
9. PEAK DISTRICT NATIONAL PARK CHARITY (SM/SS)

1. Purpose of the report

The report seeks approval to develop a charity vehicle to support our fundraising ambitions. Specifically to delegate Authority to the Director of Commercial Development and Outreach in consultation with the Head of Law and Head of Finance to develop charitable objects, governing documents and identify potential trustees.

This report outlines the development work to date, the recommended direction of travel and how the Authority and charity would work together for the benefit of the Park, the Authority and the public. It also highlights the potential risks and benefits with the proposed model.

Key Issues

- Since the approval of the Giving Strategy (March 2016), the Commercial Development and Outreach Directorate has been reviewing potential routes to diversify and boost income streams.
- Alongside work to develop the Authority's trading activities, initial investigative work has been carried out to understand the potential benefits of establishing a charitable vehicle to harvest voluntary donations.
- A number of National Parks have developed such entities and the National Parks Partnership and National Parks UK are looking into the feasibility of creating a national charity.
- Setting up a charity could provide a number of benefits – particularly in terms of encouraging a range of audiences to provide financial support – but would require independent governance from the Authority.
- Initial investment – money and staff – would be required from the Authority which would require careful consideration from a legal and value for money perspective.
- Before committing significantly more time on this development therefore, feedback and approval of the Authority is sought.

Recommendations

2. **1. To authorise the Director of Commercial Development and Outreach, in consultation with the Head of Law and Head of Finance, to progress the development of a Charitable Trust which is also a Company Limited by Guarantee in line with the proposals set out in this report.**
2. **To note that a report setting out the charitable objects, governing documents including a conflict policy document and Memorandum of Understanding and potential investment by the Authority be brought to a future Authority meeting for final approval.**

How does this contribute to our policies and legal obligations?

3. This work directly contributes to our policies and legal obligations in diversifying income, growing support and raising funds to support the corporate strategy and National Park Management Plan.

Establishing a charitable entity is within the Authority's implied powers, as it will assist in the achievement of its statutory purposes. Although it would not be possible for the charity to act under the Authority's direction or control, it would have to act in pursuit of its own objectives and in the best interests of the charity, it is envisaged that the

charity would be set up in such a way that in pursuing its own objectives, the Authority's purposes would also be supported.

Background

4. In order to sustain the delivery of our National Park purposes, The Peak District National Park Authority has taken the strategic decision to diversify its income streams, targeting significant growth in fundraising
5. The principle to create a charity vehicle to support the Peak District National Park's fundraising ambitions was set out in the Giving Strategy Report presented to the Authority in March 2016 and more recently in the Integrated Commercial Development & Outreach Plan presented to members at Strategic Advisory Group meetings in October and November 2016.
6. It is clear that the Authority can attract funding for its work in the Park – the question is whether it is the correct vehicle to maximise donations from the widest spectrum of supporters. The Authority has been able to attract significant funds matched to specific projects – it is intended that this would continue. It has received donations/legacies to a total value of c£50k to date this year. This has not been derived through an overt programme to stimulate donations or with the infrastructure and systems to support such a programme in the long-term. The corporate risk of 'failing to inspire people to give' remains high (impact and likelihood). In addition many funding bodies, trusts and corporates will not consider allocating money to non-charities; informal approaches to potential influential trustees and/or patrons has indicated the need for an independent not-for-profit vehicle to attract support.
7. As part of the Commercial Development & Outreach plan an analysis of the external environment indicated a competitive, cluttered market. One which has high barriers to entry but if successfully entered could deliver attractive levels of income and wider support. The Charity Brand Index (an annual survey of the UK's top 150 charities) indicates a continuing strong public desire for transparent, confident, compelling causes. The CBI research shows that trust is the key currency for charities and that public fall in love with (and stay committed to) causes as opposed to organisations.
8. The Authority can deliver on many of these fronts; it is respected and is clearly doing 'good' work. The question is whether its regulatory, statutory nature (including a central government grant of c£6m) could hinder building strong support among a wide group of stakeholders.
9. The development work to date (Giving Strategy, March 2015 and Commercial Development & Outreach Plan, October 2016) has highlighted the need for a step change in how we engage with audiences to win their support. The establishment of and restructure within the Commercial Development & Outreach directorate, including increased investment in the Marketing & Fundraising team has created a strong foundation for taking this initiative forward.
10. A charity would provide an effective vehicle with which to engage the public in this increasingly competitive arena. It would help open charitable sources of income currently closed to the Authority and, by enabling the application of Gift Aid to donations, plus tax relief for donors and legacy givers, it would maximise the efficiency of fundraising budgets.

Proposals

11. Development work has been informed by discussions with fundraising teams at South Downs, North York Moors and Northumberland National Parks, Derbyshire Community and Voluntary Service, National Parks Partnership plus internal expertise. There are several models for setting up a charity, but to fulfil Authority aspirations only two of these have relevance: a Charitable Incorporated Organisation (CIO) and a Charitable Trust which is also a Company Limited by Guarantee.
12. It is recommended that the most appropriate charitable model for the proposed Peak District National Park charity is a charitable trust which is also a company limited by guarantee. The creation of the charity using a company limited by guarantee restricts the liability of trustees, permits trading through the company structure, and importantly allows the Trust to borrow monies and charge its assets should it seek company/corporate finance to help develop a project.
13. The charity would provide the appropriate level of independence, governance and transparency to support voluntary donations while at the same time ensuring the right level of connectedness to the Peak District National Park Authority, the National Park Management Plan, and the promotion and protection of the Peak District National Park's special qualities.
14. The objects of the charity will be developed in line with the Authority's purposes following Charity Commission guidance. This was the approach taken by the North York Moors Trust. While the objects would not precisely replicate the PDNPA's statutory purposes they will accord with a format that has already been approved by the Charity Commission and recognised by them as a valid charitable purpose. Following this precedent will increase the prospect that the charity can be registered efficiently.
15. **Trust title**

A formal title for the charity will be developed. It is likely that the title will be deliberately similar to that of the place and the Authority in order to reflect the proposed close working relationship between the two organisations to provide sustainable long-term benefits for the place, its communities and the wider public. The title will also provide differentiation to any other charity currently operating within or around the Peak District National Park. It is possible also that a public-facing brand name for the charity could be created for marketing purposes.
16. **Appointment of Trustees**

The trustees will act as the trustees of the charity (who have powers and duties to run it and make day-to-day decisions) and its members (who are able to vote on major decisions and have limited liability). They will also be the directors of the company limited by guarantee.
17. The Trust would be governed by a number of trustees, proposed to be between 7 and 9, and who must act to further the aims of the Trust. Trustees would be a mix of PDNPA members/CEO and others as appropriate which would ensure the independent nature of the Trust. The Charity Commission would require the ratio of trustees to reflect its independence from the PDNPA.
18. The development work which needs to take place next will include agreeing the charitable objects and activities and agreeing the articles and memorandum of association and conflict policy document. This would provide a firm basis for the initial

establishment of the charity and security of operation. Once the charity is formally registered the trustees will appoint the Chair.

19. The charity will not be subject to governance by the Peak District National Park Authority and will be responsible for operating its own bank account and completing its own legal and statutory returns. It is anticipated that the charity will be based at the Aldern House office.
20. Once the charity is registered with the Charity Commission it will exist as an independent body and the Authority cannot undo that decision without the agreement of the trustees. Therefore it is essential that a long-term relationship is established at the outset between the Authority and the Trust which is mutually supportive, consistent and transparent so that the two organisations are least likely to expend resource duplicating activity.
21. Though independent, in order to help establish the charity, it is proposed that the PDNPA becomes a founding patron of the charity, committing to provide for a fixed period the necessary staff resources and overheads, to establish the charity's governance, operations and fundraising.
22. This provision will be provided to the charity's trustees on the basis that they work in partnership with the Authority and contribute to the delivery of the National Park Management Plan, where this meets its charitable objectives. This arrangement is essentially a grant agreement and will be captured in a Memorandum of Understanding (MOU) that will be presented to the Authority for approval alongside a final version of the Memorandum and Articles of Association.
23. As an independent organisation the charity will choose in which ways it supports the National Park Management Plan. Outside of this arrangement, the charity will be free to undertake its own activities so long as these are in line with its charitable objectives.
24. Once the charity has been registered, the MOU will need approval by the board of trustees, in order for it to come into effect.

25. **Other Charities in the Park**

It is proposed that the charity would not – and the objects will reflect this – engage in any political campaigning nor focus exclusively on any one aspect or area of the Peak District National Park. Discussions have taken place, and will continue to do so, with the Friends of the Peak District charity to reassure its membership that the proposed activities of the charity are appropriately differentiated. Initial conversations have also been started with the trustees of the Peak Park Trust to understand its future planned activities and similarly ensure distinctiveness between the two entities. In fact, it will best serve all the organisations to maintain a clear distinction between their activities in order to secure on-going support and provide mutual support where appropriate.

26. **Contribution to and alignment with National Park Management Plan**

The establishment of a charity is directly supportive both in principle and practice of National Park purposes, the National Park Management Plan objectives and delivery, and, in particular, the protection and promotion of the Peak District National Park's special qualities. The charity will be a National Park Management Plan partner.

27. **Charitable Purposes and Objects**

'Charitable Objects' is the term used to describe and identify the purpose for which a

charity has been set up. The Charities Act 2011 defines a charitable purpose, explicitly, as one that falls within 13 descriptions of purposes and is for the public benefit. In order to best benefit the Peak District National Park area and communities, the proposed charity's charitable objects should be consistent with (but not identical to) the agreed National Park Management Plan and National Park purposes and duties, using the learning from the North York Moors recent registration with the Charity Commission.

28. The Charity Commission states that a charity's purposes should make it clear:

1. what outcomes the charity is set up to achieve;
2. how it will achieve these outcomes;
3. who will benefit from these outcomes;
4. where the benefits extend to; and
5. clearly demonstrate public benefit.

29. It is proposed that the charitable purposes in principle should:

1. Benefit local communities, visitors and the general public;
2. Build on and enhance the special qualities of the PDNP;
3. Carry out activities that are in line with and supportive of the PDNP Management Plan;
4. Operate in the wider Peak District i.e. not to be restricted by the precise 'regulatory' boundary; and
5. Have no geographical restrictions on trading.

Are there any corporate implications members should be concerned about?

30. **Financial:**

An initial investment plan is currently being developed setting out the input costs (money and officer time) for legal, IT, finance support plus marketing and fundraising. The costs will be split between set-up and running costs. These costs would be met from the budget approved in the Giving Strategy report (March 2015).

31. The legal team, as part of the development work, will establish whether the level of anticipated support will trigger any 'state aid' restrictions.

32. The charity is required to have funds and banking facilities in place before registering with the commission. It is proposed that an account is set up with £5k funded from the budget approved in the Giving Strategy report (March 2015). Any requirements to buy in expertise and systems in specialist areas would also be funded from this budget.

33. The Authority's finance team is able to provide initial accountancy support for the charity including setting up a bank account and ensuring competent financial administration for the charity. This will be via a Service Level Agreement. External accountancy support will need to be sourced to prepare, from trial balance stage, appropriate financial reporting to statutory bodies. The Head of Finance will oversee this work.

34. The constitution of the charity and the support of the Authority may fall, subject to legal and external audit advice, into the category of being a Regulated Local Authority Company, which is a company which is controlled or influenced by a local authority. This may require the charity's accounts to be consolidated into the Authority's accounts as a subsidiary or an associated company and may require, subject to further investigation, group accounts to be prepared, where the figures are material. There may also be statutory requirements over governance which need to be included into

the constitution of the charity from the outset. The Head of Finance will investigate this and provide a recommendation as part of the second detailed Authority paper.

35. The first year's operating resource requirements will be focused on kick-starting fundraising activity and specifying the systems to support it. This will be initially provided by the Authority and, in the first instance, comprise significant resource commitment from the Director of Commercial Development & Outreach, Head of Marketing & Fundraising and Fundraising Development Manager. Other input from the CD&O directorate would be identified as appropriate. The Fundraising Development Manager would service the board of trustees, the detail of which will be set out in a memorandum of agreement.
36. Once the charity has been established, the Authority's legal department cannot provide legal advice to the trust and there can be no service level agreement with the trust for legal support as it is not an alternative business structure.
37. An annual report of staff time and other costs from the PDNPA supporting the charity will be maintained to understand and inform the degree of investment the PDNPA supplies.
38. **Risk Management:**
As the charity needs to demonstrate its independence from the Authority to allow for registration, and the Trustees need to act in the interests of the charity, there will be a loss of control from Authority Members. Similarly, an effective charity could impact on the Authority's current level of donation income, particularly if income is steered towards the charity rather than the Authority.
39. To mitigate this risk the charitable objects and articles of association of the charity will be aligned to National Park purposes and will support the objectives and delivery of the National Park Management Plan and Peak District National Park Authority corporate strategy. To that end, its fundraising will initially be based on a series of discrete, costed projects/activities. Funds therefore would be distributed in line with those propositions. The key aim of the charity will be to raise funds for expenditure plans thus contributing directly to the financial health of the Authority.
40. The Authority has long experience in its applying its influencing role, with an excellent track record in working with partners to achieve National Park purposes. The charitable objects, governing documents and work plan for the charity will ensure trustees are clear that the charity is about supporting the Park and its special qualities.
41. Authority Members appointed as Trustees will need to declare their interests and will be conflicted out of any future related discussions. There will be a conflict policy developed and Trustees will be required to sign a declaration of interest as part of the charity registration.
42. Other mitigating actions will include a memorandum of understanding (MOU) which will set out the working relationship between the Authority and the charity. This could include options to review the support and place a financial or time limit for any Authority support to the charity.
43. The Authority is seeking legal advice on the charity registration process, the development work will inform that brief.

Equalities:

There are no issues to highlight.

44. **Sustainability:**
A charity could support the Authority's financial sustainability through diversifying income for the Park and providing match funding for Authority projects. It also offers the potential to reduce costs to the Authority in the future through recharging for staff time or if staff are directly employed by the charity.
45. **Background papers** (not previously published)
Commercial Development & Outreach Plan 2017-18 (October/November 2016 SAG)

Appendices – None.

Report Author, Job Title and Publication Date

Simon Malcolm, Director of Commercial Development & Outreach, 9 March 2017