

Oban Community Harbour Development Association

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Transport Scotland
Ports and Harbours Branch
Area 2F North
Victoria Quay
Edinburgh, EH6 6QQ
by e-mail to harbourorders@transport.gov.scot

9 January 2024

Dear Transport Scotland,

PROPOSED OBAN HARBOUR REVISION ORDER 2023 PROMOTED BY ARGYLL & BUTE COUNCIL OBJECTION TO SOME WORDING INCLUDED IN THE STATEMENT OF SUPPORT

1. The Oban Community Harbour Development Association (OCHDA) recognises that this Statement of Support (SoS) submitted by Argyll & Bute Council (A&BC) in support of the proposed Harbour Revision Order for Oban Harbour (HRO) is the overarching document that contains the Purpose and Effect notes required by Transport Scotland to be submitted with the HRO. This is a technical document that covers all provisions in the draft order justifying why each power is being sought and the purpose each is expected to achieve. Whilst OCHDA understands that it does not form part of the documents required for the consultation, we believe that the misleading and inaccurate information presented should be brought to the attention of Transport Scotland as objections.
2. The SoS is not entirely complete nor is it always accurate. Further, some of the supporting documents referred to and submitted contain inaccurate statements, some of which have been the subject of formal complaints. It is a matter of regret and concern that A&BC feel unable to provide a comprehensive and wholly accurate SoS. As a consequence of these shortcomings the Argyll & Bute Harbour Board (HB) and the public may have been misled. There have also been and remain some misleading and inaccurate statements in reports Council Officers have presented to the HB and also posted on the A&BC website. For example, the statement on the Council website “Argyll & Bute Council’s plans for a Municipal Harbour have the full support of the Oban Bay Management Group” is not accurate. The Oban Bay Management Group (OBMG) has not been asked to express a view on the HRO; it was expected that Council Officers would present it to the meeting scheduled for 13 December 2023 but the Council’s decision to proceed with public consultation over the longest annual holiday period resulted in its cancellation. The Council Officers’ proposed Municipal Harbour consultation arrangements were considered by the OBMG on 5 October 2023 and there was no consensus, with questions awaiting answers and its rejection by community groups. Significantly this was after the HB had approved them at their August 2023 meeting, despite the HB’s request for an OBMG prior briefing.
3. The objections below in red provide details on the historic background part of the SoS, with supporting documentation available on the OCHDA website www.ochda.scot. Note that records of formal complaints and Freedom of Information requests, some of which remain unresolved, are not posted and can be made available on request. These objections complement the objections contained in the OCHDA Draft Order Objection document dated 9 January 2024.

ARGYLL & BUTE COUNCIL STATEMENT OF SUPPORT

1 Introduction

1.1 This statement relates to the application by Argyll and Bute Council for the proposed Oban Harbour Revision Order 2023 ("the HRO"). Argyll and Bute Council ("the Council") is the statutory harbour authority for Oban.

1.2 The application, made to the Transport Scotland dated 10th November 2023 is accompanied by:

1.2.1 A copy of the draft HRO;

1.2.2 This statement;

1.2.3 The fee for the application, by BACS, in the sum of £4,000; and

1.2.4 Copies of the following legislation:

1.2.4.1 Pier and Harbour Orders Confirmation Act 1862

1.2.4.2 Pier and Harbour Orders Confirmation Act 1864

1.2.4.3 Piers and Harbour Orders Confirmation (No.5) Act, 1896

The Callander and Oban Railway Act 1878 is not included. As a result of omitting that significant legislation, statements about the historic harbour authorities in paragraph 2.4 et seq below are incorrect and incomplete.

1.2.5 Copies of the following reports:

1.2.5.1 Argyll and Bute Council Harbour Board reports dated 2 September 2021, 3 March 2022, 4 August 2022, 1 September 2022, 22 December 2022 and 2 March 2023; and

1.2.5.2 Caledonian Economics Oban Bay Options Appraisal report dated November 2021

1.3 The application is for a harbour revision order to be made under the powers conferred on the Scottish Ministers by section 14 of the Harbours Act 1964. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

1.4 The HRO extends the harbour limits into Oban Bay. It also updates the existing legislation for Oban harbour in line with the current needs of the Council as the harbour authority for Oban harbour and Oban harbour users from the date it comes into force. The Order extends the harbour limits and confers updated powers on the Council, including powers to lease and powers as regards the making of byelaws and issuing of general special directions.

2 Oban Harbour Authority

2.1 Oban harbour ("the harbour") is a busy working port on the west coast of Scotland. The Council is the Statutory Harbour Authority for the north and south piers of the harbour under the Piers and Harbour Orders Confirmation Acts 1862, 1864 and 1896. The Council is responsible for the administration, maintenance and improvement of the harbour.

2.2 There is a separate statutory harbour authority within Oban Bay which is responsible for the administrative, maintenance and improvement of the railway pier. The limits of the railway pier and the powers of its harbour authority were defined by the Callander and Oban Railway Act 1897. Under the 1897 Act, the harbour authority was the Callander and Oban Railway Company. The harbour authority is now CMAL. This Order does not make any alterations to the limits of the harbour including the railway pier, nor does it alter the powers of CMAL as harbour authority for the railway pier.

2.3 Background leading to the HRO

2.4 The current limits of the Council's jurisdiction as harbour authority are tightly drawn around the north and south piers of Oban harbour. Most of Oban Bay is not regulated by any harbour authority. The Bay is frequently used for commercial and recreational maritime activities, including large ferries and a fishing fleet. The lack of regulation over the Bay means that no existing harbour authority has jurisdiction to manage the flow of maritime traffic and to ensure the safety of all vessels and persons on the waters of the Bay. In addition, the differing existing jurisdictions within Oban Bay has led to confusion over responsibilities between the harbour authorities.

[See comment on Paragraph 1.2.4 above.](#)

2.5 Existing powers of harbour management are contained, in respect of the Council, within harbour legislation dating to the late nineteenth century. The existing legislation does not contain powers needed for management of a modern harbour. In particular, it does not contain appropriate powers of general or special direction, or general powers to manage, maintain and develop the harbour in accordance with modern practice.

2.6 In 2018 the Oban Bay Management Group (OBMG) was tasked to consider means for better regulating the wider Oban Bay area in the interests of safety and appropriate harbour management. OBMG presented a plan for 'Consultation for a Harbour Revision Order at Oban' with stakeholders and the wider community. The options then were broadly the same as those that were later appraised, and it was highlighted that each of the operational models would be similar and the positive safety impacts would be equivalent.

2.7 The OBMG analysis indicated that two most promising options were for either the Council or CMAL to take on responsibility for the wider harbour area. These options were thought to be broadly equivalent, except that the Council option could take longer to implement. The idea of creating a trust port was also considered at this time.

2.8 The Council considered providing formal support for CMAL to assume responsibility as harbour authority for the entirety of Oban Bay. However, after consultation with interested parties in 2018, the Council did not proceed with this option. It also provided support to a community group, the Oban Harbour Community Development Association (OCHDA) to allow the latter to develop a proposal for Oban harbour to become a trust port with a harbour authority which was neither the Council nor CMAL. The Council provided this support in order that a trust port plan could be fully developed and considered against other potential options for the future of the harbour.

Title is the Oban Community Harbour Development Association (OCHDA) and further information is available on its website www.ochda.scot. OCHDA was established in 2019 to support the development of alternative harbour management arrangements for Oban Bay, namely the establishment of a new Statutory Harbour Authority to cover the un-managed waters in the middle of the bay and the entrances to the bay by establishing a Trust Port.

It was agreed at a meeting between A&BC and OCHDA on 12 November 2019 to work collaboratively to demonstrate the viability of a Trust Port. In December 2019 the Argyll & Bute Harbour Board (HB) agreed that work should be undertaken jointly by Council Officers with OCHDA to develop a Memorandum of Understanding (MOU) relating to the transfer of powers to the future Trust Port and the development of a commercial lease for specific properties on the North Pier which were to become the Trust Port operating base. Joint progress throughout 2020 was slow, not helped by Covid restrictions.

Meetings between A&BC and OCHDA throughout 2021 were initially constructive (minutes on ochda.scot) but became increasingly unproductive principally because of Council Officers unwillingness to work constructively to implement the HB's instructions. For example, in April 2021 OCHDA presented a draft MOU (see ochda.scot) which Council Officers were not prepared to support. Thereafter progress slowed with Council Officers unwilling to provide information timeously (deliverables details on ochda.scot). Of note was the Council's delay in providing lease costs for their North Pier assets. When they were provided by an independent publicly funded consultant, Council Officers refused to share the information with OCHDA. This prevented presentation of a Trust Port business case populated with validated numbers (provisional numbers were used (see ochda.scot)). Finally in November 2021, Council Officers ceased to work collaboratively and constructively on the project. It is worth recording that neither a business case nor a business plan for a Municipal Statutory Harbour Authority has been made available to inform the public of the Council's intentions.

Throughout this period OCHDA commented on inaccurate and misleading statements included in Council Officers' reports to the HB. Some were pejorative and understated the benefits of a Trust Port. The preferred option of the majority of the members of the OBMG was for a Trust Port and this remains the case for community groups.

2.9 The Council's Harbour Board agreed to conduct an independent options appraisal process to determine the preferred option for the future management of Oban Harbour. Council Officers commissioned Caledonian Economics, a management consultancy specialising in public infrastructure, to carry out the independent appraisal exercise, with the results presented to the Harbour Board in December 2021.

These options were as follows:

1. *Continue as at present. The Council's report states that this is not sustainable and therefore should be formally discounted;*
2. *A Trust Port model to include the transfer of the current Harbour limits around North Pier and the transfer or lease of some or all assets;*
3. *A Trust Port model excluding the transfer of the current Harbour limits around North Pier (wet port);*
4. *CMAL as a unitary Harbour Authority;*
5. *Argyll and Bute Council as a unitary Municipal Port.*

2.10 In December 2021 the Harbour Board agreed that either Options 4 or 5 provided the most efficient route to addressing the safety concerns that underpinned the drive for reform. The Harbour Board determined that Options 4 and 5 should be progressed. Council Officers were requested to engage with CMAL, through the OBMG, on the basis that the Council's preference was that it should be the Harbour Authority for the unmanaged section of Oban Bay. The Harbour Board agreed to begin the process of an application for a Harbour Revision Order covering the unmanaged section of Oban Bay and to expedite the process.

The so-called “options appraisal” was not conducted in accordance with Scottish Government Guidance on options appraisals, and insufficient time was made available for its completion and nor for HB members’ consideration. It only considered the case for a Trust Port and did not properly examine the other 2 options, CMAL or Municipal. The case for a Trust Port was misrepresented. The conclusion that “whilst there is no inherent reason why a Trust Port would not be a good option in the future, there was no Trust Port suitably well progressed and a great deal of work remains to be done” is disingenuous. Firstly, development of the Trust Port option was adversely affected by Council Officers’ obfuscation and delay, and secondly the amount of work to progress a Municipal Port was apparently not assessed in the “options appraisal” and timelines were not stated (OCHDA’s for a Trust Port were). However, Council Officers felt able to brief the HB that they could have a Municipal Statutory Harbour Authority in place before the start of the 2023 sailing season. As should now be evident, the case for a Trust Port was more developed than that for a Municipal Port. In particular, OCHDA had a mature draft HRO with input from professional advisers in the final stages of preparation – the Council did not achieve this milestone until a year later.

3 Consultation

3.1 The Council engaged in a pre-application public consultation between 15th July and 26th August 2022. It publicised its draft HRO upon its website and invited comments from members of the public. The Council also sent copies of the HRO directly to CMAL, the Commissioners of the Northern Lighthouse Board, the Maritime and Coastguard Agency, CFL, and the Oban Community Harbour Development Association (OCHDA), a voluntary local community group, and invited from those

groups. Finally, the Council has also consulted Transport Scotland on the drafting of the HRO prior to application.

This so-called consultation was on a 'skeleton' draft with little essential detail included and was conducted during a traditional holiday period. The responses to this consultation were reported in a highly misleading manner, claiming that 55% of the 65 responders were supportive. An objective analysis of the written responses shows that only 33% were supportive, 42% were not supportive and the remainder neutral or unable to comment because of lack of information. Preference for a Trust Port was expressed by many responders. None of these responders is understood to have received feedback from the Council, despite being promised this, with meetings to discuss and reach consensus. It is therefore misleading to state that a pre-application public consultation on the Council's proposed HRO has been completed. Indeed, there has been no meaningful community engagement to brief or consult, and input from OBMG members, the Council's stated consultancy body, has either not been sought or frequently not taken into account.

In conclusion, we would be most grateful if Transport Scotland would take note of this **objection** relating to the misleading and inaccurate information presented in this Statement of Support as detailed above. Correspondence relating to his objection should be sent to OCHDA via email: info@ochda.scot.

Yours sincerely,

Ross Wilson
Chair OCHDA