

# **Memorandum of Understanding**

between

**Argyll and Bute Council**

and

**Oban Community Harbour Development Association**

**April 2021**

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## Memorandum of Understanding

Between:

1. Argyll and Bute Council (the “**Council**”) a Local Authority incorporated under the Local Government etc. (Scotland) Act 1994 and having its principal place of business at Kilmory, Lochgilphead, PA31 8RT

and

2. Oban Community Harbour Association (**OCHDA**), a community group established to facilitate the development of a Trust Port for Oban.

### **Purpose:**

To set out the commitments of both parties to engage constructively with one another in respect of the establishment of a Trust Port for Oban; and to provide clarity on the roles and responsibilities of both parties in relation to that subject.

### **Definitions and acronyms:**

|                    |   |
|--------------------|---|
| ATON               | Aids to Navigation; any sort of mechanical, physical or electrical signal, marker or guidance equipment which aids navigation   |
| BoT                | Board of Trustees; the collective group of independent individuals who manage the assets of the harbour trust for the benefit of stakeholders.  |
| CFL                | CalMac Ferries Limited, also known as Caledonian MacBrayne or CalMac, is a wholly-owned subsidiary of David MacBrayne Ltd, which is wholly owned by Scottish Ministers. It is the largest single user (in terms of Gross Tonnage) of Oban Harbour.  |
| CMAL               | Caledonian Maritime Assets Limited, formerly Caledonian MacBrayne Ltd owner of the vessels and piers which it leases to the operator of the Clyde & Hebrides Ferry services (currently CFL). CMAL is also wholly owned by Scottish Ministers but is entirely separate from CFL. Although they have the same shareholder, each has its own Board and their relationship is solely contractual. |
| Conservancy Charge | A fee levied on vessels using a Harbour which contributes to specific elements of the Harbour running costs, mostly concerned with safety and management of vessel movements. The charge is in addition to Berthing Charges, and vessels are charged according to their Gross Tonnage.  |
| Council            | Argyll and Bute Council, a Local Authority incorporated under the Local Government etc. (Scotland) Act 1994 and having its principal place of business at Kilmory, Lochgilphead, PA31 8RT   |

|                   |   |
|-------------------|---|
| Designated Person | Each Harbour Authority must appoint an individual as the Designated Person to provide independent assurance directly to the duty holder that the MSMS, for which the duty holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the MSMS in ensuring compliance with the PMSC.   |
| Duty Holder       | The Duty Holder has the responsibility for ensuring that Argyll and Bute Council's duties and powers as a Harbour Authority are met. The Argyll and Bute Harbour Board has assigned the post of Duty Holder to the Chief Executive of Argyll and Bute Council. The Duty Holder is responsible for ensuring compliance with the Port Marine Safety Code and Harbour Authority performance in ensuring safe marine operations.  |
| Harbour           | A harbour is defined by the Harbours Act 1964 (HA 1964) as any natural or artificial harbour, any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships. It also includes docks and wharves.   |
| Harbour Authority | A Harbour Authority is the organisation responsible for managing a port or harbour.   |
| Harbour Order     | Harbour Orders are a form of delegated legislation which either amends existing legislation or introduces new harbour legislation. They are made as a statutory instrument under the HA 1964 and confer powers on the SHA for the purpose of improving, maintaining or managing a harbour.  |
| HRO               | Harbour Revision Order. Orders under section 14 of the Harbours Act 1964 can be applied for by the harbour authority concerned in improving, maintaining or managing a harbour in the exercise and performance of statutory powers and duties, or by a person, or a body representing persons, having a substantial interest in the harbour. The order must be in the interests of the harbour and may be made for achieving all or any of the objects specified in Schedule 2 of the 1964 Act. An HRO can extend or modify existing statutory powers and/or authorise works. |
| MSMS              | Marine Safety Management System, the means by which a Harbour Authority ensures the management and co-ordination of marine activities necessary for the effective facilitation of navigational safety and compliance with the Port Marine Safety Code.  |
| Municipal Port    | A port or harbour that is owned and operated by the Local Authority   |
| NLB               | Northern Lighthouse Board, the General Lighthouse Authority for Scotland and the Isle of Man. Their operational base is in Oban.  |
| Oban Bay          | Those waters lying to the south of a line from the north-west tip of Kerrera (Rubh 'a' Bhearnaig) to the north-west tip of Maiden Island and to the north of a line drawn east-west through Sgeirean Dubha light tower (Cutter Rock Beacon, Kerrera Sound).   |

|                    |   |
|--------------------|---|
| Oban Harbour       | That part of Oban Bay lying to the east of a line drawn between Dunollie Light/Dog Stone to the north and the Brandystone to the south.   |
| OBMG               | Oban Bay Management Group, comprising representatives from the Council, NLB, CMAL, CFL, OBSG and OCHDA  |
| OBSG               | Oban Bay Stakeholders Group - open to all individuals and organisations with an interest in Oban Bay  |
| OCHDA              | Oban Community Harbour Association, a community group established to facilitate the development of a Trust Port for Oban.   |
| OHDG               | Oban Harbour Develop Group - now succeeded by the OBMG  |
| OLI                | Oban Lorn and the Isles Area Committee  |
| PMSC               | Port Marine Safety Code; this sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. It is endorsed by the UK Government, the devolved administrations and representatives from across the maritime sector and, while the Code is not mandatory, these bodies have a strong expectation that all harbour authorities will comply.  |
| SHA                | Statutory Harbour Authority; Statutory Body responsible for the management and running of a harbour. The powers and duties in relation to a harbour are set out in local Acts of Parliament or a Harbour Order under the Harbours Act 1964.   |
| Transport Scotland | Transport Scotland is the national transport agency for Scotland, responsible for all devolved policy matters covering commercial, publicly owned and trust ports, on behalf of Scottish Ministers. Their remit includes providing advice on Harbour Orders made as Scottish Statutory Instruments under the 1964 Harbours Act.   |
| Trust Port         | <p>Trust Ports are independent statutory bodies, governed by their own local legislation, which are run by independent boards who manage the assets of the trust for the benefit of stakeholders.</p> <p>Trust Ports operate in a commercial environment with no direct public funding and compete in the market with Private and Municipal Ports as well as other Trust Ports. There are no shareholders or owners and profits are reinvested in the port. They make significant contributions to both local, and in many cases, the national economy.</p> <p>Scottish Ministers, as a stakeholder, maintain an overview of performance and may challenge where necessary, as all stakeholders are able to do.</p> |
| VTS                | Vessel Traffic Service; a marine traffic monitoring system established by harbour or port authorities which is designed to improve the safety and efficiency of vessel traffic and protect the environment.   |

## 1. Objective

1.1. The objective of this Memorandum of Understanding is to outline the partnership between the Council and OCHDA in the development of an agreement relating to:

- a) the transfer of the Council's historic Harbour Authority powers and responsibilities for Oban Harbour to the new Oban Harbour Authority;
- b) the commercial lease of specified Council assets on the North Pier in Oban;
- c) appropriate arrangements for staffing of leased Council assets, as above

all as agreed by the Argyll and Bute Harbour Board in December 2019.

## 2. Significant milestones

2.1. In order to achieve the objective stated above a number of specific outputs and tasks to be completed. Schedule 1 to this MOU contains a detailed list of the individual tasks, identifies the party responsible for delivering each task and a target date for completion. Progress in regard to each output will be reported to monthly meetings between the joint Trust Port Project group of the Council, OCHDA and OBSG representatives (see later). Completion of these tasks will enable the following significant milestones to be achieved:

|   |   |                    |
|---|---|--------------------|
| 1 | Preparation of draft Business Plan for consideration by Council   | OCHDA              |
| 2 | Revision of draft Business Plan   | OCHDA              |
| 3 | Circulation of Business Plan to OBMG and relevant Council Committees for consultation   | Both               |
| 4 | Completion of formal agreement between the Council and OCHDA  | Both               |
| 5 | Circulation of proposed 'Protected Provisions' for inclusion in the Harbour Revision Order (HRO)  | OCHDA              |
| 6 | Completion of draft HRO for preliminary circulation to Argyll and Bute Harbour Board, Transport Scotland, OBMG and significant Stakeholders | OCHDA              |
| 7 | Submission of final HRO and Business Plan to Transport Scotland for public consultation   | OCHDA              |
| 8 | Approval of HRO by Minister   | Transport Scotland |
| 9 | Transfer of powers and commencement of commercial lease   | Both               |

### 3. Background

- 3.1. Oban Harbour is a busy working port on the west coast of Scotland. It is the principal port for CalMac Ferries Ltd (CFL), the operational base for the Northern Lighthouse Board (NLB), home to a significant fishing fleet and an increasingly popular destination for both leisure sailors and cruise ships. It also supports a range of commercial marine users and serves as an important transport hub for Argyll and the Islands.
- 3.2. The Council is one of two Statutory Harbour Authorities (SHA) within the Harbour, their Harbourmaster being based at the North Pier which is owned by the Council. They are currently the lead provider of marine safety and related services for the Harbour. The second SHA is Caledonian Maritime Assets Ltd (CMAL) who are responsible for the waters immediately off the Railway Pier.
- 3.3. In recent years there has been a significant increase in the size and quantity of vessels using the Bay. Associated with this has been an increase in both reported incidents and near misses. The existing arrangements for the management of Oban Bay and its approaches, with multiple organisations having different responsibilities, can lead to confusion for users with no organisation in sole control of either the Bay or the Harbour.
- 3.4. All stakeholders agree that there is a need for a single SHA to manage Oban Bay and its approaches as this will remove any ambiguity and will result in benefits for all users of the Bay. The Maritime & Coastguard Agency (MCA) has repeatedly advised that time is of the essence and that progress needs to be made as quickly as possible.
- 3.5. In October 2003 the Council's Oban, Lorn and the Isles (OLI) Area Committee received a paper from the then Head of Legal Services relating to the creation of a Harbour Trust to operate all harbour installations and facilities within Oban Bay. Development and Infrastructure Services were tasked with assessing the viability of this and, it is understood, advised in 2004 that it would be too expensive a project for the Council to take on<sup>1</sup>.
- 3.6. The Oban Harbour Development Group (OHDG) was established in 2008 to oversee long-term planning for future arrangements for the management of Oban Bay. The group was initially led by the Council with CMAL and the NLB also taking part. At that time the preferred option for the future management of the Harbour was the formation of a Trust Port for Oban.
- 3.7. By 2011, following an initial risk assessment that was carried out by the OHDG, it was agreed that a formal assessment and option appraisal was necessary. Fisher Associates were commissioned to complete this appraisal and reported to the OBDG in 2014. Initially a total of seven possible management options were identified. Subsequent discussions reduced this to three.
- 3.8. In January 2016 the Argyll and Bute Harbour Board received a presentation regarding the need for, and the options regarding, the establishment of a single SHA for the waters of Oban Bay and its approaches. Subsequent reports ( March 2017, January 2018, September 2018, March 2019, December 2019, March 2020, December 2020 and March 2021) also relate to this matter.

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<sup>1</sup> The 2004 decision is based on a *pers comm* from OLI Councillors but has not yet been verified from the Council Archives

- 3.9. The three principal options put forward in 2016 were that:
1. The Council should take responsibility for becoming the new Harbour Authority for Oban by forming a Municipal Port;
  2. The new Harbour Authority should be run by CMAL, a Private Port; or,
  3. the new Harbour Authority should be run by an independent body, a Trust Port.

At that time it was acknowledged that the 'do nothing' option was not tenable.

- 3.10. In 2018 the Council indicated to both the OBMG (by then the successor to the OHDG) and other stakeholders that it was not willing to create a Municipal Port that would take responsibility for the management of the waters of Oban Bay. An extensive public consultation exercise also confirmed that there was significant opposition to the new Harbour Authority being run by CMAL.
- 3.11. All members of the OBMG have publicly stated that a Trust Port for Oban is their preferred option. It was therefore agreed that work should progress, between Argyll and Bute Council and OCHDA, on behalf of the OBMG and stakeholders, to explore the possible development of a Trust Port.
- 3.12. Following a meeting of representatives from OCHDA and OBSG with the Chair of OLI, the Council Chief Executive and Head of Service in November 2019, the Argyll and Bute Harbour Board instructed Officers to draw up an MOU with OCHDA to guide this work. The instruction was issued in December 2019 and this is the resultant document.

#### **4. Progress to date and steps still outstanding**

- 4.1. OCHDA have identified that the key steps in developing a Trust Port for Oban are:
- a) establishing the limits of the proposed Harbour Authority's area;
  - b) identifying the resources and infrastructure required to manage those waters;
  - c) obtaining agreement that the necessary powers and infrastructure will be available to the Trust Port;
  - d) establishing the commercial viability and sustainability of the proposed arrangements;
  - e) the establishment of a Board of Trustees (BoT) to oversee the future Trust Port; and, finally,
  - f) the submission of a HRO to the Scottish Government.
- 4.2. OCHDA has successfully completed a public consultation regarding the limits of the new harbour authority and has reported on this to the OBMG. It has identified the necessary resources and infrastructure required to manage the waters of the Bay, and has prepared the necessary job descriptions and recruitment strategies for the recruitment of a BoT. Legal advisors have been appointed and a draft HRO has been prepared.

- 4.3. There are outstanding tasks relating to establishing the financial viability of the Trust Port, the process for transfer of powers from the Council and negotiating a commercial lease for the identified assets at the North Pier. All of these items require input from the Council.
- 4.4. To progress the project and assess the viability of the Trust Port a number of steps are required which require the Council and OCHDA to work closely together. This Memorandum of Understanding outlines those steps and indicates responsibility within the partnership for the completion of specific key tasks which are listed in Schedule 1.

## 5. **Partnership commitments and understanding**

- 5.1. Once the financial sustainability and viability of a Trust Port in Oban has been demonstrated, both parties agree that:
  - a) Council Officers will recommend to the relevant committee(s) that the Council should transfer their statutory powers and responsibilities relating to Oban Bay and Harbour to the new Trust Port;
  - b) the transfer of these powers will be accompanied by a commercial lease relating to the North Pier, the pontoons, the harbour buildings and associated assets.
- 5.2. Both parties recognise that the final decision over the approval of the proposed Trust Port rests with Scottish Ministers. The date of the approval, if granted, will become the date on which powers are transferred and the new Oban Harbour Authority is established.
- 5.3. For the specific purposes of this project:
  - c) OCHDA agrees that they will not discuss future staffing arrangements for the Trust Port with staff currently employed by the Council to run the North Pier and associated assets;
  - d) Both parties recognise that as a consequence of the funding package which delivered the North Pier projects the Council is committed to financial liabilities including loan repayments and external grant conditions.
- 5.4. Furthermore, the Council commit to:
  - e) Providing assistance to OCHDA by way of its Community Development team who are the point of contact for community groups wishing to engage with the Council;
  - f) Providing any such information as is reasonably practical from its Marine team about the operational management and costs of the Council's marine assets in Oban;
  - g) Providing the necessary administrative support to provide draft minutes/action notes of any meetings between the Council and OCHDA, and the timely circulation of same.

## **6. Coordination and monitoring**

- 6.1. A project management group comprising Kirsty Flanagan and Jim Smith from the Council, Ross Wilson (OCHDA) and Tony Bennett (OBSG) will have monthly meetings to ensure that work progresses as expected. Concerns re slippage will be communicated as a matter of urgency among all members of the group. The Chairs of the Argyll and Bute Harbour Board and OLI Area Committee will be copied in to the correspondence relating to these meetings; they will also be able to sit-in on these meetings at their discretion.

## **7. Communication and confidentiality**

- 7.1. Communication regarding the items listed in Schedule 1 will be between Jim Smith and David Rennie of the Council and Ross Wilson (OCHDA) and Tony Bennett (OBSG), with Kirsty Flanagan (Council) copied in.
- 7.2. Where matters are discussed verbally an agreed written summary will be made and distributed among all members of the project group.
- 7.3. The progress of this project shall be reported to the OBMG, the OLI Area Committee and the Argyll and Bute Harbour Board.
- 7.4. Each party agrees to share any public announcement, press release or similar with the other prior to it being issued.
- 7.5. All communication will be assumed not to be confidential unless expressly marked otherwise.

## **8. Duration and Termination**

- 8.1. The validity of this MOU will cease upon the HRO being granted by the Scottish Government.
- 8.2. This MOU may be terminated without completion of the project with the agreement of both the Council and OCHDA.

## **9. Best Endeavours**

- 9.1. The Council and OCHDA each confirm that it is their intention to use their best endeavours to promote the best interests of the Trust Port; both parties shall also act in good faith towards each other in order to promote the success of the project.

10. **Governing Law**

10.1. The parties irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement. In witness whereof these presents on this and preceding (10) pages together with the Schedule annexed as relative hereto are executed as follows:

Subscribed for and on behalf of Council

At

On

By

Before

\_\_\_\_\_ Witness  
\_\_\_\_\_ Full Name  
\_\_\_\_\_ Address  
\_\_\_\_\_ Occupation  
\_\_\_\_\_

Subscribed for and on behalf of OCHDA

at

on

by

before

\_\_\_\_\_ Witness  
\_\_\_\_\_ Full Name  
\_\_\_\_\_ Address  
\_\_\_\_\_ Occupation  
\_\_\_\_\_

## Schedule 1 Key project deliverables, responsibilities and target dates

### Financial

### Target

|    |   |       |      |
|----|---|-------|------|
| F1 | Up to date, accurate accounts for the three Council owned assets at the North Pier (Harbour Office, pontoons and the pier itself)   | ABC   | 30/4 |
| F2 | Breakdown and explanation of North Pier expenditure classifications   | ABC   | 30/4 |
| F3 | Updated staff costing/scales as per request to SC and JS of 12/2/21   | ABC   | 30/4 |
| F4 | Copies of any reports and 'business cases' generated for Oban Harbour by ABC over the past 18 years that have led to Officers and Councillors deciding not to proceed with the Municipal Port option.     | ABC   | ASAP |
| F5 | OCHDA's financial plans, projected expenditure and banking details  | OCHDA |      |
| F6 | Updated paper on proposed Conservancy Charge  | OCHDA | 30/4 |
| F7 | Financial model and projections for the operation of Oban Bay as a Trust Port, including details of how income will be generated, anticipated expenditure and investment planning, community benefit etc. | OCHDA |      |

### Governance and staffing

|    |  |       |  |
|----|--|-------|--|
| G1 | Overview of proposed Governance Structure  | OCHDA |  |
| G2 | Details of the proposed Board, how this will be made up and to whom it reports, Stakeholder representation | OCHDA |  |
| G3 | Details of Board appointing process and timescales for appointment etc                                     | OCHDA |  |
| G4 | Confirmation of current staff tasks and responsibilities undertaken at the North Pier                      | ABC   |  |
| G5 | Staffing structure proposals – including job descriptions and seasonal staff                               | OCHDA |  |
| G6 | Differences between existing and planned service delivery  | OCHDA |  |

## Schedule 1 Key project deliverables, responsibilities and target dates (continued)

### Lease of assets

|    |  |       |      |
|----|--|-------|------|
| A1 | Details of Council assets which OCHDA is seeking to lease from the Council | OCHDA | Eol? |
| A2 | Copies of most recent asset condition surveys                              | ABC   |      |
| A3 | Valuation of assets  | ABC   |      |
| A4 | Details of maintenance requirements/plans/budgets                          | ABC   |      |
| A5 | Details of existing lease arrangements relating to North Pier assets       | ABC   |      |
| A5 | Preparation of lease   | Both  |      |

### Technical considerations

|     |   |           |      |
|-----|---|-----------|------|
| T1  | Confirmation of harbour extents   | OCHDA     | Done |
| T2  | Navigation, buoyage and other ATONs   | OCHDA/NLB |      |
| T3  | Pilotage  | OCHDA     |      |
| T4  | Details of existing PMSC status and existing MSMS (Marine Safety Management System) | ABC       |      |
| T5  | Proposed PMSC and MSMS arrangements   | OCHDA     |      |
| T6  | Details of existing Vessel Traffic Service operation                                | ABC       |      |
| T7  | Proposed VTS/vessel monitoring system   | OCHDA     |      |
| T8  | Proposals re Duty Holder and Designated Person                                      | OCHDA     |      |
| T9  | Expertise within the Trust Port Board (see also G2)                                 | OCHDA     |      |
| T10 | Proposed technical/professional advisors to support the Trust Port                  | OCHDA     |      |