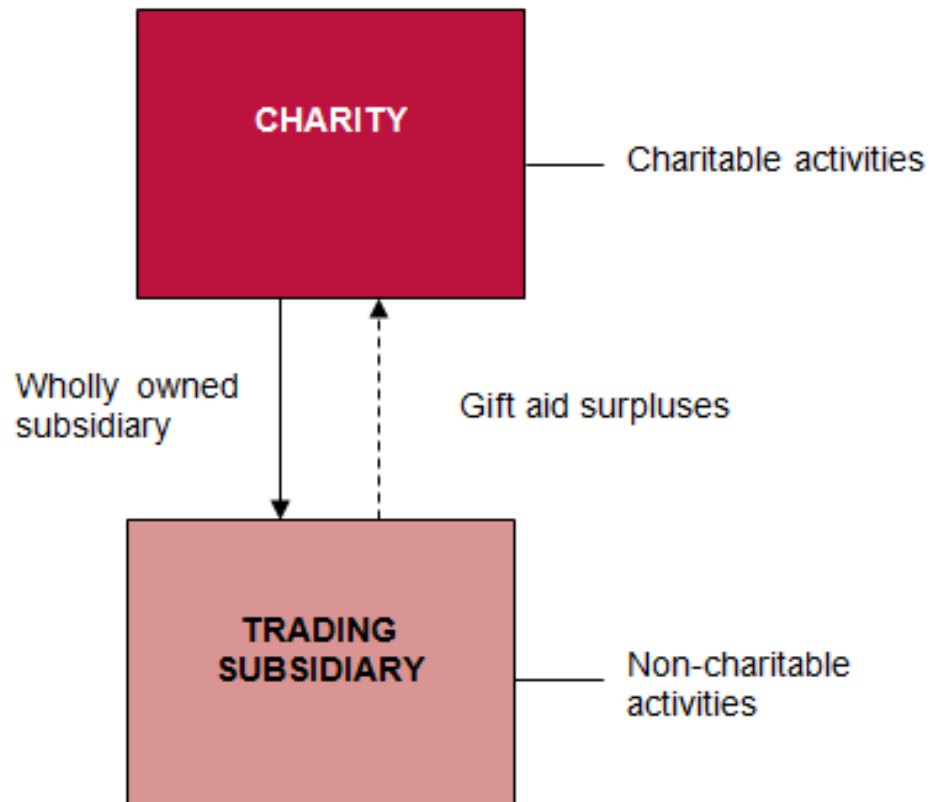
- Charities can trade
- Permissible trading is tax exempt
  - Primary purpose trading
  - Ancillary trading
  - De minimis trading
- Non primary purpose / above the threshold – need to consider a trading subsidiary
- Trading subsidiary subject to tax
- Gift any profits to parent charity so tax efficient



# Legal Models cont'd

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- Charity / Trading Subsidiary Structure



# Different Legal Models

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- Range of Legal Models
  - Co-operative (Co-op)
  - Community benefit society (CBS)
  - Company limited by shares (CLS)
  - Company limited by guarantee (CLG)
  - Community interest company (CIC)
  - Charitable incorporated organisation (CIO)

# Different Legal Models cont'd

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- Charitable or non-charitable

|                                      | Charitable | Non-charitable |
|--------------------------------------|------------|----------------|
| Co-operative                         |            | √              |
| Community benefit society            | √          |                |
| Company limited by shares            |            | √              |
| Company limited by guarantee         | √          |                |
| Community interest company           |            | √              |
| Charitable incorporated organisation | √          |                |

# Different Legal Models cont'd

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- Co-operative and Community Benefit Society
  - Registered under the CACB Acts 2014
  - Regulated by FSA
  - Two types:
    - (i) bona fide co-operative society
    - (ii) community benefit society
  - Governing document: Rules
  - Rules enshrine the rights of stakeholders at board and member level and voting rights

# Different Legal Models cont'd

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- Co-operative and Community Benefit Society cont'd
  - Need at least 3 members to register
  - Takes slightly longer to register and registration fees higher than a company
  - If charitable – exempt charity
  - Recognised by HMRC for tax purposes but not a registered charity and no charity registration number
  - Slightly old fashioned vehicle but “fit for purpose” for a stakeholder organisation

# Different Legal Models cont'd

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- Company limited by Guarantee / Shares
  - Registered under Companies Act 2006
  - Regulated by Companies House
  - Two types
    - (i) guarantee – members – no dividend
    - (ii) shares – shareholders – dividend

# Different Legal Models cont'd

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- Company limited by Guarantee / Shares
  - Governing document: Memorandum and Articles of Association
  - Enshrine rights of stakeholders at board and members
  - Modern/ flexible regime – “business ready”
  - Model business community most familiar with
  - If charitable, registered with Charity Commission / charity registration number

# Different Legal Models cont'd

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- Community Interest Company
  - Relatively new legal entity
  - Bespoke vehicle for social enterprises
  - Created by Companies (Audit Investments and Community Enterprises) Act 2004
  - Regulated by the CIC Regulator at Companies House
  - To register, must meet two tests
    - (1) “Community benefit” test
    - (2) “Asset lock” test



## Different Legal Models cont'd

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- Community Interest Company cont'd
  - Established as a guarantee or share company
  - If share company, can distribute a dividend – subject to a maximum aggregate dividend cap (35%)
  - Opportunity to raise external finance
  - Good model for a community initiative
  - However, a CIC cannot be a charity
  - Potential for a CIC to be used as a subsidiary of a charity to raise equity finance

# Different Legal Models cont'd

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- Charitable Incorporated Organisation
  - Introduced under Charities Act 2011
  - Bespoke new legal vehicle for charities
  - Incorporated as a charity but not a company
  - Only has to register with Charity Commission and not Companies House

# Different Legal Models cont'd

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- Charitable Incorporated Organisation cont'd
  - Created once registered with Charity Commission / cease to exist if “de-registered”
  - Less familiar to wider market
  - Disadvantage of not being registered at Companies House

# Key Stages to Implementation

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| Stage          | Key Actions   |
|----------------|---|
| Planning       | <ul style="list-style-type: none"><li>• Establish project team</li><li>• Prepare project plan</li></ul>   |
| Consultation   | <ul style="list-style-type: none"><li>• Prepare / roll out consultation plan for key stakeholders / staff / elected members / Friends / public</li></ul>          |
| Create "Newco" | <ul style="list-style-type: none"><li>• Prepare governing document for the new organisation</li><li>• Confirm name</li><li>• Establish new organisation</li></ul> |

# Key Stages to Implementation cont'd

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| Stage                 | Key Actions   |
|-----------------------|---|
| Recruit Board Members | <ul style="list-style-type: none"><li>• Agree board member recruitment campaign</li><li>• Open advert</li><li>• Prepare briefing pack</li><li>• Hold open evening</li><li>• Formal interviews</li><li>• Comprehensive induction programme</li></ul> |

# Key Stages to Implementation cont'd

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| Stage                     | Key Actions   |
|---------------------------|---|
| Prepare project documents | <ul style="list-style-type: none"><li>• Commissioning Agreement</li><li>• Business Transfer Agreement</li><li>• Support Services Agreement</li><li>• Leases or Licences</li><li>• Admission Agreement</li></ul> |
| Prepare Business Plan     | <ul style="list-style-type: none"><li>• Prepare business plan</li><li>• Business start up issues</li></ul>  |

# Key Stages to Implementation cont'd

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| Stage                                      | Key Actions  |
|--|--|
| Finalise project documents / business plan | <ul style="list-style-type: none"><li>• Agree project documents</li><li>• Agree business plan</li></ul>  |
| Prepare for transfer                       | <ul style="list-style-type: none"><li>• Prepare for transfer</li><li>• All policies / procedures</li><li>• Branding / launch</li><li>• Business as normal!</li></ul> |

# Timetable and Resources

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- Implementation – 6-9 months maximum
- Internal project team
  - Service lead
  - Finance
  - Property
  - HR
  - Legal
- External Support
  - Legal
  - Business planning support



# Key Legal and Practical Issues

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- Vires
  - General power of competence in Localism Act 2011
  - Power to do anything an individual can do
  - Clear objective of the power is to give Councils the confidence to be creative and innovative to meet the needs of their local community

# Key Legal and Practical Issues

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- Staff
  - TUPE protection
  - Transfer on existing terms and conditions
  - Fully recognise that it will be a period of uncertainty for the staff
  - Critical to carry out staff consultation throughout

# Key Legal and Practical Issues cont'd

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- Pensions
  - Trust eligible to join LGPS as an “admitted body”
  - Protect existing pension provision
  - Open / closed scheme?
  - If closed, need to establish alternative pension arrangements for new staff
  - Carefully consider pension risk issues

# Key Legal and Practical Issues cont'd

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- Property
  - Lease of property portfolio (where applicable)
  - Long lease provides business stability
  - Ability to attract lottery grants / commercial or social borrowing
  - Repair and maintenance issues
  - Break clauses in certain circumstances

# Key Legal and Practical Issues cont'd

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- Property cont'd
  - Careful consideration if proposing to transfer freehold
  - Potentially a significant asset
  - However if “corporate” property of the charity, then at risk in the event of insolvency
  - Consider creating a separate trust to “hold” freehold property
  - A slightly more complex structure but one which is common for charities such as the National Trust, where property is transferred freehold

# Key Legal and Practical Issues cont'd

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- Commissioning Agreement
  - Identify shared objectives and agreed outcomes
  - Fix funding for 3-5 years – “Budget Envelope”
  - Annual service planning process
  - Monitoring and review regime
  - Managing poor performance
  - Exit and handover arrangements

# Key Legal and Practical Issues cont'd

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- Local authority's continued role
  - Retain significant strategic control
  - Involved in recruitment of new board members
  - Representation on the board
  - Robust contractual relationship
  - Annual service planning process
  - Rigorous monitoring and review
  - Ongoing dialogue at strategic level

# Success Factors

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- Elected member and senior officer support :  
“Champions”
- A shared vision between the Council and the new delivery partner
- Stakeholder support
- A high profile and professionally run board member recruitment and induction process



# Success Factors cont'd

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- A comprehensive staff consultation plan
- An experienced management team with the right balance of specialist and commercial skills
- A robust and properly resourced business plan
- Appointment of external legal and financial specialists with proven track record in relation to similar projects

# Concluding Remarks

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- Recognise the significant challenge for all local authority services
- Statutory and non-statutory services under threat
- It is an opportunity to re-think service delivery
- Trust Option has a proven track record in delivering public sector services
- Opportunity to determine if this is the right option – not just for parks services, but, potentially, a wider portfolio of related services
- On standby to help!

Thank You

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