

**OBAN BAY – SINGLE HARBOUR AUTHORITY**

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**1.0 EXECUTIVE SUMMARY**

1.1 This report provides Members with an update on progress made since the last report to the Harbour Board in September 2018.

**1.2 RECOMMENDATIONS**

1.2.1 Members are asked to:-

- a) note this report and, in particular, consider the proposal outlined in the Oban Bay Stakeholders' report in Appendix B and,
- b) approve that officers continue to engage with the OBMG and continue co-operation with stakeholders in their bid to establish a trust port and,
- c) agree that a further update report be presented to Members at the September 2019 Harbour Board meeting.

1.3 Since the last meeting of the September 2018 Harbour Board, the Oban Bay Management Group has continued to work with other stakeholders at Oban towards improving safe navigation within the Oban Bay area. As discussed at the last meeting of the Harbour Board, the original intention was that CMAL should extend their SHA leaving the A&BC SHA 'nested'. Stakeholders at Oban now wish to evaluate the viability of a Trust Port (or similar concept) option for Oban Bay, which would in principle cover the area to seaward of the current CMAL and A&BC SHAs; stakeholders are currently considering financial and legal implications of such an arrangement.

1.4 Regardless of the final option chosen, one or other party intend to submit a Harbour Revision Order not later than January 2020. In the meantime, a draft list of 'protective provisions' has been produced for discussion purposes - attached in Appendix A this report.

1.5 At the last meeting of the OBMG on 20<sup>th</sup> February 2019, the chairperson of the Oban Bay Stakeholders' Group (OBSG) presented a report containing the following proposal:- *'The OBSG ask the OBMG to support them in creating a Trust Port to manage the unregulated waters of Oban Bay and its approaches, and invite interested stakeholders and users to work together to produce a harbour that is both safe and compliant with all current legislation.'* The full report is provided in Appendix B to this report.

- 1.6 Members of the Harbour Board will be given an opportunity to consider this issue further before either of the options outlined in this briefing note are implemented.
- 1.7 Work of both OBMG and Stakeholders continues. A further update will be presented to Members at the September Harbour Board Meeting.

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**2.0 INTRODUCTION**

- 2.1 A report was presented to Members at the September 2018 meeting of the Harbour Board which explained the background to the creation of the Oban Bay Management Group (OBMG) and reasons for creating a Single Harbour Authority (SHA). This report provides Members with an update on progress made since September 2018.

**3.0 RECOMMENDATIONS**

3.1 Members are asked to:-

- a) note this report and, in particular, consider the proposal outlined in the Oban Bay Stakeholders' report in Appendix B and,
- b) approve that officers continue to engage with the OBMG and continue co-operation with stakeholders in their bid to establish a trust port and,
- c) agree that a further update report be presented to Members at the September 2019 Harbour Board meeting.

**4.0 DETAIL**

- 4.1 At the last full meeting of the Harbour Board, in September last year, Members agreed to:
- a) ask CMAL to pause the process of expanding their harbour area until further consultation is carried out given the interest expressed locally in establishing a trust port; and
  - b) a further report to be provided to the next meeting of the Harbour Board providing an update on the progress towards establishing a single harbour authority for Oban.
- 4.2 Since the last decision of the Harbour Board, the Oban Bay Management Group has continued to work with other stakeholders at Oban towards improving safe navigation within the Oban Bay area. The OBMG continues to support the principle that a Statutory Harbour Authority should be created for the area encompassing the wider Oban Bay and its approaches for the purpose of

having overall responsibility and control over marine activity within that area which would achieve a positive impact on the efficiency and safety of the harbour.

- 4.3 As discussed at the last meeting of the Harbour Board, the original intention was that CMAL should extend their SHA leaving the A&BC SHA 'nested'. This was met with significant resistance both locally and within the wider recreational boating community. Stakeholders at Oban now wish to evaluate the viability of a Trust Port (or similar concept) option for Oban Bay, which would in principle cover the area to seaward of the current CMAL and A&BC SHAs; stakeholders are currently considering financial and legal implications of such an arrangement.
- 4.4 Members will be aware that Trust Ports (TP) are independent statutory bodies, each governed by their own, unique, statutes and controlled by a local independent board. There are no shareholders or owners and any surplus is ploughed back into each port for the benefit of its stakeholders. There are over 100 trust ports in the UK.
- 4.5 Both of these wider SHA concepts are being developed simultaneously ('CMAL extends' or 'trust port'), with an agreed sharing of common work. CMAL have also stated that, in principle, if they do extend their harbour area and subsequently an alternative and viable harbour authority model is proposed, then CMAL will be content to revert to their current SHA boundaries to allow the wider area of Oban waters to be operated by the alternative organisation.
- 4.6 Regardless of the final option chosen, one or other party intend to submit a Harbour Revision Order not later than January 2020. In the meantime, a draft list of 'protective provisions' has been produced for discussion purposes - attached in Appendix A of this report. This list will form the basis of discussions within the OBMG, when Council officers are ensuring compliance with the Harbour Board's decision that *'further investigation be carried out regarding the protection of the Council's interests, with particular regard to the harbour area at the North Pier'*.
- 4.7 At the last meeting of the OBMG on 20<sup>th</sup> February 2019, the chairperson of the Oban Bay Stakeholders' Group (OBSG) presented a report containing the following proposal:- *'The OBSG ask the OBMG to support them in creating a Trust Port to manage the unregulated waters of Oban Bay and its approaches, and invite interested stakeholders and users to work together to produce a harbour that is both safe and compliant with all current legislation.'* The full report is provided in Appendix B to this report.
- 4.8 Members of the Harbour Board will be given an opportunity to consider this issue further before either of the options outlined in this briefing note are implemented.

## **5.0 CONCLUSION**

- 5.1 Work of both OBMG and Stakeholders continues. A further update will be presented to Members at the September Harbour Board Meeting.

## **6.0 IMPLICATIONS**

- 6.1 Policy - None
- 6.2 Financial – The financial impacts cannot be assessed until the preferred option has been identified and protected provisions agreed upon.
- 6.3 Legal – Any agreement with CMAL must ensure that the Council's areas of responsibility are protected.
- 6.4 HR - None
- 6.5 Equalities / Fairer Scotland Duty – None
- 6.6 Risk – Advice from the OBMG is that 'to do nothing', given concerns over safety at Oban Bay, is not an option worthy of consideration.
- 6.7 Customer Service – None.

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**Head of Roads & Amenity Services:** Jim Smith

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26 February 2019

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Appendix A – Draft Protective Provisions – Summary

Appendix B – Oban Bay Stakeholder Group Report

# **APPENDIX A**

# Draft Protective Provisions - Summary

## General Themes

- The Harbour Order must allow for section 33 of the Harbours, Docks and Piers Clauses Act 1947 (open port duty)
- The employed staff to be suitably qualified and competent.
- Existing SHA areas are to remain nested, with the addition of a small area around Port Beag slipway coming under A&BC
- The duty and responsibility of the Harbour Authority mark any danger to navigation and inform NLB
  - Failure may result in summary conviction and a fine
- The duty and responsibility of the Harbour Authority to light any completed tidal works to prevent any danger to navigations and inform NLB
  - Failure may result in summary conviction and a fine
- NLB/CMAL/A&BC (and their successors) to be considered as key stakeholders and form part of a consultative body of stakeholders established through the harbour order
  - 6 monthly meetings
  - Consulted on:-
    - Navigation Safety
    - Making of Byelaws and GD
    - General Safety
    - Operational changes
    - Harbour developments
  - Such consultation to be reported to the Harbour Authority and due account taken of stakeholder opinion
- NLB/CMAL/A&BC (and their successors) whilst operators of operational Piers, base and berths in Oban shall not be hindered in any way by the Harbour Board / Authority in the statutory or commercial operation of the said base and berth. The Harbour Authority/Board shall not hinder or unreasonably withhold permission for any development of the said base or berth by the infrastructure owners or their successors.
- NLB/CMAL/A&BC (and their successors) whilst operators of operational Piers base and berths in Oban shall collect and deliver to the Harbour Board/ Authority such dues charged by the Harbour Authority for visiting vessels for use of the said berth.
  - Visiting Government vessels\* using the Commissioners of Northern Lighthouses berth shall be exempt from such dues charged by the Harbour Authority.

- \* a narrowly defined group to include warships, Border Force and fishery protection/research operated by UK and Scottish Government bodies ( NLB is already exempted through MSA 1995)
- NLB/CMAL/A&BC (and their successors) whilst operators of operational Piers base and berths in Oban shall be consulted on any harbour developments, moorings or other physical changes within the Harbour Area as a key stakeholder. Developments, moorings or other physical changes which impact the approaches to/from and operation of the piers and berths and/or helicopter landing pad (NLB Only) require approval. Such permission will not be unreasonably withheld.
- Charges levied by the Harbour Authority must be transparent and costs shared equally between all customers in an agreed methodology, formal agreement that no revenue generated from CMAL/NLB/A&BC customers can be used for any improvement out with the immediate Harbour environment that impacts on our customer operations. The charges levied are be used to cover direct costs with a reasonable overhead contribution.
- There should be no charges levied on recreational craft entering or transiting the bay
- The MSMS should be implemented as a matter of priority and in consultation with key stakeholders.
- A marine traffic management plan should be introduced as a matter of priority and in consultation with key stakeholders. (there is a requirement to provide for 2 large ferries to manoeuvre simultaneously in the harbour)
- The Harbour Authority to cover any financial losses (direct and indirect) to CMAL/NLB/A&BC should any works carried out or instructions given by the Harbour Authority that results in the facilities at Oban in NLB/CMAL/A&BC facilities not being accessible and / or are damaged.
- Harbour weather limits shall be risk driven not arbitrarily defined.
- It shall be a requirement of commercial harbour users to have vessels fitted with AIS (Automatic Identification System).



## **APPENDIX B**

## Oban Bay Stakeholder Group

### Summary of evaluation of the running costs associated with a conservancy based Trust Port for Oban Bay and its approaches

## Introduction

In September 2018 the Oban Bay Management Group (OBMG) agreed to a request from Argyll and Bute Council to 'pause the process' of seeking a HRO for CMAL to become the SHA for the majority of Oban Bay and its approaches. This request was a consequence of the public response to the consultation process which had been carried out over preceding months. It was agreed that the Oban Bay Stakeholder Group (OBSG) would undertake a more detailed evaluation of the costs associated with running a 'wet' Trust Port operating on a conservancy basis. This paper summarises the results of that evaluation thus far.

## Trust Port governance structure

As part of the evaluation members of the OBSG Finance Working Group consulted with a wide range of ports and harbours in Scotland. Whilst initial focus was on Tobermory, it quickly became apparent that although the Tobermory 'model' was based on Community ownership and management it is in fact more closely aligned with that of a Private Port. Consequently, the model which was adopted for the evaluation was based on that used at Mallaig - one of the first Harbours to convert to a Modern Trust Port in 2012. The Governance structure which was used for the evaluation was as follows:

<i>Harbour Board</i>	Maximum of 8, all remunerated with Board Members receiving (2019/20) £3,000 pa for attendance at a minimum of 6 meetings. Vice Chair to have remuneration at 200% of Board Member, and Chair to receive 300%.
<i>Chief Executive</i>	Appointed by the Harbour Board, CEO to have overall responsibility for the strategic and operational management of the Harbour. Executive post, ie with a vote at Board meetings. T&Cs determined by Harbour Board.
<i>Harbour Master</i>	Suitably qualified employee responsible for the day to day operation of the Harbour, supported by

*Two Assistant Harbour Masters* (also salaried and qualified) and *Administrative assistant* employed on a full time basis.

Total costs (Salary, insurances and superannuation etc) for the HM, AHMs and Admin Assistant have been provided by A&BC to allow accurate costs to be used in the evaluation. With regard to the CEO a budget has been used as consideration may be given to applicants tendering for the post rather than merely replying to a job advert.

One of the recurring themes that arose during discussions with the various HAs was their frustration at not being able to 'ring fence' posts or representation for significant stakeholders. The Mallaig

HRO even defines what a significant stakeholder is, although in practice this brings about little real benefit. Discussions with Transport Scotland have confirmed that this is fundamental to the Modern Trust Port objectives, ie membership of the Board should be open to all. The OBSG would therefore welcome further dialogue with the OBMG about how the views of various Stakeholders/Users might best be accommodated in the future.

### Evaluation of costs

The evaluation of anticipated annual running costs are contained in tabular form overleaf. A conservative approach has been taken throughout. For example, whilst it might be possible to operate a 'wet' conservancy Trust Port with just one Assistant HM and a part time administrative assistant, the evaluation has allowed for more than this. Similarly, where the evaluation of costs was found to be similar to those derived from the initial evaluation undertaken by the OBMG then the higher of the two values has been used.

Where possible the tabulated costs have been categorised using the same headings as the original OBMG evaluation. The items which have been considered have also been compared against the PMSC to ensure that all relevant items have been included.

It can be seen from the tabulation that the projected annual running costs of a 'wet' conservancy based Trust Port are of the order of £325,000. This is **significantly** lower than the £800k that was stated by the OBMG in their paper of 28 March 2018, and very close to the £250k figure that was quoted for either the A&BC or CMAL options at that time.<sup>1</sup> Given this, it is considered by the OBSG that the advantages of an independent Trust Port significantly outweigh the relatively small difference in annual running costs, and that this should therefore be the preferred option for the future management of Oban Bay and its approaches.<sup>2</sup>

## Conservancy Charges

There is clearly some way to go before detailed charging mechanisms can be finalised. However, at the current time it should be noted that using the model proposed by the OBMG in 2018 a conservancy charge of 2 pence per GT would provide a total income of £340k. Whilst a contingency of more than 5% might be preferred, particularly during the early years, this does demonstrate that the Trust Port option is both viable and reasonable as requested by Transport Scotland.

## Proposal

The OBSG ask the OBMG to support them in creating a Trust Port to manage the unregulated waters of Oban Bay and its approaches, and invite interested stakeholders and users to work together to produce a harbour that is both safe and compliant with all current legislation.

### Governance & personnel

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<sup>1</sup> Following that meeting the CalMac Harbour Manager has advised that the true cost of either A&BC or CMAL is <sup>2</sup> This was the original objective of the Oban Harbour Development Group back in 2012 and 2013.

Board	Chair (£9k), Vice Chair (£6k) and 6 members (£3k each)	£33,000	
CEO	Budget allocation but subject to further consideration	£50,000	
Harbour/LPS Operational Staff	One HM and two AHM, weighted to take account of overtime/standby payments	£123,000	
Admin Assistant	One full time post	£26,000	£232,000

#### **Retained/professional services (many as contingency)**

Legal	As OBMG estimate	£10,000	
Accountancy	Based on similar organisations	£5,000	
Education/PR	Increase on original OBMG estimate	£10,000	
Investigation	As OBMG estimate	£5,000	
PMSC & H&S	Additional item to reflect ongoing training and equipment needs	£5,000	
Environment (OSCP)	As OBMG estimate	£4,000	
Dredging	As OBMG estimate	£2,000	
Surveying	As OBMG estimate	£1,000	
Security (PSA)	As OBMG estimate	£5,000	£47,000

#### **Overheads**

Utilities	Considered an overestimate, but also to include office running costs	£10,000	
Accommodation	Based on similar business premises	£10,000	
Insurance	Grossly underestimated in original OBMG estimate, current figure based on initial feedback from specialist broker	£26,000	£46,000

**Total anticipated annual running cost** **£325,000**

**Summary of the annual running costs for a modern Trust Port for the unregulated waters of Oban Bay and its approaches.**

**Winter timetable**

	M	T	W	T	F	S	S
Coll & Tiree	715	715		715		715	715
	1525	1525		1525		1525	1525
Lismore	645	645	645	645	645	800	900
	1910	1910	1910	1910	1910	1855	1755
Craignure	645	800	800	800	800	731	946
	1746	1946	1746	1746	2145	2145	1946
Colonsay	1215		1215		1030	1330	
	1710		1700		1515	1055	
Castlebay	1330	1330	1330		1330		1330
	1430	1430	1430		1430		1430
South Uist	1110		1430		1130	1130	1430
	1740		1500		1230	1230	1500
Earliest	645	645	645	645	645	715	715
Latest	1910	1946	1910	1910	2145	2145	1946
Daily span	12:25	13:01	12:25	12:25	15:00	14:30	12:30
Suggested start	630	630	630	630	630	700	700
Suggested finish	1930	2000	1930	1930	2200	2200	2000
Span (hrs/mins)	1300	1330	1300	1300	1530	1500	1300
<b>Total weekly hours based on suggested hours</b>						96	

**Summer timetable**

	M	T	W	T	F	S	S
Coll & Tiree	715	1500	715	715	615	615	715
	1525	2240	2130	1525	1410	2240	1525
Lismore	645	645	645	645	645	800	1000
	1910	1910	1910	1910	1910	2055	1755
Craignure	645	730	730	730	730	730	950
	2005	2005	2005	2005	2335	2005	2005
Colonsay	1630	900	1610	1630	1630	1620	1630
	2115	1405	1630	2115	2115	1645	2115
Castlebay	1240	1240	715	1240	1240	1240	1240
	1330	1330	2130	1330	1330	1330	1330
South Uist			No service				
Earliest	645	645	645	645	645	615	715
Latest	2115	2240	2130	2115	2325	2240	2115
Daily span	14:30	15:55	14:45	14:30	16:40	16:25	14:00
Suggested start	630	630	630	630	630	600	600
Suggested finish	2130	2300	2145	2200	2345	2300	2130
Span (hrs/mins)	1500	1630	1515	1530	1715	1700	1530
<b>Total weekly hours based on suggested hours</b>						<b>112</b>	

Maximum permitted hours including stand-by and overtime 144

