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**Report To: Environment and Regeneration Committee**      **Date: 30 August 2012**

**Report By: Corporate Director Environment,  
Regeneration and Resources**

**Report No:  
ECP/ENV/IM/12.137**

**Contact Officer: Robert Graham**

**Contact No: 01475  
714827**

**Subject: Flood Risk Management (Scotland) Act 2009  
Clyde and Loch Lomond Local Plan District  
Governance Arrangements - Minute of Agreement**

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## **1.0 PURPOSE**

1.1 The purpose of this report is to (1) seek Committee's approval of the Minute of Agreement in relation to governance arrangements for the Clyde and Loch Lomond Local Plan District and (2) request the Inverclyde Council to agree the appointment of a Member and a substitute Member to serve on the Joint Committee in accordance with the above Minute of Agreement.

## **2.0 SUMMARY**

2.1 The Clyde and Loch Lomond Local Plan District was formed under the provisions of Section 8 of the Flood Risk Management (Scotland) Act 2009.

2.2 Member Councils have a statutory obligation to co-operate with each other to prepare, review and report on the Local Flood Risk Management Plan for the Clyde and Loch Lomond Local Plan District.

2.3 The Lead Local Authority for the Clyde and Loch Lomond Local Plan district is Glasgow City Council as nominated by the Scottish Government and accepted by Member Councils.

2.4 Attachment 1 sets out the Minute of Agreement for the establishment of a Joint Committee and the governance arrangements of the Clyde and Loch Lomond Plan District.

## **3.0 RECOMMENDATIONS**

3.1 That Committee approve the Minute of Agreement for the establishment of a Joint Committee and the governance arrangements of the Clyde and Loch Lomond Plan District.

3.2 That Committee request the Inverclyde Council to agree the appointment of a Member and substitute Member to represent Inverclyde Council on the Clyde and Loch Lomond Plan District Joint Committee.

#### **4.0 BACKGROUND**

- 4.1 The Clyde and Loch Lomond Local Plan District was formed under the provisions of Section 8 of the Flood Risk Management (Scotland) Act 2009.
- 4.2 Member Councils have a statutory obligation to co-operate with each other to prepare, review and report on the Local Flood Risk Management Plan for the Clyde and Loch Lomond Local Plan District.
- 4.3 The Lead Local Authority for the Clyde and Loch Lomond Local Plan district is Glasgow City Council as nominated by the Scottish Government and accepted by Member Councils.

#### **5.0 PROPOSALS**

- 5.1 It is proposed to establish a Joint Committee consisting of 10 members, one from each member authority, to provide governance in relation to the aims and objectives of the Clyde and Loch Lomond Plan District in accordance with attachment 1.
- 5.2 That each Member Council shall pay their share as set out in Annex A of Attachment 1 of the whole expenditure and costs associated with the joint actions carried out in pursuant of this agreement.  
Expenditure is based on a pro rata basis as detailed in Annex A with an estimated overall contribution to the Project Management Office of £100,000. Inverclyde Council's contribution to this will be in the order of £7000.

#### **6.0 IMPLICATIONS**

- 6.1 It is essential that Inverclyde Council is represented on the Joint Committee given the importance of the subject matter and the need for the Council to be part of the decision making process in relation to future project funding for flooding.

#### **7.0 CONSULTATION**

- 7.1 The Chief Financial Officer has been consulted on this report.

##### Financial Implications –

Cost Centre	Budget Heading	Budget Year	Proposed spend this report	Virement from	Other comments
	Scottish Government Funding	2012/13	£7,000	n/a	Future funding subject to 5.2 above

- 7.2 The Head of Legal and Democratic Services has been consulted on this report.

## MINUTE OF AGREEMENT

among

Argyll and Bute Council, East  
Dunbartonshire Council, East  
Renfrewshire Council, Glasgow City  
Council, Inverclyde Council, North  
Lanarkshire Council, Renfrewshire  
Council, South Lanarkshire Council,  
Stirling Council and West  
Dunbartonshire Council all incorporated  
by the Local Government etc. (Scotland)  
Act 1994 (and all hereinafter referred to  
as “the Member Councils”).

### WHEREAS:

1. The Clyde and Loch Lomond Local Plan District formed under the provisions of Section 8 of the Flood Risk Management (Scotland) Act 2009 covers either in whole or part each Member Council's area.
2. The Member Councils have a statutory obligation to co-operate with each other to prepare, review and report on the Local Flood Risk Management Plan for the Clyde and Loch Lomond Local Plan District.
3. The Member Councils have agreed to appoint a Joint Committee for the purpose of representing them in carrying out the functions conferred upon them under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 and have each passed the necessary resolution for giving effect to this Agreement. Each Member Council has agreed to exhibit the relevant resolution to all the other Member Councils by 31 October 2012.
4. The Lead Local Authority for the Clyde and Loch Lomond Local Plan District is Glasgow City Council as nominated by the Scottish Government and accepted by the Member Councils.
5. The Member Councils have agreed to enter into this Agreement for their respective interests.

NOW THEREFORE it is hereby agreed and declared:-

1. **Interpretation**

1.1 Words importing the masculine gender only shall include the feminine gender and vice versa.

1.2 Words importing the singular number only shall include the plural number and vice versa.

## **2. Constitution of the Joint Committee**

### Constitution

2.1 The Member Councils hereby agree that the Joint Committee shall consist of ten members.

### Appointment of Members by the Member Councils

2.2.1 Each of the Member Councils shall appoint one member to the Joint Committee in accordance with the provisions of this Clause (such members are referred to herein as "Local Authority Members".)

2.2.2 Each of the Member Councils shall appoint a Local Authority Member before or at the meeting at which approval is given by that Member Council to this Agreement and such Local Authority Member shall, subject as hereinafter provided, continue in office until they are re-appointed or replaced by that Member Councils. Following an Ordinary Election, each of the Member Councils shall, as soon as practicable thereafter, appoint or re-appoint a Local Authority Member to the Joint Committee who shall hold office until they are re-appointed or replaced by that Member Council.

2.2.3 A Local Authority Member shall cease to be a member of the Joint Committee when he ceases to be a member of the Member Council which appointed him or on the appointment by that Member Council of another Local Authority Member in his place, whichever shall occur first.

### Appointment of Convener

2.3.1 Subject to the provisions of Clause 2.4.3 hereof, Glasgow City Council as the Lead Local Authority, will appoint the Convenor of the Joint Committee, who will continue in office until the first meeting of the Joint Committee which takes place after the First day of April in the second year following their appointment unless they cease to be a Local Authority Member in terms of Clause 2.2.3 above. Thereafter the Joint Committee shall elect biennially, on a simple majority basis, a Convenor from its Local Authority Members who shall continue in office until the first meeting of the Joint Committee which takes place after the First day of April in the second year following their election unless they cease to be a Local Authority Member in terms of Clause 2.2.3 above.

2.3.2 Subject to the provisions of Clause 2.4.2 hereof, the Joint Committee shall elect biennially a Vice-Convenor from its Local Authority Members who shall continue in office until the first meeting of the Joint Committee which takes place after the First day of April in the second year following their election unless they cease to be a Local Authority Member in terms of Clause 2.2.3 above.

#### Casual Vacancies

2.4.1 Where a casual vacancy occurs in the case of a Local Authority Member of the Joint Committee, the Member Council which appointed the Local Authority Member shall appoint a new Local Authority Member.

2.4.2 Where a vacancy occurs in the case of the Vice-Convenor, the Joint Committee shall appoint a new Vice-Convenor at the next or subsequent meeting of the Joint Committee, who shall continue in office until the previously anticipated expiry of the outgoing Vice-Convenor's term of office.

2.4.3 When a vacancy occurs in the office of Convenor, the Vice-Convenor shall assume the office of Convenor in succession to the previous Convenor and shall continue in office until the previously anticipated expiry of the outgoing Convenor's term of office.

#### Quorum

2.5 The quorum of the Joint Committee shall be five Local Authority Members provided that not less than five of the Member Councils are represented.

#### Procedures

2.6 The Joint Committee may adopt Standing Orders relating to proceedings at its meetings. Such Standing Orders shall be the subject of consultation with and the prior written approval of the Member Councils.

#### Clerk

2.7 The Joint Committee shall from time to time invite one of the Member Councils to appoint an appropriate officer (being an employee of that Member Council) to act as Clerk to the Joint Committee. The Clerk shall continue in office until their employers or the Joint Committee shall otherwise determine. The relevant employing Member Council's costs arising from the duties undertaken by the Clerk shall be reimbursed as provided for in Clause 6 hereof.

#### Meetings

2.8.1 The Joint Committee shall meet not less than twice during each calendar year. The Convener of the Joint Committee, in consultation with the after-mentioned Chair of the Senior Officers Group, shall fix the date, time and place of meetings, subject to any previous agreement by the Joint Committee.

2.8.2 Each Local Authority Member shall be permitted to be represented by another member of the same Member Council as that Local Authority Member at a meeting of the Joint Committee. The name of such nominated representative shall be notified to the Clerk to the Joint Committee in writing in advance of the meeting. The substitute member shall have the same powers as the principal representative.

### **3. Aims and Objectives of the Joint Committee**

3.1 The aims and objectives of the Joint Committee shall be as follows:-

- (a) To guide, monitor and keep under review the Local Flood Risk Management Plan for the Clyde and Loch Lomond Local Plan District on behalf of the Member Councils.
- (b) To advise and make recommendations to the Member Councils on the content of the Local Flood Risk Management Plan, including the approval of the Local Flood Risk Management Plan by the Member Councils, its submission to the Scottish Ministers, its final approval and its subsequent monitoring and review.
- (c) To receive reports from the Member Councils on the management of flood risk and the implementation of the Local Flood Risk Management Plan.
- (d) To receive reports from the Member Councils on flood risk management projects of strategic importance, according to a method of prioritisation to be agreed by the Member Councils.
- (e) To support SEPA and Scottish Water in the discharge of their duties under the FRM (Scotland) Act 2009.
- (f) To liaise with and make representations to the Scottish Government, Scottish Environment Protection Agency ('SEPA'), Scottish Water, Regulatory Authorities and other bodies as the Joint Committee considers appropriate and necessary or advisable on matters of relevance to the Local Flood Risk Management Plan.
- (g) To take such action as may be necessary from time to time to implement the Local Flood Risk Management Plan and to contribute to flood risk management in the Clyde and Loch Lomond Local Plan District .

The Joint Committee is empowered to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of any of the aforesaid aims and objectives.

#### 4. **Delegation of Functions**

##### Delegation to the Joint Committee

4.1 The Member Councils hereby delegate to the Joint Committee the power to discharge the functions conferred upon the Member Councils under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 in relation to the Clyde and Loch Lomond Local Plan District . The delegation hereby granted shall not prevent any or all of the Member Councils from discharging the said functions **[by prior arrangement with the Joint Committee]**.

#### 5. **Administrative Arrangements**

##### Senior Officers Group

5.1 The Joint Committee shall be supported by a Senior Officers Group comprising the senior flood risk management officers (or their representatives) of each of the Member Councils and such representatives as are invited to attend from Scottish Water and SEPA. The Senior Officers Group will be chaired by the Lead Local Authority. The Senior Officers Group will meet regularly (at least four times each calendar year) to consider the development by SEPA of the flood risk management strategy and the preparation and implementation of the Local Flood Risk Management Plan and the work programme to be undertaken by each Member Council to discharge the statutory responsibilities under the Flood Risk Management (Scotland) Act 2009.

5.2 Representatives from the Senior Officers Group shall attend the Joint Committee by invitation of the Convener.

##### Project Management Office

5.2 The Senior Officers Group shall be supported by a Project Management Office. The Project Management Office shall be procured and managed by the Lead Local



Authority. The reasonable costs properly incurred by the Lead Local Authority in connection with the Project Management Office shall be reimbursed as provided for in Clause 6 hereof.

#### Secondment of Staff

5.3 The Member Councils shall use their reasonable endeavours to meet any request from the Lead Local Authority or the Joint Committee for the secondment of appropriate/relevant staff for the purpose of assisting in the preparation of the Local Flood Risk Management Plan, its updates and review. Any such secondment shall be on such terms as may be agreed between the Member Council and the Lead Local Authority or the Joint Committee as appropriate with the relevant employing Member Council's costs arising from such secondment being reimbursed as provided for in Clause 6 hereof.

#### Arrangement of Services

5.4 When considering the arrangement of services, the Joint Committee shall have regard to the capabilities of the Service Departments of the Member Councils and in the event of the Joint Committee seeking the assistance of any of the Member Councils, the Member Council concerned shall not unreasonably withhold such assistance. The Member Council shall receive payment of appropriate costs for any such assistance given, if so required in accordance with the provisions of Clause 6 hereof.

#### Annual Report

5.5 The Joint Committee shall prepare an annual report on its work for submission to each of the Member Councils not later than thirty first August each year, and shall submit this annual report to each of the Member Councils by no later than **[Thirty first January]** following .

### 6. **Financial Arrangements**

#### Allocation of Expenditure

6.1 Each of the Member Councils shall pay their share as set out in Annex A of the whole expenditure and costs associated with the joint actions carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009, which expenditure and costs shall include the costs of the Member Councils referred to in Clauses 2.7, 5.2, 5.3 and 5.4 hereof. Each payment shall be payable within twenty eight days of receipt of a relevant invoice.

#### Income & Expenditure Statement

6.2 The Lead Local Authority shall in each year prepare a statement of income and expenditure related to the joint actions carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 to Thirty first March and submit this statement to the Joint Committee no later than Thirty first August following. The costs of the Member Councils referred to in Clauses 2.7, 5.2, 5.3 and 5.4, provided same have been properly vouched, shall be paid or reimbursed prior to submission of such statement to the Joint Committee.

#### Financial Plan

6.3 Each financial year the Lead Local Authority shall be entitled to submit to the Member Councils a Financial Plan related to the joint actions to be carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 and setting out a proposed programme of expenditure for the next financial year, and the Member Councils shall have regard to it when preparing their own Financial Plans.

### **7. Miscellaneous**

#### Commencement and Variation

7.1 This Agreement shall be deemed to have commenced and taken effect on [ ] notwithstanding the date or dates hereof (“the Commencement Date”) and may be varied only by supplementary written agreement entered into between all the Member Councils.

### Review of Agreement

7.2 This Agreement shall be reviewed in June 2016 following completion of the first Local Flood Risk Management Plan. The Member Councils agree not to withdraw from this Agreement until the completion of such review or **[30 June 2016]**, whichever shall first occur.

### Dispute Resolution

7.3 Where agreement cannot be reached by the Member Councils or where a dispute arises, or where a Member Council is not satisfied that matters have been dealt with promptly or reasonably by any of the other Member Councils, the matter shall be referred to the Chief Executive or equivalent of each of such other Member Councils . Thereafter, any unresolved matters may be referred to mediation, the mediator to be chosen by mutual consent between the Member Councils in dispute or, in the event that they cannot agree, to be chosen by the President of the Law Society of Scotland. If mediation is unable to resolve the dispute or the mediator or President determines that the matter is unsuitable for mediation, then any unresolved matters may be referred by any Member Council in dispute to arbitration.

### Arbitration

7.4 Any dispute among the Member Councils which cannot be resolved under the provisions of Clause 7.3 hereof shall be determined by an arbiter mutually agreed whom failing by an arbiter appointed by the Sheriff of North Strathclyde at Paisley on the written application of any of the Member Councils in dispute. The decision of any such arbiter shall be final and binding on the Member Councils in dispute, and which arbiter shall have power to award expenses of the any Member Council wholly or partially against the other Member Council or Councils.

### Cost of Agreement

8 Each of the Member Councils will bear their own costs and expenses in connection with the preparation and completion of this Agreement.

### Intellectual Property Rights

- 9.1 The Lead Local Authority shall use its reasonable endeavours to ensure that the ownership and all intellectual property rights in the joint actions carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009, including all systems, domain names, design, copy and images will, on delivery, vest in them. The Lead Local Authority shall also use its reasonable endeavours to ensure that they obtain the rights to assign ownership and intellectual property rights as well as the right to grant licences to copy, use and reproduce the same without any further payments being made to any third party.
- 9.2 The Lead Local Authority shall use its reasonable endeavours on demand from any of the Member Councils to grant a perpetual licence to use copy or reproduce all systems, domain names, design, copy and images produced in connection with the joint actions carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 on payment of any fee charged to the Lead Local Authority.

#### Freedom of Information and Disclosure

- 10.1 Each of the Member Councils acknowledges that the other Member Councils are subject to the requirements of the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation ('FOISA') and the Environmental Information (Scotland) Regulations 2004 ('EISR') and shall assist and cooperate with each other (at their own expense) to enable any Member Council to comply with the Information disclosure requirements.
- 10.2 Where one of the Member Councils receives any request for information under FOISA or EISR (a 'Request for Information') in relation to Information which it is

holding on behalf of any of the other Member Councils ('Information' having the meaning given under section 73 of FOISA) it shall:-

10.2.1 transfer the Request for Information to the other Member Council or Member Councils as soon as practicable after receipt and, in any event, within five Business Days (meaning means any day excluding Saturdays and Sundays and statutory holidays as fixed by the Member Councils) of receiving a Request for Information;

10.2.2 provide the other Member Council or Councils with a copy of all Information in its possession or power in the form that the Member Council or Councils shall reasonably require it within five Business Days (or such longer period as the requesting Member Council may specify) of the Member Council requesting such Information; and

10.2.3 provide all necessary assistance as reasonably requested by the other Member Council to enable the other Member Council to respond to a Request for Information within the time for compliance set out in section 10 of FOISA.

10.3 Where one of the Member Councils receives a Request for Information which relates to the joint actions carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 it shall inform the other Member Councils of the Request for Information as soon as practicable after receipt and, in any event, within five Business Days after receiving the Request for Information.

10.4 If any of the Member Councils determines that Information must be disclosed in terms of Clause 10.5, it shall notify the other Member Councils of that decision at least two Business Days before disclosure.

10.5 The Member Councils reserve the right to disclose information contained within this Agreement and in relation to the joint actions carried out pursuant to this Agreement under Sections 34 to 39 (both inclusive) of the Flood Risk Management (Scotland) Act 2009 and any supporting correspondence, notes etc held by them in compliance with a Request for Information (the decisions of any of the Member Councils in relation to the interpretation of FOISA and the EISR shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms.

10.6 The disclosure of the Information in the circumstances detailed in Clause 10.5 hereof shall not be treated as a breach of this Agreement.

#### Notices

11.1 Any Notices to be given under this Agreement shall be delivered personally or sent by first class Recorded Delivery mail or facsimile transmission to the Member Councils **[ at the addresses detailed herein]**.

11.2 Any Notice given under this Agreement shall be deemed to be served if delivered personally at the time of delivery or if sent by post 48 hours after posting or if sent by facsimile transmission 12 hours after proper transmission.

#### No Partnership

12.1 Nothing in this Agreement shall be taken to establish a legal partnership in terms of The Partnership Act 1890 among the Member Councils.

#### Governing Law

13.1 This Agreement will be interpreted and construed in accordance with the Laws of Scotland.

Consent to Registration

12 The parties hereto consent to the registration hereof for preservation: IN  
WITNESS WHEREOF

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## Annex A - Allocation of Expenditure

<b>Local Authority</b>	<b>Local Plan District (LPD) (No)</b>	<b>Scot Gov Funding (£)</b>	<b>Scot Gov Funding / LPD (£)</b>	<b>Contribution of Shared Costs (%)</b>
Argyll & Bute	2	191,000	95,500	4.29%
East Dunbartonshire	1	183,000	183,000	8.23%
East Renfrewshire	2	135,000	67,500	3.03%
Glasgow City	1	707,000	707,000	31.78%
Inverclyde	1	150,000	150,000	6.74%
North Lanarkshire*	1	151,000	151,000	6.79%
Renfrewshire	1	391,000	391,000	17.58%
South Lanarkshire*	1	154,000	154,000	6.92%
Stirling	4	246,000	61,500	2.76%
West Dunbartonshire	1	264,000	264,000	11.87%
<b>Total</b>		<b>2,572,000</b>	<b>2,224,500</b>	<b>100.00%</b>

\* As over 90% of the flood risk properties within North and South Lanarkshire fall within the Clyde and Loch Lomond Local Plan District, solely for the purposes of determining a fair contribution to the shared costs, both Councils shall be considered as f