

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 09 MARCH 2005

EAST AYRSHIRE COALFIELD ENVIRONMENT INITIATIVE – UPDATE AND PROPOSAL FOR COMPANY LIMITED BY GUARANTEE

Report by Executive Director of Development and Property Services

1. PURPOSE OF REPORT

1.1 To update the Committee on the progress with the Coalfield Environmental Initiative, and to seek Committee approval for the transition from an unincorporated association to a Company Limited by Guarantee, with the intention to seek charitable status from the Inland Revenue.

2. BACKGROUND INFORMATION

2.1 The East Ayrshire Coalfield Environment Initiative was formally launched by East Ayrshire Council in September 2002 in partnership with Scottish Coal, Scottish Natural Heritage, RSPB and the Scottish Wildlife Trust. The overall aim of the Initiative is to improve the quality of the environment for those local communities in East Ayrshire that are, or have been, most affected by present or past coal mining activity.

2.2 A Project Officer for the Coalfield Environment Initiative was appointed in April 2002. The post was funded for an initial two year period from 2002-2004 by Scottish Coal, with additional support provided by RSPB and East Ayrshire Council. Scottish Coal has indicated their commitment to extend the period of the Initiative to at least 2006 as a means of seeking to ensure that projects already developed can be implemented and potential new projects identified.

2.3 The CEI Executive Board decided that the CEI should be more formally constituted and should also be registered as a charity. This course of action was agreed by the Development Services Committee on 10 March 2004.

3. COMPANY LIMITED BY GUARANTEE

3.1 The CEI Executive Board has recommended that the CEI should become a Company Limited by Guarantee to enable the initiative to be more effective in terms of being able to attract increased partnership funding for existing and potential future projects and become more accountable in terms of its activities in general.

3.2 Incorporated status also means that the directors are agents of the company and as such are not normally liable personally for any debts. The company will also have "limited liability" which means that its members are

normally only liable for the debts of the company to the extent which they have undertaken to guarantee them (usually a nominal amount like £5).

3.3 As a company it would be subject to company law, as well as to charity law, and there are certain duties that must be observed, such as the annual filing of accounts with the Register of Companies. The constitution of a charitable company must have a charitable purpose with all property of a charitable company being held for charitable purposes.

3.4 It is the intention to utilise the existing constitution of the CEI as a basis for the Memorandum of Association for the company limited by guarantee, with the exception of those elements relating to the financial management of the CEI by the Council's Finance Department. In relation to financial management the CEI Executive Board has decided that the company should make its own arrangements to administer all monies and prepare and audit the year end accounts to comply with the Companies Act & Inland Revenue regulations.

3.5 As the Inland Revenue has already agreed that the constitution of the CEI is suitable for registering as a charity, basing the company on the existing constitution should ensure acceptance of the company by the Inland Revenue as a registered charity. This will give the CEI greater potential to lever in partnership funding for its projects.

4. POLICY IMPLICATIONS

4.1 This Initiative is fully aligned with the Council's policies on restoration of the environment as contained in the award winning Opencast Coal Subject Plan and the environment generally as contained in the Ayrshire Local Biodiversity Action Plan and the Community Plan. The Initiative has the potential to add value to existing restoration plans by maximising the linkages between sites, creating a more diverse range of habitats and utilising habitats on land adjacent to opencast sites. The Initiative also has the potential to add to the attractions of the area to visitors and should become a conduit through which diversification could be promoted under the auspices of the Ayrshire Economic Forum.

4.2 The change to a Company Limited by Guarantee would mean the Initiative would operate in a more formalised way and would enable it to be more responsive to local issues in delivering environmental, educational, social and economic benefits to the coalfield area.

5. LEGAL IMPLICATIONS

5.1 Legal advice will be sought on the Memorandum and Articles of Association from the Solicitor to the Council, prior to its signing by the Council.

6. FINANCIAL IMPLICATIONS

6.1 Separate professional indemnity insurance will be required to cover the participation of Council Members and officers in the Initiative.

6.2 The Council's contribution in kind to the CEI will include the Chair of Development Services sitting as a Director of the new Company, and officers from the Planning & Building Control Division representing the Council on the project steering group.

7. RECOMMENDATION

7.1 It is recommended that the Committee :

- (i) note the progress made by the Coalfield Environmental Initiative,**
- (ii) agree to the Coalfield Environmental Initiative becoming a Company Limited by Guarantee and seeking charitable status, and**
- (iii) to the Chair of Development Services Committee sitting as a Director of the new company.**

James Lavery
Executive Director of Development and Property Services

25 February 2005
(CMcK/MMM)
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LIST OF BACKGROUND PAPERS

1. Draft Minute of Agreement for CEI – East Ayrshire Council, February 2004.
2. Report by Director of Development Services to Development Services Committee: 22 October 2002 – Consideration of Coalfield Environment Initiative Consultative Draft Strategic Plan 2002 – 2004.
3. Report by Director of Development Services to Development Services Committee: 10 March 2004 – Constitution for the East Ayrshire Coalfield Environment Initiative

Implementation Officer: Alan Neish