

NEW FOREST NATIONAL PARK AUTHORITY

AUTHORITY MEETING – 18 OCTOBER 2007

INCORPORATION OF THE ENGLISH NATIONAL PARK AUTHORITIES ASSOCIATION

Report by: Lindsay Cornish, Chief Executive, Kevin Gardner, Solicitor and Monitoring Officer

Summary:

This report is about a change in the legal status of the English National Park Authorities Association and the Authority's future relationship with the organisation. Specifically it seeks Authority agreement in principle to continue its membership with the newly incorporated organisation and approval for the Chairman to become a Director.

Short background is provided, together with relevant documents.

Recommendations:

- 1. To agree in principle to the Authority continuing its membership of the English National Park Authorities Association, following incorporation.**
- 2. To delegate authority to the Chief Executive in consultation with the Chairman to agree the final terms of incorporation.**
- 3. To approve the appointment of the Chairman as a Director of an incorporated English National Park Authorities Association.**

Resources and Corporate Plan:

None

Papers:

NFNPA 210/07	Cover paper
NFNPA 210/07	Annex 1 – English Constitution
NFNPA 210/07	Annex 2 – Checklist for seeking incorporation

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1. Background

- 1.1 In 2005 the English national park authorities decided to set up an organisation to represent their interests alone, in parallel with changes being made to the remit of the UK Association of National Park Authorities (ANPA). This change reflected a number of concerns but principally, in the wake of devolution, the need for country organisations to represent their interests to their national administrations.
- 1.2 The English National Park Authorities Association (ENPAA) was established in April 2005. Membership comprises the nine English national park authorities and the constitution at **Annex 1** sets out the organisation's rights and responsibilities. The purposes of the Association, drawn from the constitution are:
- (a) to protect, promote and support national park authorities in England
 - (b) to represent whenever possible by consensus the interests of the English national park authorities to national, local and where appropriate regional government, to Parliament and its members, to European and other international institutions and other bodies and to negotiate where appropriate
 - (c) to provide a forum for the discussion of matters of common concern to member authorities
 - (d) to formulate joint views of the member authorities and to express them as necessary to government both national and regional and to other bodies

- (e) to promote the authorities' policies and to provide information on national park issues to the public and other bodies and organisations
 - (f) wherever possible and appropriate to work together with other bodies and agencies having a like interest
 - (g) to work closely with both the Welsh Association of National Park Authorities (WANPA) and the Association of National Park Authorities ANPA (UK) and Scottish and Northern Irish National Park Authorities whenever it is possible to secure economy of resources and to achieve mutual objectives in the interests of all UK National Park Authorities.
- 1.3 Like the Authority, the Association's first year was rather dominated by procedural issues. In its second year, the organisation has shown itself to be very effective in raising the profile of the English national park authorities with government, providing much needed co-ordination on central consultations and initiatives, providing an effective lobby when needed, and producing some useful 'position statements' on key issues for national parks.
- 1.4 The Association is currently an unincorporated membership association which acts like a trade association. Each national park pays the same membership fee - £15,700 in 2007. Since establishment it has become clear however that the organisation's legal status needed to be reviewed and, with the agreement of the national park Chairmen, detailed work was undertaken to examine options for putting the Association's legal status onto a sound legal footing.
- 1.5 This work led to the conclusion, endorsed in principle by Chairmen in September 2007, that the Association should be incorporated as a Not for Profit Company Limited by Guarantee. The 'Checklist' (which forms the basis for the preparation of the relevant legal documents) attached at **Annex 2** sets out the basis on which the incorporated body would operate.

2. Implications of incorporation

- 2.1 The change of legal status does not affect the remit of the organisation, nor the principles which guide the way it operates e.g. by consensus wherever possible. The Articles of Association also provide for a member to resign, giving advance notice, if it is dissatisfied with the benefits of membership, or for any other reasons. The annual membership fee will be decided as part of an annually reviewed three year budget setting exercise timed to enable national park authorities to include the fee in their own budgets and financial strategies.

- 2.2 Given the benefits arising from membership, the unchanging nature of the organisation's objectives and the safeguard of resignation should the need arise, membership of the incorporated Association is recommended.
- 2.3 A special meeting of the Association will be held in late November to approve incorporation. Prior to that national park officers will work with the Association's legal advisors to finalise the detailed provisions, based on the 'Checklist' at **Annex 2**.
- 2.4 Under the proposed Articles of Association, the Chairman of the Authority would become a Director of the Association and would assume the normal duties and responsibilities deriving from company law and common-law decisions. It is therefore necessary for the Authority to agree to the Chairman taking on this role. The Chairman's personal liability while acting as a Director of the Association would be covered by the Authority's indemnity scheme but we will be recommending that the Association also takes appropriate insurance cover.

Recommendations

1. **To agree in principle to the Authority continuing its membership of the English National Park Authorities Association, following incorporation.**
2. **To delegate authority to the Chief Executive in consultation with the Chairman to agree the final terms of incorporation.**
3. **To approve the appointment of the Chairman as a Director of an incorporated English National Park Authorities Association.**

ENGLISH NATIONAL PARK AUTHORITIES ASSOCIATION CONSTITUTION

Preamble

This constitution has been drawn up to further the work of the English National Park Authorities and the Broads Authority (the Authorities). This has been done with the full knowledge and cooperation of colleagues in the Welsh National Park Authorities. Although separate, it is intended to sit alongside a constitution for UK level arrangements, which the Authorities have agreed to support.

The Authorities remain freestanding and independent as Parliament has determined. Decision making under the constitution will need to take into account this fact and the need for individual Authorities to protect their own interests, particularly regarding financial and legal matters. The intention is to operate consensually wherever possible and to recognise that there will always be some issues where agreement is not possible and joint action cannot therefore be undertaken. It is also anticipated that there will be many occasions when there is not unanimity but when a minority of Authorities willingly accept the wishes of the majority and agree, although it would not be their preferred option, that a common policy or operation may be pursued in the interests of joint working and public service.

The Constitution

THIS ARRANGEMENT is made on the thirteenth day of April 2005 between the Broads Authority, the Dartmoor National Park Authority, the Exmoor National Park Authority, the Lake District National Park Authority, the Northumberland National Park Authority, the Yorkshire Dales National Park Authority, the North York Moors National Park Authority and the Peak District National Park Authority ("the Authorities"), to come into effect on the first day of April 2006.

1. This arrangement is made pursuant of s.65(5) of the Environment Act, 1995, s.143 of the Local Government Act, 1972, s.2 (7) of the Norfolk and Suffolk Broads Act 1998 and all other powers enabling the Authorities to work together in the common interest of them all in relation to national park purposes.
2. The Authorities agree that at the appropriate time the emerging new National Park Authorities in England namely the New Forest National Park Authority and the South Downs National Park Authority will be entitled to become members of this arrangement.

3. Executive Committee

The Authorities agree that their affairs under this arrangement shall be managed by an Executive Committee made up of the Chair of each of the Authorities. Only substitutes who are Members of the Authority concerned are acceptable. The Executive Committee shall delegate such matters as it deems fit to a group made up of the National Park Officers/Chief Executive Officers of the Authorities to be known as the English National Park Officers Group "(ENPOG)". Each Authority shall make an annual subscription for each year commencing on 1 April at a rate to be determined by the Executive Committee. The objectives and functions of the Executive and its working arrangements shall be as set out below.

4. Objectives of this Arrangement

The principal objectives of this arrangement are to promote and further the interests of the Authorities. To this end the Executive Committee shall establish an Association to be known as the English National Park Authorities Association

(ENPAA) to exercise under the direction of the Executive Committee the following functions:

- a. to protect, promote and support National Park Authorities in England
- b. to represent whenever possible by consensus the interests of the English National Park Authorities to national, local and where appropriate regional Government, to Parliament and its members, to European and other international institutions and other bodies and to negotiate where appropriate
- c. to provide a forum for the discussion of matters of common concern to member authorities
- d. to formulate joint views of the member authorities and to express them as necessary to Government both national and regional and to other bodies
- e. to promote the Authorities' policies and to provide information on National Park issues to the public and other bodies and organisations
- f. wherever possible and appropriate to work together with other bodies and agencies having a like interest
- g. to work closely with both the Welsh Association of National Park Authorities (WANPA) and the Association of National Park Authorities ANPA (UK) and Scottish and Northern Irish National Park Authorities whenever it is possible to secure economy of resources and to achieve mutual objectives in the interests of all UK National Park Authorities
- h. to undertake such further work which facilitates or is conducive or incidental to the accomplishment of National Park purposes as the Executive Committee shall determine.

5. Functions

The Executive Committee shall:

- (a) manage this arrangement on behalf of the Authorities in such manner as it thinks fit
- (b) be responsible for the work of ENPAA including the approval of a business plan and all financial and personnel matters
- (c) appoint such sub-committees and other subordinate bodies as it deems necessary for such general and special purposes and with such membership powers and terms of reference as it may from time to time determine. It may delegate to such sub-committee or other body such functions as it considers appropriate. A sub-committee may with the consent of the Executive Committee co-opt such members or officers of member National Park Authorities who in their opinion may make a valuable contribution to its deliberations, provided that those co-opted shall not exceed (three) in total on any one sub-committee at any time and the sub-committee shall not co-opt more than one member from an individual National Park Authority
- (d) be advised by the lead English National Park Officer appointed by ENPAA, and the English National Park Officers Group whose Members will have a right to attend Executive Committee meetings and which is mandated to submit such papers and reports as it considers necessary for the efficient running of corporate business.

6. Chair and Deputy-Chair

- (a) The Chair and Deputy-Chair shall be elected at the Annual meeting of the Executive Committee. The Chair and Deputy-Chair may stand for re-election but shall not normally hold office for more than 3 years consecutively. The Chair of the Executive Committee shall be Chair of ENPAA.
- (b) Where both the Chair and Deputy-Chair are absent from a meeting the Chair for the meeting shall be appointed by members present.

7. Meetings and Special Meetings

- (a) There shall be an Annual Meeting of the Executive Committee in the months of September or October on such day as the Executive Committee shall determine, and for which 21 calendar days written notice shall be given.
- (b) Ordinary meetings of the Executive Committee (including AGM) shall normally be held four times in a year.
- (c) The Annual Meeting of the Association and meetings of the Executive Committee shall be held at such location as the Executive Committee may determine.
- (d) Additional meetings of the Executive Committee or its sub committees may be convened by the appropriate Chairman or shall be convened by him/her on receipt of a petition signed by not less than one third of the Members of the Executive Committee or the relevant sub committee. Where it is impractical, for any reason to convene a special meeting of the Executive Committee or any sub committee to consider a matter of an urgent nature, the Chairman in consultation with the lead English NPO, shall exercise the powers of the Executive Committee and shall report his/her actions to the Members of the Executive Committee within 7 working days.
- (e) The business to be conducted at any Executive Committee meeting shall be set out in the Agenda for the meeting, which shall be issued by the lead English NPO after consultation with the Chairman not later than seven days before the date of the meeting. The Chairman shall have authority to admit any business of an urgent nature not included in the Agenda.
- (f) The quorum for meetings for the Executive Committee shall be five, and for sub committees one half of the membership of the sub committee concerned.
- (g) The Executive Committee may invite such other persons to attend their meetings as they think fit. Only Executive Committee members or their substitutes shall be entitled to vote.
- (h) Voting rights are dependent on payment of subscriptions as outlined in this constitution.

8. English National Park Officers Group (ENPOG)

- (a) The English National Park Officers Group shall be comprised of the NPOs (CEOs) of each of the member Authorities of ENPAA. Substitutes will be permitted. Other individuals may be invited to attend on a non-voting basis.

- (b) The role of ENPOG shall be to:
 - i) advise the Executive
 - ii) take forward issues delegated to it by the Executive.
 - iii) implement the agreed Business Plan for England after its approval by the Executive Committee and
 - iv) take operational decisions in pursuit of joint working in accordance with policy decided by the Executive .
- (c) ENPOG shall agree from among its Members a lead NPO for a period to be determined by the group.

9. Staff

- (a) The Executive Committee may employ such staff as it may from time to time deem appropriate including a lead ENPAA Officer. The Executive Committee shall have ultimate authority over all the staff; day to day control shall be the responsibility of the lead English NPO through whom all instructions to staff shall be given, and by whom delegation of duties shall be implemented.
- (b) The Executive Committee may appoint special advisers from among the NPAs from time to time, including a Financial/Human Resources Advisor and/or Treasurer who may provide it with financial services or Human Resources advice. The expenses of such Advisers will normally be borne by the National Park by which they are employed but the Association may contribute to the cost of assistance to the Association Officers and/or Financial Adviser/Human Resources Adviser in addition to such staff as it may itself employ from time to time.
- (c) The Association will maintain a staff management programme which will include protocols for appointment, staff appraisals, superannuation and grievances for all staff. The lead ENPAA Officer will be responsible for staff appraisals. His/her appraisal will be undertaken by the ENPAA Chair following input from Chairs and National Park Officers/Chief Executive Officers.

10. Finance and Accounts

- (a) The financial year of this arrangement shall run from 1 April to 31 March in the following year.
- (b) The membership subscriptions shall be payable in one instalment on 1 April. The amount of that subscription shall be determined by the Executive Committee no later than 31 December preceding the financial year in question.
- (c) The lead ENPAA Officer shall be responsible for the proper application of the Association's resources in accordance with overall policy determined by the Executive Committee.
- (d) The Financial Adviser or Treasurer shall provide for the preparation of an annual Income and Expenditure Account and Balance Sheet which shall be presented to the Executive Committee, and approved at that Committee's annual meeting.
- (e) Subscriptions shall be paid within 28 days of the due date; Where subscriptions are not paid by the due date Membership will lapse following

the conclusion of the next full Executive Meeting unless a decision to the contrary is taken at that meeting.

11. Resignation of Member Authorities

Any Authority wishing to terminate its membership of this arrangement shall give not less than 12 months notice in writing to the Chairman of the ANPA (England) to expire on 31 March in the following year. Any authority upon ceasing to be a member of this arrangement shall forfeit all right to and claim to any property and funds and shall pay such amount representing the authority's share of responsibility towards liabilities incurred by the Association on behalf of the Authorities including the employment and superannuation of staff during the currency of the authority's membership.

12. Dissolution

- (a) A motion for the dissolution of this arrangement must be passed by at least two-thirds of member authorities present with at least two-thirds represented at the meeting of the Association. No action will be taken to pursue such a resolution until a period of two months has elapsed whereupon action will be taken to realise the property of the Association and make arrangements whereby the member authorities shall discharge the Association's net liabilities including the liability for the payment of compensation to staff on terms no less favourable than would be required to be paid to serving local government officers. All authorities in membership at the time of the vote to dissolve shall comply with such arrangements.
- (b) On the completion of such arrangements the remaining assets of the Association (if any) shall be distributed equally to member authorities in membership at the time of dissolution. The Association shall thereupon be dissolved.
- (c) In the event that the Association's property should prove to be insufficient to discharge its liabilities member authorities shall contribute in equal amounts such additional sum as is required to eliminate the deficiency.
- (d) In the event of a dispute between member authorities as to the amount which an authority should contribute or receive the matter shall be referred to arbitration. The Arbitrator shall be appointed by agreement of a majority of member authorities or in default of such agreement by the President for the time being of the Law Society. The Arbitration shall be conducted in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators and the Arbitrator shall be asked to determine the extent to which an authority or authorities should contribute and to determine the matter in accordance with what is fair in all the circumstances. In the event that the Arbitrator issues a determination providing that a member authority is liable to contribute a specified sum the authority shall pay such sum within 14 days of the issue of the award.

13. Alteration of this Agreement

The Executive Committee shall have power to alter this arrangement provided a motion in favour of each alteration shall be passed by at least two-thirds of member authorities present with at least two-thirds of authorities represented at the meeting.

(To be signed by all participating Authorities.)

Checklist – English National Park Authorities Association

Seeking Incorporated Status

General

The following points and issues will require discussion and agreement by the existing NPA members of ENPAA (referred to in the remainder of this checklist as "the NPAs") to enable a draft constitution for the incorporated vehicle to be prepared. The points are raised on the basis of the assumption that the incorporated vehicle will be a not for profit company limited by guarantee but not a charity.

We understand that the new incorporated vehicle is to be called "The English National Park Authorities Association". This name is currently available at Companies House but can only be reserved by setting up a company with that name.

A company limited by guarantee has two statutory constitutional documents. The first is its memorandum of association. This states the company's objects and the powers available to the company which it may use to fulfil its objects and is analogous to the objects and functions contained in the existing ENPAA constitution (referred to in the remainder of this checklist as "the Constitution"). The second document is the articles of association. The articles specify the internal structure of the organisation and how the organisation will be regulated and managed.

We have been provided with various decision documents by ENPAA which, together with the Constitution, we will use as a starting point to enable us to prepare the necessary draft constitutional documents. Accordingly, this checklist has been prepared to set out our understanding of the main issues of the proposed constitution of the incorporated vehicle but does not detail those issues otherwise addressed in documentation supplied by ENPAA.

We understand that the company is to be incorporated as a not for profit company. Accordingly, and as further explained in our Report on Incorporation as previously submitted to ENPAA (referred to in the remainder of this checklist as "the Report"), if the company makes any profits in a year, such profits must be used solely for furthering the objects and business of the company and cannot (save for services rendered) be submitted to the members.

Memorandum of Association

1. The memorandum must include a clause which sets out what the company's objects are to be. This must be sufficiently wide as to enable the company to operate effectively. The powers of the company can only be exercised in the furtherance of the objects, and accordingly it is necessary to ensure that the content of the objects are sufficient so as not to fetter the activities of the company.

We would propose that the company's objects reflect those detailed in the Constitution as closely as possible. Accordingly, we will prepare appropriate wording for consideration and approval by the NPAs based upon the existing

objects and functions set out in the Constitution together with other powers which are appropriate to organisations of this type (based upon our experience in advising such organisations) where such powers are not to be otherwise dealt with in the Constitution.

2. The members of a company limited by guarantee give a promise that they will make a limited contribution to the assets of the company in the event that it is wound up and there are insufficient funds to satisfy all the company's creditors. We would suggest that the guarantee is limited to the nominal sum of £1.00 per NPA.
3. The memorandum must be signed by the first members of the company. We understand that all existing NPAs are to be the first members for the purpose of setting up the company and accordingly each NPA will (via their authorised representatives) be required to sign the memorandum.

Articles of Association

We understand that the voting mechanisms referred to in the Constitution are to be adopted by the company so far as possible. Some decisions must (under company law) be referred to the NPAs (and will be reflected in the articles) whilst the general day-to-day management of the company will be vested in the board of directors who are able to take decisions in respect of the company as they see fit.

We shall suggest appropriate wording to deal with the manner in which decisions are to be taken by the NPAs (as members of the company) and by the Chairs of the NPAs (as directors of the company). This may include the preparation of a separate members agreement if necessary in order to govern the way in which decisions are made which are not subject to the voting requirements of the Companies Acts referred to above but which are reflected in the Constitution.

4. Membership Structure

- 4.1. As above, we understand that all of the existing NPA members are to be the members of the company and that NPA status will be the primary criteria for eligibility for membership. We shall prepare appropriate provisions to reflect this but which also enable new NPAs (if any) to become members at a later date if necessary.
- 4.2. We understand that continued membership of the company (together with the entitlement to vote on the decisions of the company) is to be dependent upon payment of annual subscriptions and compliance with membership conditions and/or bye laws issued by the Chairs of the NPAs (in their capacity as directors of the company). This will reflect the applicable provisions of the Constitution.
- 4.3. We understand that the provisions set out in the Constitution in relation to the cessation by an NPA of membership of the company are to be replicated in the articles. Accordingly, any NPA proposing to resign from the company must give not less than 12 months notice expiring at the end of the financial year of the company.

4.4. We understand that the provisions set out in the Constitution in relation to the quorum for meetings of the NPAs (in their capacity as members of the company) are to be replicated in the articles. Accordingly, the quorum for meetings of the NPAs will be five NPAs.

5. Board of directors

5.1. If company law is to apply without amendment, the directors of the company will be appointed by the members by a simple majority vote. It is, however, possible to give named organisations the right to appoint a specified number of directors.

Accordingly, we understand that each NPA will be entitled to appoint one director. Further, we understand that each NPA Chair shall act as a director.

We will need the following information in respect of each Chair who is to act as a director of the company:

- (i) full name and residential address;
- (ii) date of birth;
- (iii) nationality;
- (iv) business occupation; and
- (v) the names of any other companies of which that individual is currently a director or has been a director in the last 5 years.

Each Chair will also be required to sign a form to be submitted at Companies House detailing the above information together with confirmation that they are prepared to act as directors of the Company.

5.2. We understand that the provisions set out in the Constitution in relation to the quorum for meetings of the Chairs of the NPAs (in their capacity as directors of the company) are to be replicated in the articles. Accordingly, the quorum for meetings of the directors of the company will be five NPAs.

5.3. We understand that, in order to provide for maximum flexibility, each director is to have the power to be able to appoint either the Deputy Chair or Chief Executive of the NPA to act as their alternate if they cannot attend a board meeting.

5.4. We understand that the provisions in the Constitution in relation to the right for the board of directors to invite observers to attend meetings are to be reflected in the articles.

5.5. We understand that each director is entitled to remain in that post for so long as he/she remains a chair of the applicable NPA. This would

seem appropriate in the light of the current structure of ENPAA and accordingly we would propose to draft the documents on this basis.

- 5.6. We understand that the provisions in the Constitution in relation to the ability to form sub-committees and delegate matters to such sub-committee are to be reflected in the articles. This will permit the continuation of the role of ENPOG in respect of the company and will also enable other appropriate sub-committees to be formed.
- 5.7. We understand that the provisions in the Constitution in relation to the appointment of a chair are to be reflected in the articles.
- 5.8. We understand that the provisions in the Constitution in relation to the frequency with which meetings of the board are to take place are to be reflected in the articles.

6. Sectoral Representation

We understand that (to provide flexibility) the articles are to permit organisations or sectors (which are not directly represented on the board of directors) to have some indirect involvement in the organisation. We would propose that this be dealt with by the inclusion of a power in the articles to permit the directors to issue standing orders from time to time in respect of the same.

7. Dissolution of the company

As referred to in the Report, it is usual (in respect of not for profit companies) to have a clause stating that if the company is dissolved, any assets in the company will be given to another organisation with similar objects and, if none can be found, to a charity. We would suggest that the choice of organisation be made by the NPAs in such circumstances. Alternatively, it is possible that the NPAs could be viewed as having similar objects to the new company, in which case such assets could be returned to the NPAs. However, such assets could only be used by the member NPAs in the furtherance of their objects.