

Item: 15

Policy and Resources Committee: 20 June 2023.

Islands Growth Deal – Governance and Risk-Sharing Arrangements.

Joint Report by Corporate Director for Enterprise and Sustainable Regeneration and Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To consider proposed amendments to the Islands Growth Deal Joint Committee Governance Agreement.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 5 October 2021, the Council approved a Governance Agreement for the Islands Growth Deal which established the Islands Growth Deal Joint Committee for the purposes of governing the Islands Growth Deal.

2.2.

That Comhairle nan Eilean Siar acts as the Lead Authority and the Accountable Body for the Islands Growth Deal in terms of its relationship with UK and Scottish Government.

2.3.

That there are potential liabilities which may arise for Comhairle nan Eilean Siar due to its role as Accountable Body and it would be fair for those liabilities to be appropriately shared among the three constituent authorities.

2.4.

The proposal that the Governance Agreement for the Islands Growth Deal Joint Committee be amended to ensure that each constituent authority shall be responsible for any liabilities which relate to a project in their own geographic area, or that liabilities shall be shared proportionately where these relate to a cross-island project.

2.5.

That both the Islands Deal Programme Board and the Islands Growth Deal Joint Committee have in principle agreed the proposal referred to above, and the approval of each constituent authority is now being sought.

It is recommended:

2.6.

That the proposed amendments to the Islands Growth Deal Joint Committee Governance Agreement, as detailed in section 5.1 of this report, be approved.

3. Islands Growth Deal

3.1.

The Islands Growth Deal is a 10-year, £100 million, UK and Scottish Government investment into Orkney, Shetland and the Outer Hebrides. The Full Deal Agreement with UK and Scottish Government was signed by the three island Councils on 21st January 2023.

3.2.

On 5 October 2021, the Council agreed a Governance Agreement for the Islands Growth Deal which established the Islands Growth Deal Joint Committee for the purposes of governing the Islands Growth Deal. A copy of the Governance Agreement is attached as Appendix 1 to this report.

3.3.

Comhairle nan Eilean Siar, Orkney Islands Council and Shetland Islands Council together represent the Constituent Authorities within the Islands Growth Deal. Each Council is represented by two members on the Islands Growth Deal Joint Committee.

4. Role of Accountable Body

4.1.

Comhairle nan Eilean Siar acts as the Lead Authority and the Accountable Body for the Islands Growth Deal in terms of its relationship with UK and Scottish Governments. Islands Growth Deal funding is channelled through Comhairle nan Eilean Siar which then enters into Grant Agreements governing its distribution to Grantees (a Constituent Authority or third party delivering an agreed project within the Islands Growth Deal programme).

4.2.

Section 7.6 of the Islands Growth Deal Joint Committee Governance Agreement states that, as Accountable Body, Comhairle nan Eilean Siar is required to:

“hold the Islands Growth Deal grant funding, allocate and account for distribution of Islands Growth Deal grant income, enter into grant agreements and make disbursements on behalf of the Joint Committee, with the Constituent Authorities, and Third Parties in respect of the specified projects required to deliver the Growth Deal Programme”.

4.3.

The Financial Plan agreed with Scottish and UK Governments as part of the Full Deal Agreement states that:

“It will be the responsibility of the Accountable Body to manage any liabilities beyond the funding agreed in the Tripartite Agreement/Deal Documents which may arise during the lifetime of the Deal”.

4.4.

The intention of the three island authorities is that the Islands Growth Deal Programme should have sound controls in place that would reduce potential risks and liabilities. As such, the Accountable Body has confirmed that it will not commit to any funding beyond that which is confirmed by Scottish Government on an annual basis. Grant Offer Letters to Grantees are to be issued only once a Full Business Case has been approved, and these are required to have cost certainty, have completed procurement, and have all match funding in place. Grant Offer Letters make it clear that the responsibility for any underspend or overspend in project delivery sits with the Grantee, and that the Accountable Body is not responsible for any liabilities beyond the funding agreed in the Grant Offer Letter. In addition, all conditions in the annual Grant Offer Letter which Comhairle nan Eilean Siar receives from the Scottish Government are mirrored in the Grant Offer Letters issued to Grantees for that financial year.

4.5.

However, a potential scenario has been identified where, if the Scottish Government seeks repayment of funds at any time, and the Grantee has ceased to operate or is unable to repay the funding for any reason, the liability will fall to the Comhairle as the Accountable Body. It is believed to be fair and appropriate that such risks in terms of projects in Orkney or Shetland should be assigned to the relevant local authority rather than the Comhairle.

5. Proposed Amendments to Governance Agreement

5.1.

The Heads of Legal and Governance (or equivalent) of each island authority have consulted on the matter referred to at section 4.5 above and it is proposed that the matter would be most suitably addressed through amendments to the existing Governance Agreement. These proposals are as follows:

- Insertion of additional clause after 12.1 and before 12.2 as follows:
 - Orkney Islands Council and Shetland Islands Council shall indemnify the Lead Authority in respect of any claim made on the Lead Authority by the UK or Scottish Government for recovery of any grant funding in respect of any project, provided that Orkney Islands Council and Shetland Islands Council shall only be liable to indemnify the Lead Authority in respect of projects which relate to their geographic areas (or in reasonable proportion if the project relates to the geographic areas of more than one Constituent Authority).
- In addition, the current clause 12.1 requires to be tightened up as the existing inclusion of “*other party or parties*” means that this clause could see each council provide an indemnity for negligence that had been caused through no fault of their own. Therefore, it is proposed that existing clause 12.1 be amended to substitute “*other party or parties*” with “*Constituent Authorities*”.

5.2.

The proposed amendments do not divest Comhairle nan Eilean Siar of its responsibilities as the Accountable Body to manage the funding as required by Scottish and UK Governments, and any liabilities arising from a failure to do so will remain with the Comhairle. This is reflected in clause 7.6 of the Governance Agreement subject to the amendments to clause 12 proposed above. The Comhairle has confirmed that the Islands Deal Programme will continue to be subject to the Comhairle’s internal audit processes to ensure that appropriate controls are in place.

5.3.

The Islands Deal Programme Board, on which the Council is represented by the Chief Executive and the Corporate Director for Enterprise and Sustainable Regeneration, and the Islands Growth Deal Joint Committee, on which the Council is represented by the Leader and the Chair of the Development and Infrastructure Committee, have in principle agreed to the proposed amendments to the Governance Agreement detailed above. Approval of each Constituent Authority is now being sought.

5.4.

It is considered that, whilst risks associated with delivery of the Islands Growth Deal should be minimised through having strong financial and governance controls in place around the approval and release of funding to grant recipients, these risks cannot be completely removed, and it is believed that the proposals contained within this report are reflective of the partnership approach across the three island councils which has underpinned the Islands Growth Deal to date.

6. Corporate Governance

This report relates to the Council addressing governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

7. Financial Implications

The proposals in this report seek to achieve a fairer allocation of financial risk among the three island authorities in the event of the Scottish Government seeking repayment of funds at any time and the Grantee having ceased to operate or being unable to repay the funding for any reason.

8. Legal Aspects

The legal aspects are contained within the body of this report.

9. Contact Officers

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10. Appendix

Appendix 1: Islands Growth Deal Joint Committee Governance Agreement.



Joint Committee Governance Agreement

Islands Growth Deal

INTRODUCTION

WHEREAS

(A) Comhairle nan Eilean Siar, the local authority for Na h-Eileanan Siar constituted under the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Offices, Sandwick Road, Stornoway, HS1 2BW; Orkney Islands Council, the local authority for the Orkney Islands constituted under the Local Government etc (Scotland) Act 1994 and having its principal offices at School Place, Kirkwall, Orkney, KW15 1NY; and Shetland Islands Council, the local authority for the Shetland Islands constituted under the Local Government etc (Scotland) Act 1994 and having its principal offices at 8 North Ness, Lerwick, Shetland, ZE1 0LZ (the “Constituent Authorities”), agree to establish the Growth Deal for the Islands Joint Committee (“the Joint Committee”).

(B) The Constituent Authorities resolve to create a formal agreement for administration of the functions of the Joint Committee.

(C) The Constituent Authorities confirm that they have all the necessary powers and authority to enter into such a formal agreement.

(D) This document (hereinafter referred to as the Joint Committee Governance Agreement) constitutes the formal agreement to establish the arrangements for the administration and governance of the functions of the Joint Committee.

(E) The Constituent Authorities may enter into further formal agreements to determine more detailed arrangements or amend existing agreements for the implementation of any of the functions should this be considered necessary by them or by the Joint Committee.

NOW THEREFORE the Constituent Authorities agree as follows:-

We, Comhairle nan Eilean Siar, the local authority for Na h-Eileanan Siar constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at Council Offices, Sandwick Road, Stornoway, HS1 2BW; Orkney Islands Council, the local authority for the Orkney Islands constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at School Place, Kirkwall, Orkney, KW15 1NY; and Shetland Islands Council, the local authority for the Shetland Islands constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at 8 North Ness, Lerwick, Shetland, ZE1 0LZ (the “Constituent Authorities”), each agree to become a Constituent Authority of the Growth Deal for the Islands Joint Committee, which is a Joint Committee constituted under Section 57 of the Local Government (Scotland) Act 1973.

We each confirm that we have all necessary powers to participate as a Constituent Authority of the Islands Growth Deal Joint Committee and that our membership of the Islands Growth Deal Joint Committee and the operation of the Growth Deal for the Islands Joint Committee and its functions shall be governed by the following terms and conditions:-

1 INTERPRETATION

1.1 In these terms and conditions the following expressions shall have the meanings respectively ascribed to them:-

"The Clerk" means the officer nominated by the Lead Authority to act in this role.

"The Commencement Date" is set out in clause 2.1.

"Constituent Authorities" means Comhairle nan Eilean Siar, Orkney Islands Council, and Shetland Islands Council.

"The Contribution Sum" means any sum payable by each Constituent Authority in accordance with these terms and conditions, calculated in accordance with clause 11 to meet each Constituent Authority's share of the budgeted costs of work of the Joint Committee, and such other costs as the Joint Committee shall determine.

"Functions" are as defined in clause 4.2 of this Agreement and as otherwise agreed by the Constituent Authorities.

"The Joint Committee" means the Growth Deal for the Islands Joint Committee, a Joint Committee established under Section 57 of the Local Government (Scotland) Act 1973, the terms and conditions of which are set out herein.

"The Lead Authority" means Comhairle nan Eilean Siar (unless the Constituent Authorities agree otherwise) whose role and remit is more particularly described in clause 7.

"Programme Management Board" shall mean the group established in terms of clause 5 of this Agreement.

"The Programme Director" means the officer appointed by the Programme Management Board to lead and manage the Programme Management Office and have responsibility for coordinating the operational delivery of the Islands Growth Deal Programme.

"The Programme Management Office" (the PMO) shall be any officer or officers employed by or seconded to the Lead Authority to fulfil the operational tasks necessary to coordinate the delivery of the Islands Growth Deal Programme, whose role is more particularly described in clause 6.

"The Islands Growth Deal" is the Growth Deal to be agreed between the Constituent Authorities and the UK and Scottish Governments.

"The Islands Growth Deal Area" means the local government areas of Comhairle nan Eilean Siar, Orkney Islands Council, and Shetland Islands Council in their entirety.

"The Islands Growth Deal Programme" shall mean the programme of activities, projects and works in respect of the implementation of the Islands Growth Deal.

"The Treasurer" means the officer holding the responsibility of s95 Officer of the Lead Authority.

1.2 In this Agreement:-

- (a) References to the Growth Deal for the Islands Joint Committee are to be treated as references to the Joint Committee and vice versa;
- (b) References to contracts/grants entered into or awarded by the Joint Committee are references to contracts entered into or awarded on behalf of the Growth Deal for the Islands Joint Committee by the Lead Authority on the instruction of the Joint Committee or any sub-committee or officer authorised to issue such an instruction.

- 1.3 Words imparting the masculine gender only shall include the feminine gender and vice versa.
- 1.4 Words imparting the singular number shall, except where the context otherwise requires, include the plural number and vice versa.

2 COMMENCEMENT AND DURATION

- 2.1 The Agreement shall commence on the date these terms and conditions are received by the Lead Authority validly executed on behalf of all the Constituent Authorities. Subscription of these terms and conditions will not impose any legally enforceable rights or obligations on the body which has executed these terms and conditions until valid execution.
- 2.2 Once validly executed, these terms and conditions shall be legally binding upon the Constituent Authorities, subject to any lawful variation thereof, unless and until this Agreement is terminated in accordance with clause 14.

3 MEMBERSHIP & VOTING RIGHTS

- 3.1 The Joint Committee shall consist of 6 members, who shall be appointed by the Constituent Authorities from among their own members. The number of members to be appointed by the Constituent Authorities shall be: 2 by Comhairle nan Eilean Siar; 2 by Orkney Islands Council; 2 by Shetland Islands Council.
- 3.2 Each Constituent Authority shall appoint their Leader to be one of their representatives on the Joint Committee.
- 3.3 Members appointed by the Constituent Authorities to the Joint Committee shall, subject to the provisions of 3.4, hold office, during the term of the body by which they were appointed, until the next ordinary election of Councillors for the Constituent Authorities. At the first statutory meeting of the Council after an ordinary election, each Constituent Authority shall again appoint its number of members to the Joint Committee.
- 3.4 A member ceasing to be a member of the Constituent Authority which appointed him/her shall cease to be a member of the Joint Committee as at the same date. In that event, or any other time the Constituent Authority by which a member was appointed may appoint a member, to take his/her place for the remaining part of his/her period of office.
- 3.5 It will be open to each of the Constituent Authorities to replace its representatives on the Joint Committee at any time. The appointment of any substitutes and alterations to those substituted are a matter for each Constituent Authority provided that appropriate written notice is given to the Clerk of such appointment in advance.

- 3.6 The Joint Committee shall adopt its own Standing Orders. In the event of any inconsistency between Standing Orders and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 3.7 The Joint Committee shall hold a minimum of four ordinary meetings each year and may meet on such other occasions as may be necessary when a special meeting may be called in terms of Standing Orders. The venue for ordinary meetings shall be agreed by the Joint Committee, or meetings may be held by remote or virtual means. Copies of notices, agendas and minutes of all meetings of the Joint Committee shall be transmitted to Constituent Authorities and others for their information as soon as practicable.
- 3.8 The Clerk shall chair the first meeting of the Joint Committee and thereafter shall chair the first meeting after each ordinary election.
- 3.9 The Joint Committee shall appoint a Chair and Vice-Chair. The posts of Chair and Vice Chair will not be held simultaneously by members of the same Constituent Authority and will rotate annually among the Constituent Authorities on an equitable basis from the first meeting of the Joint Committee after 1st April in each year.
- 3.10 The Chair, when present, shall preside at all meetings of the Joint Committee. In the absence of the Chair the Vice-Chair shall preside and, in the absence of both, another member shall preside as the members present appoint. Where a vacancy occurs in the case of the Chair or Vice-Chair, the Joint Committee shall appoint a replacement from the Authority whom the previous Chair or Vice-Chair represented until the expiry of the outgoing Convener or Vice-Convener's terms of office.
- 3.11 Upon formal execution of this document by the Constituent Authorities, all members of the Joint Committee as appointed by their respective Constituent Authorities in terms of 3.1 (hereinafter referred to as "Voting Members") shall have full voting rights.
- 3.12 Any Voting Member of the Joint Committee may be substituted by another member of their own authority or organisation. Any such substitute shall have the same powers at the meeting as the member whom he or she is substituting for.
- 3.13 A simple majority of those Voting Members present shall be required in all voting procedures with the exception of the suspension of the standing orders, which shall require a majority of two thirds. In all voting procedures a majority (simple or otherwise) shall include no less than at least one Voting Member from each of the three Constituent Authorities.
- 3.14 The quorum for the Joint Committee shall be four Voting Members representing no less than at least one Voting Member from each of the three Constituent Authorities.
- 3.15 Should the Joint Committee appoint a Sub-Committee, such Sub-Committee shall be as proportionately representative of the Constituent Authorities as the Joint Committee is, and the membership of the Sub-Committee and its quorum shall be determined by the Joint Committee
- 3.16 The Joint Committee may appoint for an agreed period specialist advisors to represent other interests or provide specialist expertise.

4 PURPOSE AND SCOPE

- 4.1 The Joint Committee has been established for the purpose of regulating the joint discharge of the Functions by the Constituent Authorities.
- 4.2 The Functions of the Joint Committee are as follows:-
- i. Implementation of the Growth Deal for the Islands, in particular:-
- a. the approval and oversight of projects and investments to be funded through the Deal;
 - b. the approval and reporting of Business Cases in respect of those projects and investments;
 - c. making recommendations to the Scottish and UK Governments regarding modified or substitute projects under the Deal as appropriate;
 - d. the monitoring, evaluation and reporting of progress in respect of projects being delivered;
 - e. formal conclusion (“signing off”) following satisfactory completion of each project delivered under the Deal;
 - f. the approval and oversight of an agreed Joint Committee budget allocated by the Constituent Authorities in order to further the aims of the Islands Growth Deal;
 - g. acting as a strategic point of contact with the Scottish and UK Governments and providing quarterly progress reports to them in relation to the Deal;
 - h. approving governance arrangements and standing orders for the Joint Committee, Programme Management Board, and the Islands Deal Advisory Forum and other governance and procedural matters;
 - i. establishing sub-committees and working groups as appropriate and agreeing to the delegation of responsibilities of the Joint Committee to those bodies and to officers;
 - j. approval of the roles and remits of any sub-committees to which areas of authority may be delegated by Constituent Authorities; and,
 - k. seeking to provide a joined-up strategic response to common policy areas and growth opportunities for Orkney, Shetland and the Outer Hebrides that emerge either as a result of, or during the timeframe of, the Growth Deal.
- 4.3 The Joint Committee shall adopt standing orders relating to proceedings at their meetings and the meetings of any sub-committees.
- 5 PROGRAMME MANAGEMENT BOARD & ADVISORY FORUM
- 5.1 A Programme Management Board shall undertake such activities as are determined by the Joint Committee from time to time. The current Terms of Reference are attached as Schedule 1 to this agreement. In addition the Joint Committee will be supported by an Advisory Forum, Local Programme Boards, a Finance Directors’/Heads’ Group and a Legal and Governance Group. Their respective terms of reference are attached as Schedule 1 to this agreement.
- 6 PROGRAMME MANAGEMENT OFFICE (PMO)
- 6.1 The PMO shall be the team of officers employed by or seconded to the Lead Authority to coordinate the operational tasks necessary to implement the delivery of the Growth Deal Programme.

In particular the PMO will:-

- i. provide best practice styles and documentation to the Constituent Authorities;
 - ii. scrutinise proposed business cases and make recommendations to the Joint Committee via the Programme Management Board. Where necessary expertise does not exist within this team to fulfil this responsibility, external support may be commissioned and managed by the PMO;
 - iii. assess and monitor progress, process, slippage and risks in respect of projects within the Growth Deal Programme and report these to the Management Group;
 - iv. analyse the impact of the delivery of the projects within the Islands Growth Deal Programme as well as the wider economic benefits as agreed in business cases and the grant agreement and to report the same to the Joint Committee to enable them to fulfil their reporting obligations to all in accordance with commitments made to the UK and Scottish Governments as part of the Islands Growth Deal;
 - v. liaise with and co-ordinate programme delivery across other partners and National Bodies, including non-departmental public bodies, as long as such co-ordination advances the aims of the Islands Growth Deal and the functions of the Joint Committee; and
 - vi. develop and implement communications and stakeholder engagement strategies.
- 6.2 The Programme Director shall be appointed by the Management Group to lead and manage the PMO and have responsibility for co-ordination of the operational delivery of the Growth Deal Programme.
- 6.3 The Programme Director shall be employed by or seconded to the Lead Authority.
- 6.4 The Programme Director shall work under the direction of the Programme Management Board and shall be accountable to the Joint Committee, through the Programme Management Board, for the operational delivery of the Growth Deal Programme.
- 6.5 Through the Programme Management Board, the Programme Director shall provide quarterly updates and an annual report to the Joint Committee advising on the progress, performance, slippage and risks in respect of all active projects within the Growth Deal Programme.
- 7 LEAD AUTHORITY
- 7.1 The Constituent Authorities have agreed that Comhairle nan Eilean Siar shall be the Lead Authority.
- 7.2 The Lead Authority shall be the employing or secondee authority for the Programme Director, the PMO and any other person appointed by the Joint Committee, unless otherwise agreed by the Joint Committee.
- 7.3 The Clerk to the Joint Committee may appoint a depute or deposes as appropriate.
- 7.4 The Treasurer to the Joint Committee may appoint a depute or deposes as appropriate.
- 7.5 The Lead Authority shall provide or arrange the provision of such administrative, professional and technical support services as may be required, which services shall include financial, legal,

audit, human resources, communications, information technology systems and security and any other professional or technical support services as required to enable the Joint Committee and the PMO to deliver its functions.

7.6 In particular the Lead Authority shall:-

i. develop, in consultation with the Heads of Governance and Legal Services or equivalent of the other Constituent Authorities, all necessary governance documents for the effective operation of the Joint Committee;

ii. ensure that the PMO budget and funding are used legally and appropriately;

iii. prepare regular consolidated budget monitoring statements for consideration of the Joint Committee;

iv. prepare the annual report and accounts for the Joint Committee and arrange for audit of the said accounts;

v. ensure that any decisions in delivering the Functions conform with relevant legal requirements including equalities, environment, sustainability and best value;

vi. hold the Islands Growth Deal grant funding, allocate and account for distribution of Islands Growth Deal grant income, enter into grant agreements and make disbursements on behalf of the Joint Committee, with the Constituent Authorities, and Third Parties in respect of the specified projects required to deliver the Growth Deal Programme;

vii. account for these funds under a separately identified budget line to ensure transparency and clarity, and report on progress to Scottish and UK Governments as required in accordance with the Grant Offer Letter;

viii. prepare and circulate all meeting agenda, reports and minutes;

ix. publish the Joint Committee processes and outcomes;

x. facilitate engagement with the UK and Scottish Governments; and

xi. manage Joint Committee communications including the Islands Growth Deal website.

8 CONSTITUENT AUTHORITIES

8.1 Constituent Authorities will play a key role in supporting the delivery of the overall Programme through a range of activities including: supporting the development of Green Book compliant Business Cases for projects in their area or for those cross-island projects they are the lead authority for, participating in all Support Group activities and work plans; designing and delivering Programme-wide approaches and strategies; identifying and sharing best practice; identifying and collaborating on joint working opportunities. Constituent Authorities shall deliver approved projects in accordance with their Project Business Case and the terms of the grant agreement entered into with the Lead Authority.

8.2 Constituent Authorities will be required to provide project progress and monitoring information as required by the PMO in order to meet reporting requirements to Government and to the Joint Committee.

- 8.3 Constituent Authorities will work with relevant working groups to assist with the realisation and maximisation of relevant project benefits where required.
- 8.4 Constituent Authorities will work with the Equalities and Human Rights Commission and others to explore opportunities to maximise the impact of the Deal to deliver inclusive growth.
- 8.5 Constituent Authorities will work with Scottish Government and others to explore opportunities to maximise the impact of the Deal on achieving national and UK targets for net zero emissions.

9 THIRD PARTIES

- 9.1 Third Parties are organisations, other than Constituent Authorities, which receive a grant from the Lead Authority to deliver approved projects as part of the Programme as agreed by the Joint Committee.
- 9.2 Third Parties will be required to comply with the same grant funding conditions as Constituent Authorities.

10 ISLANDS GROWTH DEAL FUNDING OBLIGATIONS

- 10.1 All funding in respect of a project under the Islands Growth Deal Programme shall be subject to a formal grant agreement, which shall be entered into by the Lead Authority on behalf of the Joint Committee, with the relevant Constituent Authority or other Third Party ("Grant Recipient").
- 10.2 Grant Recipients will be required to provide a statement of compliance with the Grant Agreement. Islands Growth Deal Project income and expenditure, which is accounted for within Constituent Authorities' own accounts, will be subject to audit by an individual authority's own external auditors.
- 10.3 Where the Grant Recipient is one of the Constituent Authorities, it is the responsibility of the Constituent Authority to ensure that the grant agreement complies with the requirements of the Financial Regulations and other relevant governance requirements of that Authority.
- 10.4 Grant Recipients shall deliver agreed projects under the Islands Growth Deal Programme in accordance with the terms of their grant agreement.
- 10.5 Where a Grant Recipient is failing to deliver a project under the Islands Growth Deal Programme in accordance with the terms of the grant agreement, the Grant Recipient shall report to the Management Group and agree mitigating actions to ensure successful completion of the project.
- 10.6 Grant Recipients shall provide all information requested of them within the prescribed timescales to enable the Joint Committee to fulfil its functions.
- 10.7 Should the Grant Recipient fail to comply with any relevant clause of this agreement or a material condition of the grant agreement, the Joint Committee will have the delegated power to:-

- i. Suspend any further payment of grant funding until suitable resolution is found;
- ii. Terminate the relevant grant agreement;
- iii. Remove the particular project from the Islands Growth Deal Programme;
- iv. Recalculate the grant award; and
- v. Recover from the Grant Recipient any grant monies already paid and additional costs incurred or losses suffered by the Joint Committee or its Constituent Authorities arising from that failure.

11 JOINT COMMITTEE BUDGET

- 11.1 The Joint Committee shall as soon as reasonably practicable following the valid execution of this agreement have delegated authority to approve a budget to 31 March 2022 in respect of the operational running costs of the Joint Committee (hereinafter referred to as the "JC Operational Costs"), which shall include the PMO costs and the reasonable costs, expenses and outgoings incurred by the Lead Authority in providing the administrative, professional and technical support services as outlined in clause 7 above.
- 11.2 Thereafter, in each year and prior to 31 March, the Joint Committee shall have delegated authority to consider and approve a budget prepared jointly by the Programme Director and the Treasurer in terms of the Lead Authority's budgetary requirements, for the JC Operational Costs in the following financial year.
- 11.3 The Constituent Authorities shall defray the JC Operational Costs in accordance with This Agreement. The Contribution Sum shall be paid quarterly in advance in accordance with arrangements made by the Treasurer.
- 11.4 The Constituent Authorities each agree to pay their Contribution Sum in accordance with this clause.
- 11.5 The Constituent Authorities will each pay an equal share of the JC Operational Costs.
- 11.6 The Treasurer shall prepare the audited financial statement and accounts of the Joint Committee for approval by the Joint Committee prior to 30 September immediately following the financial year to which the accounts relate. Any deficit arising shall be paid by the Constituent Authorities in accordance with arrangements made by the Treasurer. Any surplus will be reimbursed to Constituent Authorities in accordance with the pro rata Contribution Sums.
- 11.7 No change to the Contribution Sums of any Constituent Authority may be made without prior approval of the Joint Committee following consultation with those Constituent Authorities whose Contribution Sum is affected.
- 11.8 The Treasurer shall keep or cause to be kept full and accurate accounts through the currency of this agreement, or any replacement thereof. The detailed records will be available for the following periods:
 - (a) for the JC operational Costs detailed records will be held for a period of three years;

(b) for Grant Receipt and allocation, detailed records will be retained for the period of time required by the Scottish Government.

11.9 The Constituent Authorities and their auditors shall be entitled, on giving reasonable prior notice, to inspect such accounts and records and to make any examination which they may desire and for this purpose, the Treasurer shall forthwith on demand produce to the Constituent Authorities all relevant information or vouchers as a Constituent Authority may reasonably request.

12 INDEMNITY AND INSURANCE

12.1 The Constituent Authorities shall indemnify each other in respect of any claim, demand, loss, damage, injury, cost or expense (including any liability to their legal advisers) arising from any act or omission of the other party or parties in the course of their obligations under this Agreement.

12.2 The Lead Authority shall arrange for the taking out of such policies of insurance as the Treasurer considers appropriate in relation to the carrying out of the functions on behalf of the Joint Committee which insurances shall include without prejudice to the foregoing generality, employers liability, public liability and professional indemnity insurance and the cost of taking out such policies shall be defrayed by the Constituent Authorities as part of the Contribution Sums with each Constituent Authority's share of the costs being calculated by reference to the Contribution Sums.

13 TERMINATION

13.1 This Agreement shall be subject to periodic review and be reviewed at least every 3 years but otherwise shall continue in full force and effect until the whole Islands Growth Deal Programme as defined in Clause 1 has been concluded.

14 PREMISES

14.1 The PMO shall be located in premises approved by the Joint Committee.

14.2 If applicable, the costs of any premises occupied by the PMO shall be met in accordance with this Agreement.

15 CONFIDENTIAL INFORMATION

15.1 The Constituent Authorities shall at all times use their reasonable endeavours to keep confidential (and to procure that their respective employees, agents, consultants and sub-contractors shall keep confidential) all Confidential Information concerning the Joint Committee, the Functions of the Joint Committee or the business and affairs of the other Constituent Authorities which may now or at any time hereafter be in its possession and shall not disclose it except with prior written consent of the other Constituent Authorities or where the Confidential Information relates only to one Constituent Authority the consent of that Constituent Authority.

- 15.2 “Confidential Information” means information imparted to any of the Constituent Authorities or their employees, agents, consultants or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Constituent Authorities on the basis that it was to be kept confidential or is of commercial value in relation to the Joint Committee but shall not include any information which is:
- i. already in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party; or
 - ii. already in the possession of the Receiving Party without restrictions as to its use; or
 - iii. the disclosure of which is required by statute or court order; or
 - iv. is provided for the purpose of obtaining professional advice; or
 - v. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - vi. which is information independently developed without access to the Confidential Information including audit and assessing best value.
- 15.3 This clause is subject always to the obligations of a Constituent Authority to comply with the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004, the UK General Data Protection Regulation, the Data Protection Act 2018 and any other relevant legislation. A Constituent Authority shall not be in breach of this clause where information is released by that Constituent Authority to comply with the aforementioned legislation.
- 16 FREEDOM OF INFORMATION
- 16.1 Each Constituent Authority acknowledges that the other Constituent Authorities are subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (“FOI”).
- 16.2 Each Constituent Authority shall assist and co-operate with other Constituent Authorities to enable the other Constituent Authorities to comply with their information disclosure obligations under FOI.
- 16.3 Where a Constituent Authority receives a request for disclosure of information under FOI which that Constituent Authority holds in connection with or as a result of its membership of the Joint Committee or its participation in any of the grants awarded through the Joint Committee, that Constituent Authority shall bring the receipt of such a request to the attention of the Clerk.
- 16.4 The Constituent Authority receiving a request under FOI shall be responsible for determining whether to disclose the information requested and where it is decided not to release any of the information requested, which of the exemptions in terms of FOI it is relying on. However, before making any determination in terms of this clause the Constituent Authority shall give the Clerk a reasonable opportunity taking into account any statutory time limit for

determining such a request to make representations regarding how the Clerk considers the request under FOI should be dealt with.

16.5 Where a Constituent Authority receives a request for information in relation to information which it is holding on behalf of any of the other Constituent Authorities in connection with its participation in the Joint Committee, it shall:-

(a) transfer the request for information to the relevant Constituent Authority as soon as practicable after receipt; and

(b) provide all necessary assistance as reasonably requested by the relevant Constituent Authority to enable the Constituent Authority to respond to the request for information within the time for compliance set out in FOI.

17 GIFTS AND HOSPITALITY

17.1 Each member of the Joint Committee shall follow their respective council policies and procedures in relation to the acceptance of gifts and hospitality.

18 AUDIT AND SCRUTINY

18.1 The Lead Authority shall submit unaudited accounts to the auditor no later than 30th June immediately following the financial year to which they relate.

18.2 The Lead Authority shall submit to the Joint Committee the unaudited annual accounts as submitted to the auditor no later than 31st August immediately following the financial year to which the annual accounts relate.

18.3 The Lead Authority shall have audited the accounts of the Joint Committee and prepare an annual report to 31st March in each year which will be submitted to the Joint Committee no later than 30th September following for approval.

18.4 The first audit will take place year ending 31st March 2022 and will subsequently take place on an annual basis.

18.5 Islands Growth Deal project income and expenditure which is accounted for within Constituent Authorities' own accounts will be subject to audit by an individual authority's own external auditors.

19 CONFLICTS OF INTEREST

19.1 The members of the Joint Committee will act in the interests of the Islands Growth Deal area as a whole when making decisions in relation to the Growth Deal Programme.

19.2 Members of the Joint Committee will be governed by their Councillor Code of Conduct.

20 VARIATION

20.1 These terms and conditions may only be varied by execution of a minute of variation signed by all of the Constituent Authorities.

21 RESOLUTION OF DISPUTES

- 21.1 Any dispute between Constituent Authorities arising in connection with its membership of the Joint Committee which cannot be resolved by discussion between the Constituent Authorities in dispute shall be referred to an independent mediator appointed by the Law Society of Scotland. The fees and expenses of the mediator shall be borne equally by the parties involved in the mediation. In the event the parties fail to reach an agreement within 30 days after the commencement of the mediation, then the matter may be determined by an arbitrator.
- 21.2 Arbitration in terms of this clause may be initiated by any of the Constituent Authorities in dispute after the 30 day period referred to in clause 21.1. The arbitrator shall be mutually agreed by the parties in dispute failing which the arbitrator shall be approved by the Law Society of Scotland on the written application of any Constituent Authority.
- 21.3 The decision of the Arbitrator on the matter in dispute and on any award of expenses relating to the arbitration shall be final and binding on all parties involved in the arbitration.
- 21.4 The operation of Rule 69 of the Arbitration (Scotland) 2010 Act is excluded. The Constituent Authorities also agree not to make a referral to the Outer House all in terms of Section 41 of the Arbitration Act 2010.

22 ASSIGNATION

- 22.1 No rights or obligations arising from these terms and conditions may be assigned except by the prior written consent of the Joint Committee.

23 SERVICE OF NOTICES

- 23.1 In any provision within the Agreement, where reference is made to the serving of notices if such notices are registered or recorded delivery post, receipt of such notices will be deemed to have occurred the day after the date of posting.

24 INCONSISTENCY

- 24.1 If any Constituent Authority shall find any discrepancy in or divergence between any of the following, including a divergence between parts of any one of them, namely:

- a) The Joint Committee Governance Agreement;
- b) Any subsequent or ancillary agreements pursuant to the Joint Committee Governance Agreement.

The Constituent Authority shall without undue delay give to the Clerk a written notice specifying the discrepancy or divergence and the Constituent Authorities shall negotiate in good faith to agree any relevant modifications or amendments to the foregoing documents as may be required.

25 THIRD PARTY RIGHTS

- 25.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contract (Third Party Rights) (Scotland) Act 2017.

26 AGREEMENT

- 26.1 Subject to clause 2.1 the execution of these terms and conditions creates a legally binding agreement between the three Constituent Authorities of the Joint Committee.

IN WITNESS WHEREOF these presents consisting of this and the preceding 14 pages together with the Schedules annexed hereto are subscribed as follows:-

SUBSCRIBED for and on behalf of Comhairle nan Eilean Siar

at

on the day of 2021 by

..... Authorised Signatory
..... Authorised Signatory's Full Name (Block capitals)
..... Witness' Signature
..... Witness' Full Name (Block capitals)
..... Witness' Address
.....

SUBSCRIBED for and on behalf of Orkney Islands Council

at

on the day of 2021 by

..... Authorised Signatory
..... Authorised Signatory's Full Name (Block capitals)
..... Witness' Signature
..... Witness' Full Name (Block capitals)
..... Witness' Address
.....

SUBSCRIBED for and on behalf of Shetland Islands Council

at

on the day of 2021 by

..... Authorised Signatory

..... Authorised Signatory's Full Name (Block capitals)

..... Witness' Signature

..... Witness' Full Name (Block capitals)

..... Witness' Address

.....

Schedule 1

This is the Schedule 1 referred to in the foregoing agreement between Comhairle nan Eilean Siar, Orkney Islands Council and Shetland Islands Council.

Growth Deal for the Islands: Programme Management Board

Terms of Reference

1. Purpose

The Programme Management Board supports the Joint Committee in the delivery of the Islands Growth Deal Programme. It oversees cross-regional strategic activities outlined in the Heads of Terms. It also acts as a sounding board for the Programme Management Office (PMO) and local Projects, and provides feedback for activity that the PMO is undertaking.

The purpose of the Programme Management Board is to:

- support the Joint Committee in the delivery of the Deal, ensuring that it is aligned towards achieving its inclusive growth ambitions;
- ensure that the proper processes and procedures are in place in the delivery of the Deal;
- monitor financial spend against profile and delivery of milestones against agreed timescales;
- bring together intelligence and expertise to identify priorities and develop solutions to maximise private sector investment in the region and secure sustainable and inclusive growth;
- provide guidance to Local Programme Boards in Orkney, Shetland and the Outer Hebrides;
- capture and communicate business requirements for changes to, and development of economic policy and commission associated appropriate interventions;
- work collaboratively with all partners, to address barriers to inclusive economic growth and drive efficiency; and
- work to create an environment to support business growth ensuring appropriate mechanisms exist through which, as a co-ordinated voice, the private sector can inform and influence the shape and future direction of local, regional and national Government policy.

2. Membership

Membership comprises:

- Chief Executives of the three Islands Councils
- The Directors for Development, or equivalent, of the three Islands Councils
- HIE Senior Management representative
- 3 Representatives of the Islands Growth Deal Advisory Forum (1 Business, 1 Academic, 1 Community/Third Sector)
- Section 95 Officer of the Lead Authority (Comhairle nan Eilean Siar)

The Programme Director will have a standing invitation and right to attend all meetings; and Scottish Government and UK Government representatives have a standing invitation and right to attend as observers.

The posts of Chair and Vice Chair will be held by one of the Chief Executives of the Constituent Authorities and will rotate annually among the Constituent Authorities on an equitable basis, aligning with the Constituent Authority of the Chair and Vice Chair of the Joint Committee.

3. Meeting Frequency

It is proposed that the Programme Management Board meets monthly. Meeting frequency will be reviewed as requested by members, or depending on requirements of the overall Programme.

Growth Deal for the Islands: Advisory Forum

Terms of Reference

1. Purpose

The overarching purpose of the Growth Deal for the Islands Advisory Forum is to involve the business, academic and community sectors in guiding the implementation of the Islands Growth Deal. While the projects and financial arrangements have already been agreed in the Heads of Terms and ultimately, in the Deal Document, the Forum will support the Deal partners (local authorities, universities / colleges and government / public sector agencies), towards a shared ambition for achieving sustainable and inclusive economic growth for the region. It will do this in the following ways:

- use its knowledge and expertise to influence the Joint Committee and Programme Management Board to make spending and investment decisions that maximise benefits for the region's economy and its people;
- engage with wider business and third sector networks across Orkney, Shetland and the Outer Hebrides to ensure that a wide range of views are captured; and
- champion the Islands Growth Deal nationally and internationally to encourage further investment opportunities.

2. Principles

- The group will augment, and build on, existing business forums or similar structures without superseding them.
- Individuals will be required to act in the best interests of the Islands Growth Deal in its broadest sense.
- Members will be responsible for ensuring that views of existing business, academic, community, and other networks are captured, and that there is no duplication between the group's activity and these networks.

3. Governance and decision-making

The group will not have decision-making power, but its advice will be submitted to the Programme Management Board and, via the Programme Board, to the Joint Committee.

4. Membership

- Private sector representation, seeking to ensure an appropriate balance of membership, in terms of:
 - Geography: each of the 3 local authorities will be represented by at least one business organisation with significant operations in their area.
 - Sector: organisations which operate in key industry areas that are relevant to the economy will be represented.
 - Size: SME representation, potentially through Chamber of Commerce representation.
- Youth representation through appropriate mechanism, eg MSYP, for each area.
- Chair of the Islands Deal Programme Management Board.
- HIE Area Team Managers for Orkney, Shetland and Innes Galloway.
- Skills Development Scotland Islands Manager.
- Academic partners in the Deal – UHI, HWU and RGU.
- 2 members from each Council area, representing third / community sector, nominated by each Council.

5. Meeting Frequency

It is proposed that the Advisory Forum meets quarterly, the frequency of meetings to be reviewed as requested by members or depending on requirements of the overall Programme.

Growth Deal for the Islands: Local Programme Boards (Orkney, Shetland and Outer Hebrides)

Outer Hebrides Local Programme Board (Example for Reference)

Terms of Reference

1. Purpose

To bring together lead officers involved in the development and implementation of the Islands Deal in the Outer Hebrides (OH) in order to support successful progression of all aspects of the Islands Deal for the Outer Hebrides, maximizing local benefit and impact.

2. Reporting & Operational Support

Comhairle nan Eilean Siar will act as Lead Agency for the Programme Board and will provide administrative and secretarial support. The Responsible Officer within Comhairle nan Eilean Siar will be Calum Iain MacIver, Director for Communities.

3. Remit and Focus

- Ensure OH projects within the Islands Deal move consistently to Outline and Full Business Case in line with requirements.
- To seek to ensure that the necessary governance and project management measures are applied to all OH Islands Deal projects.
- To provide a forum for joint-working and guidance to Project Leads and delivery bodies in relation to OH Islands Deal projects.
- To provide feedback to the PMO on OH spend profile, risks and other matters which may impact on the successful implementation of the Islands Deal in the OH.
- Promote collaboration and communication among organisations involved in taking forward the different strands within the Islands Deal in the Outer Hebrides, and to promote positive and accurate communication within the wider island community.
- Support the identification and exploitation of further opportunities for the Outer Hebrides as a result of the Islands Deal investment.

4. Membership

The following have been asked to join the Programme Board

- Director for Communities, CNES
- Head of Economic Development and Planning, CNES
- Head of Accountancy and Exchequer Services, CNES
- Communications Manager, CNES
- Area Manager, Highlands and Islands Enterprise Innse Gall
- Principal, Lews Castle College UHI
- Islands Deal Outer Hebrides Project Leads

5. Meeting Frequency

It is proposed that the group initially meets fortnightly, the frequency of meetings to be reviewed as requested by members or depending on requirements of the overall Programme.

Growth Deal for the Islands - Finance Directors'/Heads' Group

Terms of Reference

1. Membership

The group will comprise:

- Finance Directors or equivalent of each Constituent Authority.

It will be chaired by the Section 95 Officer of the Lead Authority (Comhairle nan Eilean Siar) and be supported by the PMO.

2. Purpose

The group will:

- support the PMO, the Programme Management Board and the Joint Committee in overseeing the Deal's finances;
- ensure that the Deal monies are spent in accordance with the Financial Plan for the Growth Deal;
- ensure that financial risk, audit and assurance are assessed and addressed effectively throughout the process;
- ensure compliance with current financial regulations and accountancy best practice; and
- consider quarterly financial reports and escalate any risks to the Programme Management Board.

3. Meeting Frequency

It is proposed that the group initially meets monthly, the frequency of meetings to be reviewed as requested by members or depending on requirements of the overall Programme.

Growth Deal for the Islands – Legal and Governance Group

Terms of Reference

1. Membership

The group will comprise:

- Heads of Legal Services or equivalent of each Constituent Authority.

2. Purpose

The group will:

- support the PMO, the Programme Management Board and the Joint Committee by providing advice and oversight on legal, governance and procurement matters as these relate to the Islands Growth Deal,
- ensure that any legal risks are identified and escalate these as appropriate,
- seek to ensure that the Joint Committee and other governance levels within the Deal comply with relevant legislation, the requirements of the Constituent Authorities (including schemes of delegation and contract regulations), and the Joint Committee Governance Agreement,
- advise on potential conflicts of interest where these arise,
- advise on the development of standing orders and other requirements for the governance of the Joint Committee,
- advise on data protection, FOI, and information security matters relating to the Islands Growth Deal.

3. Meeting Frequency

It is proposed that the group meets as requested by members or depending on requirements of the overall Programme.

Governance Diagram

