

## 2. INCORPORATION OF THE ENGLISH NATIONAL PARK AUTHORITIES ASSOCIATION (A956/JBD)

### Proposal

- 1 This report informs members of the proposal to incorporate the English National Park Authorities Association (ENPAA) as a Company Limited by Guarantee and seeks the endorsement of members.

### RECOMMENDATION:

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### Key Issues

- 2 In 2006 the English National Park Authorities Association was established (minute reference) to give English National Parks a stronger role in getting their message across collectively to English Government Departments, agencies and politicians. ENPAA now performs an important consultation, lobbying and campaigning role on behalf of English National Park Authorities. ENPAA works closely with the devolved Welsh body, the Welsh Association of National Park Authorities, the 2 Scottish National Park Authorities and the UK Association of National Park Authorities, ANPA with each now playing clearly different – and consequently much more effective – roles.
- 3 In its first 18 months, ENPAA has performed effectively on behalf of the English NPAs by keeping close to Defra and other Ministers and senior officials; co-ordinating responses to a large number of consultations (such as on the planning reforms, impacts of local government reforms and the Housing Green Paper); maintaining liaison at a national level with key bodies such as Natural England, Environment Agency, Highways Agency and the National Trust; and developed a number of position statements on climate change, renewable energy, farming and affordable housing. Conduct of national meetings has been much improved as a result of high quality, well-presented and orderly agendas.
- 4 ENPAA employs 2.5 staff: A Director, a part-time campaigner and an administrator and is based in London. To date, ENPAA has been operating as a trade association. Other NPAs have provided in kind support for eg IT, property or recruitment services as, in effect, a partnership where resources are pooled.
- 5 A number of problems have arisen with ENPAA's current unincorporated position, which have caused particular concern to the North Yorkshire Moors NPA (who have shouldered much of the administrative burden), including problems over VAT registration. In July

2007 NYM NPA engaged Ward Hadaway solicitors to advise and in September 2007 they reported, recommending that ENPAA incorporate as a not for profit Company Limited by Guarantee. In summary, the benefits of this would be:

- Much greater clarity over roles, responsibilities etc when letting contracts and employing staff
- Future liabilities would be limited
- ENPAA would be able to let contracts eg for services
- Greater potential for ENPAA to attract external funds

6 Whilst an incorporated body has advantages as set out above, there are also statutory requirements under the Companies Act that must be weighed against those advantages. These are set out clearly in the Ward Hadaway report and include the requirement to manage the company's own accounts, report on this publicly and ensure they are audited and that appropriate tax arrangements are in place. Whilst these are straightforward and common to many companies, advice needs to be sought on the set up and periodically to ensure compliance with the law. This adds a cost to the operation of ENPAA which must be considered against pooling resources in a partnership arrangement.

7 The company will be what is known in law as a "local authority controlled company"; and the law states that it is to be treated as under the control of each and every NPA which is a member of the company. This Authority will have to ensure that the company complies with all of the rules which apply to local authority controlled companies – if it does not, any payment to the company by this Authority will be unlawful. The rules themselves are not particularly onerous, and in summary they are as follows:

- (a) All company documents (letters, notices etc) must state that the company is a company controlled by... - and then name all NPAs which are members of the company. So if all 9 NPAs sign up, all 9 will have to be named.
- (b) Company directors cannot be paid more than they would be paid for doing the same duties directly for their NPA (this includes travel & subsistence and payments for performing duties).
- (c) The company must not publish anything which is contrary to the restrictions on local authority publicity.
- (d) The company must provide all information and explanation about the affairs of the company required by the external auditors of all, some or any of the NPAs.
- (e) The company must provide to any member of any of the participating NPAs such information about its affairs as that member needs properly to discharge his/her duties.
- (f) The company must obtain the consent of the Audit Commission before it appoints any person as its auditor.
- (g) The company must make publicly available the minutes of any general meeting of the company, and they must remain available for 4 years.

8 Chairs of ENPAA have been advised by Ward Hadaway solicitors that it is within the powers of National Park Authorities to establish such a company; of the costs and benefits of doing so; and the appropriate way of doing so. The cost of this advice has been borne by ENPAA in the expectation that it will be shared equally by the NPAs and is reported in paragraph 12 below. On balance, with this advice, Chairs resolved at the ENPAA meeting 19 September 2007 to establish an incorporated Company Limited by Guarantee as the better way of supporting the shared venture that is ENPAA.

9 Chairs agreed to proceed with the recommendations at their meeting on 19 September 2007, but their recommendation needs specific endorsement by each of the member Authorities. To date, 5 NPAs have agreed to support incorporation (an update will be

given at the Authority), along the lines of this report, and all Authorities are expected to have considered this by 17 December 2007 with a view to an Extraordinary General Meeting of ENPAA on 21 January 2008. ENPAA officers are developing a Memorandum and Articles of Association which is a central requirement of the incorporation. In summary, these reflect ENPAA's constitution plus compliance requirements for any company limited by guarantee and will include:

- The purpose of ENPAA and its name
- Summary points from the agreed constitution, including members, voting arrangements etc.
- Descriptions of financial and employment liabilities
- How statutory requirements – accounts, company registration, registered office etc. will be fulfilled
- Responsibility of officers and of Directors
- Disclosure of information
- Manner (including frequency, voting rights, chair etc) of meetings

The detail of these will be approved at the Extraordinary General Meeting to establish ENPAA's Company Limited by Guarantee. The Articles of Association will be examined by this Authority's Head of Law who will advise the Chief Executive prior to his approving them at the ENPAA Special General Meeting on the 21 January 2008 that will establish the Company to ensure that the Authority's commitments are reasonable and that it has the ability to withdraw from the Company should it wish to do so. A member's Agreement will also be prepared that will cover other non statutory arrangements for the operation of ENPAA that go above and beyond the constitution or Memorandum and Articles of Association, covering , for example, voting procedures.

- 10 The Authority has already appointed its Chair as the representative on ENPAA and we now need to appoint him as a non executive director of the newly formed Company Limited by Guarantee, in line with appointments made by all other English NPAs. Whilst the liabilities will always be limited by guarantee, in exercising his functions, the Chair will also be covered by existing insurance that covers all members in the exercise of functions when appointed to an outside body. However, on advice from our insurers, the Authority will need to ensure that the new Company puts in place appropriate insurance arrangements to cover itself, its directors and officers from any personal liabilities, with the Authority's own existing insurance policy providing contingency cover. We understand ENPAA plans to arrange this. The company directors will need guidance on their duties, and on conduct where their duty to act in the best interests of the Company conflicts with their duty as members of the Authority. Guidance will be taken to the Authority meeting in February as this relates to a number of outside body arrangements.

## **APPENDIX**

### **Resources**

- 11 The report commits the Authority in principle to a 3 year financial contribution to ENPAA as a new Company Limited by Guarantee so as to ensure the new entity is viable and able to conduct its business efficiently. However, as this commitment is in line with the current subscription paid by the Authority and all other English National Park Authorities it does not raise any concerns. It is expected that the three year settlement for ENPAA will reflect the three year settlement for National Park Authorities overall.
- 12 Advice has been received by ENPAA from specialist advisers Ward Hadaway at a cost, to date, in total of £7000. It is expected that this will be shared equally amongst the English NPAs (£777.78) as a one off addition in 2007 to the annual subscription to ENPAA of £15 470 to be met from the mid year review. Further advice, addressing questions raised by NPAs, may increase this amount by a small proportion.

### **Risk Management**

- 13 In practice, ENPAA is today a consensual partnership of equals and it is expected that this will remain the basis of its operations. It has already a clear constitution that provides the basis for all significant matters relating to governance. These proposals are in line with that. However, there remains the small possibility that a NPA or number of NPAs might wish to withdraw from ENPAA at some time in the future on policy grounds (this is highly unlikely). Arrangements will be included in the Memorandum and Articles of Association to accommodate this. Support for this company would require a substantial notice period to be applied. It is also possible (but highly unlikely) that on cost or other grounds that the collective decision would be to wind up the company, but this is not considered sufficiently likely to be planned for and were it to arise it would be a straightforward process legally.

### **Human Rights, Equalities, Health & Safety**

- 14 None other than those described above are considered relevant.

### **Consultees**

- 15 Resources Management Team, Chief Finance Officer, Head of Law, Monitoring Officer

### **Enclosures**

- 16 None

### **List of Background Papers** (not previously published)

- 17 Ward Hadaway Report is available from the Chief Executive.

### **Report Author**

- 18 Jim Dixon

### **Publication date**

- 19 29 November 2007