

OBAN BAY OPTIONS APPRAISAL

1.0 INTRODUCTION

1.1 The purpose of this report is to provide Members with an update following the September meeting where an item on this same subject was considered. At that meeting the Argyll and Bute Harbour Board:

1. noted the advice of the Council's Monitoring officer that at this stage we do not have all the necessary information to allow a preferred option to be selected;

2. agreed, in principle, they were prepared to consider an option for the future use of Council assets at Oban which would involve a disposal of these;

3. agreed to note that Officers would continue to engage with third parties, including OCHDA to enable them to fully develop their proposals;

4. agreed that an options appraisal process be conducted to determine a preferred option for the future management of Oban Harbour and the engagement that would be carried out with other partners who have an interest in Oban Bay; and

5. noted that the results of the options appraisals would be presented to a special meeting of the Harbour Board in December 2021, provisionally on the date of the Environment, Development and Infrastructure Committee that month, for determination by Members, and that Members of the Harbour Board would undertake a site visit in advance of the December meeting

1.2 Since then, Officers commissioned an independent third party, Caledonian Economics, to undertake an options appraisal, which is appended to this report at Appendix One.

1.3 Five options were presented for consideration:

1. continue as at present.

2. a Trust Port model to include the transfer of the current Harbour limits around North Pier and the transfer or lease of some or all assets.

3. a Trust Port model excluding the transfer of the current Harbour limits around North Pier (wet port).

4. CMAL as a unitary Harbour Authority;
5. Argyll and Bute Council as a unitary Municipal Port.

2.0 RECOMMENDATIONS

The Harbour Board is asked to:

- 2.1 Thank Caledonian Economics for their work on the Options Appraisal;
- 2.2 Agree that the Council will not at this time proceed with a transfer of assets on the basis that there are too many uncertainties around the proposal
- 2.3 Note that Options 4 or 5 (ABC or CMAL becoming the Harbour Authority for the unmanaged section of Oban Bay) provide a quicker route to addressing the current safety concerns and are therefore the best options available at this time
- 2.4 Agree that either Options 4 or 5 should move forward and request that Officers engage with CMAL, through the OBMG, to determine which of the Council or CMAL is best placed to begin the process of application for a Harbour Revision Order covering the unmanaged section of Oban Bay and to expedite the process for such an order or work with CMAL to facilitate such an order being sought by them and to report back to members on that process.
- 2.5 Note that there is no inherent reason why a Trust Port would not be a good future option.
- 2.6 Agree that once options 4 or 5 are delivered there will be a period of bedding in to monitor the new arrangement and, after that time, there will be a further report to members on the potential for and exploration of the future development of a Trust Port.

3.0 DETAIL

3.1 BACKGROUND

- 3.1.1 There are three separate Harbour Orders in place for Oban: the North Pier, Railway Pier and South Pier. The approaches and waters through the bay are not covered by an order. The responsibility for these waters defaults to the Maritime and Coastguard Agency (MCA).
- 3.1.2 With various organisations having different responsibilities for areas of Oban Bay, some parts of the bay are not part of the specific jurisdiction of any organisation and this situation can lead to confusion for users, with no organisation in sole control of the bay itself
- 3.1.3 Having Statutory Harbour Authorities controlling the entirety of the bay would remove ambiguity, improve the safety aspects, and would result in benefits to

users. Due to the geographic setting and number of connected ferry routes supported by Oban, Oban Bay is of strategic importance for the West of Scotland. It is important that a satisfactory outcome for the safe management of Oban Bay is progressed at pace and with no further unnecessary delays.

- 3.1.4 The purpose of progressing a harbour authority area for the areas currently not managed should lead to a consolidation of the overall management of Oban Bay improving the effectiveness, efficiency and safety of the entire harbour.
- 3.1.5 Regardless of preferences regarding shoreside Council infrastructure, there needs to be a focus on progressing a harbour authority at pace to ensure that all areas within Oban Bay can be adequately managed. It should be noted that the Oban Bay Management Group have put in place a significant number of initiatives which have gone some way to improving safety in recent years. However, it is only the establishment of a harbour authority that can ensure that all vessels entering and leaving Oban Bay can be fully managed which will bring about further safety enhancements.
- 3.1.6 The process to formalise arrangements for the ungoverned section of the bay would require a Harbour Empowerment or Revision Order. This 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 projects or vary their existing harbour powers. Any amendment or consolidation of existing Harbour Orders will require a formal process to effectively extend the Harbour limits to include the waters currently not covered
- 3.1.7 Any solution would require to demonstrate overall benefits to users, financial and technical viability, organisational competence and future sustainability. It is critical to understand that, regardless of which of the five options were to be progressed: (1) that **vessels less than 20m or sailing vessels shall not impede the passage of vessels which can safely navigate only within the buoyed channel**. The larger vessels which in the main are ferries, have this right over other harbour traffic no matter which body has authority in the bay and that these services represent the lifeline links to island communities. (2) all options currently being considered **would result in more than one** Harbour Authority in Oban Bay.
- 3.1.8 As well as the established harbour authorities within Oban operated by the Council and CMAL a community group was formed named Oban Community Harbour Development Association (OCHDA) which consists of a number of volunteers who have been seeking to progress a Trust Port model for Oban Bay. OCHDA have undertaken a range of work, with support from Council Officers and Members, and have produced various documents which begin to outline their proposal. While at present the Council has no structured proposal from OCHDA showing how the Trust Port would operate on a financially sustainable basis, which can be appraised, it can appraise the option of a Trust Port, in principle, with or without the transfer or lease of some or all relevant assets.

3.2 COUNCIL ASSETS AND RESPONSIBILITIES

3.2.1 For clarity, it is useful at this point to summarise the extent of the Council's assets and responsibilities. Argyll and Bute Council have responsibility for the following assets in the vicinity of the North Pier:

- Harbour Master's offices (which incorporates meeting rooms, pontoon office, showering and toilet facilities, retail space etc)
- North Pier, associated berthing face, access roads, slipways etc.
- Oban Times Slipway
- North Pier Car Park
- North Pier Pontoons and Breakwater
- North Pier toilets and showers
- Port Beag Slipway and associated ground (sited across the bay)

3.2.2 The Council's Harbour Master and her small team are based at the North Pier Building. As well as covering their area of responsibility in Oban, this team also carry out harbour master duties at a number of other mainland and island assets in the OLI area. Furthermore, the Oban based marine Technical Officer will shortly be relocated from Albany Street to the North Pier Building as part of the ongoing office rationalisation project. Should the north pier assets and harbour limits be transferred then the Council would require to consider the contractual implications for staff in this process, in the context of TUPE, as well as the effective management and delivery of our remaining marine services both in the OLI area and across Argyll and Bute.

3.2.3 The North Pier Building also provides a useful meeting room facility which has and continues to be well used. As well as being available for internal use, the facility can be made available for external use. There is a lack of suitable meeting space in Oban, and while this may be addressed via the office rationalisation project, it is nevertheless worth bearing in mind.

3.2.4 Should the above noted recommendations progress, with either the Council or CMAL becoming the harbour authority for the ungoverned area of Oban Bay as well as their own current extents, with a view to exploring a Trust Port proposal to develop in the longer term as a potential second phase, then the public authorities would need to consider how best to accommodate any new group while that group effectively shadowed the operation. It is unlikely that the North Pier Building would provide sufficient space for such a purpose.

3.2.5 In terms of the existing harbour limits and extent of responsibility, the Council's understanding of position is as follows:

- The Council is the harbour authority in respect of the North Pier by virtue of the Piers and Harbours Order Confirmation Act 1896 ("the 1896 Order").
- The 1896 Order sets out the harbour limits which are verbally described and from those descriptions the bounds consist of areas immediately around the piers, and do not extend more widely into Oban Bay.

- The Council's powers to control operations in the Oban Bay area are limited. While they can regulate the anchoring and mooring of vessels etc. by virtue of the 1896 Order, that is within what appears to be a relatively limited area
- The Scottish Ministers can expand the bounds of a harbour as they see fit via a HRO and grant appropriate powers to any relevant harbour authority. However, the Ministers/Transport Scotland will be mindful of the interests of other bodies in the Oban Bay area, not least the existing harbour authorities. Before a HRO for Oban to constitute a new harbour authority and/ or extended its powers out into Oban Bay could be granted, there would require to be extensive consultation with and agreement from both Transport Scotland and other relevant local interests.

3.3 HARBOUR BOARD SITE VISIT

3.3.1 On 24 September 2021, members of the Harbour Board visited the North Pier. This site visit was provided to enable Members to be fully appraised of the assets at North Pier, and is part of ongoing member development for Harbour Board Members. The Harbour Board also visited the North Pier soon after the transit berth pontoon had been commissioned with the then Designated Person [DP] providing presentations setting out the responsibilities of both a Harbour Authority and Harbour Board.

3.3.2 During the September visit [under strict COVID protocols], Members observed the MV Ronjafisk a 2580 GRT, 70M long fish carrying Norwegian vessel with 4500 ton deadweight capacity berthing at the North Pier to take on board fuel, water and general supplies; small cruise ships calling into port to drop off guests and undergo a changeover ready for the follow cruise; inspected the Transit Berth facility; inspected the North Pier Building and facilities; spoke with the Harbour Master and her staff; and received a presentation from the Council's DP with input from Council officers.

3.4 OPTIONS APPRAISAL

3.4.1 Following the September meeting of the Harbour Board, Officers commissioned an independent third party, Caledonian Economics, to undertake an options appraisal. The options appraisal is appended to this report at Appendix One.

3.4.2 In respect of the Council assets at Oban North Pier, the conclusion from the Options Appraisal [Section 8, point 17] is that:

The central issue is that the assets are central to Oban, the area and the islands, and that future arrangements must contribute to long term growth of Oban and the islands it serves. For the time being, taken together, there are too many uncertainties around a proposed transfer of the assets for the Council to be able to say, with confidence, that such a transfer would represent Best Value. For this reason, it is recommended that the assets remain in full Council control at this time.

3.4.3 The options appraisal contains a final section [Section 9] which provides three outcomes to consider:

1. *Addressing the safety issues by bringing the waters under the management of a SHA as soon as possible is the top priority. Either of the two public sector options provides a quicker route to achieving this, and while any option has uncertainties around the timeline, the uncertainties are fewer for a public sector option.*
2. *The Trust Port concept is used throughout Scotland and could be applied in Oban. Before a Trust Port assumed SHA responsibilities, public stakeholders would require its proponents to demonstrate it would be transparent, accountable, sustainable and financially viable. They would also require that, within its constitution, the interests of island communities and the ferry operators that provide lifeline services to them are properly represented among with other stakeholders in line with legislation and guidance.*
3. *The Council's Best Value considerations are complex. However the overarching consideration is that the North Pier assets are central to Oban, and to the economic development of the town, its area and its communities. This includes the island communities. Before agreeing to any transfer of responsibility for those assets, the Council would need to be confident that a proposed future steward of the assets had a clear understanding of the role of the assets in that light, and had a credible vision and strategy for continuous improvement of the performance of the assets within the wider economic and social context. This is not yet in place.*

3.4.4 On the basis of the options appraisal, it is reasonable to conclude that, whichever option or options which provides a Statutory Harbour Authority within the shortest timeframe is safer and preferable than another option which will take longer to implement.

3.4.5 For the reasons stated in the options appraisal, it is recommended that the Council or CMAL progress with a HRO in order to provide for a solution at pace. That is not to say that there is any inherent reason why a Trust Port cannot be successful at a future point in time, as part of a second phase, but rather that a solution should be progressed and the Council or CMAL options provide a quicker and more certain route to addressing the current safety concerns and are therefore the best options available at this time.

3.5 CURRENT RISKS AND POSSIBLE NEXT STEPS

3.5.1 Whilst the OBMG have been successful in putting in place proportionate safety improvements/mitigation measures, the current situation would be improved if the ungoverned section of the Bay were to be formally governed with the enforceable powers of a Statutory Harbour Authority. The current risk in Oban Bay rests mainly with the MCA and the two existing Harbour Authorities: CMAL and ABC.

- 3.5.2 The 2018 proposal for CMAL becoming the HA with the Council remaining nested at North Pier would have provided a solution to cover the whole of Oban Bay. The Council were supportive of pausing that process to allow a Trust Port proposal to be developed. While it is regrettable that the Trust Port proposal has not sufficiently developed to allow it to progress at this time, what is clear is that time continues to pass without any solution being progressed.
- 3.5.3 There now needs to be a focus on progressing a harbour authority at pace. What is clear is that either ABC or CMAL appear to be best placed to progress a formal arrangement for the approaches which are currently not managed, within a reasonable timescale
- 3.5.4 That is not to say that the Trust Port option cannot be progressed at a future point as part of a second phase, subject to any proposal meeting the tests outlined previously in this report and at Appendix One.
- 3.5.5 Officers should now formally engage with CMAL through the OBMG in an effort to establish which of the two public bodies would be best placed to progress matters in order to achieve the positive safety impacts as quickly as possible.

4.0 CONCLUSION

- 4.1 Various organisations have different responsibilities for areas of Oban Bay, some parts of the bay are not part of the specific jurisdiction of any organisation and this situation can lead to confusion for users, with no organisation in sole control of the bay itself.
- 4.2 In an effort to provide a robust mechanism to compare the different possible options for the future of Oban Bay, Caledonian Economics were commissioned to undertake an Options Appraisal.
- 4.3 On the basis of the conclusions from the Options Appraisal, and bearing in mind that the imperative is to provide a solution to the safety concerns at pace, then the options of the Council or CMAL progressing matters are inherently safer in that they can be delivered in a shorter timescale.
- 4.4 That is not to say that the option of a Trust Port cannot progress as a second phase, subject to any proposal being able to meet the various tests noted in the Options Appraisal.

5.0 IMPLICATIONS

- 5.1 Policy – The Council's policy position remains that there are five possible options which could progress to manage the ungoverned sections of the Bay. If the recommendations in this report are accepted then the updated position will be that Options 4 or 5 should be progressed as a first phase.

- 5.2 Financial – any financial model for any a harbour authority should be self-financing and generate a working surplus. The Council would need to have confidence in a third party's model before transferring responsibilities.
- 5.3 Legal – there are distinct legal processes involved in the development of new local harbour legislation.
- 5.4 HR – TUPE could apply should a Trust Port be progressed as a future second phase
- 5.5 Fairer Scotland Duty:
 - 5.5.1 Equalities - protected characteristics – High level EqSEIA at Appendix 2
 - 5.5.2 Socio-economic Duty – none known
 - 5.5.3 Islands –Islands Impact Assessment – Appendix 3
- 5.6 Risk – the recommended actions and way forward in this report have been designed to minimise risk to the Council
- 5.7 Customer Service – the Council continues to engage with all relevant parties with a view to finding a solution

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APPENDICES

Appendix 1 – Options Appraisal Findings Report by Caledonian Economics

Appendix 2 – High Level EqSEIA - Oban Bay

Appendix 3 - Islands Impact Assessment