

OBAN BAY – SINGLE HARBOUR AUTHORITY

1.0 EXECUTIVE SUMMARY

- 1.1 This report explains the background to the creation of the Oban Bay Management Group (OBMG) and why a Single Harbour Authority (SHA) is being considered.
- 1.2 The OBMG was established in 2008 as a partnership between the three main infrastructure providers in the marine environment in Oban; the group includes Caledonian Maritime Assets Ltd (CMAL), the Northern Lighthouse Board (NLB) and Argyll and Bute Council, with Calmac providing assistance as required.
- 1.3 The OBMG has produced guidance documentation to assist with safe navigation in Oban Bay; the Group has also given consideration to the formation of an SHA at Oban Bay, again in the interests of safety.
- 1.4 At the Harbour Board in September 2018, 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.
- 1.5 The OBMG, including CMAL, agreed to postpone CMAL progressing a single order to enable stakeholder consultation.
- 1.6 A consultation exercise was carried out in which the majority of respondents were in favour of setting up a Trust Port at Oban Bay.
- 1.7 Oban Community Harbour Development Association (OCHDA) has been established to develop the option of creating a Trust Port. OCHDA are proposing a transfer of the Council's existing powers and responsibilities in Oban Bay, including those around the North Pier, to the new Harbour Authority.
- 1.7 It is recommended that the Board:
- Subject to consultation with the OLI Area Committee, Instruct officers to

investigate further the proposal to establish a Trust Port and to the transfer of powers at the South Pier (any transfer would not happen unless the Harbour Order was subsequently granted by Transport Scotland)

- Instruct officers to investigate further with OCHDA the options of transferring the powers at the North Pier and the transfer of assets at the North Pier, on a commercial basis
- Recommend to Policy and Resources Committee that they delegate to the Executive Director with responsibility for Marine Operations in consultation with the Executive Director with responsibility for Legal Services the agreement of an MoU with OCHDA on the basis set out in paragraph 4.18.

OBAN BAY – SINGLE HARBOUR AUTHORITY

2.0 INTRODUCTION

2.1 This report explains the background to the creation of the Oban Bay Management Group (OBMG) and why a Single Harbour Authority (SHA) is being considered. It sets out the proposals of the Oban Community Harbour Development Association for the development of a Trust Port and potential next steps.

3.0 RECOMMENDATIONS

3.1 It is recommended that the Board:

- Subject to consultation with the OLI Area Committee, Instruct officers to investigate further the proposal to establish a Trust Port and to the transfer of powers at the South Pier (any transfer would not happen unless the Harbour Order was subsequently granted by Transport Scotland)
- Instruct officers to investigate further with OCHDA the options of transferring the powers at the North Pier and the transfer of assets at the North Pier, on a commercial basis
- Recommend to Policy and Resources Committee that they delegate to the Executive Director with responsibility for Marine Operations in consultation with the Executive Director with responsibility for Legal Services the agreement of an MoU with OCHDA on the basis set out in paragraph 4.18.

4.0 DETAIL

Background

4.1 Increases in marine traffic within Oban Bay and its approaches have highlighted the need for the waters to be controlled and regulated by a single Harbour Authority. This led to the creation of the Oban Bay Management Group (OBMG).

4.2 In March 2018 the OBMG agreed to support the expansion of CMAL's Harbour

Area to include the outer bay and its approaches. The Council's Harbour Board also supported this approach.

- 4.3 Over the summer of 2018 an extensive public consultation exercise was undertaken by the OBMG. This produced a widespread consensus on the following points:
- Almost all respondents agreed that the outer part of the bay needs to be regulated;
 - The vast majority of respondents stated that they did not think that CMAL should be responsible for this.
- 4.4 The Council had indicated at that time that it did not wish to extend its Harbour area to create a larger Municipal Port on the basis of the increased liabilities. It was felt that CMAL had more specialist resources to undertake the role. Following stakeholder engagement, in the absence of a Municipal Port, the majority of respondents favoured the creation of an independent Trust Port for Oban.
- 4.5 The Stakeholder Group therefore asked that they be given the opportunity to undertake an evaluation of the financial viability of a Trust Port, a request which was supported by the A&BC Harbour Board and was subsequently agreed to by the OBMG. The assessment was completed in the spring of 2019, following which the OBMG agreed to give the Stakeholder Group until March 2020 to make significant progress towards the preparation of the necessary legislation to enable the new Harbour Authority to be created.

Current status

- 4.6 In March 2019, the Stakeholder Group formed the Oban Community Harbour Development Association (OCHDA), which has been working on the next phase of the project during the summer and autumn of 2019. Whilst significant progress has been made by this voluntary group, a number of issues still require to be addressed. Some of the more significant issues are as follows:
1. The legislation relating to the regulation of Oban Bay has an extensive and complex history. Whilst broad consensus has been reached between the OBMG as to who currently has jurisdiction over which body of water, incorporating this historic legislation into a new Harbour Order is challenging. The council is currently including the waters around North Pier in Oban as part of a Single Harbour Order which covers all the ports and harbours which the council has responsibility for.
 2. The primary aim of establishing a single harbour authority is to improve safety within the bay for all users. OCHDA are of the view that requiring a visiting vessel to first contact the new Harbour Authority (HA) when entering the bay, and then liaise with the Council Harbour or Pier Master before approaching the North Pier and/or pontoons is not consistent with this as it complicates the process and increases the potential for confusion and/or conflict.

3. OCHDA are also of the view that there seems to be little point in duplicating many of the facilities and services that each Harbour Authority will have to provide.
- 4.7 OCHDA have discussed these issues at length, both internally and also with local Councillors and the wider group of stakeholders. Their stated aim is to deliver a solution which is advantageous to both organisations as well as the users and residents of Oban.

Outline proposal

- 4.8 OCHDA are proposing a transfer of the Council's existing powers and responsibilities in Oban Bay, including those around the North Pier, to the new Harbour Authority.
- 4.9 In order to meet the March 2020 deadline OCHDA have indicated a desire to adopt a pragmatic approach to progressing their proposals. OCHDA would like to discuss the following proposals with the Council:
 - For both parties to agree (by way of a Minute of Agreement if appropriate) that the new Harbour Order will be drafted on the basis of the Council agreeing to transfer its powers to the new Harbour Authority (the transfer would not happen unless the Harbour Order is subsequently granted by Transport Scotland);
 - Both organisations work towards the transfer of relevant assets (initially the seaward part of the North Pier, the North Pier pontoons and the associated harbour building/offices) from the Council to OCHDA. They envisage that this transfer might take place over a number of years, and could perhaps be in the form of a 'lease with an option to buy' agreement;
 - OCHDA have stated that their preference would be for a transfer of powers (Harbour Order covering North Pier) and assets (the Pier berthing face, pontoons and Harbour Building) to provide a viable package which could be operated on a sustainable basis.

OCHDA are of the view that such an approach will bring about significant benefits for both Oban and the wider area of Argyll and Bute, and will also provide a number of benefits and savings to the Council.

In order to meet the timescales requested it is proposed that the Harbour Board recommend that the Policy and Resources Committee agree to the council entering into an MoU with OCHDA. The Harbour Board has a remit in relation to the operation of the harbour and Policy and Resources Committee has a remit in terms of the transfer of assets. Given the local importance of the harbour it is also recommended that the OLI Area Committee are consulted on the proposals.

Points to consider

- 4.10 OCHDA appear willing to make payment that would cover Council costs including capital charges for the pontoons and Marine Visitor Centre. Initial

analysis indicates that that the North Pier and associated marine infrastructure makes a loss before capital charges are taken into account. Consideration would need to be given to how the car park and restaurant area of the pier is treated. OCHDA have been advised that they would need to demonstrate that they would be sustainable financially and in terms of their capacity. One way to allow sustainability to be demonstrated would be to initially lease assets to OCHDA with an option to purchase being contingent on demonstrating appropriate capacity and financial viability. Any new expanded harbour authority would generate income from a conservancy fees, paid by each vessel entering the harbour. This would be in addition to current harbour charges.

- 4.11 North Pier has currently not made a profit between 2010-11 – 2018-19 due in part to one off payments to third parties and significant asset sustainability investments. However, berthing dues have been increasing in recent years at the North Pier and the addition of the pontoons generated an additional income of £18,100 in the first part year and £73,000 in the first full year of operation. It is anticipated that the pontoons will see an ongoing increase in income which could be further enhanced by extending the pontoons and generating additional opportunity for mariners.
- 4.12 A transfer of assets would inevitably include a transfer of some if not all of the staff employed in activities supporting the North Pier. This transfer would be carried out under TUPE. Staff employed at the North Pier also carry out duties across other marine assets across the Oban Lorn and Isles and occasionally more widely across marine assets across Argyll and Bute. TUPE transferring of staff would have a detrimental impact on the overall resilience of the marine team.

Recent Development

- 4.13 The Transit Berthing Facility was renamed the Oban North Pier Pontoons project: in April 2015 the Oban Lorn and the Isles (OLI) Area Committee approved the design layout and subsequently in June of that year approved the recommendation to seek approval for development funding from the Policy & Resources Committee to enable the project to be taken forward to the procurement stage. A revised CHORD budget allocation of £1.5m, was supplemented by external funding of £700k from RCGF and £300k from HIE, giving a total capital budget of £2.5m. The construction contract was awarded in December 2016 with the facility operational by the end of July 2017. The contract is on programme to close out in December 2019, within budget.
- 4.14 The Harbour Building includes: dedicated showers, toilets, changing areas; and secure storage lockers for maritime visitors. Additionally there are 4 commercial spaces, two on the mezzanine floor and two on the ground level, including: a harbour-master's office; an office for the North Pier Pontoons operator; and two additional spaces, one let as a shop, and one room available for hourly rentals for meetings and presentations. The harbour buildings are subject to a separately funded package for their capital costs.
- 4.15 The Marine Operations Service, in partnership with Regeneration Project

Manager, have developed options for the on-going operational business model for this facility. However, before we can consider whether to take this opportunity to market, we need to have compiled the requisite data in respect of costs, revenues, management structure, regulatory requirements etc. and benchmark the Oban facilities against comparable Council facilities in Rothesay and Campbeltown. This can only be achieved by monitoring the operation of the facilities once the construction contract is fully closed out, and for a full operational season i.e. through to the end of 2020. At this point we will be in a position to make recommendations as to the most sustainable and efficient operating model for the facilities in Oban going forward.

Options

4.16 There are a number of options available including:

- Facilitate OCHDA progressing a Trust Port with a transfer of assets, including staff.
- Facilitate OCHDA progressing a Trust Port with a transfer of harbour powers, without a transfer of assets. The council would continue to operate the North Pier and pontoons possibly extending the commercial offer at this location.
- CMAL to progress becoming the Harbour Authority.
- Argyll and Bute Council to form a Municipal Port.
- Continue with the status quo. This option is not recommended and should be discounted.

4.17 In principle officers support the Trust Port in recognition of community feedback and in interest of long term safety within the bay. More work with OCHDA is required on the options above, including a Municipal Port, to fully understand cost and other impacts. Should a Trust Port be considered further it would have to be on commercial terms. Commercial terms would in effect cover the council's costs and income. OCHDA are of the view that a transfer of powers with assets would be a logical requirement.

4.18 To provide OCHDA with evidence of continued progress and to demonstrate a willingness by the the council to explore the options to transfer assets and powers, officers recommend that an MoU is entered into by both parties. The MoU would set out a willingness on the part of both organisations to enter into further discussions regarding the establishment of a Trust Port, agree to explore the commercial terms on which that might happen and the implications of doing so. The result of those discussions would be reported to the appropriate committee(s) before any further decisions on the transfer was taken, including the Council in relation to asset transfers.

5.0 CONCLUSION

5.1 OCHDA are proposing the establishment of a Trust Port to manage Oban Bay. They are also seeking a transfer of the Council's existing powers and

responsibilities in Oban Bay, including those around the North Pier, to the new Harbour Authority. OBMG agreed to give the Stakeholder Group until March 2020 to make significant progress towards the preparation of the necessary legislation to enable the new Harbour Authority to be created. In order to meet the deadline OCHDA have indicated a desire to adopt a pragmatic approach to progressing their proposals and have suggested entering into an MoU with the council. Officers are recommending that an MoU is agreed, allowing discussion of the options to continue while providing OCHDA with evidence of progress.

6.0 IMPLICATIONS

- 6.1 Policy - None
- 6.2 Financial – The financial impacts cannot be assessed until further discussion with OHDA have been completed.
- 6.3 Legal – Legal implications of any transfer will be considered as part of the discussions with OCHDA.
- 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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