

ROTHESAY HARBOUR – JUDICIAL REVIEW

1.0 EXECUTIVE SUMMARY

This report updates members on the outcome of the Rothesay Harbour Judicial Review raised against the Council.

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2.0 INTRODUCTION

- 2.1 This report updates members on the outcome of the Rothesay Harbour Judicial Review raised against the Council.

3.0 RECOMMENDATION

- 3.1 Members are asked to note the favourable outcome achieved in respect of the matters.

4.0 DETAIL

- 4.1 The Committee will recollect that it was reported on 17th March 2016 that a Petition for Judicial Review by Calum McMillan/Argyll Workboats Limited, had been raised against the Council in respect of various matters relating to the operation of Rothesay Harbour over a seven year period and seeking damages in the sum of £350K.
- 4.2 Over the following months, extensive and in depth investigations were undertaken which included taking statements from a range of individuals who had been involved in the matter to varying degrees and the production of a large volume of documents. This work resulted in very detailed and robust answers being made to the terms of the Petition, rebutting both points of law and fact as made on behalf of the pursuer
- 4.3 In late August, a consultation took place with Senior Counsel at which he advised that it would be prudent to offer the Petitioners the opportunity to abandon their petition for Judicial Review, and a related Section 1 petition which had been a precursor to the main action. This would be a time limited offer and, in the event that it was not accepted and the Council were ultimately successful in the proceedings, then a higher level of expenses would be recoverable from the Petitioners than would otherwise be the case. The offer was made and accepted by the Petitioners.
- 4.4 The Council therefore called upon the Petitioners to agree to interlocutors being granted in favour of the Council which have the effect of determining matters in favour of the Council and making the matters therein Res Judicata. This means that the historical concerns raised

have been rejected by the Court, including the claim for damages referred to above.

- 4.5 The approach was made on the basis that the Council were firmly of the view that they had comprehensively answered the terms of the petition and were confident of success if the matter went to debate and, subsequently, a proof. This was only possible due to the extensive and diligent work carried out by staff in Governance and Law and in the Marine Operations Team.

5.0 IMPLICATIONS

Policy:	The Council will defend actions raised against it when legal advice indicated that the prospects of success are good.
Financial:	The Council's costs in defending the action are currently being calculated. It is expected that they will be met from within the provision which has been made.
Legal:	These decisions vindicate the legal advice offered by officers over a number of years in respect of various matters.
HR:	None
Equalities:	None
Risk:	The risk of having to meet a substantial claim has been fully mitigated.
Customer Service:	None

Executive Director of Customer Services
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