

Date: 27 November 2007

Report: THE INCORPORATION OF THE ENGLISH NATIONAL PARK AUTHORITIES' ASSOCIATION [ENPAA]

Purpose of the report

1. To bring to members' attention the proposals for the Incorporation of ENPAA and recommend future action.

Background

2. ENPAA was established in 2006 to ensure that English National Park Authorities developed a stronger position in order to better influence central government. ENPAA performs an important consultation, lobbying and campaigning role on behalf of the English NPAs. Its establishment was partly as a response to devolution as its roles were previously carried out by the Association of National Park Authorities (ANPA). However, ANPA, which includes representatives from Wales and Scotland [and has ambitions to include National Park Authorities (if created) in Northern Ireland] is unable, as a matter of law, to carry out a lobbying role. In any event, one of the key consequences of devolution was the need to develop agendas on a country, rather than UK, basis.

3. Over the past 18 months ENPAA has been developing and performing an effective role for the English NPAs. Close links have been formed with Ministers and relevant government departments. English National Park Authorities are now much more able to respond as a single entity, where appropriate, and therefore provide a strong single voice on a number of key policies and governance developments. ENPAA has also produced a number of 'Park wide' policy position statements on key issues facing NPAs such as: renewable energy, climate change and transport. Members will be aware that the current chairman of the organisation is the YDNPA's Chairman; Carl Lis.

4. ENPAA employs 2.5FTE staff, namely a director, an administrator and a part time campaigner and is based in London. To date it has been operating as a trade association with all the staff formally employed by the North York Moors NPA.

Current Difficulties

5. In spite of the positive start to its life there are problems facing the organisation. These are based largely around the fact that it does not employ its own staff and as a consequence there are personnel and financial issues for any NPA which has to appoint these staff [as pointed out above this is currently the North York Moors NPA but has in the past also fallen to Exmoor NPA].

6. The English Chairmen's group have been considering the issue of the legal status of ENPAA since December 2006. Detailed papers looking at the implications of incorporation, VAT matters and the problems associated with the current un-incorporated nature of the organisation have been considered.

7. In March 2007 the Chairman's group agreed, in principle, that ENPAA should incorporate and instructed the Director and the Lead National Park Officer (NPO) to carry out further work on this issue. Following this decision the Director, working with the Chairman and Lead NPO has sought additional information on the implications of incorporation and the different models that might be available to the organisation. A leading firm of solicitors, Ward Hadaway, were commissioned to undertake much of the work on this issue. Ward Hadaway produced a report relating to the proposed incorporation which was presented to the English Chairmen in late September 2007.

8. In this report Ward Hadaway recommended that ENPAA incorporate as a 'not for profit' company limited by guarantee. The report provided comprehensive answers to a series of questions as to the impact of incorporation on ENPAA itself. Consequently, ENPAA is in the process of implementing this recommendation. In summary, the benefits of incorporation are:

- Much greater clarity over roles, responsibilities and liabilities;
- Future liability would be limited;
- ENPAA would have a legal status and therefore would be able to enter into contracts and employ staff;
- The organisation would be more attractive to potential external funders.

Legal implications

9. A Memorandum and Articles of association are currently being drafted on how the company is to operate. There may also be a Members' Agreement outside of the Memorandum and Articles of Association – this would have the same effect as a Shareholders' Agreement for a company limited by shares, in particular to contain contractual agreements as to how the members of the company will act. It is the intention, within these documents, to mirror existing arrangements unless there are good reasons to change. The basis of the proposals is that each English National Park Authority would be a member of the company; and it is recommended that the nine Chairs become the directors of the company. Each individual NPA now has to decide whether it wishes to become a member of the company and, if so, whom it wishes to nominate as a Director of the company.

10. Consequently, the issue of incorporation has now been/is being considered by each NPA and the impact of such a decision is now being assessed. It is important to bear in mind that much of Ward Hadaway's advice identified the impact of incorporation on ENPAA – not on individual NPAs. Each NPA will have to satisfy itself that, in entering into such an arrangement, it is clear as to the Authority's roles and responsibilities.

11. The issue has been examined by this Authority's Monitoring Officer. His view is that, although this Authority does have legal power to participate by becoming a member of this company, it will be important to scrutinise the Memorandum and Articles of Association, and any proposed Members' Agreement, in order to ensure that the commitments (including financial commitments), rights and liabilities which this Authority would be assuming by becoming a member of the company are reasonable, and also to ensure that this Authority has reasonable rights to withdraw from the company, should it ever wish to do so in future.

12. Another issue which will need to be resolved is to ensure that the company puts in place appropriate indemnity and insurance arrangements to protect directors of the company from any possible personal liabilities. Company directors will also need guidance on their legal duties as such – most of these duties have recently been brought together and set out in the Companies Act 2006. One duty which will be particularly important is the duty of all company directors to act in the way most likely to promote the success of the company for the benefit of its members as a whole. This means that directors of the company will have to base decisions on the best interests

of all National Parks, not just their own. Guidance will also be needed on the application of the members' code of conduct to activities undertaken as a company director.

13. Finally from a legal point of view, 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.

RECOMMENDATION

That the Authority:

1. Notes and endorses the proposals to incorporate the English National Park Authorities' Association as a 'not for profit company limited by guarantee', and decides in principle that the Yorkshire Dales National Park Authority should be a member of the company.
2. Authorises the Chairman and Chief Executive to approve the detailed memorandum and articles of association and any Members' Agreement.
3. Formally appoints the Chairman of the YDNPA to become a non-executive director of the newly formed company.

David Butterworth
Chief Executive

Richard Daly
Solicitor & Monitoring Officer

7 November 2007

Background documents:

Report by Ward Hadaway entitled: 'Report and options appraisal relating to the proposed incorporation of ENPAA' – September 2007