

ARGYLL AND BUTE COUNCIL SINGLE HARBOUR ORDER

1.0 EXECUTIVE SUMMARY

- 1.1 This report outlines the intention of the Marine Operations Service to seek a consolidation of the multiple harbour orders that currently exist across the piers and harbours which Argyll and Bute Council has a responsibility for. The proposal is to promote a single harbour order to cover all of the Council's marine assets.
- 1.2 It is recommended that Members instruct the Director of Development and Infrastructure to pursue the introduction of a single harbour order for all of Argyll and Bute Council's 39 piers, harbours and slips.
- 1.3 This is an issue which has been highlighted by our Designated Person (DP) in audits. The introduction of a single order will allow antiquated orders to be updated and ratify the position in relation to piers and harbours currently operating on the basis of historic custom and practice. This will provide improved clarity for harbour staff and users; and enable a more consistent approach to be taken to the management of the council's facilities.
- 1.4 The pre-application and application process to progress the introduction of a new harbour order is outlined in the annexe to this report. The process will involve wide consultation with a number of interested parties including local communities. The timescale for getting a single Harbour Order in place will be dependant on consultation feedback but is expected to take at least a year and possibly much longer should representation be received requiring negotiation; the main tasks will be as follows:-
- Plan will be prepared identifying each of the Council's 39 piers and harbours.
 - A draft order will be prepared by Legal Services.
 - Discussions will take place with Transport Scotland regarding the Council's proposals.
 - An important aspect of the process will be to determine if any Environmental Statements and/or Environmental Impact Assessments are required to be provided.
 - Consultation with communities and interested parties will take place.
 - Finally, the consolidation order will be formally advertised.
- 1.5 Should approval be given by Members, as recommended in this report, officers will progress the promotion of a single harbour order for all of the Council's 39 piers and harbours.

ARGYLL AND BUTE COUNCIL SINGLE HARBOUR ORDER

2.0 INTRODUCTION

2.1 This report highlights the fact that, currently, the 39 piers and harbours which Argyll and Bute Council has a responsibility are covered by multiple harbour orders which are often extremely antiquated or operate on the basis of historic custom and practice. It is proposed to promote a single harbour order to cover all of the Council's marine assets.

3.0 RECOMMENDATIONS

3.1 It is recommended that Members instruct the Director of Development and Infrastructure to pursue the promotion of a single harbour order for all of Argyll and Bute Council's 39 piers, harbours and slips.

4.0 BACKGROUND

4.1 A Harbour Empowerment or Revision Order is a piece of local legislation governing a port; it is made as a Scottish Statutory Instrument under the 1964 Harbours' Act by Scottish Ministers. An order can create and empower Harbour Authorities to undertake works or vary their existing harbour powers.

4.2 Argyll and Bute Council is responsible for 39 piers, harbours and slips; of these 39 marine assets, only 8 of the Council's ports have Harbour Orders in place. Some of these orders, instigated by the Council's predecessors, date back over a century to their initial inception. Orders are currently in place for the following facilities:-

- Bruichladdich
- Campbeltown
- Carradale
- Craignure
- Dunoon
- Port Askaig
- Rothesay
- Oban North Pier

4.3 The Council's Designated Person (DP) has commented in previous audits as follows:- *'Clarification should be sought as soon as possible with regards to establishing the statutory harbour limits and ascertaining the relevant local enabling*

legislation describing the main duties and powers pertaining to the Statutory Harbour Authority.'

4.4 In order to formalise the current position, a single harbour order will be progressed to ensure that the legal status of the Council's 39 marine facilities is ratified.

5.0 DETAIL

5.1 The pre-application and application process to progress the introduction of a new harbour order is outlined in the annexe to this report. The process will involve wide consultation with a number of interested parties including local communities. The timescale for getting a single Harbour Order in place will be dependant on consultation feedback but is expected to take at least a year and possibly much longer should representation be received requiring negotiation; the main tasks will be as follows:-

- A plan will be prepared identifying each of the Council's 39 piers and harbours.
- A draft order will be prepared by Legal Services.
- Discussions will take place with Transport Scotland regarding the Council's proposals.
- An important aspect of the process will be to determine if any Environmental Statements and/or Environmental Impact Assessments are required to be provided.
- Consultation with communities and interested parties will take place.
- Finally, the consolidation order will be formally advertised.

5.2 The introduction of a single order will allow antiquated orders to be updated and ratify the position in relation to piers or harbours currently operating on the basis of historic custom and practice. This will provide improved clarity for harbour staff and users; and enable a more consistent approach to be taken to the management of the council's piers and harbours. This approach has the added benefit of removing any dubiety as to the council's ability to apply charges on a network wide basis.

5.3 At the time of writing this report, a pre-application meeting was being sought with Transport Scotland to discuss related issues, with work on a draft order already in progress.

6.0 CONCLUSION

6.1 Should approval be given by Members, as recommended in this report, officers will progress the introduction of a single harbour order for all of the Council's 39 piers and harbours.

7.0 IMPLICATIONS

- | | |
|------------------------------|---|
| 7.1 Policy | None directly arising from this report |
| 7.2 Financial | The cost of promoting a consolidated order can be managed within existing budgets. |
| 7.3 Legal | Introduction of a single harbour order would ensure that the legal status of the Council's 39 marine facilities is ratified thereby creating powers to ensure the safety of those using the Council's piers and harbours. |
| 7.4 HR | None |
| 7.5 Equalities | None |
| 7.6 Risk | Currently, only 8 of the Council's 39 piers and harbours have orders in place and, as such, the Council has limited powers to regulate waters around the majority of its marine assets. |
| 7.7 Customer Services | Customers and key stakeholders will be consulted on the proposed changes. |

APPENDIX – Harbour Orders Procedure

Executive Director of Development and Infrastructure: Pippa Milne

Head of Roads & Amenity Services: Jim Smith

Policy Lead: Councillor Roderick McCuish

21 December 2017

For further information contact: Stewart Clark, Marine Operations Manager

Tel: 01546 604893

APPENDIX

Harbour Orders Procedure- Scotland

Pre Application

Meet with Transport Scotland in Order to discuss the procedure and drafting before formal application process

It is advised to consult as widely as possible locally, especially if the proposal may impact local environments, a guided list of consultees includes:

- Scottish National Heritage (SNH)
- Scottish Environment Protection Agency (SEPA)
- Maritime and Coastguard Agency
- Northern Lighthouse Board
- Marine Scotland (Marine Licensing team)
- Local communities

EIA:

Where a harbour order will empower any project, Scottish Ministers will inform the applicant of the requirements to provide an Environmental Statement. This examines the impact of the proposals on the environment.

The information required for an ES can take considerable time to collect and analyse.

If it is determined that an EIA (Environmental Impact Assessment) is needed, a scoping opinion will be provided.

SNH, SEPA and other environmental agencies will be consulted.

IF such an adverse effect is found to be likely the project can only be approved if;

- There are no alternative solutions;
- There are imperative reasons for overriding public interest for carrying out the project
- Provided any necessary compensatory measures are secured preserving the overall coherence of European sites.

Draft Orders:

Transport Scotland can comment informally on draft orders.

Drafts should be accompanied by purpose and effect notes which detail the reason for seeking each power and the legal basis for such a power to be granted with reference to schedule 2 of the 1964 Act.

Formal Applications:

All application drafts should be accompanied by purpose and effect notes if not already provided during informal discussions.

The appropriate fee should also be accompanied.

Applicants should be mindful of devolved and reserved matters and should not include any provisions in their drafts which relates to the reserved matters out with the powers of Scottish ministers.

An electronic copy of the draft order and associated documents is normally sufficient

- However, if plans/maps are larger than A3 3 hard copies are needed
- Electronic copies should be in word format
- If an ES is needed a hard copy and an electronic copy should be provided

Where a new harbour authority is being proposed or transfer of existing infrastructure to a new authority, the application should also cover details of the condition of any infrastructure and maintenance plans, including how these will be resourced.

Fees:

Fees for harbour orders are fixed based on the powers required in the order and are payable when a formal written application for an order is made.

Current fees are:

- £2,000 for an order the sole purpose of which is to amend the borrowing powers of an existing authority
- £4,000 for any other order that would not empower an authority to undertake works
- £6,000 for an order which expressly empowers an authority to undertake works where an EIA is not required
- £10,000 for an order which expressly empowers an authority to undertake works where it is decided that an EIA is required

Advertisement:

The applicant must publish notice of the application once in the Edinburgh Gazette and once in each of two successive weeks in one or more local papers. The notice must comply with the requirements of schedule 3 of the 1964 Act and should give:

- notice that application has been made
- Scottish Ministers decision on the application of the EIA directive (if appropriate) and whether an ES has been supplied and, if so, where it and the draft order and any related maps etc. can be viewed
- a concise summary of the draft order
- a general description of any works and any land proposed for compulsory acquisition if appropriate
- information on how objections should be made within 42 days of the date the order was first advertised and details of the procedure for handling these

If the order would authorise the compulsory acquisition of land or the extinguishment or diversion of a footpath or bridleway, there are additional requirements for giving notice.

Original copies of each publication containing the notice must be provided to Marine Scotland.

Consultation:

Scottish Ministers may direct that copies of the draft order are served on persons specified by them

If the applicant is not the harbour authority they must also serve a copy on that authority

Normally consult with the following bodies:

- SNH
- SEPA
- Local Planning Authority
- Northern Lighthouse Board
- Maritime and Coastguard Agency
- UK Chamber of Shipping
- Royal Yachting Association

Where no works are to be authorised by the order the bodies to be served would normally exclude SNH and SEPA

In each case the applicant will be formally advised on the persons to be served.

Objections and Representations

- 42 days from the date of advertisement
- Each consultee will also have 42 days in which to respond
- All objectors must state the grounds for their objections.
- Objections will then be passed to the applicant who will have the opportunity to negotiate with the objector.
- There is no fixed timescale for this stage- dependent on the nature and scale of objections
- Objections can be withdrawn at any time
- At the end of the 42 days objectors will be asked to confirm the status of their objection

Not withdrawn:

Ministers will take a decision on the most appropriate route to deal with the objections in the best interest of the applicant and the objectors.

Ministers may determine they can be handled by further written representations by both parties

In more complex cases, a hearing or public inquiry may be held.

At the end of such a hearing, the Minister will consider the material provided and reach a decision on the making of an order.

Modifications

Scottish Ministers will consider whether any modifications are necessary to the Order

If it is decided modifications should be made and these modifications substantially affect the character of the order, the ministers shall take steps to inform the applicant and other people likely to be concerned and will allow a reasonable period for comment on the modifications before making the order.

Decisions and Timescales:

When making the decision on whether to make the order, ministers will consider:

- Any environmental statement provided
- The results of any consultation
- Any objections made and not withdrawn
- Any representations made
- The report of any enquiry or hearing
- Any written representations by the applicant or objectors

Following consideration a formal decision letter will be issued to the applicant, copied to consultees and objectors, and published on our website.

Order Made:

An order will usually be made within a short period of the decision letter being issued

The applicant must publish notice of the fact in the Edinburgh Gazette and a local newspaper and serve copies on the same people notified of the original application

Applicants must copy these adverts and notices to Transport Scotland.

Scottish Parliament:

If the order authorises a project considered to be of national significance, it will be subject to parliamentary scrutiny.

They will be laid before the parliament and scrutinised by the relevant committees.

These committees will report to parliament on whether or not the order should be approved.

Any order subject to this procedure cannot be made until approved by resolution of the Parliament.