

AYRSHIRE SHARED SERVICE JOINT COMMITTEE

14 JUNE 2019

SCOTTISH WATER - MAINTENANCE AGREEMENTS FOR SHARED DRAINAGE SYSTEMS

Report by the Head of Roads - Ayrshire Roads Alliance

PURPOSE OF REPORT

1. The purpose of this Report is to advise Joint Committee of the Scottish Government's desire to ensure that the maintenance of surface water drainage systems is carried out by Public Bodies in the future.

BACKGROUND

2. Under Section 7 of the Sewerage (Scotland) Act 1968, a roads authority and Scottish Water may enter into an agreement on the provision, management and maintenance of Sustainable Urban Drainage Systems (SUDS), sewers and drains.
3. The maintenance responsibility for surface water drainage from housing developments is divided between Scottish Water who are responsible for drainage outwith the property curtilage, while the responsibility for drainage of public roads rests with the roads authority.
4. Agreements under Section 7 of the Sewerage (Scotland) Act 1968 enable these systems to be combined and, through the sharing of costs, the maintenance burden is reduced for each party.
5. At present it is not uncommon for SUDS features such as basins or ponds to remain un-adopted following completion of housing developments. (Currently as part of the Development Control procedure, it is a requirement that the developer employs a Factor to maintain these items funded by the residents.)
6. Whilst this means that the Council do not incur any costs maintaining the feature, there is no certainty that the feature will be kept in a serviceable condition and there is the possibility that a failure of the drainage system could cause localised flooding.
7. The Section 7 agreements ensure that such features will be maintained in perpetuity by a public body.
8. A working group was formed comprising members from the SCOTS Roads Group, SCOTS Flood Group and Scottish Water. They drafted a Memorandum of Understanding (MOU) outlining the high-level principles of working together to minimise the costs to all parties.

DETAIL

9. Under the MOU, the surface water from roads and from outwith the curtilage of properties within the development will be accommodated within a shared system with the maintenance responsibility shared between the roads authority and Scottish Water.
10. Individual maintenance agreements would be signed for each development following the principles in the MOU.
11. The proposed maintenance split would involve Scottish Water maintaining those parts of the shared drainage system which lie below ground while the roads authority would maintain those parts above ground.
12. In addition, Scottish Water would renew the shared drainage system at the end of its life at their own expense.
13. This arrangement would ensure that each party undertakes the work appropriately suited to their expertise, and this would achieve a roughly equal proportion of costs over the life of the development.
14. Proposed Maintenance responsibilities of the drainage network;
 - Gullies and tails - Local Authority
 - Swales or ponds grass cutting - Local Authority
 - All carrier pipework/ Manholes and Chambers - Scottish Water
 - Outlets and flow control devices - Scottish Water.
15. A letter endorsing the proposals is detailed in Appendix 1.
16. The Memorandum of Agreement is detailed in Appendix 2
17. The individual agreement format is detailed in Appendix 3.
18. An illustrative guide to the adoption principles is detailed in Appendix 4.
19. Projected whole life costs, if the site were solely maintained by a Local Authority are detailed in Appendix 5.
20. The current status of the Local Authority MOU is contained in Appendix 6.
21. There are legacy sites across the Ayrshire Roads Alliance Network. These sites are not part of the Section 7 MOU agreements. However, Scottish Water propose to approach these locations using the same principal, and each will be individually agreed with the Ayrshire Roads Alliance.
22. Currently the number of potential legacy sites identified by Scottish Water and the Ayrshire Roads Alliance for each area is as follows: East Ayrshire 38 (including 9 Atrium sites); and South Ayrshire 36 sites.

23. If East Ayrshire Council and South Ayrshire Council opt not to enter into this mitigating agreement then they would be faced with a three pipe system.
24. Essentially this means that there would be separate pipes and SUDS systems (ponds) for road water and Scottish Water curtilage water, resulting in a liability to the Local Authority in the order of £9,000 rising to £17,000 after 10 years (pipe clearance/repair costs).

POLICY/COMMUNITY PLANNING ISSUES

25. A well maintained road network will contribute to achieving the Community Plan objectives in relation to Economy & Skills and Safer Communities to maintain good access to our communities within East Ayrshire.
26. The matters referred to in this report contribute to the South Ayrshire Council strategic objective of 'Enhanced Environment through Social, Cultural and Economic Activities' and within that to the outcome of 'Work with partners to improve roads and other infrastructure, to encourage house building and business investment that sustains local communities'.

LEGAL IMPLICATIONS

27. By virtue of the relevant statutory provisions, principally detailed within the Roads (Scotland) Act 1984, the Council as local roads authority is required to manage and maintain all publicly adopted roads within its area other than those which are maintained and managed by the Scottish Ministers.

HUMAN RESOURCES IMPLICATIONS

28. The work programmes have direct impact on human resources and the Alliance will ensure all works are suitably resourced.

EQUALITY IMPACT IMPLICATIONS

29. An equality impact assessment is not needed because the proposal does not have a differential impact on any of the protected characteristics.

FINANCIAL IMPLICATIONS

30. The Ayrshire Roads Alliance delivers the strategic and local services as stated in the Service Plan. The budget is provided by East Ayrshire Council, South Ayrshire Council, and other external organisations. Appropriate scrutiny arrangements are in place to manage these budgets
31. Entering into joint maintenance agreements for new shared drainage systems will involve additional routine maintenance costs. However, these costs would be minimal compared to those falling to the Councils under the alternative scenario of assuming sole liability for the maintenance of systems draining road surface water only.

RISK IMPLICATIONS

32. The Works Programmes, Service Plan and the Risk Register do not expose either Council to an increased risk as they have been developed from existing budgets and existing service commitment.
33. Section 7 agreements will ensure that responsibility for the maintenance of appropriate SUDS will pass to public bodies. This should reduce the likelihood of localised flooding arising from poorly maintained or neglected drainage systems.

TRANSFORMATION STRATEGY

34. This report aligns with the following design principle stated in the "Transformation Strategy 2017-2022" maximising value for our communities by ensuring the road network is maintained.

RECOMMENDATIONS

35. It is recommended that the Joint Committee:
 - (i) Approves the Memorandum of Agreement.
 - (ii) Otherwise, notes the contents of this Report.

Stewart Turner
Head of Roads - Ayrshire Roads Alliance
24 May 2019

LIST OF APPENDICES

Appendix 1 - Scottish Government Letter
Appendix 2 - MOU
Appendix 3 - Blank individual site agreement format
Appendix 4 - Illustrative maintenance agreement drawing
Appendix 5 - Whole Life Cost spreadsheet
Appendix 6 - LA MOU Current Status

BACKGROUND PAPERS

There are no background papers

For further information on this report, please contact Stewart Turner
Head of Roads - Ayrshire Roads Alliance on 01563 503164 or at
stewart.turner@ayrshireroadsalliance.org

Implementation Officer: Kevin Braidwood,
Operations Manager - Ayrshire Roads Alliance on 01563 576441, or at
kevin.braidwood@ayrshireroadsalliance.org

APPENDIX 1



6 February 2017

«Title_1» «Name_1» «Name_2»
«Council»
«Address»
«Column2»
«Column3»
«Column4»

Castle House 6
Castle Drive
Carnegie Campus
Dunfermline KY11
8GG

Dear «Title_1» «Name_2»,

Memorandum of Understanding regarding the provision of surface water drainage from housing developments

Over the last year, representatives from the SCOTS Roads Group, SCOTS Flood Group and Scottish Water with support from the Scottish Government, have worked in partnership to develop a collaborative framework that enables shared sustainable drainage systems designed to treat and convey road drainage and surface water from the roofs and curtilages of buildings.

The framework is in the form of a memorandum of understanding (MOU) which outlines the principles of working together to minimise the costs to roads authorities, Scottish Water and developers. Under these principles the surface water drained from the roads and the curtilage of houses within the development will be accommodated within a shared system, with the maintenance responsibilities shared between the two authorities.

Although not legally binding, all Local Authorities are encouraged to adopt the framework and enter into a maintenance agreement with Scottish Water under Section 7 of the Sewerage (Scotland) Act 1968 for individual developments. Should Scottish Water or a Local Authority decide not to do so, they will have to ensure the provision of, and meet the full costs of maintaining, their own separate drainage systems for new developments.

We are content that a fair and reasonable arrangement has been achieved and are fully in support of this proposal. This type of co-operation and collaboration is fundamental to integrated surface water management and will also be a significant step towards meeting the obligations of Local Authorities and Scottish Water to help facilitate the implementation of sustainable flood risk management in Scotland.

With this in mind, the framework represents the preferred arrangement for all new housing developments. The signatories wish to encourage Local Authorities to adopt and apply this framework with immediate effect as set out in the accompanying documentation.

Yours sincerely,

Douglas Millican
Chief Executive
Scottish Water

Neil Ritchie
Head of Natural Assets and Flooding
Scottish Government

Scott Allan
Executive Chair
SCOTS

Enc. Documentation package



Scottish Government
Riaghaltas na h-Alba
gov.scot

Appendix 2

Memorandum of Understanding regarding the provision of surface water drainage from housing developments

1. When proposals are received from a developer of a new housing development to which the Security for Private Road Works (Scotland) Regulations 1985 apply to incorporate into the development as part of its overall drainage design a section which carries surface water from both the curtilage of houses and other buildings within the development and the roads serving the development (this section being the “shared drainage system”), the authorities responsible for drainage (SW), roads (RA) and flood risk management (FRM) at the development will work together to agree the technical aspects of the shared drainage system to ensure it meets the requirements of each of the authorities involved, liaising with other authorities with statutory responsibility in relation to the development as required.
2. The approvals given to the developer to allow the developer to proceed will include conditions to ensure the shared drainage system (1) is constructed to the agreed technical standards, and (2) can vest in SW on its completion independently from the remainder of the drainage system of which it forms a part.
3. Subject to any change in law over the period in question, the technical standards will not be revised over the period of time given to the developer to complete the development. If the developer seeks an extension to the timescale for completion, RA will liaise with SW and FRM on the proposal, and the three authorities will agree any revised technical standards to be imposed.
4. Where the development comprises a phase of a larger development, the developer must include a stand-alone drainage system in the first phase to be completed, and either an individual stand-alone drainage system or integration by agreement into a completed drainage system for each subsequent phase.
5. RA will take a security to construct the road in accordance with the terms of the relevant construction consent. This will include an amount sufficient to construct the shared drainage system to the agreed standard.
6. The shared drainage system will vest in SW on completion in accordance with agreed standards.
7. In the event of RA being required to construct the road in accordance with the provisions of the 1985 regulations, SW will allow RA access onto land it has acquired to house the shared drainage system to allow RA to complete the infrastructure. As required by the 1985 regulations, RA will adopt the road on completion.
8. SW’s vesting process will result in SW being legally responsible for maintaining the shared drainage system. Once vested, SW will maintain that shared drainage system. Where the road is not constructed by RA, RA will adopt the road as and when it is required to do so in accordance with the provisions of section 16(2) of the Roads (Scotland) Act 1984. When the road is adopted by RA, SW and RA will share the cost of maintenance of the shared drainage system on a basis to be agreed. The agreed sharing of costs will be set out in a maintenance agreement under section 7 of the Sewerage (Scotland) Act 1968. RA will become liable for its share of maintenance under the maintenance agreement relating to that road from the date of its adoption of the road.
9. The maintenance agreement will be specific to each development, and be based on a standard framework, as follows –
 - 9.1 SW will maintain the ‘below ground’ components of the shared drainage system,
 - 9.2 RA will maintain the ‘above ground’ components of the shared drainage system,

- 9.3 the 'below ground' and 'above ground' components will be identified on the drawing forming part of the maintenance agreement, and
- 9.4 SW will meet the cost of renewing the shared drainage system or any part thereof at the end of its life.
10. If a developer proposes to add discharge to an existing shared drainage system, SW, RA and FRM will liaise over the proposal and agree a response.
11. Should damage or an incident be caused by a third party which affects any part of the shared drainage system, SW and RA will co-operate fully and openly in investigating the incident, together with, where necessary, any relevant regulator, and join in seeking to recover the costs of repair from that third party, if both consider that action is reasonable and proportionate.
12. Where a road is stopped up or de-listed, RA will no longer be responsible for its share of the maintenance of any shared drainage system serving that road. If all connections from the curtilage of houses and other buildings into a shared drainage system are removed, SW will no longer be responsible for its share of the maintenance of that shared drainage system.
13. In their dealings with each other and other stakeholders in relation to the application of these principles, SW, RA and FRM will endeavour always to act in a reasonable manner and a spirit of co-operation. In addition, SW and RA will keep under review the terms of any maintenance agreement they enter into, and will endeavour to ensure it always reflects a fair and equitable division of the overall maintenance costs.
14. If a difference of opinion on any issue covered by these principles or a maintenance agreement cannot be resolved through internal escalation procedures agreed between SW and RA, the matter will be referred to the Scottish Ministers for determination, and that determination is final.
15. It is acknowledged these principles will evolve over time to reflect changes in legislation and practice. SW, RA and FRM agree to review these principles from time to time at the instigation of any of the authorities.

November 2016

Appendix 3

Cover Sheet – not a page of the agreement

Maintenance Agreement

(under section 7 of the Sewerage (Scotland) Act 1968)

between

Scottish Water

and

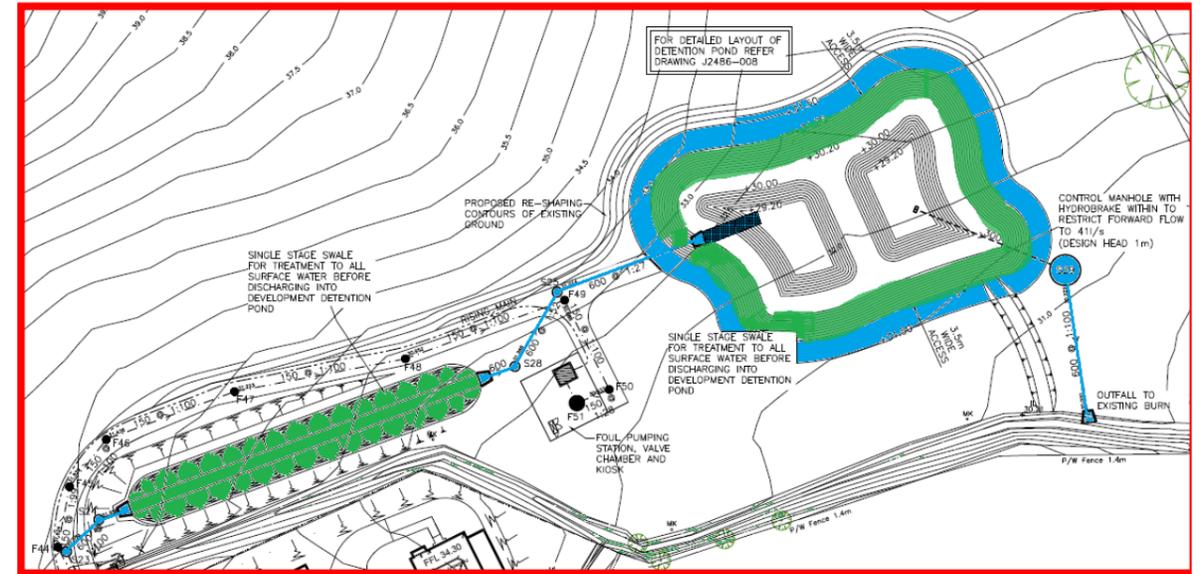
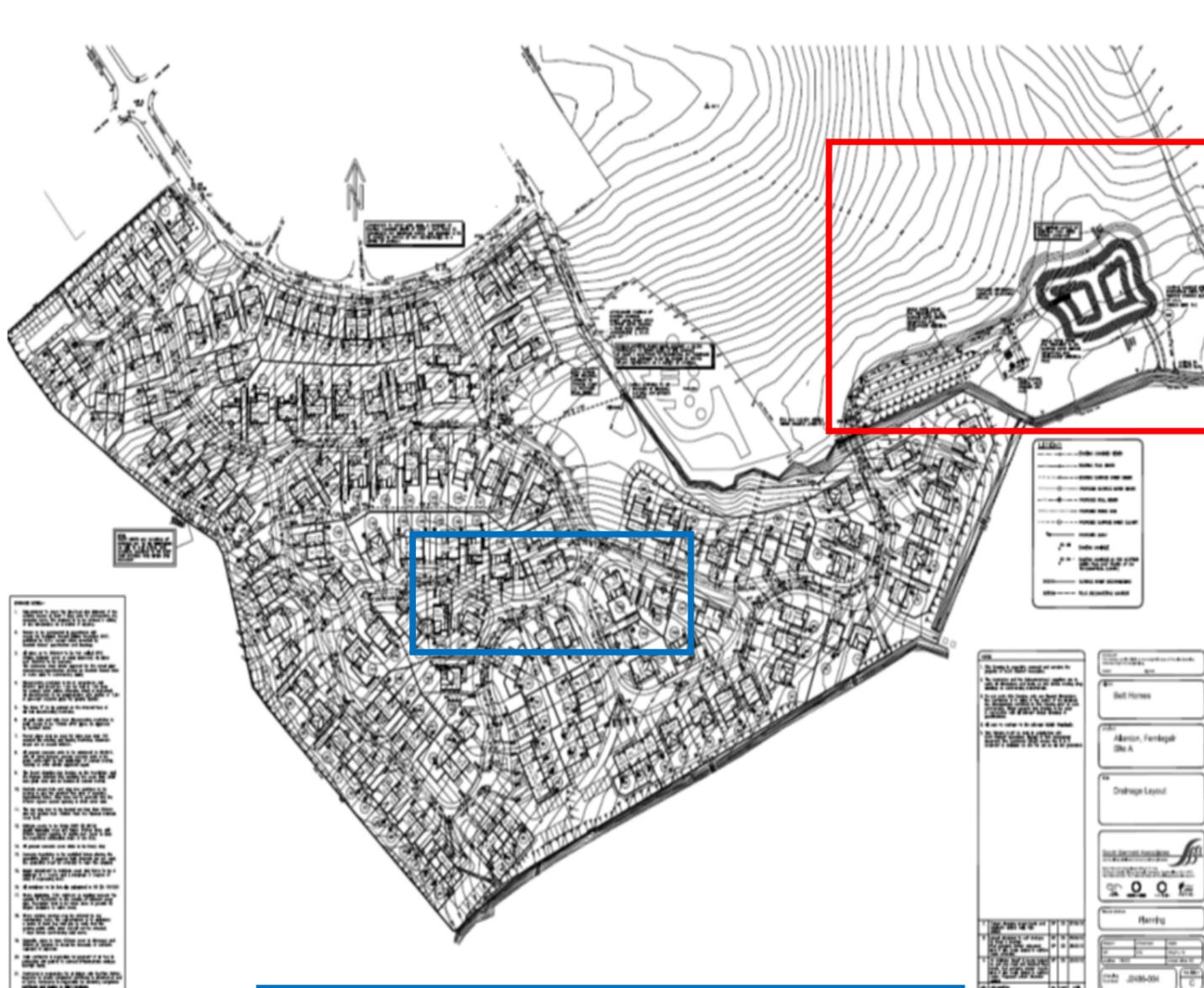
[] Council

(as local roads authority for the local government area of [])

Development []

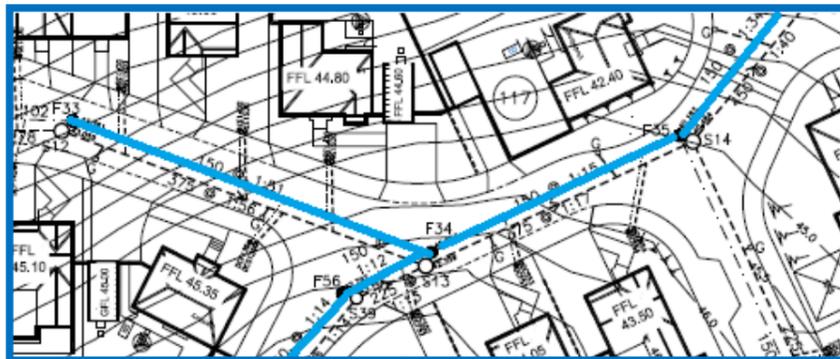
Date of Maintenance
Agreement []

Appendix 4: Illustrative maintenance agreement drawing



Legend
Maintenance Responsibilities

- Scottish Water
- Roads Authority



Appendix 6 - LA MOU Current Status

The Highland Council and the Moray Council have agreed the principles.

Perth and Kinross Council will submit shortly to their relevant committee. In the interim, they have sent a letter confirming their agreement to the principles of the MOU.

City of Edinburgh Council agrees the principles with a few changes required to the specification on issues relating to planting rather than grass along with some technical issues.

South Lanarkshire Council has utilised delegated powers and they have fully agreed to work under the MOU principles and they have a few sites progressing. One is now operational using the factoring system described in the briefing.

Clackmannanshire Council agrees with the principles and a pilot has commenced

North Ayrshire Council has committed to working under the MOU principles.

Dundee City Council has committed to working under the principles.

Aberdeenshire Council has intimated they are content to work under the MOU principles.

The Western Isles Council has confirmed they will proceed with a three pipe system if required and they will not be signing up to Section 7.

The Angus Council has committed to working under the principles of MOU.

Aberdeen City Council are currently declining to accept, although they agree this is potentially the way to go. They do not want to commit until they have full confirmation from Scottish Government that no additional funding will be made available. Note: Scottish Government has confirmed at a recent SCOTS meeting that no additional funding will be provided.