

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, updated powers on the Council, including powers to lease and powers as regards of byelaws and issuing of general special directions.
 - 1.2.2 This statement;
 - 1.2.4.3 Piers and Harbour Orders Confirmation (No.5) Act, 1896
 - 1.2.5 Copies of the following reports:
 - 1.2.5.1 Argyll and Bute Council Harbour Board reports dated 2 September 2021, 3

except that the Council option could take longer to implement. The idea of creating a trust port was also considered at this time.

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risk and proposed mitigation for reducing the risk. This follows the requirements of the Port Marine Safety Code (DfT, 2016).

- 4.3 The NRA methodology was approved by, and the results will be reviewed as part of this process by, the Maritime and Coastguard Agency (MCA) as the competent authority with a marine safety remit for Oban Bay, as most of the area is currently outside of a statutory harbour area. It is used to inform, and provide justification for, the external limits and jurisdiction of Oban Harbour as well as the required degree of traffic monitoring and therefore staffing levels i r4.3

manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships".

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 4:

"imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above".

And at paragraph 6:

"Settling (either for all purposes or limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled".

4.9 The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

4.10.1 Paragraph 3 of Schedule 2 to the 1964 Act:

Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provisions of local application affecting the harbour, being duties or powers

Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled.

4.10.3.1 The HRO provides for an extension of the area within which the Council exercises jurisdiction, and settles the limits within which the Council is to have such jurisdiction, at article 4.

4.10.3.2 The making of the HRO will therefore enable the object contained within paragraph 6 of Schedule 2 to the 1964 Act to be achieved.

4.10.4 Paragraph 9 of Schedule 2 to the 1964 Act:

Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes.

4.10.4.1 The HRO confers powers on the Council to dispose of land, buildings or harbour facilities (including by way of sale, lease, exchange or otherwise) which is no longer required by the Council for the purposes of the harbour at article 6(2).

4.10.4.2 The making of the HRO will therefore enable the object contained within paragraph 9 of Schedule 2 to the 1964 Act to be achieved.

4.10.5 Paragraph 11 of Schedule 2 to the 1964 Act:

Empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the harbour.

4.10.5.1 The HRO confers powers on the Council to levy harbour charges other than ship, passengers and goods dues at article 30.

4.10.5.2 The making of the HRO will therefore enable the object contained within paragraph 11 of Schedule 2 to the 1964 Act to be achieved.

4.10.6 Paragraph 12 of Schedule 2 to the 1964 Act:

Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.

- 4.10.6.1 The HRO clarifies liability for charges payable to the Council in respect of vessels or goods at article 31, confers the power to grant exemptions and rebates at article 32

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| | as the railway pier is subject to a separate statutory harbour authority. | | | |
| 5 | To provide that the Council may take such steps as it may consider necessary or expedient from time to time for the improvement, maintenance and management of the harbour, its facilities and accommodation. | Article 13 of the Eyemouth Harbour Revision Order 2021 | This article confers on the Council general powers in respect of the improvement, maintenance and management of the harbour. | Paragraph 4 of Schedule 2 to the 1964 Act. |

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To permit the Council to acquire land for the purpose of the harbour undertaking, to allow it to dispose of property no1 (ou)6.2 (r)-1.4 (29)1.5 (s)-2ming, tdi

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| 9 | To permit the Council to dredge the bed and foreshore of the harbour and approaches, and thereby maintain the harbour in efficient working order, and to control the deposit of dredged material. | Article 17 of the Eyemouth Harbour Revision Order 2021 | This article grants powers to dredge to the Council within the harbour area and approaches, and controls the deposit of dredged material. | Paragraph 4 of Schedule 2 to the 1964 Act. |
| 10 | To control dredging and the construction, maintenance etc of works within the harbour area, and to require any such works or dredging to be licensed by the Council. This provision contains enforcement powers for the Council in respect of any contravention of this provision. Saving is made for CMAL in its position as harbour authority for the railway pier, but requires CMAL to consult with the Council prior to undertaking dredging in relation to the approaches to the railway pier. | Article 7 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 | This article gives the Council powers to control dredging and the maintenance, construction of etc of works within the harbour area, require licensing of such works or dredging by the Council, to provide enforcement powers in respect of any breach of this provision, and to exclude CMAL from those provisions in relation to the approaches to the railway pier subject to a requirement to consult prior to carrying out any dredging works. | Paragraph 4 of Schedule 2 to the 1964 Act. |
| 11 | To allow the Council discretion to provide parking places within the harbour premises, including powers to make reasonable charges and construct and maintain relevant infrastructure. This provision is in the interests of regulating the carrying on of activities in the harbour, and in the interests of the efficient and economic use and management of the harbour. | Article 11 of Tobermory Harbour Empowerment Order 2017 | This article permits the Council discretion to provide parking places within the harbour premises, including powers to make reasonable charges and construct and maintain relevant infrastructure. | Paragraph 4 of Schedule 2 to the 1964 Act |
| 12 | To allow the harbour master to require the | | | |

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| 13 | <p>navigation and berthing within the harbour.</p> <p>To make provision as to the recovery of costs incurred by damage to any property of the harbour by any persons contravening harbour enactments, or any vessel, and to clarify liability for any such costs. This provision is in the interests of managing the harbour and ensuring the Council can recover the costs of rectifying any damage caused by any other person/vessel.</p> | <p>Article 10 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018</p> | <p>This article makes provision as to the recovery of costs incurred by damage to any property of the harbour by any persons contravening harbour enactments, or any vessel, and to clarify liability for any such costs. Saving provisions are made for other rights or liabilities under common law or statute, including criminal liability.</p> | <p>Paragraph 4 of Schedudud</p> |
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| 17 | regulate berthing of vessels within the harbour area. | Article 22 of the | | |
| | To permit the Council to remove obstructions to proper use of the harbour which are not vessels, vehicles or wrecks, in the interest of effective and efficient management and use of the harbour and safe navigation. | | | |

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| 20 | <p>To allow the Council to make byelaws for the efficient management and regulation of the harbour. This provision is in the interests of the efficient and effective management and use of the harbour, of safe navigation and of regulating the carrying on of activities on harbour land.</p> | <p>Article 22 of the Eyemouth Harbour</p> | <p>provide a copy of the accounts to those that request one.</p> | |
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| | <p>specified purposes in the interests of safe navigation and the efficient and effective management of the harbour. Provision is made for consultation with bodies other than the Royal Yachting Association and the UK Chamber of Shipping in response to consultation comments from CMAL and the Northern Lighthouse Board.</p> | <p>Revision Order 2021.</p> <p>Article 27 of the Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019</p> <p>Note that provisions similar to those contained within article 18 (Special Directions) of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 have been moved into this article further to consultation with CMAL. Additional powers of general direction have also been added following consultation with CMAL.</p> | <p>Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency, and other harbour users, gives directions for certain purposes and as applying to all or certain classes of vessels, for all or part of the harbour and at all or at specified times. Provision is also made for the revocation of any such directions after consultation with the aforementioned organisations and harbour users.</p> | |
| 23 | <p>To make provision as to the publication of general directions, in the interests of safe navigation and the efficient and effective management of the harbour. Updated general direction provisions are made in concurrence with the terms of the Port Marine Safety Code (November 2016) published by the UK Department of Transport.</p> | <p>Article 17 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018 (with additional reference to publication on a website and removal of provisions as to charging).</p> | <p>This article provides for the publication of notice of general directions, and the amendment or revocation of the same, in a newspaper</p> | |

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| | | Article 18 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 | | |
| 25 | To provide that failure to comply with a special or general direction commits a criminal offence. This provision is in the interests of safe navigation and use of the harbour, and efficient and effective regulation and management of the harbour. | Article 28 of the Eyemouth Harbour Revision Order 2021. | This article provides that a master of a vessel who fails to comply with a special direction without reasonable excuse is guilty of an offence. Any person who fails to comply with a general direction without reasonable excuse is also guilty of an offence. | Paragraph 4 of Schedule 2 to the 1964 Act. |
| 26 | To provide for the enforcement of special directions, in the interests of safe navigation and use of the harbour. | Article 29 of the Eyemouth Harbour Revision Order 2021 | This article makes provision as to enforcement of special directions by the harbour master, and for recovery of reasonable expenses by the Council in respect of said enforcement. | Paragraph 4 of Schedule 2 to the 1964 Act. |
| 27 | To provide that the master's responsibility for his vessel remains undiminished, in the interests of ensuring that the position of the master of his vessel at common law and under statute is unaffected within the harbour area. | Article 27 of the Eyemouth Harbour Revision Order 2021 | This article provides that the giving of general or special directions does not diminish or affect the responsibility of the master of the vessel in respect of the vessel, person on board, its cargo or any other person or property. | Paragraph 4 of Schedule 2 to the 1964 Act. |

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| | | | Majesty in right of the Crown or held by a government department or held in trust for His Majesty for the purposes of a government department shall not be interfered with by the Council without consent in writing from Crown Estate Scotland, relevant government department or relevant person. | |
| 43 | To give effect to the repeal or revocation of various obsolete provisions of harbour enactments of local application. | Article 38 of the Eyemouth Harbour Revision Order 2021 | This article specifies the enactments that the enactments mentioned in Schedule 1 to the Order are repealed to the extent specified in that same schedule. | Section 14(2A) of the 1964 Act. |

6 Conclusion

- 6.1 In light of the above, the proposed HRO satisfies the requirements of section 14(1) of the 1964 Act as it relates to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties, for objects specified under Section 14(2A) and Schedule 2 to the 1964 Act.
- 6.2 The Council therefore considers that the Scottish Ministers are entitled to make the HRO under section 14(1) of the 1964 Act.

On behalf of Argyll & Bute Council

10th November 2023