

SUMMARY OF RECENT RESEARCH INTO THE HISTORIC AND CURRENT JURISDICTION OF OBAN BAY

1. Introduction.

This Attachment provides a very brief overview of the research which has recently been carried out relating to the existence of a Harbour Authority responsible for the waters of Oban Bay. All of the information summarised in this document has been presented to either the Oban Bay Management Group (OBMG) or its predecessors, the Oban Harbour Development Group and the Oban Harbour Management Group (OHMG).

2. Retired Scottish High Court Judge, Lord Bruce Weir.

Prior to the formation of the Oban Bay Stakeholder Group (OBSG), the main mechanism by which users of Oban Harbour had any meaningful input into the (then) OHMG was via the Oban Harbour User Group, chaired by Alasdair Henderson of CalMac. Lord Weir took part in these meetings on behalf of RYA Scotland and made a number of recommendations and observations, some of which were approved and recorded in subsequent meeting notes of the OHMG and the OBMG.

One of these observations, made at a meeting held at the Cuan Mor in 2018, was with regard to the relevance of historic legislation to Oban Bay. Lord Weir advised that, until such time as it was formally repealed, the historic legislation was still valid - irrespective of whether or not the current pier owner/operator chose to recognise it.

This principle was recently demonstrated in March 2019 when the then speaker of the House of Commons, John Bercow, used legislation which had first been used on 2 April 1604, and most recently in 1920, to prevent a parliamentary debate related to the Brexit vote from taking place. As this Attachment will demonstrate, in the case of Oban there is documentary evidence that the former Harbour Authority was operating much more recently than that, and that it had done so for more than a century.

3. Former Oban Assistant and Temporary Harbour Master, Fergus Gillanders.

Fergus Gillanders carried out an extensive search of the Argyll and Bute Council (A&BC) archives during 2017 and 2018 and discovered a significant amount of material which confirmed the formation and operation of a Harbour Authority for Oban Bay. The most recent records were to the late 1980s and early 1990s, and were included as an Appendix in the jurisdictions paper that was subsequently prepared by the OBSG (see later). The result of the work that was completed by Fergus has been used by others to inform their own research and considerations.

4. Retired solicitor and RYA Scotland Cruising Committee Member, Boyd Holmes.

Boyd Holmes was asked by RYA Scotland to provide a legal opinion of the historic information that had been collated by Fergus Gillanders, and compare that to the preliminary findings of Monica

Peto of Eversheds Sutherland who had been commissioned by the OBMG to undertake a review of historic jurisdictions in Oban Bay.

Mr Holmes reported that, in contrast to the then view of Ms Peto, he considered that the information and legislation did support the view that there was a Harbour Authority for Oban Bay, albeit one that was no longer operating. Boyd was the first person to describe the Harbour Authority as being 'moribund but extant' and, like Lord Weir, advised that it would remain so until the relevant legislation was repealed.

5. Oban Bay Stakeholder Group.

The OBSG collated the work that had been completed by both Fergus Gillanders and Boyd Holmes, together with the initial report which had been prepared for the OBMG by Monica Peto, and combined this with historic Admiralty charts held by the National Library of Scotland. The resultant document, referred to as 'the jurisdictions paper', was first presented to a stakeholder meeting held at the Glencruitten Hall and then again at a public meeting hosted by the OBMG at the Argyllshire Gathering Halls in March 2019.

Whilst the report confirmed the geographical extents of the areas of jurisdiction around the existing harbour structures, and identified specific points of agreement and those which were still to be resolved, it also made the following statements with regard to the outer part of Oban Bay:

- A general harbour master for Oban Bay was appointed as a result of the 1878 Act;
- The 1878 Act led to the formation of the Oban Harbour Authority (OHA);
- There is documentary evidence that the OHA was active until at least the late 1960s or early 1970s;
- There is circumstantial and documented evidence that the role of the OHA has been acknowledged more recently.

These findings were acknowledged by Monica Peto in her final report to the OBMG prior to the March 2019 public meeting.

6. Monica Peto of Eversheds Sutherland.

As already stated, Monica Peto was commissioned by the OBMG to provide a legal review of the legislation and jurisdictions in Oban Bay. This was published in late 2018, following which both Boyd Holmes and then the OBSG provided detailed feedback and comment. Correspondence between the author of the OBSG and Monica led to a general consensus being reached on all points other than the detail of the boundary between different harbour areas in the vicinity of the South Pier (this has subsequently been agreed between OCHDA, CMAL and members of the OBMG in 2020). Monica confirmed that consensus had been reached in her final report to the OBMG in February 2019, with the OBMG minute stating the following:

The legal status of the SHA at the North Pier and Railway Pier has been agreed, along with more accurate boundary positions. There is a grey area of the exact legal status of the area of jurisdiction associated with the South Pier, although this is thought to be of small

consequence as this can be clarified with the required new legislation for a wider SHA. The original South pier boundary has also been identified.

The area outside of these SHA areas, up to the Dog Stone - Brandy Stone line, has limited HM powers under the 1847 and 1878 acts; these powers relate to a general HM that could be jointly appointed by the owners of the Railway, North and South Piers and the Council. Again new legislation will be required for a wider SHA to be effective which would supersede this legislation.

This is entirely consistent with the findings of both Boyd Holmes and the OBSG jurisdictions report, the latter concluding with the following statement:

The way forward to secure a compliant harbour authority is for ABC and CMAL to acknowledge that they are the inactive guardians of the moribund but extant old-style trust port, OHA, and to discharge their obligations by seeking the necessary authorisation for the conversion of that body to a modern trust port whilst incorporating an extension of its geographical limits of jurisdiction.

This is exactly what OCHDA is trying to achieve on behalf of all stakeholders, including both A&BC and CMAL.

7. Argyll and Bute Council Legal Services Department, Mr D Kelly, and the Oban Harbour website.

In March 2017 Mr Donnie Kelly, Legal Services Manager of A&BC, advised Council Officers and Members of the OBMG that:

This Council as successor to the Oban Harbour Authority is the harbour authority for the wider area of Oban Harbour and as well as that as owner/operator of the North Pier also has responsibilities for the specified area off the North Pier.

This view appears to be reconfirmed on the home page of the Oban Harbour website which starts with the statement that:

The lead provider of marine safety and related services for Oban Harbour is Argyll & Bute Council with support from CalMac Ferries, the Northern Lighthouse Board and Caledonian Maritime Assets Ltd.

There is additional supporting evidence to further confirm that A&BC considers itself to be responsible for controlling the waters of Oban Bay (for example, making what appear to be complaints through the OBMG meetings that the CMAL Pier-master told vessels that were anchored in the harbour to move). Similarly, both historic Admiralty charts and those produced by others also show the outer harbour boundary. However, the information contained in this Attachment, together with the documents to which it refers, all demonstrate that there is historic legislation and documentation which confirms the existence of a Harbour Authority for Oban Bay. This legislation will need to be repealed in order for a new Statutory Harbour Authority to control the waters of both Oban Bay and its approaches.