

**Oban Community Council & OCHDA meeting with local Councillors**

**May 24<sup>th</sup> 2023**

**FOREWORD**

In May 2023, at the request of Oban Community Council and OCHDA, a meeting was held with some local Councillors to explain our concerns, at that stage, over the planned development of the Municipal Harbour. Unknown to us, days before the meeting was held a briefing was circulated, by Council Officers, to our local Councillors. The meeting went ahead without our knowledge of this.

After the meeting we became aware of the briefing and, at the request of the Councillors, Oban Community Harbour Development Association prepared a detailed commentary. This was circulated in June 2023 to Argyll & Bute Harbour Board Members and Oban Lorne & the Isles Area Committee Members and is reproduced in full, below. The first two pages are a summary of the overall concern. The remainder of this document is made up of the Council's original briefing with OCHDA's comments on each section in red.

**OCHDA COMMENT ON A&BC OFFICERS' BRIEFING NOTE OF MAY 2023**

**Why we are concerned**

There have been many examples, in the development of the proposed Harbour Authority, of statements being made by Council Officers which are inaccurate and potentially misleading, whether by design or by accident. Information has been denied routinely, leading to the - entirely unnecessary - submission of FOIs in order to find out what is going on. In addition the consultation undertaken in the summer of 2022 has been repeatedly misrepresented as well as being overtaken by a revised draft being published before the consultation finished.

The briefing issued to local Council Members recently is another example of partial or misleading information. Of note is the statement "Most if not all the users of Oban Harbour will not notice any change in the day to day business around the bay area". If this is true, what is the point of setting up a Statutory Harbour Authority and what will the additional Harbour Master staff be doing? If this is not true what will the updated Marine Safety Management System and associated Directions be that will ensure safety in the Bay on Day One of the new Harbour Authority?

Detailed comment on the Brief is attached.

### **Consultation mechanism proposals**

Officers have put forward proposals for a consultative mechanism - not to elected Members, community groups or the Harbour Board but to the Oban Bay Management Group, a group which has no formal status or representational function. These proposals for future consultation over the safe and effective management of the proposed Harbour Authority area give significant cause for concern and seem designed to keep the community - including users of the harbour and those that depend upon it - at arms length. The current arrangements for community engagement across Argyll & Bute's Harbours are ineffective and will certainly not suit the developing new Oban Harbour Authority. As such they urgently require re-design, but this isn't it.

The Council's proposals are not compliant with the guidance in the Port Marine Safety Code nor with the Scottish Government's good governance guidance. Oban Community Council and Oban Community Harbour Development Association, with the local Stakeholder Group, have proposed models, based on other Scottish Municipal Harbours, have been rejected by Council Officers without explanation. Instead they have put forward a 2-tier consultative model which also combines management co-ordination with other bodies which have legal/financial responsibilities in the Bay, specifically Northern Lighthouse Board (NLB), CMAL and CalMac. (Note: Crown Estate Scotland have significant legal and financial interests but are not included.) The structure proposed is a 'stakeholder' body which includes harbour users, reporting to the 'management co-ordination' body which itself reports to the Council's Harbour Board.

### **Comments**

For safety reasons, and for compliance with the Port Marine Safety Code, the reporting line from harbour users requires to be directly to the responsible body of the Council - the Harbour Authority - and must not be 'filtered' by another body. The Harbour Authority is responsible for making directions for harbour users and, therefore, effective consultation as well as implementation is essential.

Other stakeholders (e.g. the local business community) should be effectively engaged in planning future developments and in receiving reports on progress, receiving reports from and reporting to the Harbour Authority, as summarised in the Scottish Government's guidance.

The Harbour Authority must liaise effectively with other relevant bodies, for example CMAL, CalMac and NLB over, for example, planned responses to environmental matters and with the Police and Border Force over matters relating to security but these matters are not the responsibility of the Harbour Authority alone and are a matter for liaison and co-ordination rather than consultation, direction and reporting.

For the reasons outlined above, and reflecting a complete lack of confidence in the Council's responses to consultation, the issue of community engagement, covering both consultation with harbour users and engagement with the wider group of stakeholders, is likely to become a major source of difficulty. In order to try to address this before the formal consultation starts proposals have been submitted (by the Community Council, the existing stakeholder group and by OCHDA) to bring together all parties to work collaboratively (workshop-style) on the development of acceptable, fit-for-purpose consultation/engagement arrangements. This has not yet been rejected but Officers made clear that this is not their preferred approach.

It is the role of our elected representatives to ensure that the detailed arrangements for the new Harbour Authority are fit for purpose and provide a secure basis for the management and development of the Harbour. Our role is to help the process but we cannot support the currently proposed arrangements.

**A&BC OFFICERS' BRIEF OF MAY 2023  
(with OCHDA's comment in Red)**

**What is it that the Council is doing?**

The Council is creating a Municipal Harbour Authority for the whole of Oban Bay, excluding the area around the CMAL link spans and fisherman's berths which are already covered by a HRO operated by CMAL/CalMac. This will be an extension of what the council currently manages at North Pier where the Council is already the Harbour Authority for that area of water. The area proposed as the Harbour Authority is detailed on the charts pasted at the foot of this document.

CMAL does not have an existing administrative Harbour Revision Order for the Railway Pier. The Callander and Oban Railway Act 1878 Section 39 is the sole legal basis for CMAL's status as a Statutory Harbour Authority.

The areas off the Northern Lighthouse Board pier and those for which Kerrera Marina has seabed rights require clarification.

**Why is the Council creating a Municipal Harbour Authority?**

The approaches into and out of Oban Bay are not covered by a Harbour Authority and therefore these areas default to the MCA (who have jurisdiction on inland waters not covered by a Harbour Authority).

MCA have jurisdiction on coastal or inshore waters.

Whilst there has been significant and good work progressed through the Oban Bay Management Group (OBMG), there are still large parts of the bay which are not controlled by a Harbour Order. OMBG have produced a user guide, commissioned various technical reports and assessments, provided significant information on the website and also improved the marks and buoyage in the bay.

Establishing a Harbour Authority will help to ensure that Oban Bay can be managed safely through a Harbour Authority who will have the legal ability to give direction to vessels to ensure the safe movement of all vessels within Oban Bay regardless of a vessel being a paddle board or a large ferry/commercial vessel.

Statutory Harbour Authorities have a statutory duty to fulfil their legal responsibilities for the infrastructure, maintenance and management of a statutory harbour undertaking. The safety of a harbour is only ONE aspect, and the most important, of a SHA's management responsibilities.

They can only hope to manage paddleboard/kayak actions through CCTV observation and VHF to warn vessels with radio. This system is not in place.

In 2018, CMAL were moving towards becoming a harbour authority with the Council remaining nested at North Pier. This would have provided a solution to cover the whole of Oban Bay. Following stakeholder representation, CMAL paused that process to allow a Trust Port proposal to be developed. Unfortunately, the Trust Port proposal had not sufficiently developed to allow it to progress and in December 2021 the Council's Harbour Board made a decision for the Council to progress a municipal harbour authority to expedite safe management of Oban bay for all users.

The reality is that Oban Community Harbour Development Association and A&BC were unable to complete the Trust Port proposal because the Council withdrew its co-operation. For example:

- a. A&BC refused to release lease costs for selected North Pier assets provided at public expense by an independent consultant.
- b. A&BC employed a consultant to conduct a so-called “options appraisal” on setting up a Statutory Harbour Authority. This was not conducted in accordance with Scottish Government guidance on Options Appraisals. The case for a Trust Port was misrepresented.
- c. As should now be evident, the case for a Trust Port was more developed than that for a Municipal Port.

## What is the process?

The process is a complex one governed by harbour legislation, however, a summary of the process is outlined below:

- Harbour Revision Order (HRO) drafted to supersede any historical Orders which is informed by:
  - o Carry out a Navigation Risk Assessment (NRA) to the requirements of MCA to identify any areas of risk and also to inform the limits of the bay included in the Order.  
**The Navigation Risk Assessment has not yet been made available.**
  - o Stakeholder engagement and drop in sessions as part of the NRA process
- Informal consultation seeking views of stakeholder and interested parties
- Consultation with statutory consultees as defined by harbour legislation  
**There are no statutory consultees for this stage of the process. There is no “harbour legislation” which defines such a thing. Pre-application consultation is detailed in Transport Scotland’s Harbour Orders Guidance document which explains pre-application consultation:  
<https://www.transport.gov.scot/transport-network/ports-and-harbours/harbour-orders/#37285> .**
- Technical discussions with CMAL as adjoining harbour authority and Northern Lighthouse Board (NLB) who will continue to have some responsibility for buoys and marks within Oban Bay  
**This responsibility requires clarification.**
- Submission of draft HRO to Transport Scotland
- Formal consultation over a 42 day period once Transport Scotland are content with the draft HRO  
**Oban Bay Stakeholders Group, Oban Community Council and Oban Community Harbour Development Association consider a public meeting is essential during this period. If A&BC are not prepared to sponsor a meeting then one of the aforementioned groups will.**
- Consideration of any representations received during consultation period, any objections which can’t be removed by negotiation will be put to Transport Scotland/Ministers for determination possibly by a public inquiry
- HRO to be approved either as consulted on, amended or refused. Note the latter would not be in the interest of any individuals or organisations on the basis that the safety improvements and enhancements brought about by a harbour

authority being created would not be realised.

Only if the Minister regards the Harbour Revision Order as inadequate would this happen. For this reason Oban Community Harbour Development Association has firmly committed to helping A&BC get it right. However, if this is the outcome, the Trust Port option should be reconsidered in order to avoid further delay in establishing a Statutory Harbour Authority.

## What consultation has been carried out?

In addition to the formal HRO process, an informal consultation was carried out over a 6 week period. As part of this process details were sent to over 1000 addresses including all statutory consultees; Argyll and Bute Council Elected Members; Commercial and organised groups with an interest in Oban Bay; Community Councils; 899 individuals within both Oban, Lorn and the Isles Wards, who have subscribed to the 'keep in the loop' subscription service and was open to the general public via the Argyll and Bute Council website.

The results have been published on the website ([Click here](#)) and are summarised below:

### Oban Bay as a Municipal Port: Summary of responses from consultation

Total responses to mail address	65	
Responses supportive of Municipal Port	36	(55.4%)
Responses against Municipal Port	17	(26.1%)
Responses neutral to Municipal Port	12	(18.5%)

All of the responses were examined and core themes were identified from the questions, statement and comments.

This is highly misleading. Only 10 respondees supported the proposal without reservation while 18 specifically stated that a Trust Port is the preferred option. Many respondees were doubtful of A&BC's ability and concerned about the lack of detail included in the 'skeleton' draft proposal on which the consultation was based. There has been no public consultation on the 1<sup>st</sup> or 2<sup>nd</sup> draft Harbour Revision Orders and sight of the version submitted to Transport Scotland in December 2022 is awaited.

Attention is drawn to the full list of responses available on the A&BC website. A more objective analysis of these scored in a similar manner and with one point additionally allocated to respondees who were content with the proposal of a Municipal Port prior to gaining a Trust Port produces the following:

Support Municipal Port: 33%  
Against Municipal Port: 42%  
Neutral on Municipal Port: 23%

In sum, the case for a Municipal Port has yet to be made.

The table below summarises those themes and provides a response to each:

Questions & comments received in the 'Against' and 'Neutral' categories (summary)	Response
Does the Oban Bay Management Group support the Municipal Harbour?	<p>Argyll and Bute Council's plans for a Municipal Harbour have the full support of the Oban Bay Management Group.</p> <p>The Oban Bay Management Group supported the principle for a Municipal Port but also supported that for a Trust Port which was the preferred option of the majority of its members. Plans for a Municipal Harbour have yet to be made available. Together with the Navigation Risk Assessment, their visibility would enable proper consultation, input and comment.</p>
Oban is a distinct and complex harbour; how can we be confident that Argyll and Bute Council has the expertise to run it?	<p>Argyll &amp; Bute Council have a Harbour Master at Oban with a great deal of experience both in general marine terms and specifically in managing Oban Bay. Oban Bay is one of 39 piers and harbours managed by Argyll &amp; Bute Council, including five Statutory Harbour Authorities and one Competent Harbour Authority. Within the Roads and Infrastructure Services, the Marine Department have an extensive range of experience supported by (among others) Legal, HR &amp; Technical Design colleagues.</p> <p>The A&amp;B Harbour Board of elected Councillors has delegated authority from the A&amp;BC Council to fulfil their legal responsibilities for the infrastructure, maintenance and management of a statutory harbour undertaking.</p> <p>One Harbour Master would be overwhelmed by the proposed expansion to the full port area and further competent staff will be required.</p>
What will the staffing be and what hours will the Harbour operate?	<p>It is envisioned that the Harbour will operate between 06:00 and 23:00 with up to three Assistants working with the Harbour Master.</p>
How will Argyll and Bute Council govern the harbour and ensure the local community and stakeholders are involved?	<p>Argyll &amp; Bute Council has Elected Members directly involved through the transparent workings of the Harbour Board, representing not only the local Oban area but also the wider Islands Communities who also rely on Oban. There will be the required and appropriate Harbour User / Stakeholder Groups which will meet regularly.</p> <p>See following comment on governance and</p>

	<p>engagement with stakeholders, users and communities.</p> <p>Current arrangements are not a good model to be followed.</p>
<p>Will the extra charges discourage visitors and where will any profits go?</p>	<p>Argyll &amp; Bute Council will receive most of its income from fees and charges from larger vessels and CalMac (CFL), whereas locals and local business will benefit from any developments made to encourage visitors to Oban. Conservancy charges etc. made on non-leisure craft are to cover the costs of maintaining the port and the duties required of the Harbour Authority (whomever that may be) in keeping the Port safe and open for business.</p> <p>See previous comments on the so-called “options appraisal” and note the lack of a business case from A&amp;BC on their Municipal Harbour proposal. This should have been developed with indicative user charges included before the Harbour Board approved proceeding with the Municipal Port option which, along with the Trust Port option, should have been considered in the so-called “options appraisal” in accordance with Scottish Government guidance and best practice.</p>
<p>Are there any plans for upgrading the port facilities?</p>	<p>There are plans at an early stage which look at an extension of the North Pier. The scope of the proposal would include extending and strengthening the North Pier by up to an additional 50m and dredging to a usable uniform depth of 5m to facilitate and future proof the berthing face for commercial customers. The works would help to ensure a safe and efficient through traffic management of commercial and private vehicles using the pier.</p> <p>This extension was first proposed in 2012.</p>
<p>Why do we need any change, surely existing COLREGS are enough for safety?</p>	<p>The formal management of the larger bay area allows the Harbour Authority to enforce legislation (like COLREGS) and other safety rules (like speed limits). Without the inclusion of the larger bay area in a new HRO, there is the possibility of disruption or incidents which take place outside the jurisdiction of the existing Authorities. Local leisure and regular users should not notice much of a difference in the Day-to-Day running of the Bay.</p> <p>Clarification of “much” required.</p>



<p>Will the harbour eventually be transferred to CMAL or run for the benefit of CalMac ferries?</p>	<p>Oban Bay is recognised as an important strategic asset within Argyll &amp; Bute. The Council will run and maintain Oban Harbour for the benefit of all users, including CFL (CalMac) and that after a period of bedding in, there will be a further report to Members on the potential for and exploration of the future development of a Trust Port.</p>
<p>Will small leisure craft still be able to launch for free and have access to the bay?</p>	<p>Argyll &amp; Bute Council operates an 'Open Port' policy which ensures that safe access and safe use of our Ports and Harbours is enjoyed by the public. Leisure craft will be exempt from Conservancy Fees.</p> <p>However, once the Municipal Port takes over from Marine Scotland management of the "water column" it will be able to set its own scale of charges (Crown Estate Scotland will continue to levy charges for use of the seabed). If these are increased significantly, owners of these assets may be forced to pass these on to users thereby increasing costs to "leisure craft". Clarification required.</p>

### **How will the Municipal Harbour Authority operate and what opportunity will there be for stakeholder engagement?**

The new Municipal Harbour Authority will effectively be an extension of the existing North Pier Harbour Area operating over a larger area and being staffed 7 days a week over a longer working day

It is proposed that 2 consultative forums will be formed, one of which includes all stakeholders with an interest in this strategic location and the second group consisting of those bodies with a financial and legal responsibility for parts of the bay.

The Council also has in place an established Harbour Board which covers all the ports and harbours which the Council is responsible for. It is proposed that there will be a cycle of meetings where the wider stakeholder meeting meets first allowing any issues/actions to be reported to the meeting with the bodies with a financial and legal responsibility for parts of the bay. Issues and actions from both meetings then being reported to the Council's Harbour Board.

This proposal is not consistent with the guidance issued by the Scottish Government (Transport Minister's letter covering the Good Governance document) and fails to ensure that all harbour users, as a specific group, are effectively consulted over

matters of safety as required under the Port Marine Safety Code. There are also concerns over effective engagement with all stakeholders and communities. It is not supported by the Oban Bay Stakeholders Group, Oban Community Council or Oban Community Harbour Development Association who together represent the majority of interested parties.

The A&BC proposed “Harbour Liaison Committee” should not have any role in assessing, amending, dismissing or refusing to consider any issues raised by the A&BC proposed “Stakeholder Consultative Body” which, under Port Marine Safety Code guidance, should expect a direct reporting line to the Harbour Board.

The May 2022 Oban Bay Management Group was unable to reach consensus on fit for purpose arrangements: either A&BC Officers’ proposal described above or the Oban Bay Stakeholders Group/Oban Community Council/Oban Community Harbour Development Association proposed Harbour Advisory Committee structure which is compliant with Scottish Government Guidance and is in place at Municipal Harbours in Scotland. A workshop to develop a structure which can be supported by the majority of stakeholders, users and communities is proposed.

### **What are the next steps?**

Once the HRO is made, a bedding in or transitional period where new equipment will be thoroughly tested and staff will be on shift will run parallel to some of these steps so that the management and direction of the Harbour can proceed from the day of enactment.

Most if not all the users of Oban Harbour will not notice any change in the day to day business around the bay area.

If this is true then it will be failing. The need for a Statutory Harbour Authority is because of observed risk and this must change and lead to changed behaviour and reduced risk. The question that should be asked is how? For example, implementing a set of General Directions approved by the Harbour Board could have a significant impact on Harbour Users.

We will aim to have the first of our user and stakeholder meetings as soon as possible.

Previous comment on fit for purpose engagement arrangements refer – these have yet to be developed to the satisfaction of the majority of Harbour users, stakeholders and communities.

Figure 1: Proposed Northern Limits including the 'Outside Anchorages'

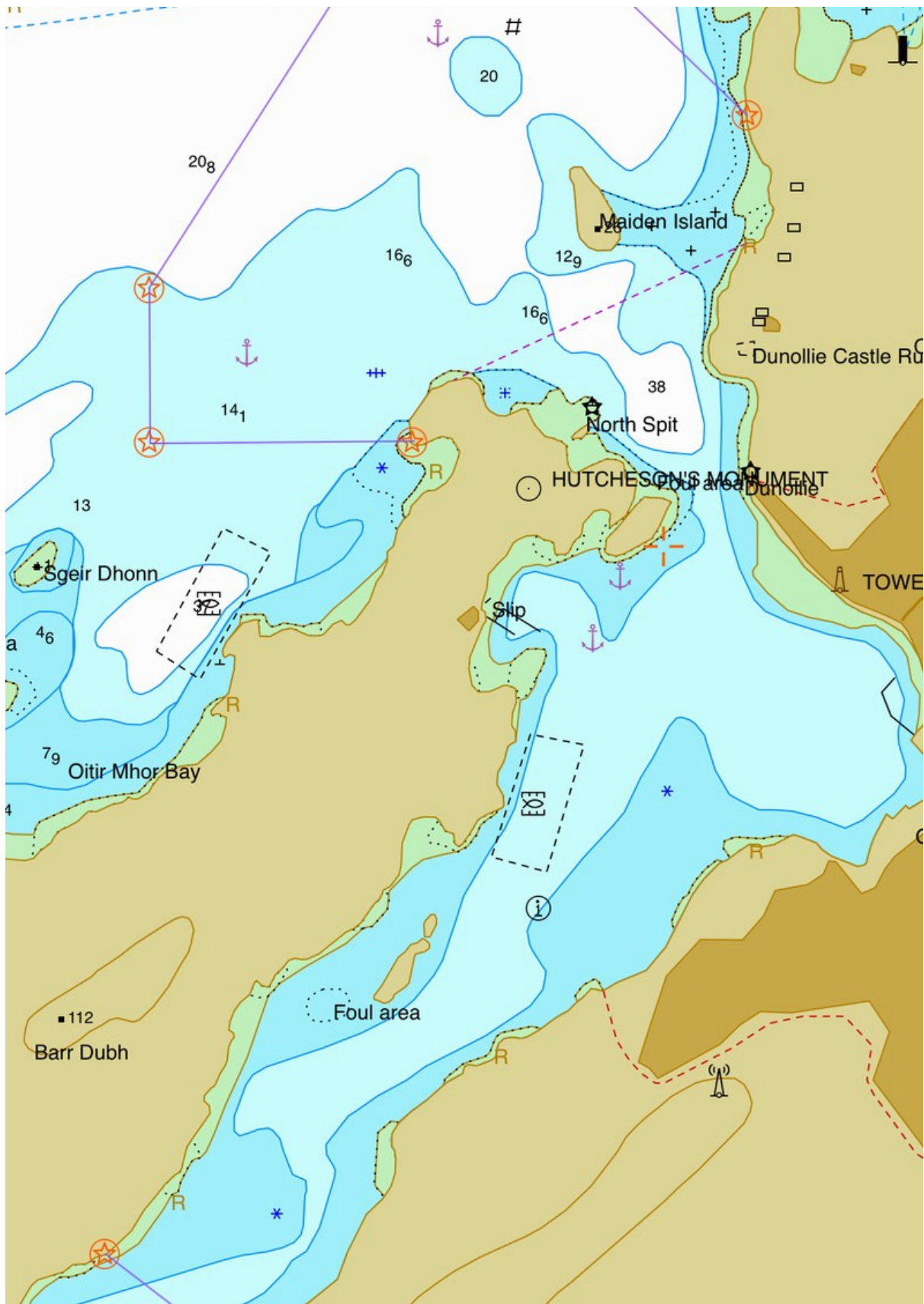


Figure 2: Overview of proposed limits

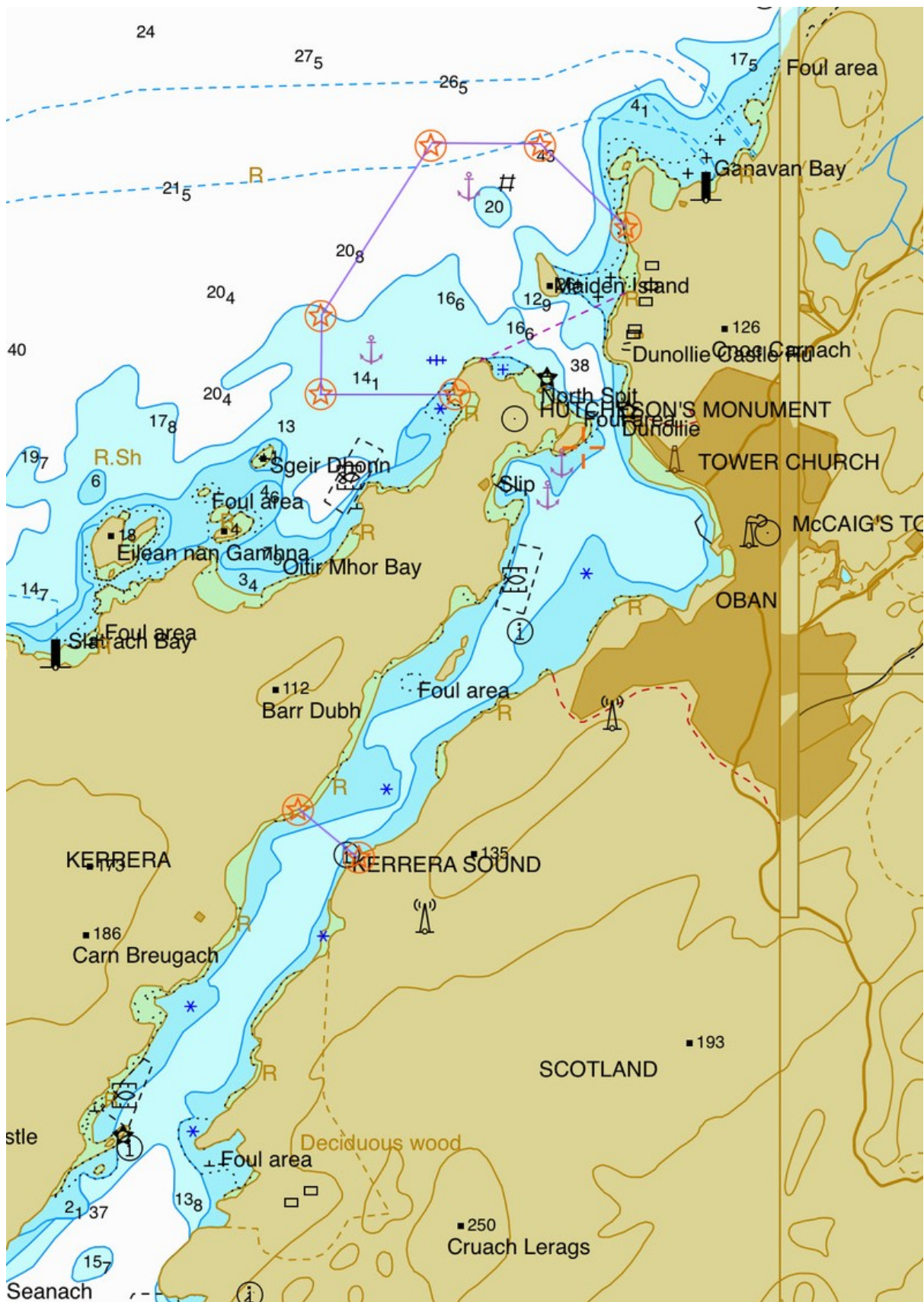


Figure 3: Proposed Northern Limits including the 'Outside Anchorages'

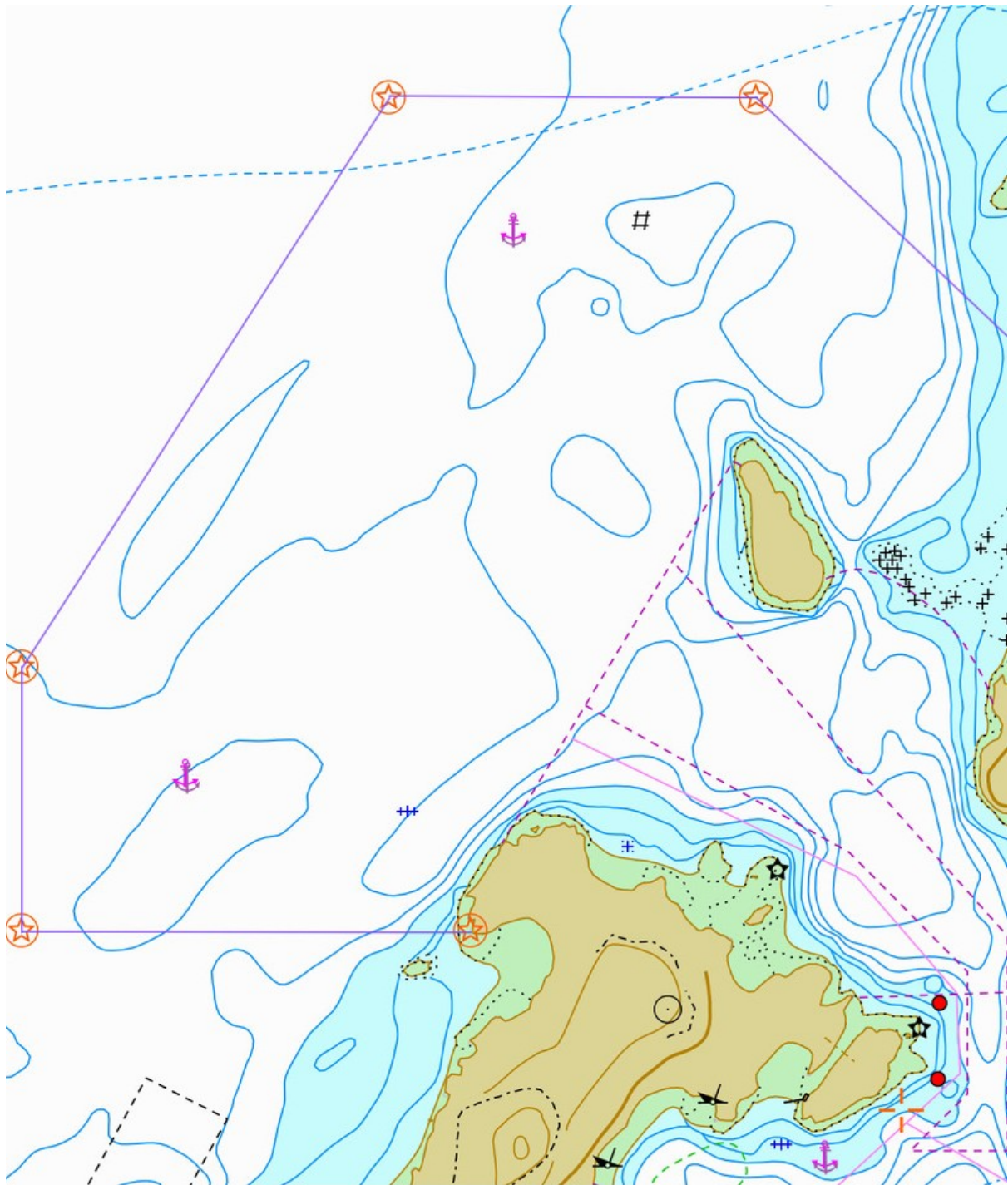


Figure 4: Proposed Southern Limits including approaches to Kerrera Ferry

