
DEVELOPING A STATUTORY REGIONAL MARINE PLAN FOR THE FIRTH OF CLYDE

1.0 EXECUTIVE SUMMARY

- 1.1 A Marine Planning Partnership is being set up to develop a statutory Regional Marine Plan for the Firth of Clyde. This report sets out the current proposals for the establishment of a Marine Planning Partnership (MPP) for the Scottish Marine region for the Clyde, the proposed constitution for the partnership and the proposed Direction from Scottish Ministers which sets out the marine planning functions under the Marine (Scotland) Act 2010 that they wish to delegate to the partnership.
- 1.2 The report also identifies the legal duties and implications for the Council in relation to the proposed delegation under the Marine (Scotland) Act 2010 and involvement as a member and board member of the Clyde MPP and considers the benefits, risks and resource implications of direct involvement in regional marine planning and membership of the Clyde MPP.
- 1.3 Regional Marine Planning will seek to influence the future use and development of our marine waters and adjacent coast and it is therefore essential that the Council positively influence the development of Regional Planning in the Firth of Clyde. Engagement by the Council in the marine planning process is not expected to require additional resources and presents a key opportunity to ensure that marine planning actively contributes to and supports delivery of Council priorities, in particular our SOA outcomes for sustainable economic growth.
- 1.4 A report on this matter was considered by PPSL Committee on 16th March, focussing on the specific implications for the Council's Planning Service and the decision of this committee will be provided verbally on the day of the meeting.
- 1.5 The report recommends that Policy and Resources Committee:
- (i) Note the contents of this report;
 - (ii) Note the decision of PPSL Committee on 16 March 2016; and
 - (iii) Recommend that the Council:
 - a) Agree to be a Member of the Clyde MPP, to be represented by an officer from Development and Infrastructure Services;
 - b) Agree to accept the offer of a permanent position on the Partnership Board of the Clyde MPP, and seek appointment by Council of an elected member;
 - c) Approve the constitution for the Clyde MPP, as detailed in Appendix 2; and
 - d) Give consent to the draft Direction from Scottish Ministers delegating functions under the Marine (Scotland) Act 2010 to the Clyde Marine Planning Partnership, as detailed in Appendix 3.

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2.0 INTRODUCTION

2.1 This report sets out current proposals for the establishment of a Marine Planning Partnership (MPP) to develop a statutory Regional Marine Plan for the Scottish Marine region for the Clyde and identifies the legal duties and implications, including benefits, risks and resources, associated with direct involvement in regional marine planning and membership of the Clyde MPP.

3.0 RECOMMENDATIONS

3.1 It is recommended that this committee:

- (i) Note the contents of this report;
- (ii) Note the decision of PPSL Committee on 16 March 2016; and
- (iii) Recommend that the Council:
 - a) Agree to be a Member of the Clyde MPP, to be represented by an officer from Development and Infrastructure Services;
 - b) Agree to accept the offer of a permanent position on the Partnership Board of the Clyde MPP, and seek appointment by Council of an elected member;
 - c) Approve the constitution for the Clyde MPP, as detailed in Appendix 2; and
 - d) Give consent to the draft Direction from Scottish Ministers delegating functions under the Marine (Scotland) Act 2010 to the Clyde Marine Planning Partnership, as detailed in Appendix 3.

4.0 DETAILS**4.1 Background**

4.1.1 The [Marine \(Scotland\) Act 2010](#) and Marine and Coastal Access Act 2009 established a new legislative and management framework for the UK marine environment with the aim of managing competing demands on the sea in a sustainable way.

4.1.2 The Marine (Scotland) Act 2010 requires Scottish Ministers to prepare and adopt a National Marine Plan for Scotland's marine area and allows them to prepare and adopt Regional Marine Plans for Scottish Marine Regions.

4.1.3 The Marine (Scotland) Act 2010 provides the Scottish Ministers with powers to give directions which designate any of the delegable functions in relation to a Regional

Marine Plan which would be exercisable by the Scottish Ministers to a delegate acting on behalf of the Scottish Ministers. The designated delegate must comprise of a person nominated by the Scottish Ministers and one or more of (i) a public authority (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate.

- 4.1.4 The Scottish Ministers may give direction only with the consent of the public authority.

4.2 Marine Planning in Argyll and Bute

National Marine Plan

- 4.2.1 Scotland's first [National Marine Plan](#) was laid before Parliament on 27 March 2015 and sets out strategic policies for the sustainable use of Scotland's marine resources out to 200 nautical miles. It contains objectives and policies for the sustainable development of key marine industries and provides guidance for the development of Regional Marine Plans.

Regional Marine Planning

- 4.2.2 Regional Marine Planning will be implemented within defined regional areas known as Scottish Marine Regions. Two regions cover the Argyll and Bute area (see **Appendix 1**), the Argyll region which is fully within Argyll and Bute, and the Clyde region which encompasses our coastal waters from the Mull of Kintyre to Helensburgh.
- 4.2.3 Scottish Ministers intend to delegate regional marine planning powers to MPPs to give local stakeholders ownership and decision making opportunities when developing statutory Regional Marine Plans that best reflect the economic and environmental needs and sensitivities of their area. Each MPP will be responsible for forming a Regional Marine Plan for their area in accordance with any direction to it by Scottish Ministers. The Regional Marine Plan must meet the requirements of the Marine (Scotland) Act 2010 and be consistent with the National Marine Plan. Regional Marine Plans will be subject to adoption by Scottish Ministers.
- 4.2.4 The Scottish Government do not have the resources to support the development of all eleven Regional Marine Plans at the same time and have therefore decided that the Clyde and Shetland regions will be the first areas to set up MPPs and develop statutory regional plans. There is currently no timescale for developing a Regional Marine Plan for the Argyll region.

4.3 Implications for the Council

- 4.3.1 The importance of Local Authority involvement and membership of MPP's is recognised in the National Marine Plan and associated [Planning Circular 1/2015: The relationship between the statutory land use planning system and marine planning and licensing](#), in order to develop effective and achievable marine plans that are consistent with regional development plans and strategies. These documents clearly outline the necessity for integration between the marine and terrestrial planning systems and identify that alignment should be achieved through consistency of policy guidance, plans and decisions.

- 4.3.2 The Marine (Scotland) Act 2010 places a number of duties on Argyll and Bute Council as a public authority, including having regard to marine plans:
- In the development of our Local Development Plan. There is also a reciprocal duty for the MPP to consider relevant LDPs when developing marine plans;
 - In relevant planning authorisation and enforcement decisions for aquaculture and coastal development where proposals might affect the marine area; and
 - In making any decision which relates to the exercise by them of any function capable of affecting the whole or any part of the Scottish marine area, but which is not an authorisation or enforcement decision. This requirement could be relevant to any proposed management action, strategy or policy which has potential to affect the marine area.

4.4 Proposals for Regional Marine Planning in the Firth of Clyde

Marine Planning Partnership

- 4.4.1 Marine Scotland has tasked the existing Firth of Clyde Forum, of which the Council is a member, with setting up the MPP for the Scottish Marine region for the Clyde. It is intended that the initial membership of the MPP will be based on the existing membership of the Clyde Forum which includes a wide range of stakeholders including public bodies, marine and coastal industry sectors and environmental organisations.
- 4.4.2 As a key local authority with a significant area of coastline within the Clyde region, Argyll and Bute Council has been identified as a key public body which should be a Member of the Clyde MPP and have a permanent position on the Partnership Board. Partnership Board members are required to act in the wider interests of the partnership, rather than representing their own organisation and the Board will supervise the activities of the association, including making final decisions on any issue where Members cannot agree.
- 4.4.3 The [Constitution](#) for the Clyde MPP is detailed in **Appendix 2** and has been developed in consultation with Clyde Forum members. Members and Board Members of the partnership are required to conform to the constitution. The proposed legal form of the partnership is an Unincorporated Association.

Direction from Scottish Ministers

- 4.4.4 Under Section 12 of the Marine (Scotland) Act 2010, Scottish Ministers can direct a delegate to carry out marine planning functions at a regional level. The delegate must comply with the direction, and is taken to have all the powers necessary to do so. Scottish Ministers may give Directions only with the consent of the public authority and the terms of the Direction should be discussed with the delegate before the Directions are finalised and given by Scottish Ministers.
- 4.4.5 The [Draft Ministerial Direction](#) detailed in **Appendix 3** sets out the powers that Scottish Ministers propose to delegate and identifies the 'delegate' as the Clyde MPP and those public authorities which form part of the Clyde MPP and which have given consent to the Direction. Letters from Scottish Ministers were sent to the Chief Executives of Public Bodies in the Clyde area at the end of February 2016 asking for a reply to confirm that they consent to the Direction once they are in a position to do so.

4.4.6 The Clyde MPP was formally established on 10 February 2016 at a Clyde Forum meeting with some members able to sign up to the constitution and consent to the draft Direction from Scottish Ministers on this date. The majority of public bodies in the Clyde require longer seeking approval within their organisations and so are able to adopt and sign these documents at a later date.

Stages of plan development

4.4.7 The Clyde MPP will start the development of the Regional Marine Plan in spring 2016 with some preparatory work already started on a Clyde Marine Region baseline assessment. It is estimated that it could take three years to develop a Regional Marine Plan and this timescale may fit with the key stages of development of the next LDP which has to be adopted prior to March 2020.

4.4.8 Marine Scotland will support the Partnerships with access to research and science, provision of data and guidance on policy development. Marine Scotland is providing fixed funding for the Clyde MPP to take forward the development of the Regional Marine Plan for the Scottish Marine region for the Clyde.

4.4.9 The key stages of plan development will include:

1. Approval of 'assessment of the Clyde' report;
2. Approval of 'Statement of Public Participation';
3. Approval of 'Main Issues Report';
4. Approval of 'draft plan' for consultation; and
5. Approval of 'final plan' for submission to Scottish Ministers.

It is proposed that at these key stages of plan development, relevant documents would be reported to the relevant Council committees for consideration and approval.

4.4.10 Members should note that it may be necessary to amend the Council's constitution to delegate to the Director of Development and Infrastructure Services the nomination of an officer to sit as a member on the Clyde MPP.

4.5 Views on proposals

Membership of the Clyde Marine Planning Partnership

4.5.1 The coastal area of Argyll and Bute is an exceptional economic, environmental and social asset. The extensive and varied coastline is of national, and in some parts international significance, containing many areas of special landscape and ecological significance. It is also home to the majority of Argyll and Bute's population and a major focus for economic activity, recreation and tourism. The Argyll and Bute economy and many of our coastal communities, particularly in remote rural or island communities, are heavily dependent on a range of maritime economic sectors including fishing, aquaculture, marine transport and shipping, marine tourism, military use, marine services and marine science. These established sectors in addition to emerging sectors such as marine renewables offer considerable potential for economic growth in Argyll and Bute. It is therefore essential that the national and regional framework of marine planning is consistent with our Council priorities and policy, in particular our LDP and EDAP, in order to maximise delivery of our SOA outcomes for sustainable economic growth.

4.5.2 In addition, active involvement in the development of regional marine planning policies provide the Council opportunities to ensure regional plans are consistent with and promote delivery of Council priorities, and directly influence decision making by other consenting bodies on marine development proposals that do not require planning permission. For these reasons it is clearly in the Council's interest to directly influence the development and implementation of a Regional Marine Plan for the Scottish Marine region for the Clyde and therefore this report recommends that the Council agrees to be a Member and a Partnership Board Member on the Clyde MPP.

Legal form of the MPP

4.5.3 Members should note that the MPP is formed as an unincorporated association, which means that liability will fall to any or each of the Members as the association cannot be sued in its own right. While a legal challenge to the process of developing the plan is possible, it is considered that the main risk of liability of the association will be to the Scottish Ministers should the association fail to meet their obligations under the Direction. Any legal challenge to the finalised Regional Marine Plan itself is likely to be addressed against Scottish Ministers.

4.5.4 It should also be noted that the proposed legal structure of the MPP does not allow it to directly employ staff, which would instead need to be employed by a Member of the MPP. Where Scottish Ministers and SNH are employers of MPP staff they will be responsible for those staff members.

Constitution and Direction

4.5.5 The Direction is considered to be short on detail in some areas but it is acknowledged that this document needs to be read in conjunction with the [Marine \(Scotland\) Act 2010](#). While there are currently considered to be a number of points which could be improved upon, these concerns, if not amended, are not considered to be of detriment to the Council.

4.5.6 Members should note that some of the terms and conditions set out in the Schedule to the Direction identify requirements which should be undertaken only if Scottish Ministers decide that they are required. This means that there is absence of certainty as to all of the requirements which will definitely require to be undertaken by the MPP. This absence of uncertainty is however mitigated by the fact that the MPP has accounted for all potential tasks in its work planning and resources committed from Marine Scotland.

4.5.7 Members will note that the Constitution identifies under objectives and powers that the MPP will focus on Integrated Coastal Zone Management (ICZM) activities in addition to marine planning at a regional scale whereas the draft Direction only includes powers relating to regional marine planning. The reason for this is because the MPP will replace the current Clyde Forum which has been operating as a voluntary Local Coastal Partnership for many years and undertaking a range of projects under the banner of ICZM. Clyde Forum members, who will become members of the MPP, have agreed that once a regional marine plan has been developed that the MPP should have the ability to undertake ICZM projects if it has time and resource to do so, and it contributes to the implementation of the regional marine plan.

4.5.8 Council officers have made a number of comments and recommendations on these documents during their development. While all of our comments have not resulted in changes to the documents, overall they are considered appropriate and no unacceptable risks have been identified. Taking account of the points raised above (paras.4.5.1 - 4.5.8), it is recommended that the Council sign up to the Constitution and give consent to the Direction.

Resource implications

4.5.9 The Direction from Scottish Ministers will remain in effect until it is revoked by the Scottish Ministers. It is anticipated that the Direction will be reviewed after a three year period and that a further Direction may be given by the Scottish Ministers, with agreement of the MPP and relevant public bodies, following the adoption of the Regional Marine Plan. The Marine (Scotland) Act provides that Scottish Ministers with powers to make grants to a delegate for the exercise of designated functions. Marine Scotland have committed to the funding of MPP staff and other associated running costs for a period of two years, with staff to be employed and housed by SNH, who are a member of the MPP. This is set out in a grant agreement between Marine Scotland and SNH. Marine Scotland fully intend to continue funding in the final year covered by the Direction but at this time are not able to commit to funding beyond a two year period.

4.5.10 The Constitution allows in-kind contributions to be made by Members to the partnership, including but not limited to, staff employment, office accommodation, meeting rooms, geographical information systems services and relevant financial management services. There is no expectation or requirement on any Member of the partnership to make any in-kind contributions and therefore there are no financial obligations for the Council should it become a member of the Clyde MPP. There may be opportunities for joint working between the Council and the MPP during the development of the Regional Marine Plan and the next LDP which might identify areas of work which directly benefits both parties and for which the Council may wish to consider in-kind contributions of some form. Any proposals which might have resources implications for the Council would be brought to the relevant committee(s) for approval.

4.5.11 There is a clear requirement for officer and member time in attending Clyde MPP meetings, acting on outputs and reporting to relevant departments and committees. This expected officer time can be met under current staff levels within Planning Services.

4.5.12 The duties on the Council from the Marine (Scotland) Act 2010, outlined in section 4.3 of this report, will be implemented largely by officers in the Development Policy and Development Management sections of Planning Services. These duties are not anticipated to result in a significant increase in work load and therefore can be met under current staffing levels.

5.0 CONCLUSION

5.1 Regional Marine Planning will seek to influence the future use and development of our marine waters and adjacent coast, and it is therefore essential that the Council continues to positively influence the development of Regional Planning in the Scottish Marine region for the Clyde. Engagement by the Council in the marine

planning process is not expected to require additional resources and presents a key opportunity to positively influence marine plans affecting Argyll and Bute to ensure that marine planning actively contributes to and supports delivery of Council priorities, in particular our SOA outcomes for sustainable economic growth.

6.0 IMPLICATIONS

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| 6.1 | Policy | Positively influencing the development of Regional Marine Plan for the Clyde region assists the Council deliver its commitments for the environment and SOA local outcomes and objectives for the economy, communities and environment.

The Council will have to ensure that our Local Development Plan is consistent with and complements the National Marine Plan, and ensure that National and relevant Regional Marine Plans are consistent with our own development policy and corporate priorities where possible. |
| 6.2 | Financial | None |
| 6.3 | Legal | While liability could fall to any or each of the Members of MPP, as an unincorporated association, the main liability of the association will be to the Scottish Ministers should the association fail to meet their obligations under the Direction. |
| 6.4 | HR | Meeting duties and engagement in marine planning process can be met under current staff resources. |
| 6.5 | Equalities | None |
| 6.6 | Risk | No significant risks identified. |
| 6.7 | Customer Services | None |

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APPENDICES

Appendix 1 – Map of Scottish Marine Regions for Regional Marine Planning

