

OBAN BAY – SINGLE HARBOUR AUTHORITY – BRIEFING

1. 0 INTRODUCTION/BACKGROUND

- 1.1 Various organisations have different responsibilities for areas of Oban Bay, and some parts of the bay are not part of the specific jurisdiction of any organisation – the situation can lead to confusion for users, with no organisation in sole control of the bay itself.
- 1.2 Having one or more statutory harbour authorities controlling the entirety of the bay would remove ambiguity, improve the safety aspects, and would result in benefits to users of the bay. There appears to be a consensus amongst interested parties that the status quo is not acceptable in the longer term from a safety point of view.
- 1.3 There are three separate Harbour Orders in place for Oban: the North Pier, Railway Pier and South Pier. The approaches and waters through the bay are not covered by an order. The responsibility for these waters defaults to the Maritime and Coastguard Agency (MCA).
- 1.4 A Harbour Empowerment or Revision Order is a piece of local legislation governing a port. It is made as a Scottish Statutory Instrument under the 1964 Harbours Act by Scottish Ministers. An order can create and empower Harbour Authorities to undertake works projects or vary their existing harbour powers.
- 1.5 Any solution would require to demonstrate overall benefits to users, financial and technical viability, organisational competence and future sustainability. At present no single option has been identified which meets that test.
- 1.6 It is important to understand that ferries will have “right of way” over other harbour traffic no matter which body has authority over the bay.
- 1.7 This briefing provides an overview of the current governance arrangements, what decisions have been taken to date in respect of Oban Bay, possible options for exploration, and an indication of next steps to move matters forward in a positive manner.

2. 0 RECOMMENDATIONS

- 2.1 Members are asked to:-

- i. Consider and note this briefing paper;
- ii. Note Officers advice that the Council is required to engage with all parties who could be involved in future options for Oban Bay, of which OCHDA are one;
- iii. Note the terms of the key next steps, as set out at paragraph 3.6 of the report; and
- iv. Note that OBMG have asked OCHDA to bring their proposals to the 27 August 2021 meeting of the OBMG for consideration.

3. 0 DETAIL

3.1 Governance

3.1.1 The Council's decision to set up a Harbour Board (HB) was in response to a report tabled at the Policy and Resources (P&R) Committee on 18th December 2014, where members "*agreed the establishment of a Harbour Authority as a sub committee of the existing Economic Development and Infrastructure (EDI) Committee for all Council owned ports and Harbours.*" This was ratified at the full Council meeting in January 2015, with appointments made to the HB in April 2015, and the first meeting held on 13th August 2015. The HB became a standalone committee in 2017.

3.1.2 The report seeking a Single Harbour Order (SHO) was tabled at the Harbour Board on 23rd January 2018, where it was agreed that "*Members instruct the Director of Development and Infrastructure to pursue the promotion of a single harbour order for all of Argyll and Bute Council's 39 piers, harbours and slips.*"

3.1.3 In terms of the Council Constitution, the Harbour Board is mentioned at Part A as:

A single Harbour Board to oversee the operation of all Council piers and harbours.

The Constitution defines Strategic Committees and includes reference to the Harbour Board as follows:

The Harbour Board shall have 8 members and will have regard to relevant Area representation.

The Harbour Board is authorised to discharge the powers and duties of the Council as a Single Harbour Authority in respect of general and specific statutory duties subject to the provisions of this Scheme. The Board is responsible for providing policy direction to officers/others involved in operational management and use of the facilities and for scrutinising implementation of these.

3.1.4 The decision to pursue a SHO for the whole of Argyll and Bute is relevant to the Oban situation because as long as the Council retains its interest in Oban Bay it is likely to be included in the Argyll and Bute wide order.

3.1.5 If a decision requires to be taken in respect of any agreement for Oban Bay, which is a change in Policy, this would require to be reported to the HB, EDI and P&R.

3.2 Decisions taken by the Harbour Board in respect of Oban Bay

3.2.1 Since it's first meeting in August 2015, the following decisions have been taken by the HB in respect of Oban Bay:-

Meeting	Item	Decision
14 Jan 2016	Presentation on Single Harbour Authority for Oban (Chris Fisher of Fisher Associates)	<ul style="list-style-type: none"> Noted the presentation and thanked Chris Fisher for raising awareness and providing the Board with a clearer understanding of issues in relation to a Single Harbour Authority for Oban; and Requested officers to bring a more detailed report with recommendations to the Board as soon as possible noting the potential need of a Special Meeting if required.
23 Mar 2017	Oban Harbour Management Group – Oban Bay A report providing an update on the work carried out to date by the OHMG was considered by Members which explained possible options for the future management of the waters of Oban Bay.	<ul style="list-style-type: none"> Noted the report; and Noted that the Council must ensure continuing unfettered access to the North Pier and the transit berthing waters of Oban Bay.
23 Jan 2018	Oban Harbour Management Group – Oban Bay A report providing an update on the work being carried out by OHMG explaining possible options for the future management of the waters of Oban Bay was considered by the Board. The Marine Operations Manager highlighted to Members that the reasons for seeking a single harbour authority for Oban Bay are safety driven.	<ul style="list-style-type: none"> Members approved the progression of Option 4 (as outlined in the report: <i>Two SHAs – CMAL extends statutory limits, A&BC remains as is</i>) on the basis that further investigation is carried out regarding the protection of the Council's interests, with particular regard to the harbour area at the North Pier.
6 Sept 2018	Oban Bay – Single Harbour Authority (SHA)	Agreed to;

	<p>Members of the Argyll and Bute Harbour Board considered a report which explained the background to the creation of the OBMG and detailed why a SHA is to be considered. The report provided a resume of recent events and advised on the planned next steps following on from the public meeting held in Oban on 18 July 2018 the OBMG meeting which was held on 31 July 2018.</p>	<ul style="list-style-type: none"> • Ask CMAL to pause the process of expanding their harbour area until further consultation is carried out given the interest expressed locally in establishing a trust port; and • A further report to be provided to the next meeting of the Harbour Board providing an update on the progress towards establishing a single harbour authority for Oban.
7 Mar 2019	<p>Oban Bay – Single Harbour Authority</p> <p>Members were presented with a report which updated them on the progress made since the Argyll and Bute Harbour Board’s meeting in September 2018 when the background to the creation of the Oban Bay Management Group (OBMG) and the reasons for creating a Single Harbour Authority (SHA) were discussed.</p> <p>Since the circulation of the report before them Members noted that the OBMG met on 1 March 2019 where the Oban Bay Stakeholders’ Group (OBSG) put their proposals for a SHA to CMAL and noted that the OBMG agreed not to promote a Harbour Revision Order for the time being and agreed to review its position at a later date if no legislation is promoted by 1 March 2020.</p>	<ul style="list-style-type: none"> • Noted the report and in particular considered the proposal outlined in the Oban Bay Stakeholders’ report in Appendix B; • Approved that Officers continue to engage with the OBMG and continue cooperation with stakeholders in their bid to establish a trust port; and • Agreed that a further update report be presented to Members at the September 2019 Harbour Board meeting.
12 Sept 2019	<p>Oban Harbour Management Group – Oban Bay (Verbal Update)</p> <p>The Marine Operations Manager updated the Harbour Board on work being carried out by the Oban Community Harbour Development</p>	<ul style="list-style-type: none"> • The Argyll and Bute Harbour Board noted the verbal update.

	<p>Association (OCHDA). He advised that the Group had been formally constituted and had formed a separate working group to consider a transfer request in respect of the North Pier and pontoons in Oban.</p>	
<p>5 Dec 2019 (Special meeting)</p>	<p>Oban Bay – Single Harbour Authority</p> <p>The Harbour Board gave consideration to a report that explained the background to the creation of the Oban Bay Management Group (OBMG) and why a Single Harbour was being considered. The report set out the proposals of the Oban Community Harbour Development Association for the development of a Trust Port and potential next steps.</p> <p>The other options available to the Council remain open and require to be considered as part of the overall way forward.</p>	<ul style="list-style-type: none"> • Agreed, subject to consultation with the Oban Lorn and the Isles Area Committee, to instruct officers to investigate further the proposal to establish a Trust Port and to the transfer of powers at the South Pier (any transfer would not happen unless the Harbour Order was subsequently granted by Transport Scotland). • Instructed officers to investigate further with Oban Community Harbour Development Authority (OCHDA) the options of transferring the powers at the North Pier and the transfer of assets at the North Pier, on a commercial basis. • Agreed to recommend to the Policy and Resources Committee that they delegate to the Executive Director with responsibility for Marine Operations, in consultation with the Executive Director with responsibility for Legal Services, the agreement of a Memorandum of Understanding with Oban Community Harbour Development Authority (OCHDA) on the basis set out in paragraph 4.18 of the submitted report. The result of those discussions would be reported to the appropriate committee(s) before any further decisions on the

		transfer was taken, including the Council in relation to asset transfers.
5 Mar 2020	<p>Oban Bay – Single Harbour Authority</p> <p>A report on the progress of work being carried out by the Oban Bay Management Group in consideration of forming a Single Harbour Authority and the Oban Community Harbour Development Association's (OCHDA) progress on the development of a Trust Port, was before the Board for noting.</p>	<ul style="list-style-type: none"> Noted the report.
10 Sept 2020	<p>Oban Bay – Single Harbour Authority</p> <p>Consideration was given by the Board to a report which provided an update on work being done by both the OBMG and OCHDA towards the development of a Trust Port.</p>	<ul style="list-style-type: none"> The Argyll and Bute Harbour Board endorsed the report and noted that a separate report was presented to the Oban, Lorn and the Isles Area Committee.
4 Mar 2021	<p>Oban Bay – Single Harbour Authority</p> <p>Consideration was given by the Board to a report which provided an update on work being progressed by OCHDA towards the development of a Trust Port.</p>	<ul style="list-style-type: none"> Considered the update concerning the proposed transfer of the Council's existing powers and responsibilities in Oban Bay to a new Trust Port; and Agreed that a virtual meeting would be organised with all stakeholders concerning the work being progressed by OCHDA towards the development on a Trust Port following consultation between the Chair and the Executive Director with responsibility for Roads and Infrastructure.

3.3 Council's Assets at the North Pier

Argyll and Bute Council have responsibility for the following assets in the vicinity of the North Pier:

- Harbour Masters offices (which incorporates meeting rooms, pontoon office, showering and toilet facilities, retail space etc)
- North pier, associated berthing face, access roads, slipways etc.
- Oban Times Slipway
- North Pier Car Park
- North Pier pontoons and Breakwater
- North Pier toilets and showers
- Port Beag Slipway and associated ground

3.4 Available Options

3.4.1 Fisher Marine Associates produced a report in 2014 outlining eight options worthy of consideration:

- Option 1: Single Statutory Harbour Authority (SHA) (municipal port) – A&BC
- Option 2: Single SHA (state port) – CMAL
- Option 3: Two SHAs – A&BC extends statutory limits, CMAL remains as is
- Option 4: Two SHAs – CMAL extends statutory limits, A&BC remains as is
- Option 5: Single SHA (trust port) – new independent trust port as sole SHA
- Option 6: Multi SHAs - new independent trust port + current SHAs nested within this
- Option 7: Single SHA (hybrid municipal/trust port) - Board made up of current SHAs possibly plus others
- Option 8: Single SHA (Company Limited by Guarantee) (CLG) – the ‘Tobermory Model’

The outcome of this exercise was that options 3, 4 and 7 were deemed the most worthy of further consideration.

3.4.2 The report to the Harbour Board on 5th December 2019 summarised the options currently available as:

- Facilitate OCHDA progressing a Trust Port with a transfer of assets, including staff.
- Facilitate OCHDA progressing a Trust Port with a transfer of harbour powers, without a transfer of assets. The council would continue to operate the North Pier and pontoons possibly extending the commercial offer at this location.
- CMAL to progress becoming the Harbour Authority.
- Argyll and Bute Council to form a Municipal Port
- Continue with the status quo. This option is not recommended and should be discounted.

As previously outlined in the table above, the decision of the Harbour Board on 5th December 2019 was:

- *Agreed, subject to consultation with the Oban Lorn and the Isles Area Committee, to instruct officers to investigate further the proposal to establish a Trust Port and to the transfer of powers at the South Pier (any transfer would not happen unless the Harbour Order was subsequently granted by Transport Scotland).*

- *Instructed officers to investigate further with Oban Community Harbour Development Authority (OCHDA) the options of transferring the powers at the North Pier and the transfer of assets at the North Pier, on a commercial basis.*
- *Agreed to recommend to the Policy and Resources Committee that they delegate to the Executive Director with responsibility for Marine Operations, in consultation with the Executive Director with responsibility for Legal Services, the agreement of a Memorandum of Understanding with Oban Community Harbour Development Authority (OCHDA) on the basis set out in paragraph 4.18 of the submitted report.*

3.4.3 CMAL SHA Option

CMAL on behalf of OBMG were progressing an Order which would enable them to be the Harbour Authority of Oban Bay with the Council's North Pier area nested within (option 4 as per paragraph 3.4.1 above).

A public meeting was held on 18 July 2018, at which approximately 70 members of the public attended. Most attendees appeared to support the concept of a Trust Port at Oban Bay, on the basis that no 'one' organisation should take over responsibility for the Bay.

A further consultation exercise was carried out in which the majority of those responding in favour of setting up a Trust Port at Oban Bay.

As a result of this the Argyll and Bute Harbour Board in September 2018 agreed to;

Ask CMAL to pause the process of expanding their harbour area until further consultation is carried out given the interest expressed locally in establishing a trust port.

The process was paused on the understanding that proposals would be brought forward by OCHDA for a Trust Port by March 2020, some delays have been experienced due to various reasons and recently due to the global pandemic. The OBMG have asked that OCHDA bring their proposals to the September meeting of the OBMG for consideration. On this basis it is recommended that the Council do not engage with OCHDA on their proposals alone, but in consultation with the other key interested parties.

3.5 **OCHDA**

The service has been engaging with OCHDA since 2019. With reference to recommendation (ii) at paragraph 2.1 of the report, Members need to be clear to OCHDA that they cannot pursue their option in isolation. Members also need to bear in mind that the Trust Port is not the only option available and, in the event that a Trust Port is the preferred option, OCHDA are not the only option in terms of operating it.

3.5.1 OCHDA came forward with proposals on the development of a Trust Port.

3.5.2 The information given to officers as part of the proposal is summarised in the report tabled at the Harbour Board in December 2019:

In particular section 4.17 covers the available options:

- Facilitate OCHDA progressing a Trust Port with a transfer of assets, including staff.
- Facilitate OCHDA progressing a Trust Port with a transfer of harbour powers, without a transfer of assets. The council would continue to operate the North Pier and pontoons possibly extending the commercial offer at this location.
- CMAL to progress becoming the Harbour Authority.
- Argyll and Bute Council to form a Municipal Port.
- Continue with the status quo. This option is not recommended and should be discounted.

To be clear, when we refer to OCHDA progressing with a Trust Port, the function of OCHDA is to develop proposals to establish a new Harbour Authority for Oban, which will be run by an independent Board. OCHDA would undertake the recruitment of the Board and the Chief Executive for the new Harbour Authority and the Board would develop their own business plan.

2020

3.5.3 OCHDA held a public meeting on 4 February 2020 to discuss the SHA for Oban Bay. The meeting was held in two parts. The first part was a technical update from NLB on navigational marks and general safety improvements that NLB have carried out in the bay following consultation with Oban Bay Management Group (OBMG) and stakeholders. The second half of the meeting was a general update from OCHDA which touched on the recent report to the Harbour Board.

3.5.4 The next step for the Council was to work with OBMG and OCHDA regarding a SHA in Oban and progress towards a Memorandum of Understanding (MoU). The MoU would set out a willingness on the part of both organisations to enter into further discussions regarding the establishment of a Trust Port, agree to explore the commercial terms on which that might happen and the implications of doing so.

3.5.5 At the June 2020 meeting of the OBMG, OCHDA outlined its plans as follows:-

- The new 'trust port' will lease the Council's North Pier assets, possibly with a future purchase option.
- The Council's responsibilities as a SHA will be transferred to the new 'trust port'.
- The new 'trust port' will extend the SHA area to encompass the whole of Oban Bay, leaving the CMAL SHA nested within.

At that point there had been no formal submission from OCHDA to the Council in respect of the transfer of either assets, or responsibilities, or both.

OCHDA advised that:

- They were now planning to release a draft Harbour Revision Order (HRO), as opposed to a Harbour Empowerment Order (HEO) on the basis that their plan would be to take over all existing Council responsibilities at Oban. OCHDA has intimated that informal consultation with stakeholders will commence in September 2020. Transport Scotland has stated that they would be reluctant to accept a formal HRO or HEO application until the majority of concerns have been resolved in the informal consultation phase.

3.5.6 In the meantime Council officers requested that OCHDA produce a business plan demonstrating their capacity, financial viability etc. to deliver on their proposals. To date, a complete business plan for the Council to appraise is still awaited.

3.5.7 OCHDA proposed to have their SHA in place, covering the wider Oban Bay area, for the 2021 summer season. Given the work which OCHDA must complete before summer 2021 – finalised HRO and transfer of Council assets and responsibilities – this was considered in June 2020 to be a fairly ambitious timeframe.

3.5.8 Although there has, at that time, been no formal submission from OCHDA re transfer of Council assets or responsibilities, an ‘Expression of Interest’ was submitted to the Council in December 2020 in relation to Council infrastructure at the North Pier in Oban, including the harbourmaster’s building and pontoons.

2021

3.5.9 At the OBMG meeting held in January of this year, OCHDA submitted a draft outline programme indicating potential timescales for their main activities; those in attendance agreed to provide formal comments on the timescales indicated by OCHDA.

3.5.10 The draft programme submitted by OCHDA was well received by OBMG and Council Officers alike, as this was requested some time ago. The programme indicated that the new harbour area will be incorporated into legislation by the end of March this year and Council approval in principal for the asset transfer will be in place by the same time. Whilst officers accept that the programme was in draft format at that stage, it is clear that timescales were not realistic given the substantial outstanding work required in order for the Council to appraise the proposal.

3.5.11 A number of communications have been issued to OCHDA from the Head of Roads and Infrastructure Services, including letters on 26 January and 12 March providing OCHDA with further information on the type and level of detail the Council would need to appraise their proposal.

3.5.12 At the Harbour Board held in March 2021 it was agreed that a virtual meeting would be organised with all stakeholders concerning the work being progressed by the Oban Community Harbour Development Association (OCHDA) towards

the development on a Trust Port following consultation between the Chair and the Executive Director with responsibility for Roads and Infrastructure.

3.5.13 Despite the original date having been set as March 2020 by OBMG, there is still no detailed business case from OCHDA.

3.6 Next Step for the Council

3.6.1 There are currently 5 options in respect of Oban Bay and at this stage the Council have not stated what their preferred option is. The Harbour Board have instructed officers to investigate further with OCHDA the options of transferring the powers at the North Pier and the transfer of assets at the North Pier on a commercial basis, the advice from the Council's Legal Advisors is that the Council are not in a position to take a final decision at this stage and matters do need to be moved on.

3.6.2 A report will be presented to the Harbour Board on 2 September that outlines the 5 options with the benefits and risks of each option, in order to get a decision in principle on a preferred option. Ultimately the Harbour Order process is determined by Transport Scotland/Scottish Ministers, however, if OCHDA's business for a Trust Port includes a transfer or lease of Council assets, then there is a requirement for Council to make a decision on that.

3.6.3 The five options are noted below along with the next steps once a decision in principle of the Council's preferred option is agreed.

Option No.	Option Description	Next Steps following Harbour Board decision on 2 September
1.	Continue with the status quo. (Although this is an option, it is not recommended and should be discounted.)	No further action, will confirm that this option is not viable from a safety perspective.
2.	Facilitate OCHDA progressing a Trust Port to include the transfer of the current Harbour limits around North pier and the transfer or lease of some or all the following assets: North Pier berthing face Transit Berth marina Oban Times Slip Harbour Masters Office (this may be further sub-divided) Car Park	Dependant on Council decision, further options appraisal may be required or alternatively it may provide a mandate to officers to enter into negotiations on the terms of a lease. Any lease will have to be on commercial terms and agreement of such a lease would need to demonstrate that Best Value has been met.
3.	OCHDA progress a Trust Port not including the transfer of the current Harbour limits around North Pier (wet port).	No further action required by officers, the Council would become a consultee as part of the Harbour Order process.
4.	CMAL to progress becoming the Harbour Authority.	Officers would advise CMAL that the Council are not in a position to

		progress with a municipal port and are no longer supportive of the Trust Port option.
5.	Argyll and Bute Council to progress the formation of a Municipal Port.	Officers would progress with a business case and all the necessary information to meet the requirements of the Harbour Order process.

- 3.6.4 Council Officers will continue to engage with OCHDA to establish if the terms of a suitable MoU can be agreed – as per the decision by the Policy and Resources Committee on 17 December 2019 (“to delegate to the Executive Director with responsibility for Marine Operations, in consultation with the Executive Director with responsibility for Legal Services, the agreement of a Memorandum of Understanding with Oban Community Harbour Development Authority OCHDA on the basis set out in paragraph 4.18 of the submitted report”.)
- 3.6.5 Harbour Board to meet with all stakeholders as agreed at the Harbour Board meeting held in March 2021.
- 3.6.6 A future key date will be the meeting of OBMG on 27 August 2021 where OCHDA will present their proposals. Their views on these proposals will help to inform the options that will then be presented to Members.

4.0 CONCLUSION

- 4.1 This briefing provides an overview of the current governance arrangements, what decisions have been taken to date in respect of Oban Bay, possible options for exploration, and an indication of next steps to move matters forward in a positive manner.

5.0 IMPLICATIONS

- 5.1 **Policy** – None
- 5.2 **Financial** – The financial impacts cannot be assessed until the Business Case has been produced by OCHDA.
- 5.3 **Legal** – Any agreement with OCHDA must ensure that the Council’s interests and areas of responsibility are protected.
- 5.4 **HR** – None
- 5.5 **Fairer Scotland Duty**
- 5.5.1 **Equalities / Protected Characteristics** - None directly arising from this report
- 5.5.2 **Socio-economic Duty** - None directly arising from this report
- 5.5.3 **Islands** - See risk below
- 5.6 **Risk** – Advice from the OBMG is that ‘to do nothing’, given concerns over safety at Oban Bay, is not an option worthy of consideration.

5.7 Customer Service – None

Executive Director with responsibility for Development and Infrastructure:

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Appendix 1 - GLOSSARY OF TERMS

ABC	Argyll and Bute Council
CMAL	Caledonian Maritime Assets Ltd Own and manage ports, harbours and ferries on behalf of Scottish Government
CalMac	Caledonian MacBrayne Operate ferries on behalf of Scottish Government
TS	Transport Scotland National transport agency for Scotland
NLB	Northern Light House Board The general lighthouse authority for Scotland and the Isle of Man
OBMG	Oban Bay Management Group Has been providing a joint approach to improving navigational safety since 2007/8 consisting of ABC, CMAL, CalMac, NLB and stakeholders.
OSG	Oban Stakeholder Group
OCHDA	Oban Community Harbour Development Association
SHA	Single Harbour Authority
HRO	Harbour Revision Order
HEO	Harbour Empowerment Order
VTS	Vessel Traffic System
MCA	Maritime and Coastguard Agency