

# Public Document Pack

## Argyll and Bute Council

Comhairle Earra-Ghàidheal Agus Bhòid

Executive Director: Douglas Hendry



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15 December 2022

## NOTICE OF MEETING

A Special meeting of the **ARGYLL AND BUTE HARBOUR BOARD** will be held **ON A HYBRID BASIS IN THE COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD AND BY MICROSOFT TEAMS** on **THURSDAY, 22 DECEMBER 2022** at **10:30 AM**, which you are requested to attend.

Douglas Hendry  
Executive Director

## BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST (IF ANY)**
- \* 3. **PIERS & HARBOURS - MARINE ASSET MANAGEMENT PLAN FEES & CHARGES 2023 / 2024** (Pages 3 - 8)  
Report by Executive Director with responsibility for Roads and Infrastructure
4. **OBAN BAY UPDATE** (Pages 9 - 52)  
Report by Executive Director with responsibility for Roads and Infrastructure

Items marked with an “asterisk” are items, on the basis of information available at the time this Agenda is published, on which the Committee may not have delegated powers to act, and which may therefore require to be referred to the Council or another Committee, and that referral may depend on the decision reached at the meeting.

## Argyll and Bute Harbour Board

Councillor John Armour	Councillor Jim Lynch
Councillor Andrew Vennard	Councillor Garret Corner
Councillor Andrew Kain (Chair)	Councillor Ian MacQuire
Councillor Ross Moreland (Vice-Chair)	Councillor Amanda Hampsey

Contact: Hazel MacInnes Tel: 01546 604269

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**ARGYLL AND BUTE COUNCIL****ARGYLL AND BUTE HARBOUR BOARD****ROADS AND INFRASTRUCTURE SERVICES****22 DECEMBER 2022**

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**PIERS & HARBOURS -****MARINE ASSET MANAGEMENT PLAN FEES & CHARGES 2023 / 2024**

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**1.0 INTRODUCTION**

- 1.1 This report allows Members to consider the necessary increase in fees and charges for the forthcoming financial year 2023 / 2024, in order to meet the requirements for the Argyll & Bute Council Asset Management Plan referenced in the September 2022 Harbour Board report.

**2.0 RECOMMENDATIONS**

- 2.1.1 Members are asked to:
- 2.1.1 Recommend to the Council, when setting the fees and charges for 2023/2024 that it approves an increase to piers and harbours fees and charges of 5%, over and above an inflationary increase which will be ring fenced to develop the Council's marine infrastructure.
- 2.1.2 Note that this presents a stepped "proposed increase to allow smoothing" over a 10 year period for meeting both the sustainability costs and future improvement costs associated with the marine infrastructure which Argyll & Bute Council has responsibility for.
- 2.1.3 Agree that the asset management plan will continue to be updated on a rolling 10 year basis.

**3.0 BACKGROUND**

- 3.1 It was agreed at the December 2020 Harbour Board meeting that any fees and charges; "...increase will be in-step with the motion passed at the Harbour Board meeting in January 2018 that agreed to set charges that meet both the asset sustainability costs and future improvement costs associated with the piers and harbours which the Council has a responsibility for."
- 3.2 In line with the above agreement, it has been highlighted in previous reports that fees and charges will be set at a level which ensures the income generated at

each of the Council's main ferry ports covers total costs for each individual port plus a contribution to central 'piers and harbours'-related costs.

#### 4.0 DETAIL

In order to fund the various works identified in the Marine Asset Management Plan it is necessary to increase fees and charges, over and above any required inflationary increase, on a year-on-year basis. Annual increases in future years are expected to be in the order of between 2% and 10%, depending upon confirmed works identified for that particular year (plus any inflationary increase).

##### 4.1 Present expenditure

Projects highlighted in the Asset Management Plan Report in March this year totalled over £15 million of capital works which were programmed for the 2022/2023 financial year (plus any slippage brought forward from 2021/2022).

Table 1 - Summary of works from the Marine Asset Management Plan 2022/2023

Project	Location	Cost Estimate	Works summary
<b>Campbeltown (New Quay)</b>	Kintyre South	£500,000	Link span refurbishment
	Kintyre South	£80,000	Fender piles refurbishment
<b>Campbeltown (Old Quay)</b>	Kintyre South	£500,000	Replace 'wall A' with new sheet piling
	Kintyre South	£50,000	RE duties
<b>Craignure (long term)</b>	Mull	£2,500,000	Long Term: Detail design, FBC, compile tender documentation
<b>Craignure (interim)</b>	Mull	£500,000	New PAS construction
	Mull	£100,000	Concrete works
<b>Dunoon / Kilcreggan</b>	Kilcreggan	£250,000	Design, GI & Tender documentation
	Dunoon	£250,000	Design, GI & Tender documentation
<b>Dunoon Pier</b>	Dunoon	£100,000	Works on timber pier
<b>Feolin Ferry slip</b>	Jura	£45,000	New fender system
	Mull	£5,000,000	New aligning structure: Construction

<b>Iona / Fionnphort</b>	Mull	£50,000	Design, RE studies (includes Iona)
	Iona	£5,000,000	Start construction breakwater
<b>Gigha / Tayinloan</b>	Gigha	£50,000	Consultancy for Design & Tender documentation
<b>Port Askaig</b>	Islay	£50,000	Land acquisition & GI

#### 4.2 Previous Expenditure

Since 2017/18 the council has increased Fees and Charges for Piers and Harbours above inflation to fund prudential borrowing which in turn is financing the Asset Management Plan. The table below shows the expenditure and financing costs since 2017/18 with any residue being placed in earmarked reserves to fund future expenditure. There is currently £1,642,811 held in earmarked reserves to fund prudential borrowing for Piers & Harbours.

Table 2 - Previous expenditure since 2017/2018

	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>Total</b>
Actual	319,873	1,485,304	2,759,589	788,161	1,191,927	<b>6,544,854</b>
Loans Charges	6,797	48,330	167,337	265,299	317,932	<b>805,696</b>
Additional Income generated by uplift	113,590	177,012	515,873	560,657	987,525	<b>2,354,658</b>
Surplus income added to earmarked reserves	107,041	133,050	367,750	362,384	672,586	<b>1,642,811</b>

#### 4.3 As shown in Table 3 below, the increase proposed for 2023 / 2024 is 5% over and above an increase for the year.

The proposed increases will cover Argyll and Bute Council's present Marine Infrastructure Asset Management Plan which includes projects across the entire Council region. Many involve upgrades to Council infrastructure required for planned CFL/ CalMac (CFL) ferry service improvements and we continue to have close liaison with Transport Scotland, CMAL and CFL to ensure lifeline services are prioritised and resources are targeted accordingly and also to ensure any planned project costs are included in future forecasts once confirmed.

Proposed increases are smoothed over future years to avoid large spikes in the increases which would be required to fund the asset management plan in the years where large expenditure is planned.

Table 3 - Smoothing of Asset Management Plan Fees and Charges

	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Planned expenditure £'000	15,550	23,025	28,200	17,811	182	0	0	500
Anticipated Annual Loans Charges £'000	748	1,187	2,424	3,938	4,895	4,906	4,906	4,906
Additional funding required to pay loans charges £'000	430	439	1,237	1,515	957	11	0	0
Increase required if fully funded in year	5.46%	4.87%	12.37%	14.03%	8.28%	0.09%	0.00%	0.00%
Proposed increase to allow smoothing	5.00%	5.00%	5.00%	4.00%	3.00%	2.00%	0.00%	0.00%

- 4.4 The proposed increases above any inflation will cover the Council's present plans including projects in partnership with Transport Scotland, CMAL and CFL, which require Argyll & Bute Council infrastructure developments. Officers continue to liaise closely with these bodies to ensure any planned project costs are included in future forecasts once confirmed.

The proposed increases will cover Argyll and Bute Council's present Marine Infrastructure Asset Management Plan and includes projects across the entire Council region. Many involve upgrades to Council infrastructure required for planned CFL/ CalMac (CFL) ferry service improvements and we continue to have close liaison with Transport Scotland, CMAL and CFL to ensure lifeline services are prioritised and resources are targeted accordingly. The work carried out to support ferry traffic is generally financed through these fees and charges which are used to service loans charges for capital borrowing.

- 4.5 Future income

The Asset Management Plan is an adaptable plan fed into by changing priorities and circumstances. It also relies on steady and predictable income from those ferry services utilising Argyll & Bute Council infrastructure.

In recent years the COVID-19 pandemic and the UK's withdrawal from the European Union has made some of the variables less predictable and our ability to engage contractors and consultants more difficult.

A close watch on fees and charges income and its effect on future projects will be maintained to ensure the statutory and priority works are delivered.

The following table shows the anticipated income which will be generated by the increased fees and charges and the effect it will have on the earmarked balance.

Table 4 - Profile of income and borrowing costs on Asset Management Plan

	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Planned expenditure £'000	15,550	23,025	28,200	17,811	182	0	0	500
Anticipated Annual Loans Charges £'000	748	1,187	2,424	3,938	4,895	4,906	4,906	4,906
Anticipated additional income generated £'000	1,465	1,882	2,483	3,133	3,775	4,455	4,574	4,574
Surplus transferred to / from earmarked reserves £'000	717	695	59	-806	-1,121	-452	-333	-333
Cumulative balance on earmarked reserves £'000	2,359	3,054	3,113	2,308	1,187	736	403	71

## 5.0 CONCLUSION

5.1 The proposed fees and charges increase is required to fund future asset sustainability and improvement costs for the Council's present plans for piers and harbours.

## 6.0 IMPLICATIONS

6.1 Policy – None directly arising from this report.

6.2 Financial – The proposed increase of fees and charges will ensure that future income is sufficient to maintain and develop the Council's marine assets.

6.3 Legal – Considered to be none directly arising from this report.

6.4 HR – None.

6.5 Fairer Scotland Duty:

6.5.1 Equalities - protected characteristics – None directly arising from this report.

6.5.2 Socio-economic Duty – None directly arising from this report.

6.5.3 Islands – Completed works and projects will enhance service reliability and community connectivity.

6.6 Climate Change - there are no direct impacts in regard to climate change from this report, due regard will be given to climate change with a view to minimising any climate change impact and these will be considered as and when they arise.

6.7 Risk – Completed works will reduce the repair and maintenance on existing infrastructure. Above inflation increases may have a detrimental economic impact on businesses using the facilities for example:

- fishermen
- bulk importers
- timber exporters
- wind farm developers
- Cruise companies.

Significant increases may also reduce usage and customers while making attracting new business more difficult.

External influences may come to bear on ferry usage patterns which may, in turn, impact on income from ferry fees and charges i.e. Vessel breakdowns and redeployments, Environmental issues (car use), Brexit, Covid 19 and potential changes in RET.

6.8 Customer Service – Customers and key stakeholders will be informed of fees and charges when set. An overall improvement in travel experience and reliability should result with improved and maintained infrastructure.

**Executive Director with responsibility for Roads and Infrastructure:** Kirsty Flanagan

**Policy Lead for Roads and Transport:** Councillor Andrew Kain

November 2022

**For further information contact:**

Scott Reid, Marine Operations Manager Tel: 01546 604 696

Jim Smith, Head of Roads and Infrastructure Services Tel: 01546 604 324



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**ARGYLL AND BUTE COUNCIL****HARBOUR BOARD****ROADS AND INFRASTRUCTURE  
SERVICES****22 DECEMBER 2022**

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**OBAN BAY UPDATE**

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**1.0 INTRODUCTION**

- 1.1 This report is provided to update Members on the status of plans to establish the Municipal Oban Harbour and the progress of the Oban Harbour Revision Order (HRO).
- 1.2 The HRO includes proposed external harbour limits which have been justified by an independent Navigational Risk assessment (NRA) process.

**2.0 RECOMMENDATIONS**

It is recommended that the Harbour Board:-

- 2.1 Notes the update provided in this report;
- 2.2 Notes the comments referenced from the Consultation period and the Council's response thereto;
- 2.3 Approves the draft HRO for submission to Transport Scotland as the submission to be confirmed as an HRO;
- 2.4 Notes that the HRO will be submitted to Transport Scotland in the first case on an informal basis as part of their best practice advice and that should there be any material alterations requested by Transport Scotland then they will be brought back to the Harbour Board for approval; and
- 2.5 Notes the governance arrangements in respect of the Harbour Authority.

**3.0 DETAIL****Harbour Revision Order (HRO)**

- 3.1.1 The draft HRO has been produced by the Service with advice from the Council's Legal Services in liaison with external advisers. This was posted on the Council's website for public responses and issued to statutory consultees and others for comment. We received comments from Transport Scotland, Caledonian Maritime Assets Ltd (CMAL), CalMac Ferries Ltd (CFL), Northern

Lighthouse Board (NLB) and Oban Community Harbour Development Association (OCHDA) among others which were reviewed by our legal team and incorporated where appropriate in the final draft. The HRO is shown in appendix 1.

Comments and feedback from the consultation can be found here [\(Click here\)](#)

- 3.1.2 The draft will be issued to Transport Scotland who will accept this, in the first instance on an informal basis. This is considered to be best practice and allows Transport Scotland the opportunity for informal discussion with the Council on the content before they then accept as a formal submission for public consultation. Transport Scotland will undertake a 42 day period public consultation. The draft Order before members today along with the Harbour limits, if approved, will be submitted to Transport Scotland as the submission to be confirmed as an HRO.
- 3.1.3 An HRO lays out the some of the powers which the Harbour Authority will need to effectively run the day-to day operations. Other powers are detailed in historical Acts, some of which need modernising, clarifying or repealed to ensure modern language and practices are reflected appropriately. The HRO also sets out the limits of the Statutory Harbour Authority's jurisdiction in the form of harbour limits. Transport Scotland, as part of their process, will require justification for the requested powers and limits to ensure their effects are reasonable and just. The powers and effects are shown in appendix 2. The harbour limits are shown in appendix 3.

## **Navigational Risk Assessment (NRA)**

- 3.1.4 In the process of raising a HRO there is a requirement for a Navigational Risk Assessment (NRA) as part of the assessment process to understand the current level of marine risk and proposed mitigation for reducing the risk. This follows the requirements of the Port Marine Safety Code (DfT, 2016).
- 3.1.5 The NRA will be reviewed 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.
- 3.1.6 Summer observations were completed over the busiest period of traffic from 18<sup>th</sup> to the 31<sup>st</sup> July 2022 and also included engagement with users as well as a Hazard Identification session (HazID) where users could comment and provides additional input to augment the observational data.

## **External Harbour Limits**

- 3.1.7 The NRA establishes a navigational baseline on which a decision can be made on the external limits of the Harbour. It is incumbent on the HRO applicant to justify any extension to the jurisdiction of its Harbour area in terms of improving safety for users and the data gleaned from the busiest period of the summer

fulfils that need.

- 3.1.8 The data gathered during this process by ABP Mer confirms that the proposed external limits put forward by Argyll & Bute Council are justified and should now form part of the HRO application. A further winter observation period required by the MCA is being conducted in early December and will highlight any additional mitigation measures which may be required by the winter traffic pattern.

### **Consultation**

- 3.1.9 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 & 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 & Bute Council website.
- 3.1.10 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.

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

<b>Questions &amp; comments received in the 'Against' and 'Neutral' categories (summary)</b>	<b>Response</b>
Does the Oban Bay Management Group support the Municipal Harbour?	Argyll and Bute Council's plans for a Municipal Harbour have the full support of the Oban Bay Management Group.
Oban is a distinct and complex harbour; how can we be confident that Argyll and Bute Council has the expertise to run it?	Argyll & 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 & Bute Council, including five Statutory Harbour Authorities and one Competent Harbour Authority. Within the Roads and Infrastructure Services, the Marine Department have and

	extensive range of experience supported by (among others) Legal, HR & Technical Design colleagues.
What will the staffing be and what hours will the Harbour operate?	It is envisioned that the Harbour will operate between 06:00 and 23:00 with up to three Assistants working with the Harbour Master.
How will Argyll and Bute Council govern the harbour and ensure the local community and stakeholders are involved?	Argyll & 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.
Will the extra charges discourage visitors and where will any profits go?	Argyll & 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.
Are there any plans for upgrading the port facilities?	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.
Why do we need any change, surely existing COLREGS are enough for safety?	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.

Will the harbour eventually be transferred to CMAL or run for the benefit of CalMac ferries?	Oban Bay is recognised as an important strategic asset within Argyll & 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.
Will small leisure craft still be able to launch for free and have access to the bay?	Argyll & 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.

The Council have been keeping groups and the general public informed through regular updates on the Argyll & Bute Council website which can be viewed by using the following link:

[Click here](#)

### **Governance arrangements**

- 3.2.1 The Council's Constitution sets out that its functions as a harbour authority are carried out by the Harbour Board which is a committee of the Council consisting of elected members and is authorised to discharge the powers and duties of the Council as a Statutory Harbour Authority in respect of general and specific statutory duties. The Council as the legal body required to exercise the functions of the harbour authority, is named as the harbour authority within the text of the draft Order.
- 3.2.2 The HRO will designate the Council as the harbour authority for the Harbour. This designation will not affect CMAL's existing position as harbour authority for the Railway Pier, nor will it affect the existing rights and duties of the Northern Lighthouse Board.
- 3.2.3 Some of the feedback asked that the Council either manage the harbour area at Oban through a body named the Oban Harbour Board, or a sub-committee of the existing Harbour Board named the Oban Advisory Committee with delegated executive powers and having a membership consisting of 50% elected members (i.e. councillors) and 50% major stakeholders.
- 3.2.4 The feedback also made reference to the Ports Good Governance Guidance, which is produced by the UK Department of Transport. Part C of that guidance states that harbour management committees for local authority owned ports should ideally consist of approximately 50% local authority elected members and the remainder external appointees. However, the Department of Transport states in the guidance it applies to statutory harbour authorities in England and,

in certain circumstances, Wales. The guidance does not directly reference Scottish Councils or Statutory Harbour Authorities and is not legally binding.

- 3.2.5 The feedback also indicated a desire to have community engagement in the operation of the harbour. The Harbour Board, in exercise of its functions will consult with harbour users and other interested groups (including community groups) on the operation/management and development of Oban harbour. It is willing to put in place appropriate arrangements to that end. At present, there is a management committee which the Council uses to consult with other users of Oban harbour.
- 3.2.6 A consultative forum would not have any formal powers over the operation of Oban harbour so the draft Order cannot make provision for it. The purpose of the Order is to set out the Council's formal powers as harbour authority over the Oban harbour area. However, the Council can seek agreement amongst interested parties as to the arrangements for consultation and can, if appropriate, set those arrangements out separately in writing.

### **Next Steps**

- 3.2.7 The key statutory and notable milestones for subsequent reports to the Harbour Board are:
- (1) Any clarifications or amendments requested by Transport Scotland or MCA will be presented to a further Harbour Board meeting for Members review and approval.
  - (2) Advertisement of the application in Edinburgh and local press following receipt of the HRO by Transport Scotland.
  - (3) 42 days for formal consultation as per the HRO process.
  - (4) Addressing any issues and objections.
  - (5) Decision by Ministers on HRO.
  - (6) Order is made.

## **4.0 CONCLUSION**

- 4.1 This report provides an update to Members on the status of plans to establish the Municipal Oban Harbour and the progress of the Oban Harbour Revision Order (HRO).
- 4.2 The HRO includes proposed external Harbour Limits which have been justified by an independent Navigational Risk assessment (NRA) process.

## **5.0 IMPLICATIONS**

- 5.1 Policy – The Harbour Board agreed in December 2021 that the Council should proceed to make the arrangements to formally manage the unmanaged section of Oban Bay.

- 5.2 Financial – No financial implications at this stage. As the proposal develops further detail will be brought to the Harbour Board.
- 5.3 Legal – the HRO process is a formal legal process set out in the 1964 Harbours Act.
- 5.4 HR – HR implications will be identified as the proposal progresses.
- 5.5 Fairer Scotland Duty:
  - 5.5.1 Equalities – None known.
  - 5.5.2 Socio-economic Duty – None known.
  - 5.5.3 Islands – consultation will continue to include island communities with special interest and connections with Oban as required by the process.
- 5.6 Climate Change – due regard will be given to climate change with a view to minimising any climate change impact and these will be considered as and when they arise.
- 5.7 Risk - The Council progressing to become a Municipal Port Authority for the unmanaged areas of Oban Bay increases the safety within Oban Bay. There is a risk that there could be a number of objections and representations during the process which could impact on timescale and these will be considered as and when they arise.
- 5.8 Customer Service – Improved and safer environment for all users.

**Kirsty Flanagan**, Executive Director with responsibility for Roads and Infrastructure

**Jim Smith**, Head of Roads and Infrastructure

**Policy Lead for Roads and Transport**, Councillor Andrew Kain

December 2022

**For further information contact:** Jim Smith, Head of Roads and Infrastructure, or Scott Reid, Marine Operations Manager

## **APPENDICES**

Appendix 1. Proposed HRO draft for submission to Transport Scotland

Appendix 2. Purpose and Effects note

Appendix 3. Proposed external limits to Oban Harbour

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**Draft – November 2022**

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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. [ ]**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Argyll and Bute Council (Oban) Harbour Revision Order 2022

*Made* 2022

*Coming into force* 2022

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964<sup>(1)</sup> and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour Council in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>2</sup>.

In accordance with section 14(2) of the Act—

- (a) this Order is made following a written application to Ministers by Argyll and Bute Council (“the Council”) being the Council engaged in improving, maintaining or managing the harbour; and
- (b) except in so far this Order is made for achieving objects mentioned in section 14(2A) of the Act, Ministers are satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

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<sup>(1)</sup> 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), schedule 6, paragraphs 2, 3, 4(1) and 14 and schedule 12 and the Transport and Works Act 1992 (c.42), schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

<sup>(2)</sup> Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

[Notice has been published by the Council in accordance with the requirements of paragraph 10 of Schedule 3 of that Act<sup>3</sup>. No objections to the application have been made.]

[In accordance with paragraph 19(2) of that Schedule<sup>4</sup>, Ministers have decided to make this Order in the form of the draft submitted to them.]

PART I  
PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the Argyll & Bute Council (Oban) Harbour Revision Order 202[x] and comes into force on the day after the day on which it was made.

**Interpretation**

2. In this Order—

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847<sup>5</sup>;

"CMAL" means Caledonian Maritime Assets Limited, a company incorporated in Scotland with registered number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow, Renfrewshire, PA14 5EQ;

"the Council" means Argyll and Bute Council;

"ferry operator" means the operator (if any), from time to time, of the Clyde and Hebrides Ferry Services on behalf of the Scottish Ministers;

"general direction" means a direction given by the Council under article 19;

"government department" includes any part of, or any member of the staff of, the Scottish Administration which shall have the same meaning as in section 126(6) of the Scotland Act 1998;

"harbour" means the harbour at Oban comprised within the harbour limits;

"harbour limits" means the limits of the harbour as described in article 4 and Schedule 1 to this Order and shown on the first harbour map;

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<sup>(3)</sup> Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c).

<sup>(4)</sup> Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

<sup>5</sup> 1847 c.27.

"first harbour map" means the map referred to in article 4(1), and forming Schedule 3 to this Order;

"second harbour map" means the map referred to in article 4, and forming Schedule 4 to this Order;

"harbour master" has the definition provided for under section 2 of the 1847 Act;

"harbour premises" means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises from time to time vested in or occupied or administered by the Council as part of the harbour undertaking, including the existing works which are all situated within the harbour limits;

"harbour undertaking" means the harbour undertaking of the Council at Oban;

"land" includes land covered by water, any interest in land and any servitude or right in, to or over land;

"master" in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

"mooring" includes any buoy, pile, post, chain, pillar, jetty for use as an appurtenance to a dwelling or like apparatus or structure used for the mooring of vessels;

"railway pier" means the harbour at Oban within the limits defined in Schedule 2 to this order and shown on the second harbour map

"relevant ferry services" means any services associated with the delivery of the Clyde Hebrides Ferry Services on behalf of the Scottish Ministers;

"relevant person" in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies means the person who manages that property, or those rights and interests;

"special direction" means a direction given by the harbour master under article 21;

"vessel" means a ship, boat, raft or watercraft of any description however propelled or moved and includes anything constructed, adapted for or used to carry persons or goods by water or for floating on or being submerged in water (whether permanently or temporarily) and shall include but not be limited to a displacement craft, a personal water craft, a sea plane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle.

### **Incorporation of the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 1 to 4, 34, 35, 37 to 39, 42, 51, 54, 55, 63 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) In construing the provisions of the 1847 Act as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock, or pier” shall mean the harbour; and

(b) for the definition of the word “vessel” in section 3 (*interpretations in this and the special Act*) there shall be substituted the definition of that word in article 2;

(c) section 63 shall be read and have effect as if for the words from “be liable to” to the end of the section there were substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”

(d) section 65 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

## PART II - POWERS

### **Harbour jurisdiction**

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in schedule 1 of this Order, and shown on the first harbour map together with the harbour premises as shown on the first harbour map.

(2) In the event of any discrepancy between the boundaries of the harbour as described in schedule 1 of this Order and the boundaries shown on the first harbour map, the description shall prevail.

(3) For the avoidance of doubt the Council shall not exercise jurisdiction as a harbour authority within the area described in schedule 2 of this Order, and shown on the second harbour map.

### **General powers and duties in respect of the harbour**

5.—(1) The Council may improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities therein.

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may construct, alter, demolish and reconstruct structures and works in the harbour, subject to having all necessary consents and the rights over any land required.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

### **Powers with respect to land, buildings, harbour facilities etc.**

6.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the harbour.

(2) The Council may for the purposes of the harbour undertaking manage, use or develop land belonging to it (whether under its ownership or lease) ,as it thinks fit.

### **Power to dredge**

7.—(1) The Council may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour and the seaward approaches thereto.

(2) The Council may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>6</sup>) from time to time dredged or removed by it from the harbour.

(3) No dredged materials shall be deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

(b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

### **Restriction of works and dredging**

8.—(1) No person other than the Council shall in the harbour—

(a) construct, place, alter, renew or maintain any works; or

(b) dredge,

unless that person has contracted with or been licensed by the Council to do so.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The Council may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice the Council may carry out the works so required and may recover from that person as a debt any expenses incurred by it in doing so.

(4) This article shall not apply to dredging carried out by CMAL, its contractors or agents in the approaches to the railway pier, but before carrying out any dredging in the approaches to the railway pier, CMAL shall consult with the Council.

### **Parking places**

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<sup>6</sup> 1995 c. 21

9. The Council may provide facilities within the harbour premises for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences for the use of the public, may delineate parking areas, operate access control systems and may make reasonable charges for the use of such facilities.

#### **Declaration of draught, etc. of vessel**

10.—(1) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

#### **Provisions as to damage**

11.—(1) This article applies to any damage caused to any work or property of the Council in the harbour—

(a) by any person who contravenes any provision of this Order or any other enactment relating to the harbour; or

(b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Council may detain any vessel which caused the damage, and any other property belonging to or in charge of the person who caused the damage, or belonging to that person’s employers, until the cost of the damage has been paid or until reasonable security has been given to the Council.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

(a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage;

(b) any right of the Council under any other enactment, agreement or rule of law; or

(c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the harbour by the Council.

#### **Obstruction of harbour master, etc.**

12. Any person who intentionally obstructs the harbour master or any other person carrying out duties under this Order or any enactment relating to the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Boarding of vessels**

13. The harbour master may enter and inspect a vessel in the harbour, subject to producing his authority where requested—

(a) for the purposes of any enactment relating to the Council or of any byelaw of the Council relating to its functions as the harbour authority in respect of the harbour undertaking, including the enforcement thereof; or

(b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the written notice shall have annexed to it a copy of this article.

### **Vessels adrift**

14.—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on the part of that person.

### **Power to appropriate parts of the harbour, etc.**

15.—(1) Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Council may from time to time set apart and appropriate any part of the harbour or any land, works, buildings, machinery, equipment or other property within the harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbour master, and—

(a) the harbour master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and

(b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.

(3) In exercising its powers to appropriate or set apart any part of the harbour under paragraph (1), the Council shall have regard to the facilitation of—

- (a) the public right of navigation in the harbour;
- (b) any public rights of way affecting the harbour; and
- (c) access to relevant ferry services,

such that the Council shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

#### **Power to enter into arrangements to provide supplies**

16. The Council may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

#### **Moorings**

17.—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided by the Council under paragraph (1), or moored to land owned or leased by the Council, such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour.

(5) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the harbour except under and in accordance with the terms and conditions of a licence granted under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Any licence granted under paragraph (4) shall be valid only for a period of one year, or such longer period as seems to the Council to be desirable in the circumstances, commencing with the date on which it takes effect.



(7) The Council may charge a reasonable fee for the grant of a licence under this article.

### **General directions**

**18.—**(1) The Council may after consultation with the Royal Yachting Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency and such other persons as the Council considers are representative of users to the harbour, give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move only at certain times or during certain periods;
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof;
- (e) requiring the master of a vessel entering, leaving or intending to enter or leave the harbour to state the length overall and draught maximum of their vessel;
- (f) prohibiting entry into or movement in the harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather;
- (g) regulating the navigation, berthing, mooring and speed of vessels within the harbour;
- (h) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (i) prohibiting or restricting use of fires or lights;
- (j) regulating the admission to, and the movement within, and the departure of vessels from, the harbour, or the removal of vessels, and for the good order and government of vessels whilst within the harbour;
- (k) regulating the use of ferries within the harbour;
- (l) regulating the use within the harbour of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft, personal watercraft, tugs and other small craft;
- (m) regulating the launching of vessels within the harbour; and
- (n) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for

authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;

(2) A general direction under this article may apply—

(a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction;

(b) to the whole of the harbour or to a part designated, or for which the designation is provided for, in the direction; or

(c) at all times or at times designated, or for which the designation is provided for, in the direction,

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Council may after consultation with the Royal Yachting Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency and such other persons as the Council considers are representative of users of the harbour revoke or amend any general direction.

#### **Publication of general directions**

**19.**—(1) Except in an emergency, the Council shall publish notice of the giving of a general direction and of any amendment or revocation of a general direction as soon as practicable once in a newspaper circulating in the locality of the harbour, and on a website maintained by the Council, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Council to be appropriate.

#### **Special directions to vessels**

**20.**—(1) The harbour master may give a special direction under this article—

(a) requiring a vessel anywhere within the harbour to comply with a requirement made in or under a general direction;

(b) regulating the time at which, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the harbour;

(c) for securing that a vessel move only at certain times or during certain periods;

- (d) prohibiting the mooring of a vessel in any particular part or parts of the harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel;
- (f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship or ship to ship) passengers, cargo, fuel, water, ship's stores or ballast in the harbour; and
- (g) requiring the removal from any part of the harbour of a vessel if—
  - (i) it is on fire;
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;
  - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons;
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out at harbour premises or to premises adjacent thereto.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

#### **Failure to comply with special directions**

**21.** The master of a vessel who fails without reasonable excuse to comply with a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Enforcement of special directions**

**22.—**(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master shall not do so unless, after reasonable enquiry has been made, the master of the vessel cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Council from the owner of the vessel as if they were a charge of the Council in respect of the vessel.

#### **Master's responsibility in relation to directions**

23. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

**Removal of obstructions other than vessels, vehicles or wreck**

24.—(1) The Council may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour other than—

(a) a vessel or vehicle; or

(b) a wreck within the meaning of Schedule 11ZA of the Merchant Shipping Act 1995.

(2) If anything removed by the Council under paragraph (1) is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council shall within one month of its coming into its custody give notice, in accordance with paragraph (6), to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) The Council may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Council proves to its reasonable satisfaction that such person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) If anything removed under this article—

(a) is sold by the Council and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) is unsaleable,

the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

(6) A notice given under paragraph (2) shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Council, possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the date when the notice is served.

(7) The Council shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence.

### **Power to remove goods**

**25.**—(1) If any goods are left on or in any part of the harbour premises the Council may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Council may cause them to be removed to the Council or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of the Council, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Council by the owner in respect of the goods under Part III (Charges) of this Order.

(3) In this article, "goods" includes equipment of any description.

### **Powers to make byelaws, etc.**

**26.**—(1) The Council may from time to time make byelaws for the efficient management and regulation of the harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

(a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, jetties, landing places, equipment, works and conveniences (including moorings);

(b) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;

(c) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the harbour;

(d) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;

(e) preventing and removing obstructions or impediments within the harbour;

- (f) regulating the holding of regattas and other public events in the harbour;
- (g) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits;
- (h) prohibiting persons in or entering the harbour, or any part thereof, from smoking therein;
- (i) regulating the movement and parking of vehicles within the harbour;
- (j) regulating the exercise of the powers vested in the harbour master, as provided for in the 1847 Act, this Order and any other relevant enactment;
- (k) regulating the hours during which any gates, entrances or outlets to or from the harbour or any part of the harbour shall be open;
- (l) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the harbour;
- (m) regulating the use of cranes, weighing machines, weights and measures belonging to the Council, and the duties and conduct of weighers and meters employed by the Council;
- (n) regulating the holding of regattas and other public events in the harbour;
- (o) regulating or preventing the use of fires and lights within the harbour;
- (p) the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features; and
- (q) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the harbour of historic or architectural significance.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 3 n the standard scale;
- (b) relate to the whole of the harbour or harbour premises, or to any part thereof; or
- (c) make different provisions for different parts of the harbour or harbour premises, or in relation to different classes of vessels.

(4) Existing byelaws in respect of the harbour will remain in place as if they had been made under this order.

**Confirmation of byelaws**

27.—(1) Byelaws made by the Council under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) At least one month before an application for confirmation of byelaws is made by the Council to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows—

(a) once in the Edinburgh Gazette; and

(b) once in each of two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by the Council at the principal office of the Council and at the harbour office and will be available for inspection without payment.

(4) The Council shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it.

(5) During the period of one month after the date of first publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(6) Subject to paragraph (7), the Scottish Ministers may confirm the byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Council and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not make decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on request.

### PART III CHARGES

#### **Charges other than ship, passenger and goods dues**

**28.**—(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the harbour such reasonable charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(2) The Council may make such reasonable charges for services and facilities provided by it or on its behalf in relation to the harbour as it may from time to time determine.

(3) In paragraph (2) “charges” does not include ship, passenger and goods dues as defined by section 57 of the Harbours Act 1964.

### **Liability for charges**

**29.**—(1) Charges payable to the Council on or in respect of—

(a) a vessel, shall be payable by the owner or master of the vessel;

(b) goods, shall be payable by the owner, consignee or shipper of the goods.

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

### **Power to grant exemptions, rebates, etc., in respect of charges**

**30.**—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

### **Account of goods**

**31.**—(1) When goods are to be unshipped within the harbour the master of the vessel containing them shall—

(a) within 24 hours of the arrival of the vessel within the harbour, deliver to the harbour master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;

(b) if required so to do by the harbour master, give to the harbour master 12 hours' notice of the time at which any such goods are to be unshipped.



(2) If any difference arises between the harbour master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the harbour master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.

(3) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Security for charges**

**32.** The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the harbour or goods on or in harbour premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

### **Liens for charges**

**33.—**(1) A person who by agreement with the Council collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect of the amount.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

### **Refusal to pay charges for landing place, etc.**

**34.** An officer of the Council may prevent a vessel from using a landing place or any other facilities provided by the Council, if the master of the vessel refuses to pay the charges for such use.

### **Exemptions from charges**

**35.—**(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to levy charges shall extend to authorise it to levy charges on—

(a) a vessel—

(i) belonging to or in the service of His Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or

(iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the harbour without mooring or making use of any facilities provided by the Council.

#### **Conditions as to payment of charges**

**36.**—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

#### **PART IV MISCELLANEOUS**

##### **Reserve funds**

**37.**—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the harbour undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect of that year carry to the credit of a reserve fund in respect of the harbour undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

(a) in making good to the regional rate fund any deficiency at any time arising in the income of the Council from the harbour undertaking;

(b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the harbour undertaking;

(c) in defraying any expenditure in connection with the harbour undertaking for which capital is properly applicable or in providing money for repayment of loans;

(d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the harbour undertaking; or

(e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the harbour.

(4) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the harbour undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

#### **Saving for Commissioners of Northern Lighthouses**

**38.**—(1) Nothing in this Order shall prejudice or derogate from any of the rights, duties, or privileges of the Commissioners of Northern Lighthouses. (2) Where any exercise by the Council of its powers under article 5 (power to maintain etc. the harbour), article 7 (power to dredge), article 18 (general directions) or article 26 (power to make byelaws) is likely to affect materially on the regular operations of the Commissioners of Northern Lighthouses, the Council shall, prior to exercising such powers, consult with the Commissioners of Northern Lighthouses and shall have due regard to any representations made by the Commissioners of Northern Lighthouses.

(3) For the avoidance of doubt, this Order does not affect the exercise or existence of any power, duty or right held by the Commissioners of Northern Lighthouses to maintain aids to navigation within the harbour.

#### **Saving for CMAL and ferry operator**

**39.**—(1) Nothing in this order shall prejudice or derogate from any of the rights, duties, or privileges of CMAL.

(2) Where any exercise by the Council of its powers under article 4 (power to maintain etc. the harbour), article 7 (power to dredge), article 18 (general directions) or article 26 (power to make byelaws) is likely to impact materially on the regular operations of CMAL or the ferry operator within the harbour limits in connection with the operation of the relevant ferry services, within the harbour limits, the Council shall, prior to exercising such powers, consult with CMAL and the ferry operator and shall have due regard to any representations made by CMAL and/or the ferry operator.

### **Crown rights**

**40.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of Crown Estate Scotland;

(b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having management of that land or (as the case may be) the relevant person; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

### **Repeal**

**41.** The enactment mentioned in the first and second columns of schedule 5 is repealed to the extent specified in the third column of that schedule.

SCHEDULE 1 – HARBOUR LIMITS

SCHEDULE 2 – RAILWAY PIER LIMITS

SCHEDULE 3 – FIRST HARBOUR MAP

SCHEDULE 4 – SECOND HARBOUR MAP



## SCHEDULE 5 – REPEALS and REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent and time of repeal or revocation</i>
[ ]	Pier and Harbour Orders Confirmation Act 1862	Articles [ ]
[ ]	Pier and Harbour Orders Confirmation Act 1864	
[ ]	Piers and Harbour Orders Confirmation (No.5) Act, 1896	Articles [ ] Articles 2, 4 – 28, 30 – 59 and First and Second Schedules in so far as applicable to the harbour.

EXPLANATORY NOTE

This Order updates the existing legislation for Oban harbour in line with the current needs of Argyll and Bute Council as the harbour authority for Oban harbour and Oban harbour users from the date it comes into force. This Order also repeals those parts of the Pier and Harbour Orders Confirmation Act 1862, the Pier and Harbour Orders Confirmation Act 1864, and the Piers and Harbour Orders Confirmation (No.5) Act, 1896 which are no longer relevant.

**PURPOSE AND EFFECT NOTES – OBAN HARBOUR REVISION ORDER 2022****PART I – PRELIMINARY****1 Article 1 – Citation and commencement**

Article 1 provides that the Order may be cited as the Oban Harbour Revision Order 2022 and comes into force on the day after the day on which it was made.

**2 Article 2 – Interpretation**

Article 2 provides interpretation of defined terms within the Order.

**3 Article 3 – Incorporation of the Harbours, Docks and Piers Clauses Act 1847**

Article 3 incorporates selected clauses of the Harbours, Docks and Piers Clauses Act 1847 ("the 1847 Act").

**PART II – POWERS****4 Article 4 – Harbour jurisdiction**

4.1 Article 4(1) provides for the Council to exercise jurisdiction as harbour authority within the harbour's bounds as described within Schedule 1 of the Order.

4.2 Article 4(2) provides that the description of the boundaries of the harbour as contained within Schedule 1 shall prevail over those shown on the first harbour maps in the event of any discrepancy.

4.3 Article 4(3) provides that the Council shall not exercise jurisdiction as a harbour authority within the area described within Schedule 2 of the Order.

**5 Article 5 – General powers and duties in respect of the harbour**

5.1 Article 5(2) provides for the Council to exercise certain general powers within the harbour, and to provide harbour facilities.

5.2 Article 5(2) provides that the Council may carry out works (including the construction, alteration, demolition and reconstruction of structures) within the harbour bounds, subject to possession of all required consents and heritable rights.

5.3 Article 5(3) provides that the provisions of Article 5 are without prejudice to any other statutory powers of the Council.

**6 Article 6 – Powers with respect to land, buildings, harbour facilities etc.**

- 6.1 Article 6(1) provides that the Council may dispose of property belonging to it which is no longer required for the purposes of the harbour, for such price and upon such terms and conditions as it sees fit.
- 6.2 Article 6(2) provides that the Council may utilise land either belonging to it or leased by it for the purposes of the harbour undertaking.

**7 Article 7 – Power to dredge**

- 7.1 Article 7(1) provides that the Council may dredge the bed, foreshore, and seaward approaches of the harbour, and undertake related activities.
- 7.2 Article 7(2) provides for the disposal of material by the Council dredged or removed from the harbour.
- 7.3 Article 7(3) places limitation on the disposal and placement of dredged materials.

**8 Article 8 – Restriction of works and dredging**

- 8.1 Article 8(1) provides that no person other than the Council shall construct, place, alter, renew or maintain any works or dredge in the harbour unless contracted or licensed by the Council to do so.
- 8.2 Article 8(2) provides that any person who contravenes Article 8(1) shall be guilty of an offence.
- 8.3 Article 8(3) provides that the Council may require a person who contravenes Article 8(1) to remove, abate or rectify the work and restore the site to its former condition. Failure to do so will allow the Council to carry out the rectification themselves and recover the expenses of doing so.
- 8.4 Article 8(4) provides that Article 8(1) shall not apply to dredging carried out by CMAL or its contractors or agents. CMAL shall consult with the Council before carrying out any dredging.

**9 Article 9 – Parking places**

Article 9 provides that the Council may provide facilities within the harbour premises, and may make reasonable charges for the use of such facilities.

**10 Article 10 – Declaration of draught, etc. of vessel**

- 10.1 Article 10(1) provides that the master of a vessel who fails to provide such information as required, or provides incorrect information, without reasonable excuse, is guilty of an offence.
- 10.2 Article 10(2) provides for interpretation of the term "draught".

**11 Article 11 – Provisions as to damage**

- 11.1 Article 11(1) provides that Article 11 applies to damage caused to any work or property of the Council in the harbour by persons contravening a provision of the Order or any other harbour enactment, or by a vessel.
- 11.2 Article 11(2) provides that the Council may detain a vessel causing damage or any property belonging to a person who causes damage, or that person's employers, until the cost of the damage has been paid, or security provided to by the Authority.
- 11.3 Article 11(3) provides that the owner of any vessel and the master (where the damage was caused through his fault) shall bear liability for the cost of the damage.
- 11.4 Article 11(4) states that Article 11 does not affect certain rights of owners or masters of vessels, the Council, or criminal liability under the Order or other harbour enactment is guilty of an offence.

**12 Article 12 – Obstruction of harbour master, etc.**

Article 12 provides that any person who intentionally obstructing the harbour master or other person carrying out duties under the Order or other harbour enactment is guilty of an offence.

**13 Article 13 – Boarding of vessels**

Article 13 provides for the harbour master to enter and inspect vessels within the harbour for certain purposes, with prior written notice having been given at least 24 hours in advance.

**14 Article 14 – Vessels adrift**

Article 14 provides that the owner or master of a vessel adrift in the harbour is guilty of an offence. It also provides that it shall be a defence for the owner or master to prove that the vessel did not become adrift as a result of any fault of that person.

**15 Article 15 – Power to appropriate parts of the harbour, etc.**

- 15.1 Article 15(1) provides that the Council may appropriate any part of the harbour or property within the harbour that is owned or managed by the Council for certain purposes, subject to payment of reasonable charges and terms, conditions and regulations as the Council sees it.
- 15.2 Article 15(2) provides that no person or vessel may make use of the harbour or property which has been so appropriated without the consent of the harbour master, other than in accordance with the appropriation, and provides that the harbour master may order such person or vessel to leave or be removed. Section 58 of the 1847 Act applies in respect of such vessels.
- 15.3 Article 15(3) provides that the Council must have regard to the public right of navigation in the harbour, any public rights of way affecting the harbour, and access to relevant ferry services where exercising

its powers under Article 15(1). Any restriction of such rights should be no more than is necessary for the purpose of the appropriation.

**16 Article 16 – Power to enter into arrangements to provide supplies**

Article 16 provides that the Council may enter into arrangements for the provision of supplies to vessels using the harbour, and to lay down such apparatus as may be required for that purpose.

**17 Article 17 – Moorings**

Article 17 provides for the Council to place such moorings or buoys as it considers necessary or desirable within the harbour. It provides that the Council may recover reasonable charges in respect of the use by a vessel of any such moorings. Provision is also made for the granting of licences for the placing, maintenance etc. of moorings subject to reasonable fees and to a time period of one year or such period as the Council considers may in the circumstances be desirable, and that any person doing so without a licence is guilty of an offence.

**18 Article 18 – General directions**

Article 18 provides that the Council, after consultation with the Royal Yachting 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.

**19 Article 19 – Publication of general directions**

Article 19 provides for the publication of notice of general directions, and the amendment or revocation of the same, in a newspaper circulating in the locality of the harbour and on a website maintained by the Council.

**20 Article 20 – Special directions to vessels**

Article 20 provides that the harbour master may give special directions in respect of specific vessels for certain purposes.

**21 Article 21 – Failure to comply with special directions**

Article 21 provides that a master of a vessel who fails to comply with a special direction without reasonable excuse is guilty of an offence.

**22 Article 22 – Enforcement of special directions**

Article 22 makes provision as to enforcement of special directions by the harbour master, and for recovery of reasonable expenses by the Authority in respect of said enforcement.

**23 Article 23 – Master's responsibility in relation to directions**

Article 23 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.

**24 Article 24 – Removal of obstructions other than vessels, vehicles or wreck**

Article 24 makes provision as to the removal of items causing or likely to become an obstruction to the proper use of any part of the harbour, where those items are not a vessel or vehicle, or a wreck. Provision is made as to the return of any such items to their owners as may be marked as such or known to the Council. Provision is made for any such items where ownership is not proven or known to become property of the Council. Provision is made for the disposal of items of a specified nature by the Council, and the recovery of the expense of removing the item from the owner of the item.

**25 Article 25 – Power to remove goods**

Article 25 makes provision for the Council to require the owner of goods left within the harbour premises to remove them, and where the goods are not so removed by the owner, to remove them. The expenses and risk of any such removal shall be borne by the owner of the goods. Provision is made for such goods to be subject to a lien for the cost of removal and any charges payable to the Council under Part III of the Order.

**26 Article 26 – Power to make byelaws, etc.**

Article 26 provides that the Council may make byelaws for the efficient management and regulation of the harbour, and for specified purposes. Provision is made for byelaws to impose penalties upon persons found guilty of offending against the provisions of those byelaws. Existing byelaws are to remain in place.

**27 Article 27 – Confirmation of byelaws**

27.1 Article 27(1) provides that byelaws must be confirmed by the Scottish Ministers before they may come into operation.

27.2 Article 27(2) – (5) makes provision for the notification of byelaws within the Edinburgh Gazette and a local newspaper, and for the notification of objections or representations to the Scottish Ministers.

- 27.3 Article 27(6) – (9) provides for the confirmation of the byelaws by the Scottish Ministers, subject to any modification as they see fit, or their refusal. Where the Scottish Ministers propose any modification, they must notify the Council and require the Council to notify any persons concerned with the modification. In doing so, the Scottish Ministers must allow time for any comments to be made in respect of the modification and shall have regard to any such comments. Once confirmed, any byelaws shall be made available by the Council for inspection without payment.

### **PART III – CHARGES**

#### **28 Article 28 – Charges other than ship, passenger and goods dues**

Article 28 provides that the Council may make reasonable charges in respect of objects such as dracone, floating docks, cranes, rigs, drilling rigs, or floating plants, which are not ships, entering, using or leaving the harbour. The Council may make such reasonable charges for services and facilities provided by it in relation to the harbour, where such charges are not ships, passenger or goods dues as defined by section 57 of the Harbours Act 1964.

#### **29 Article 29 – Liability for charges**

Article 29 provides that charges payable to the Council are payable by the owner or master of the vessel, in respect of a vessel or the owner, consignee or shipper of goods, in respect of goods. Where a charge payable to the Council may be recovered from more than one person, such persons shall be jointly and severally liable.

#### **30 Article 30 – Power to grant exemptions, rebates., in respect of charges**

Article 30 permits the Council to grant exemptions (where total or partial) to allow rebates or make compositions in respect of any person with respect to charges. Such arrangements do not require to be required to be entered onto the list of ship, passenger and goods dues kept at the harbour office.

#### **31 Article 31 – Account of goods**

Article 31 requires the master of a vessel with goods to be unshipped or shipped within the harbour to provide an account of such goods or bill of lading or manifest. In respect of goods which are to be unshipped within the harbour the master must additionally provide the name of the consignee of the goods, along with the time such goods are to be unshipped. Provision is made for the resolution of disputes as to the weight or quantities of such goods in respect of which charges may be payable. A person who fails to comply with any part of the provisions of Article 31 is guilty of an offence.

#### **32 Article 32 – Security for charges**

Article 31 provides that the Council may require the deposit or guarantee of a sum of money as security in respect of charges which are incurred or are about to be incurred by a person. Where such deposit



or guarantee is not made, the Council may detain the vessel or goods in the harbour or harbour premises until the deposit or guarantee is made or until the charge is paid.

**33 Article 33 – Liens for charges**

Article 33 makes provision for a right of lien in respect of certain persons.

**34 Article 34 – Refusal to pay charges for landing place, etc.**

Article 34 provides that the Council may prevent a vessel from using facilities provided by the Council where the master of the vessel refuses to pay charges.

**35 Article 35 – Exemptions from charges**

Article 35 provides for exemptions from charges levied by the Authority in respect of certain categories of vessels, passengers or goods, or officers of the Department of Transport or Scottish Ministers in execution of their duty.

**36 Article 36 – Conditions as to payment of charges**

Article 36 provides that the Council may specify terms and conditions in respect of the payment of charges, including the time when the charge falls due for payment and the provision of information to the Council.

**PART IV – MISCELLANEOUS**

**37 Article 37 – Reserve funds**

Article 37 provides that the Council may carry a reasonable amount forward to the reserve fund if the revenue generated by the harbour exceeds the expense of it in any financial year.

**38 Article 38 – Saving for Commissioners of Northern Lighthouses**

Article 38 provides a saving in respect of the provisions of the Order for the rights, duties and privileges of the Commissioner of Northern Lighthouses, and provides that the Council must consult with the Commissioners when the Council seeks to exercise its powers under articles 5, 7, 18 or 26 in a manner that is likely to materially affect the Commissioners' regular operations.

**39 Article 39 – Saving for CMAL and ferry operator**

Article 39 provides a saving in respect of the provisions of the order for the rights, duties and privileges of CMAL, and provides that the Council must consult with the Commissioners when the Council seeks to exercise its powers under articles 5, 7, 18 or 26 in a manner that is likely to materially affect the Commissioners' regular operations.

**40 Article 40 – Crown rights**

Article 40 provides a saving in respect of the provisions of the Order for the estate, right, power, privilege, authority or exemption of the Crown. It provides that any land or rights of whatsoever description belonging to His 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 Authority without consent in writing from Crown Estate Scotland, relevant government department or relevant person.

**41 Article 41 Repeal**

Article 45 specifies the enactments that the enactments mentioned in Schedule 5 to the Order are repealed to the extent specified in that same schedule.

**SCHEDULE 1 – HARBOUR LIMITS**

Schedule 1 specifies the limits of the harbour.

**SCHEDULE 2 – RAILWAY PIER LIMITS**

Schedule 2 specifies the limits of the railway pier, which is not subject to the Council's jurisdiction as harbour authority under this Order.

**SCHEDULE 3 – FIRST HARBOUR MAP**

Schedule 3 contains a map showing the boundaries of the harbour.

**SCHEDULE 4 – SECOND HARBOUR MAP**

Schedule 4 contains a map showing the boundaries of the railway pier.

**SCHEDULE 5 – REPEALS AND REVOCATIONS**

Schedule 5 specifies the enactments subject to repeal and the extent of such repeal.



**Oban Bay Proposed Harbour Limits**

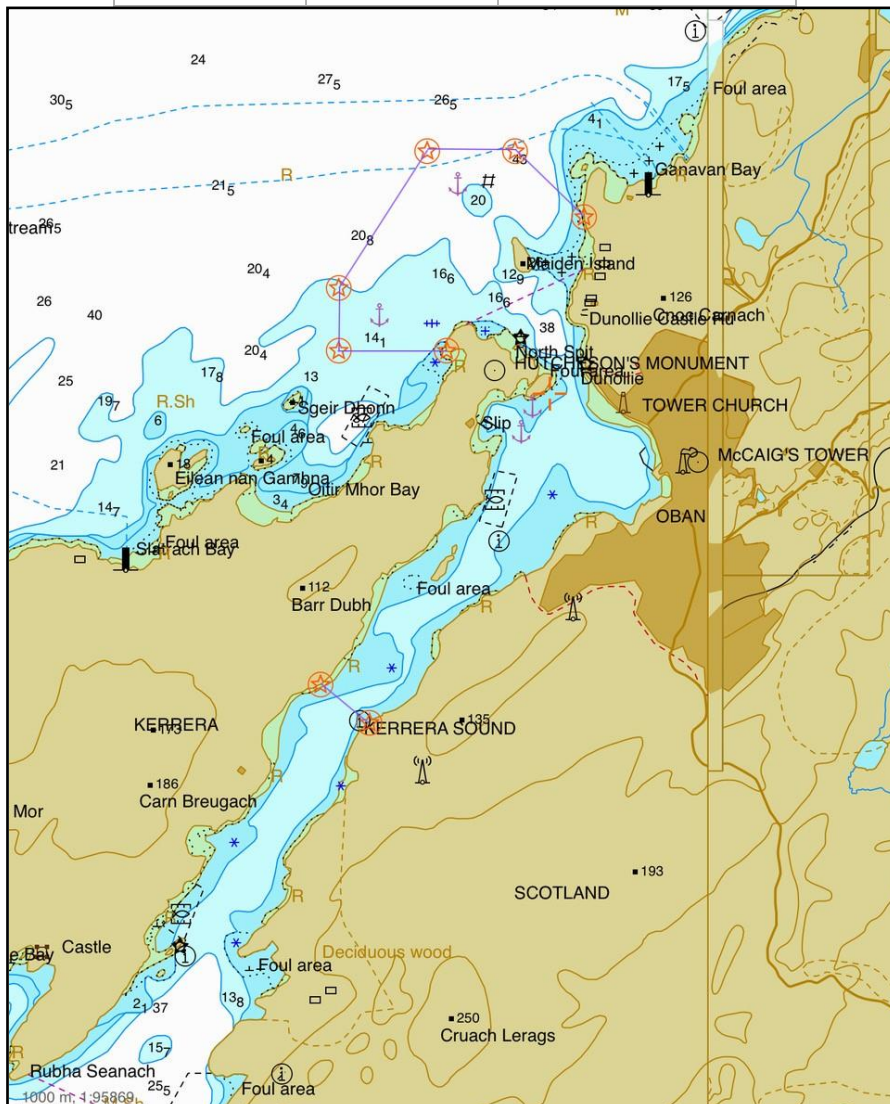
Below are the proposed Argyll & Bute Council limits for Oban Harbour. The CMAL area around the Railway pier has been left out of the chart but will of course be nested within the larger Municipal area. The limits have been derived following consultation with NLB, CMAL & CFL as well as a Navigational Risk Assessment (NRA) using Maritime & Coastguard Agency (MCA) approved methodology, Hazard Identification (HazID) Workshop and formed part of a public consultation.

The area enclosed by the northern boundary includes the No 1 and No 3 anchorages which are marked with the magenta anchor symbols.

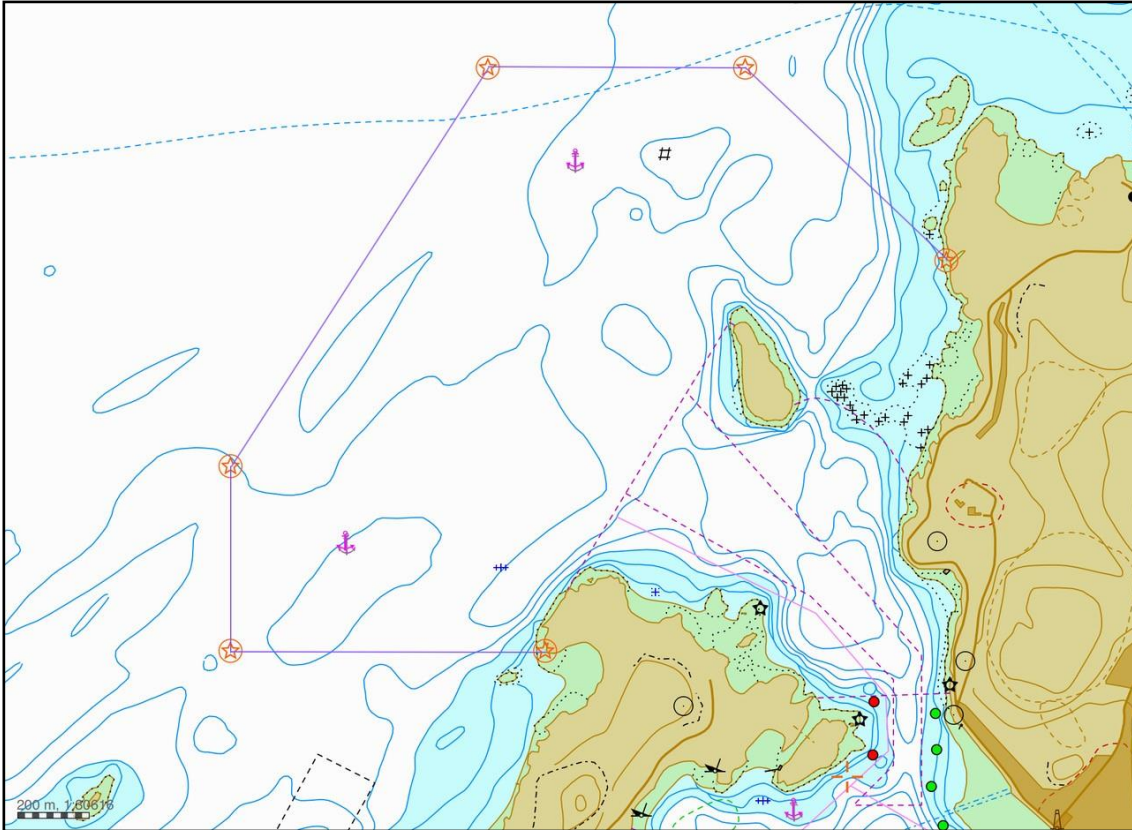
The southern limit extends to beyond the CFL ferry service to Kerrera.

**KEY FOR CHARTS**

Mark	Image	Description
Purple lines		Indicate the limits of the proposed Harbour limits
Star Points		Indicate the points on the boundaries which define the limits



**Northern Boundary to Proposed Limits**



**Southern Boundary to Proposed Limits**

