



APSE parks, open spaces and horticultural services seminar

# Powers to generate income in parks and green spaces

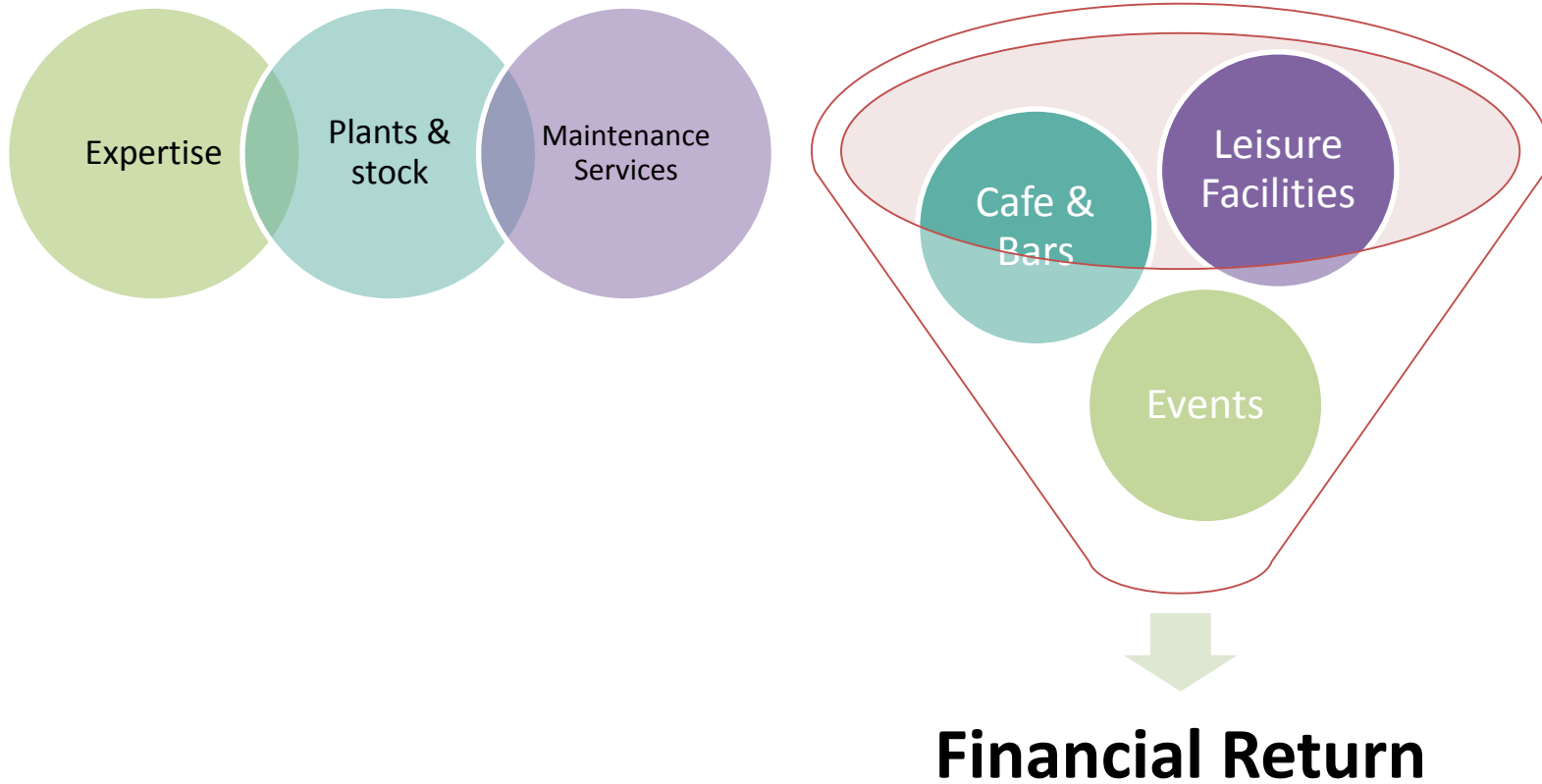
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# Opportunities for Authorities



# The Legal Frameworks

## Powers

- Powers to trade
- Powers to charge

## EU Rules

- Concessions
- Joint ventures

## Restrictions

- Charitable Trusts
- Governance requirements

# Commercial Options



Private/3<sup>rd</sup>  
sector led  
project

Partnership  
project

Authority  
led project

# General Power of Competence (Localism Act 2011)

Power to do anything that individuals may generally do

- Even though in nature extent or otherwise
  - Unlike anything the authority may otherwise do
  - Unlike anything that other public bodies may do
- Individual with full capacity
- Anywhere in the UK or anywhere else
- For a commercial purpose or for a charge or without a charge
- For or otherwise than for the benefit of the Authority or its area or residents

# The Power to Trade

## Local Government Act 2003

- Authorised to do for a commercial purpose anything which authorised to do for the purpose of carrying on any of its ordinary functions.
  - Not where required or authorised under ordinary functions.
- Power only exercisable through a company .
  - part 5 of the Local Government and Housing Act 1989.
  - Prepare business case.
  - Recover costs.

## General Power of Competence

- Limits on doing things for commercial purpose under the General Power
  - Only through Company
  - Not if activity is a duty
  - Subject to
    - pre-commencement limitations
    - post commencement limitations

# Providing Goods and Services to Public Bodies

**Local Authorities (Goods and Services)  
Act 1970**

Provide to a **Public Body**:

- Goods and materials
- Administrative and technical services
- Use of vehicles, plant or apparatus
- works or maintenance

Such terms as to payment or otherwise as  
the parties consider appropriate

# The EU Rules

Do the public procurement rules apply to our trading company?

We want to set up a JV with a private company or 3<sup>rd</sup> sector organisation – do the public procurement rules apply?

**Questions**

Are we setting up a concession?

You are subject to competition law just like other companies.



# The Ability to Charge

## Local Government (Miscellaneous Provisions) Act 1976

- Power to provide indoor and outdoor facilities, boating facilities, premises for clubs, staff and instructors, food/drink premises.
- Ability to charge for use as the authority thinks fit.

## Local Government Act 2003

- You can charge if you are authorised but not required to provide the service.
- The recipient agrees to its provision.
- Inapplicable if charging prohibited by another power or express prohibition.
- Duty to secure that charge does not exceed the cost.

## Localism Act 2011

- You can charge if you are not required by statute to provide the service to the person.
- The person agrees to its provisions.
- Authority does not have power to charge under another provision.

# Power to Create Parks - Open Spaces Act

Hold and administer the open space in trust to allow, and with a view to, the enjoyment thereof by the public as an open space.

- may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them

- Power to appropriate Open Space
  - Give public notice
  - Consider objections
- Free from trust under the Act

# Is the park held on charitable trust?

Conveyed  
by a Deed  
of Gift

- “forever in trust for the perpetual use [...] by the public for the purpose of exercise and recreation pursuant to the provisions of the Open Spaces Act 1906

Registered  
as a charity  
with objects

- “The beneficiaries are the general public/mankind. The City of..... Council is currently the sole trustee”.

# Is the park held on charitable trust?

Conveyed by a Deed of Gift dated 25th September 1912.

- "forever in trust for the perpetual use [.....].by the public for purposes of exercise and recreation pursuant to the provisions of the Open Spaces Act 1906"

Registered as a charity with objects

- " The beneficiaries are the general public / mankind. The City of Bradford Metropolitan District Council is currently the sole trustee."

# Acting as a Trustee



Is the proposal compliant with the objects of the charity?



Is it in the best interests of the charity?



Who owns the income?

# Acting as Trustee

Is the proposal compliant with the objects of the charity?

Is it in the best interests of the charity?

- Important to show that the benefits to the Council are not taken into account
- What will best enable the charity to carry out its purposes?

Who owns the income?

# Contact

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