

## **A&BC REPORT ON OBAN BAY SINGLE HARBOUR AUTHORITY DATED 2 SEPTEMBER 2021 – OCHDA COMMENTS**

**Note: The Harbour Board report can be found [here](#) or at <https://www.argyll-bute.gov.uk/moderngov/ieListDocuments.aspx?CId=567&MId=14305&Ver=4>**

1. The Argyll & Bute Council (A&BC) Officers' Report for the Argyll & Bute Harbour Board (HB) meeting on 2 September 2021 has been considered by the Oban Community Harbour Development Association (OCHDA) Committee. We find it disappointing that it is again necessary to bring to Council Members' attention both factual errors and misleading statements contained in an A&BC paper, particularly as an amendment had previously been suggested or accurate information is contained in papers either previously prepared by Council Officers or presented by OCHDA. It is, however, recognised that some facts recently provided to OCHDA have permitted production of additional briefing material which was presented at the HB/Oban, Lorn & the Isles Area Committee/OCHDA meeting on 3<sup>rd</sup> August, and more recently at the Oban Bay Management Group (OBMG) meeting on 27<sup>th</sup> August with additional input from attendees. We suggest that the current Report lacks essential up to date information presented in an objective and coherent manner, and is therefore not a sound basis for informed decision making.

2. OCHDA considers the Report's portrayal of its proposal, a Trust Port based on the North Pier, to be misleading and incomplete, and a revised appraisal is presented at Annex A. Also that the Report requires correction, and comments and clarification are included at Annex B with input on the Advantages and Disadvantages Table for Option 2 only.

a. OCHDA welcomes Recommendation 2.1b, "*agree in principle, to consider an option for the future use of Council assets at Oban which would involve a disposal of these*", supported by Recommendation 2.1c, "*if the response to 2.1b is in the affirmative, to note that officers will continue to engage with third parties, including OCHDA, to enable them to fully develop their proposals*". This would allow OCHDA to meet with Council Officers to agree arrangements for the lease(s) of the North Pier and Pontoon assets, and then complete its Business Case. Throughout the report use of the words "disposal", "transfer of assets", and "lease of assets" are used inconsistently. To be clear, the OCHDA proposal is for these assets to be leased by A&BC to a new Trust Port Board with A&BC retaining ownership and receiving regular rental payments significantly greater than the income received with their current model.

b. OCHDA understands the need for Recommendation 2.1d, "*agree that an options appraisal process be conducted to determine a preferred option for*

*the future management of Oban Harbour and the engagement that will be carried out with other partners who have an interest in Oban Bay*". The Table following Para 3.14, prepared by Council Officers, suggests that this may already have been started. However, the OBMG, who have expressed a need for the project to be delivered in time for Summer 2022, have their next meeting planned for late October 2021; we suggest that, if the HB decides that another option appraisal is indeed required, Council Officers are instructed to present it to this meeting.

c. OCHDA expresses concern with Recommendation 2.1e, "*The results of the options appraisals are presented to the March 2022 HB meeting or if applicable an earlier special meeting for determination by members*".

Throughout the Report the requirement for timeous progress is emphasised, eg "outcome for safe management progressed at pace with no further delays". This timeline proposed is inconsistent with the stated urgency, particularly for implementation before Summer 2022. It is also not supported by the OBMG Chair who stated in June 2021 "The OBMG is mindful the major risk identified in the Navigational Risk Assessment for Oban remains a small vessel collision with a ferry or other large vessel in North Channel. This remains the main driver for the recognised need to set up a port authority to make improvements in safety that all OBMG and MCA support. ... OBMG can form a view on the realistic likelihood of the improved safety needed for Summer 2022".

3. There are points of detail that require correction which Councillors should note:

a. Clarification on geographical limits of Oban Harbour and Approaches<sup>1</sup>.

b. A&BC Harbour limits, currently defined by the area east of a line joining Dog Stone to Brandy Stone<sup>2</sup>, and possibly more dependent on interpretation of Jurisdiction<sup>3</sup>.

c. Report Para 3.7 "Larger vessels ....will have "right of way" over other harbour traffic"; this is incorrect, confirmed by OBMG Chair on 27<sup>th</sup> August.

d. Report Table for Option 2 concerning "no known experience within OCHDA"; see Annex B Page 8 Serial 20c(2) for an accurate statement.

4. OCHDA's input is intended to be positive and helpful to the joint enterprise we are engaged in; best decisions require accurate information. We ask that HB Members support the recommendations quoted and instruct Council Officers to complete an updated option appraisal in time for presentation to the OBMG meeting

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<sup>1</sup> MOU Deliverable T1

<sup>2</sup> A&BC MSMS Annex D

<sup>3</sup> OCHDA Response dated 22 Jul 21 Attachment 2

in October 2021. OCHDA would be pleased to discuss further both before and at the HB meeting, if we are invited to be in attendance.

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Vice Chair OCHDA  
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30 August 2021

Annexes:

- A. OCHDA Appraisal of Proposal to Establish a Trust Port based on the North Pier
- B. OCHDA Comments and Clarification

## ANNEX A

### Oban Community Harbour Development Association: appraisal of proposal to establish a Trust Port based on the North Pier

In order to judge the strength of a proposal for the new Harbour Authority in Oban it is necessary to consider the fundamental and statutory duties and responsibilities of any Harbour Authority. This table attempts to do this for the proposed Trust Port based on the existing Harbour facilities at the North Pier and Pontoons. No other proposals have been put forward so comparison with alternatives is not possible.

The principal responsibilities of any Harbour Authority are in relation to safe navigation, maintenance of the harbour (conservancy), meeting the needs of the harbour users and, to allow these to be undertaken effectively, sound financial management. These criteria have been used, as previously in the assessment by Fisher Associates, to assess the strength of the proposal to establish a Trust Port based at the North Pier.

Assessment criteria	Advantages of TP	Disadvantages	Supporting evidence
<b>Safety priorities, including:</b> <ul style="list-style-type: none"> <li>a) Reduction of risk to lowest level possible</li> <li>b) Communication with mariners</li> <li>c) Ensures management of vessel movements</li> <li>d) Enforcement of regulations</li> </ul>	<ul style="list-style-type: none"> <li>a) Majority of vessel movements associated with N Pier facility so efficient use of existing VHF facilities for single point of contact, as confirmed by Transport Scotland at last OBMG meeting</li> <li>b) Wide publication and dissemination of guidance/regulations via extra staff</li> <li>c) Approaches to Oban Bay included for maximum safety</li> <li>d) As a) above</li> </ul>		<ul style="list-style-type: none"> <li>a) 17,000 vessel movements to/from N Pier per year</li> <li>b) Doubling of N Pier staff and minimum 20% uplift in pontoon staff</li> <li>c) Only possible through additional staffing</li> <li>d) Through provisions in Harbour Revision Order</li> </ul>
<b>Financial management &amp; economic viability:</b> <ul style="list-style-type: none"> <li>a) Cost effectiveness</li> <li>b) Income generation</li> <li>c) Funding</li> <li>d) Reinvestment</li> <li>e) Minimise negative impact on users</li> </ul>	<ul style="list-style-type: none"> <li>a) Shared use of facilities for N Pier reduces start-up costs and significantly increases income for Council</li> <li>b) Financial independence (not reliant on ‘parent company’) and conservancy fee set according to need of wider harbour in consultation with stakeholders</li> <li>c) Numerous capital and revenue grant streams available to community-based organisations that</li> </ul>	<ul style="list-style-type: none"> <li>a) Dependence on Council commitment for future provision</li> </ul>	<ul style="list-style-type: none"> <li>a) As set out in financial projections - total provision of £135,000 pa for Council owned facilities</li> <li>b) Fundamental principle of Trust Port guidelines</li> <li>c) Current funding examples include Boat Based Tourism (BBT) and Coastal</li> </ul>

	<p>are in addition to those available to <u>all</u> port operators</p> <p>d) Surplus funds cannot be ‘spent’ elsewhere</p> <p>e) Negotiation with stakeholders and discounts for regular users</p>		<p>Communities Fund (CCF) funding</p> <p>d) Fundamental to Trust Ports</p> <p>e) Governance paper/deliverable outlines this</p>
<p><b>Harbour maintenance &amp; development:</b></p> <p>a) Short and long term maintenance programme</p> <p>b) Co-ordinated planning and working</p>	<p>a) Planned maintenance budget with additional ‘capital fund’ provision for larger repairs and investment projects.</p> <p>b) “Single issue” organisation (no other interests) offering a forum for collaborative planning for Oban 2030 – 2050, linked to strategic plan for Argyll &amp; Bute and planned promotion of Oban as a visitor destination</p>		<p>a) As set out in financial projections - total provision of £135,000 pa for Council owned facilities</p> <p>b) CalMac have already suggested collaborative working on some issues at last OBMG meeting</p>
<p><b>Community/stakeholder engagement:</b></p> <p>a) User interests balanced</p> <p>b) Community benefit</p>	<p>a) Requirement to run Harbour considering interests of all users via independent Board to take decisions with stakeholder input</p> <p>b) Surplus funds must be re-invested in Harbour and local environment</p>	<p>a) Board recruitment required (compared with commercial or Council practice)</p>	<p>a) Fundamental to Trust Port governance</p>
<p><b>HR Considerations:</b></p> <p>a) Existing staff</p> <p>b) Staff numbers</p> <p>c) Council skills and roles</p> <p>d) Available resources</p>	<p>a) All existing Pier and Pontoon staff to be protected under TUPE</p> <p>b) Increase of staff with three additional full time posts, eight part-time posts, a further FTE and uplift of 20% in staffing budget for Pontoon</p> <p>c) Under OCHDA proposals (which cannot be discussed at specific request of Council Officers) the existing duties relating to Lismore, Craignure and wider marine portfolio will still be possible</p> <p>d) In addition to the core staff employed by the Trust Port, the availability of a skilled and experienced Board plus input from stakeholders will further strengthen the existing operation.</p>	<p>c) Dependent on discussions with Council</p>	<p>a) Not only a legal requirement but commitment was first made by OCHDA in 2019</p> <p>b) As per financial evaluations etc</p> <p>c) Still to be discussed but has been assumed in determining staff requirements for Trust Port</p> <p>d) As per previously supplied Governance documentation, and as evidenced by current team working with OCHDA</p>

**Summary of specific benefits to Argyll and Bute Council:**

- Delivery of a project that was first identified by the Council almost two decades ago;
- Income can be used to support wider A&BC estate;

- Guaranteed income via Commercial Lease at a significantly higher level than currently achieved;
- Potential for index-linking rental to turnover;
- Rental of Offices at full Business Case values;
- Provision for guaranteed maintenance budget;
- Provision for 'Capital Fund' for ongoing capital repairs and investment in consultation with A&BC;

- Protection of existing staff under TUPE;
- Three additional Full Time posts created plus one FTE;
- Eight part-time posts created;
- Uplift of 20% in Pontoon staff budget;
- Proposal for HM to be retained by Council on part-time basis to cover other harbour facilities as at present.

## ANNEX B

### Oban Community Harbour Development Association: Comments and Clarification on the A&BC Report to the Argyll & Bute Harbour Board dated 2 September 2021

Ser	Rep-ort Para	Report Words	Comment
1	1.1 et seq	Oban Harbour vs Oban Bay	Clarification required on geographical area under consideration. OCHDA recommends “Oban Bay and Approaches” <sup>4</sup> .
2	1.3, 1.4, 2.1d, 2.1e	a. outcome for safe management progressed at pace with no further delays b. focus on progressing a harbour authority at pace c. options appraisal process be conducted d. determination of options appraisal in March 2022, or earlier special meeting	The timelines proposed appear inconsistent with “at pace” and “no further delays” as stated, and clarification required on the justification for another option appraisal.  It is also inconsistent with the OBMG stated requirement of a solution being in place for Oban for the Summer of 2022, as per their Chair’s letter of 23 June 2021.
3	1.4	Appendix 1 explains the position	Appendix 1 not provided
4	1.5, 2	a. Transfer of current Harbour limits around North Pier  b. Transfer of assets	a. A&BC Harbour limit currently defined <sup>5</sup> by the area east of a line joining Dog Stone to Brandy Stone, and possibly more <sup>6</sup> dependent on interpretation of Jurisdiction b. OCHDA is not seeking asset transfer <sup>7</sup> but is instead proposing a lease on a commercial basis
5	1.5, 3	Wet port option	OCHDA recommends <sup>8</sup> that the Trust Port operating on a combined operations model provides the optimum solution for all stakeholders; supported by Transport Scotland at the recent OBMG meeting
6	1.6	Disposal of A&BC assets at North Pier to a third party	OCHDA’s proposals <sup>9</sup> leave the Council owning the assets, not disposing of them, and benefitting from lease payments
7	2.1a	Council’s Monitoring Officer’s advice	No advice provided in this Report
8	2.1b	Disposal of Council assets	Ser 6 above - Council will retain the assets
9	2.1d	Conduct another option appraisal	Criteria for this should be stated together with clarification on which stakeholder(s) require(s) this to be completed, and agreed timeline for completion. OCHDA does not believe this to be an OBMG requirement

<sup>4</sup> MOU Deliverable T1

<sup>5</sup> A&BC MSMS Annex D

<sup>6</sup> OCHDA Response dated 22 Jul 21 Attachment 2

<sup>7</sup> MOU Deliverable A1

<sup>8</sup> MOU Deliverables F5, F6, F7

<sup>9</sup> MOU Deliverable A1

10	2.1e	Outcome of new option appraisal to be presented to HB meeting in March 2022, or earlier	March 2022 A&BC decision too late to have a solution in place for summer 2022
11	3.2	a. Unfettered access b. Public meeting where there was some concern expressed	a. Is unfettered intended? b. There was also wide public consultation with the vast majority of respondents expressing dissatisfaction with the CMAL option proposed by the HB
12	3.4, 3.5	No structured proposal from OCHDA	It has been repeatedly advised <sup>10</sup> that OCHDA's work is dependent on A&BC producing their Deliverables per the MOU Schedule. OCHDA is currently waiting to start discussions with A&BC Officers on lease arrangements for North Pier and pontoons assets, stated as not before September 2021
13	3.6	Harbour powers around North Pier	Ser 4 above
14	3.7	Larger vessels ....will have "right of way" over other harbour traffic	Incorrect - as stated by both OCHDA <sup>11</sup> and the OBMG Chair at their recent meeting (Phil Day of the Northern Lighthouse Board)
15	3.8	A&BC assets in the vicinity of the North Pier	It is OCHDA's understanding, supported by A&BC financial accounts, that A&BC also have responsibility for the "island" containing the EE-Usk and Piazza buildings (for which rent is received by the Council), and the Clock Tower (in addition to the public (not Pontoon) toilets and showers)
16	3.9	Financial outturn for North Pier generally shown a marginal surplus	OCHDA financial analysis, agreed with Council Officers, contained in MOU Deliverables F5, F6, F7. NOTE that this also includes the Retail Unit - which OCHDA does not seek to lease. If this is removed from the figures then the North Pier shows a financial loss.
17	3.10	Any interruption in the operation of the North Pier and pontoons will have a significant negative impact on the wider economy of Oban and Lorn	The development of any new SHA must ensure continuous operation of all Harbour Piers and pontoons without interruption

<sup>10</sup> MOU Deliverables Schedule, brief to HB and OLI AC Members on 3 Aug 21, Deliverables F5, F6, F7

<sup>11</sup> OCHDA Response dated 22 Jul 21



		<p>c. Disadvantages:</p> <p>(1) Loss of income to the Council</p> <p>(2) No known experience within OCHDA</p> <p>(3) Unknown financial viability</p> <p>(4) Recruitment of Trust Port Board and Staff; TUPE</p>	<p>(4) In addition to retaining all existing staff at the North Pier, an additional three full time roles will be created together with provision for a further FTE, eight part-time roles and an uplift in staff budget at the pontoons.</p> <p>(5) The Trust Port Board will also bring a wealth of skills and experience to the management of the Harbour.</p> <p>(1) Council will receive rent for Trust Port assets (in a similar manner to the Ee-Usk and Piazza buildings). The precise value cannot be provided until Council Officers agree to discuss them (an outstanding MOU Deliverable), but budget provision includes rental payments that are an order of magnitude higher than the current net income from the North Pier facility.</p> <p>(2) This issue has been previously addressed at A&amp;BC/OCHDA meetings, in OCHDA comments<sup>14</sup>, and in an A&amp;BC Briefing Note<sup>15</sup>. In sum, the function of OCHDA is to develop proposals to establish a new Harbour Authority which will be run by an independent Board</p> <p>(a) The OCHDA Committee supported by Association Members has a wealth of relevant experience, skills and professional expertise. This includes: one former Queens' Harbour Master (for Gibraltar), two former Assistant Harbour Masters, an Engineer who was involved with the formation and operation of the Montrose Trust Port which was completed in partnership with Angus Council</p> <p>(b) Professional support and advice is provided by:</p> <ul style="list-style-type: none"> <li>i ABPmer ( ) – Port Marine Safety Code and related legislation</li> <li>ii Briggs Environmental ( ) – oil spill and related environmental issues</li> <li>iii Burness –Paul ( ) – legal issues</li> <li>iv Travellers ( ) – insurance issues</li> <li>v British Ports Association and various Trust Ports – general support</li> <li>vi NLB Chair ( ) – appointed by</li> </ul>
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<sup>14</sup> OCHDA Response dated 22 Jul 21

<sup>15</sup> A&BC Briefing Note OBAN SHA dated 23 Jun 21

		<p>transfer of Council Staff</p> <p>(5) Reduction in available resources to cover the wider maritime estate</p> <p>(6) Loss of [A&amp;BC] control of ...fees and charges</p> <p>(7) Provision of vessel traffic system [sic]</p> <p>(8) Establishing will take longer than the municipal option</p> <p>(9) Conservancy fee would likely apply to North Pier</p>	<p>OBMG to assist and advise</p> <p>vii Tesco HR Director – HR issues</p> <p>(c) Expertise in Trust Port Board covered in MOU Deliverable T9</p> <p>(3) Covered in MOU Deliverables F5, F6, F7; budgeted lease payments require negotiation with A&amp;BC Officers when they are prepared to engage</p> <p>(4) Recruitment covered in MOU Deliverables G1, G2, G3; A&amp;BC Officers' HB Report states there are no HR implications with TUPE</p> <p>(5) Council Officers have previously stated that financial numbers refer to North Pier and pontoons only; OCHDA proposal will actually allow Council to support wider maritime estate with income from lease payments. Additionally, whilst OCHDA is not currently allowed to discuss TUPE arrangements with A&amp;BC at the specific request of Officers, the proposal allows the Council to retain staff who have key skills.</p> <p>(6) Not recognised as a disadvantage to majority of stakeholders. Covered in MOU Deliverables F5, F6, F7</p> <p>(7) If this refers to a vessel traffic service for managing vessel traffic, the requirement for its provision will be considered by the Trust Port once established</p> <p>(8) Progress on all options is currently delayed by A&amp;BC Officers' inaction. We suggest aim should be to provide the optimum solution for all stakeholders including Oban, its hinterland and nearby islands</p> <p>(9) Proposed Conservancy Fee structure covered in MOU Deliverables F5, F6, F7; a similar mechanism would be required for <u>any</u> of the potential Options to be implemented.</p>
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