

## **Item 5. Conservation Board update**

### **1. Summary**

This paper sets out some considerations relevant to the current position with the Conservation Board proposal.

### **2. Background**

Current issues may be summarised as follows:

Seeing through the Conservation Board request. An update on brief informal conversations with Defra at the NAAONB event in London on 23<sup>rd</sup> November has been circulated by email. The decision process by Defra is taking longer than hoped, but this is definitely still the best future governance model if it can be secured. The financial deal agreed with Shropshire Council will need reconfirming going into 2018-19, since the scenario on which it was based has not fully materialised.

If Defra agree to create a Conservation Board. A risk factor to consider in this scenario is that there may be considerable delays, or they may even prove ultimately unable to deliver it even if the will is there.

If Defra say no, what is the least worst alternative? Through what process do we reach a decision on this and how much time should be given to this? Might a short term workable solution be improved by something better in the longer term?

The current agreement in principle with Shropshire Council (and supported by the AONB Partnership in April 2016) is to go independent in some form - the firm preference for Conservation Board came later, in June. Therefore if we want to do something different from going independent, we will need to change this agreement/resolution properly and involve the Partnership in that decision.

The other options are still basically as set out in the Business Case to Defra (italic commentary below is also extracted from the Business Case):

#### **i. Retain hosting arrangement with Shropshire Council**

*Remaining within Council hosting would mean all these risks and real impacts continuing, and the creation of a permanent independent body is the only option which actually solves this problem.*

#### **ii. Creation of an independent body for the AONB using a 'generic' model in the form of a Trust, charity or company**

*This model is untested in England and Wales under the CROW Act legislation and on detailed consideration appears problematic. An independent body in one of these forms would be in a vulnerable and potentially weak position due to the retention by the local authorities of the statutory duty for the AONB, in which the independent body would have no direct role.*

#### **iii. Transfer hosting to a different organisation**

Not really viable in our case.

The risks and uncertainties associated with option ii, a different form of independent body, seem to make this a non-viable option. It is very likely that negotiating some form of renewed and more secure hosting arrangement with the Council represents the next best option to a Conservation Board. It should be possible to apply some of the considerable work we have done

in the last two years on ideal or improved governance structures, to make a new hosting arrangement better. We should probably go back to first principles as in the Business Case, and adapt the 'outcome requirements' we defined, to the hosted rather than independent scenario. These were:

- The structure should provide a secure, long term vehicle for delivery of AONB functions, including employment of the staff team.
- The new structure needs to be efficient and cost effective operationally, and have a good ability to fund-raise from a wide variety of sources. Ideally the new structure needs to be capable of borrowing to meet short term cash flow shortfalls.
- The structure must be capable of receiving the AONB funding from Defra (or its successor if Government departments change) and to be directly accountable to Defra for it.
- The structure should be relatively simple to understand. Alongside strong branding, the structure will aid the organisation in public understanding of the AONB, which is quite a significant issue, and will also enhance fundraising ability.
- The structure should be able to attract and involve a high calibre of board members/trustees with relevant skills as well as time and willingness to take on responsibility. These people need to be appointed through robust processes, which provide the skills needed but also provide checks and balances against possible personal interests or dominance of a small number of individuals.
- The structure must provide links to the two local authorities, but also be seen to be independent from them. The relationship between the organisation and the local authorities' legal duty for the AONB Management Plan needs to be clear, and to not expose the independent organisation to undue risk.
- The structure needs to be able to champion the interests of the AONB, including in responding to planning consultations (both policy and applications).
- The structure needs to support engagement, collaboration, learning, sharing knowledge etc. with the national AONB family.

Some of these do not apply to the hosted scenario. Those that do are shown underlined. Additional points applicable to a new hosting arrangement might be:

- The structure should connect to the Council's statutory duties for the AONB and help to engage relevant departments, officers and members in active support of AONB functions. The Council must be able to protect its interests and manage any risks associated with its essential and valued contractual roles as accountable body, but it should not act as a unilateral decision maker on operational matters.
- The structure should also recognise the multi-stakeholder nature of AONB work and its highly developed partnership working, by providing representation of non-Council interests on a decision-making Board with greater authority than the previous Management Board. This would help to provide the checks and balances required by good governance, and also allow drawing on the pool of highly skilled and motivated volunteers which is available. If taking on greater responsibility, robust appointment procedures, along with clear roles and responsibilities and codes of conduct etc for these non LA Board members will be essential to ensure accountability. The ultimate legal responsibilities of both the Board and host authority would need to be clear.
- The financial reserves accumulated are now substantial and it is essential that agreements are absolutely secure that these are for the AONB structure and its delivery, and not for other use by the Council. On the positive side, the reserves do lower the risk considerably

to the Council from hosting, and already enable the AONB team to operate as a more or less financially independent unit within the Council structure.

- Ongoing core funding by the Councils is essential.

Some research has been done on some potential mechanisms for an alternative option:

Public Service Mutuals – these are where a group of employees wish to take on great responsibility and autonomy for delivering a service, usually outside a local authority. With the statutory basis of the AONB and its multiple stakeholders, this does not appear to fit well. A mutual is in any case not a 'legal form' and requires to operate through e.g. a charity, trust or company. It is therefore really just a variation of option ii, an independent body.

Local authority 'controlled' or 'influenced' companies – in some ways this is a form of hybrid between options i and ii above, i.e. independent but strongly linked to the Council. The examples of these usually described are for services seeking to become more commercial, and appear to have little in common with the AONB scenario. It is perhaps possible however that this option could provide a combination of greater autonomy from the Council, while retaining strong links to it, the ability to involve non local authority members in formal governance structures, the ability to hold and use financial reserves. There are some very specific criteria that determine whether a structure is a controlled or influenced company, and regulations which apply in consequence, with a complex set of pros and cons. The National Association for AONBs was an LA controlled company before it changed to become a charitable company. There may be lessons from this, though it must be borne in mind that the NAAONB has a different function to an AONB unit, i.e. as an umbrella advocacy body, and not delivering statutory AONB functions.

Local authority Joint Committees or Area Committees - can take responsibility for a specific function (jointly where also involving another local authority). This can provide a high profile for a function and an increased degree of ring-fencing within the Council, meaning for example that a single service manager within the authority would not have the ability to restructure the team. Such committees can have non local authority members, but under the current regulations these cannot be voting members. In the few AONBs which have Joint Committees this is a major limitation to partner involvement and arguably to balanced governance. It is conceivable that as a long term possibility, seeking to amend the regulations to enable committees created for AONB purposes to have voting non local authority members, may provide a new model nationally which some AONBs may find useful. A broader advisory committee such as a JAC may still be needed in addition, and the relationship between the two bodies would need to be clear.

Further information on these topics can be supplied on request.

A useful source is <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05950>.

### **3. RECOMMENDATION:**

**The Transition Board is recommended to comment on the issues raised, and to guide the Chair and AONB Partnership Manager regarding the direction and timing of actions to pursue.**

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