

National Park Partnerships
Report by Chief Executive

Summary: This report provides an update to Members on the progress made by the fourteen National Park Authorities and the Broads Authority in establishing a joint venture for the purpose of engaging with the private sector and gaining commercial sponsorship.

Recommendations:

- (i) To endorse the Limited Liability Partnership structure now proposed for National Park Partnerships and the Broads Authority's membership of it.
- (ii) To authorise the Chief Executive, in consultation with the Authority's Chair, to take all such incidental and consequential steps as are reasonably necessary to implement this decision including entering into any agreements and signing any legal documentation to give effect to this decision.
- (iii) To delegate to the Chief Executive, in consultation with the Authority's Chair, the taking of any decisions on behalf of the Authority in the running of National Park Partnerships, bringing back regular reports to the Authority as necessary.

1 Introduction

- 1.1 At its meeting on 23 January 2015 the Authority endorsed the establishment of a new Company Limited by Guarantee (CLG), 'National Park Partnerships Limited' to oversee the development of commercial sponsorship on behalf of the National Park Authorities and the Broads Authority in the UK and approved an initial investment of £10,000.
- 1.2 This matter was last considered by the Financial Scrutiny and Audit Committee on 7 July 2015. At that time a Board had been appointed including Sir Peter Dixon from the Broads Authority. The first meeting of the Board had taken place and tax advice was being sought on the appropriate structure for new body.

2 Company Structure

- 2.1 The tax advice received indicated that a Limited Liability Partnership (LLP) would be more tax efficient than a Company Limited by Guarantee (CLG). One of the key differences is that a CLG would be liable to pay Corporation Tax. The main differences between the two models are summarised below.

2.1.1 **Company Limited Guarantee**

- Members 'own' the company but have limited involvement in its management
- Members can pass resolutions to change the Articles of Association
- Members are protected by the limited liability status of the company
- Members can enter into a Members' Agreement which supplements and provides additional detail on process and procedures to the company's governing document, the Articles of Association. This is not always necessary for some companies which simply rely on the basic provisions set out in the Articles of Association
- Directors manage and control the company
- Directors can be appointed by the Members (which is a means of the Members exerting some influence on the governance structure). The appointment process can be set out in the Articles or a separate policy
- Directors have statutory duties under company law including to act in the best interests of the company, to avoid conflicts of interest, to promote the success of the company and to act within their powers as well as being subject to company law generally
- The board of directors should contain a balance of skills and experience for start-up enterprises, this is particularly important as independent directors and their skills can be particularly useful
- Directors are not generally personally liable unless they act outside their remit
- Directors may have service agreements so would also have contractual obligations

2.1.2 **Limited Liability Partnership**

- Members, more commonly called the partners, control the organisation. In other words the Broads Authority would be a formal member of the partnership with a formal role in day to day decision making, although we would not necessarily have a seat on the board
- Members have limited liability and generally do not need to meet the liabilities of the LLP
- It is necessary to have at least two members
- There must be two 'designated members' who have slightly enhanced roles compared to the 'ordinary members'
- Members enter into a Partnership Agreement which sets out the rules and regulations for the LLP. This can be varied by the Members
- The Members may or may not appoint a management board. The terms of appointment and terms of reference are set by the Members

2.2 My understanding is that there is not a significant difference in the legal liabilities or structures of an LLP as opposed to a CLG. The main difference relates to obligations placed on the management board (being non statutory in the case of the LLP) and the role of the company members. An LLP model would enable the Authorities to be more involved in the running of the LLP, and, for example to make a decision as to the appointment of a management

board. The tax status is an important factor and the LLP model will remove any future liability to pay corporation tax. There is a specific provision that the LLP cannot pass any losses on to the members.

- 2.3 The Chairs and Chief Executives of the Park Authorities are keen that the Board should be able to get on with its business and for that reason all the day to day decisions, except for matters such as the signing of the accounts are delegated to the Board. All the park authorities are members of the LLP and to avoid burdening everyone with this formal stuff it is proposed that the park authorities with individuals on the Board should be 'designated members'. That would include the Broads Authority. The intention is to share the NPP plan with everyone shortly and the proposition is for a six-monthly reporting cycle.
- 2.4 The primary purpose of this activity is that it is calculated to facilitate the promotion of opportunities for the understanding and enjoyment of the special qualities of the National Parks by the public and therefore falls within the Broads Authority's general powers (Norfolk and Suffolk Broads Act 1988 S2 (7)).

3 Risks

- 3.1 The following risks have been identified and considered in the drafting of this report:
- 3.1.1 **Reputation** - Failure to be involved may result in lost opportunities to promote the Broads, as well as to receive potential income from sponsorship deals. Any risk to the Authority's reputation due to its involvement with the company, for example, the risk that state aid rules might be breached, can be mitigated by appropriate action being taken by the Authority. Further, the Broads Authority would not be immune from criticism arising from the actions of the company even if we did not sign up, as public perception would be that this is an action by all National Parks whether we are part of the company or not.
- 3.1.2 **Resources** - The current financial liability of the Authority is limited to the £10,000 already contributed to support the establishment of the LLP.
- 3.1.3 **Challenge to powers** – Any new vehicle of this kind raises the possibilities of legal challenge. This could, for instance, be on the basis that the vehicle addresses National Park purposes collectively, rather than promoting the particular special qualities of the Broads. This risk has, however, been mitigated by the inclusion of the nationalparks.gov.uk website address, in the promotion of the product. The website address has links to the fifteen authorities' websites and, hence, a link to the relevant information about the Broads' special qualities.
- 3.1.4 Consideration will need to be given to how the financial relationship between National Parks Partnerships Limited and the Broads Authority, and any commercial sponsors, will operate to ensure that any future transactions do not breach the State Aid rules. There are discussions between the fifteen

Authorities regarding licensing arrangements of the “Britain’s Breathing Spaces” brand to National Parks Partnerships limited. Care needs to be taken to ensure that the financial transactions involved are solely commercial so as not to constitute unlawful state aid.

- 3.2 The Broads Authority has relied on the legal and financial advice sought on behalf of the UK’s 15 National Parks rather than seeking independent advice on these specialist matters.

4 Conclusions

- 4.1 This initiative continues to look like a significant opportunity for the Broads, both in terms of raising the profile of the area and gaining resources for the private sector, to support the delivery of the Authority’s three purposes. My understanding is that the Board is making good progress in establishing links with some of the UK’s major companies and Sir Peter Dixon, as a Member of the Board, may be in a position to provide more information at the meeting.

Background papers: None

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Broads Plan Objectives: None

Appendices: None