

## Oban Bay Options Appraisal

### 1 Background

The Council report<sup>1</sup> dated 2 September 2021 sets out the background and options for the future management of Oban Bay. The report explains the intention to bring to a conclusion the appraisal of options and determine a preferred option, including engagement with partners who have an interest in Oban Bay. The primary issue at hand is that different organisations have different responsibilities for different areas of the bay, and some areas are not in the jurisdiction of any organisation. This situation has the potential to lead to confusion and there remain concerns over safety of users.

The situation has changed little since 2018 when the Oban Bay Management Group (OBMG) reported<sup>2</sup> on the situation and presented a plan for 'Consultation for a Harbour Revision Order at Oban' with stakeholders and the wider community. The options then were broadly the same as currently being appraised, and it was pointed out that the operational models would be similar (in other words, the positive safety impacts would be equivalent).

At that time, the OBMG analysis indicated that two most promising options were for either the Council or CMAL to take on responsibility for the wider harbour area. These options were thought to be broadly equivalent, except that the Council option could take longer to implement. The trust port idea was also considered at this time.

The consultation ran over the summer of 2018. As reported on the Oban Harbour website<sup>3</sup>, there were 553 responses to an online survey (self-selecting sample), 474 of which were from respondents who identified themselves as 'leisure' users, and 165 (29.8%) as living 'in the Oban area'.

The consultation, as reported by the Council<sup>4</sup> found that:

- 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<sup>5</sup>.

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<sup>1</sup> Argyll and Bute Council Harbour Board, Oban Bay – Single Harbour Authority, 2 September 2021

<sup>2</sup> The Consultation for a HRO at Oban, presentation by Oban Bay Management Group 18 July 2018

<sup>3</sup> [http://www.obanharbour.scot/files/8715/3451/7419/Oban\\_Bay\\_Survey\\_Data\\_8\\_18.pdf](http://www.obanharbour.scot/files/8715/3451/7419/Oban_Bay_Survey_Data_8_18.pdf)

<sup>4</sup> Argyll and Bute Council Harbour Board, Oban Bay – Single (sic) Harbour Authority, 5 December 2019

<sup>5</sup> Q14 found that a Trust Port was thought to be the most suitable operator to apply for an HRO (347 respondents) with the Council second (84). Q15 found that 396 of respondents thought CMAL should not go ahead with an HRO to extend their SHA. Text responses indicate a general feeling that if CMAL were to operate the entire area, the interests of leisure users would be secondary to CFL as the operators of large vessels.

Respondents indicated strong support for the suggestion that a ‘Trust Port (run by a local board)’ would be the most suitable operator for the wider Oban Bay. In the course of this study, none of the professionals consulted disagreed with the principle that the creation of a Trust Port to take on the responsibility for the Bay is a logical and appropriate objective.

In order to explore the development of a Trust Port in more depth, the OBMG worked with the Oban Bay Stakeholders Group (OBSG) and other interested parties to identify the preferred means of bringing this about. To that end, the Oban Community Harbour Development Association (OCHDA) was formed, meeting for the first time in April 2019.

A subsequent consultation on the seaward limits for the area that would be managed by the new Harbour Authority was carried out by OCHDA in 2021.

## 2 Options for Consideration

Five options were presented for consideration in the Council Report of September 2021:

1. continue as at present. The Council’s report states that this is not sustainable and therefore should be formally discounted;
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<sup>6</sup>;
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.

Each of options 2 to 5 could reasonably be expected to address the safety concerns that have been raised. The Trust Port structure (options 2 and 3) is used throughout the UK and there is no obvious reason why it would not work in theory for the waters of and surrounding Oban Bay. This structure is being promoted by OCHDA.

It is noted that the 2014 report<sup>7</sup> commissioned by OBMG suggested that either Option 4 or 5 could be a ‘good starting point with the view of working towards a trust port’. The idea was supported during conversations with stakeholders. A similar conclusion was made in the OBMG presentation in July 2018: ‘If [a new trust port] can be progressed at a later date, CMAL and the OBMG will support its implementation...’.

## 3 Issues to Consider

In order to identify the preferred option from the Council’s perspective, several factors are considered in this study:

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<sup>6</sup> OCHDA clarified that their proposal is for the Trust Port to lease the pontoons, seaward faces of the North Pier, and three offices within the Harbour Master building.

<sup>7</sup> Development of Oban Bay Harbour Management Plan, 14<sup>TH</sup> July 2014, Fisher Associates

1. Best Value and Strategic Fit
2. Islands Community Impact
3. Structural Advantages
4. Pathway to Implementation

## **4 Best Value and Strategic Fit**

### **4.1 Strategic Fit**

The harbour and waterfront define Oban. They are the focal point for tourists and locals and the hub for its fishing and aquaculture sectors. They are the embarkation point for visitors travelling to and from the islands, whether tourists, public service providers, or islanders going about their daily lives.

The waterfront and adjacent areas have improved vastly in recent years, and partnership working between the Council and Oban Business Improvement District has provided investment in a range of improvements to public spaces and frontage.

Tourism and Aquaculture (among others) will be central to the new Rural Growth Deal (RGD)<sup>8</sup>. This will bring £50 million of Scottish and UK government investment plus at least £20 million from Argyll and Bute Council and key stakeholder partners to *“develop Argyll as an inclusive, sustainable, economically successful region”* and *“accelerate inclusive economic growth for the region”*.

The Transit Berths and North Pier are front and centre, physically, economically and commercially. They are, in every sense, strategic assets that provide a benefit to the local communities of Oban and the islands. Any proposals regarding their use, operation, development and maintenance have to be viewed in the context of the Corporate Strategic Asset Management Strategy as discussed later, and be shown to be transparent, accountable, sustainable and financially viable.

### **4.2 The Council’s Duty of Best Value**

The Local Government (Scotland) Act 2003 introduced a statutory framework for Best Value for local authorities. The Best Value duties are set out in the Act.

The associated guidance<sup>9</sup> sets out seven cross-cutting themes, and local authorities are expected to demonstrate a focus on continuous improvement in performance around each of these themes. The seven themes are:

1. Vision and leadership
2. Governance and accountability
3. Effective use of resources
4. Partnerships and collaborative working

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<sup>8</sup> Argyll and Bute Rural Growth Deal - Heads of Terms Agreement, February 2021

<sup>9</sup> Local Government in Scotland Act 2003, Best Value: Revised Statutory Guidance 2020

5. Working with communities
6. Sustainability
7. Fairness and equality

There is no black and white formula for determining whether a particular policy or action represents better value than another. Rather, the Council has to take a balanced view based on the themes, under the overall duty to secure continuous improvement in performance.

The Accounts Commission Best Value Assurance Report (May 2020<sup>10</sup>) made several findings and recommendations which are relevant to the future management of Oban Bay:

- Findings #7 – “... [make] greater use of the potential for engaging, enabling and empowering the communities of Argyll and Bute.”
- Part 3 (page 33) – “... put in place a robust options appraisal process to ensure that decisions support social and economic outcomes.”
- Part 3 (page 33) – “... as the Council embarks on the Rural Growth Deal (RGD) it needs to ensure it has robust processes in place to evaluate and successfully deliver projects, placing investment where it will best develop Argyll and Bute as a successful region”

Taken together and interpreting them in the context of the North Pier assets, one could reasonably infer that the Council would be behaving in a manner consistent with Best Value principles and the recommendations of the Assurance Report if it:

- continues to work with all stakeholders including the proponents of a Trust Port to find a long term solution that is aligned to long term strategic plans for the area and which meets the needs of the communities of Oban and the islands;
- before decisions to change existing arrangements are taken, ensures that any proposals brought forward are robustly challenged and tested to confirm that they are viable, sustainable, and would bring real social and economic additionality to the Oban area and the islands;
- if a decision is made to change the existing arrangements, continue to monitor and evaluate social and economic impacts in light of the business case and grants for the Transit Berths and North Pier building, RGD Heads of Terms and in future the business cases for individual projects within it.

#### **4.3 Best Value and the Current Management Arrangement at the North Pier**

If the overarching test of Best Value is the ability to demonstrate that an initiative can show continuous improvement, then there is evidence that the current management arrangements for the North Pier assets are achieving that. The March 2020 project

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<sup>10</sup> Accounts Commission Best Value Assurance Report on Argyll & Bute Council, May 2020

closure report<sup>11</sup> found that overall the economic performance of the North Pier Harbour Building and Transit Berth is exceeding the forecasts established in their Full Business Cases.

2020 and 2021 have been atypical years due to the pandemic, but the facilities were well used in summer 2021 when restrictions were lifted and there is every reason to think that this will be sustained and grow under the current arrangements.

#### 4.4 Council Corporate Asset Management Strategy

The Corporate Asset Management Strategy<sup>12</sup> sets out the Council's overall approach to management of its asset base. It states that:

- *“Argyll and Bute Council holds each of its assets as a resource to be used in the delivery of services and to support and contribute to its corporate objectives.”*
- and, *“...key properties are held for economic development purposes ... to support local employment, regeneration and business growth.”*

Proponents of the Trust Port concept have made it clear that they would wish to lease, not buy the assets. Nothing in the strategy specifically forbids the lease of assets to a third party, however the second bullet point above stresses the link between key properties and economic development, employment, regeneration and business growth.

The strategy also points out that the Council has a Statutory responsibility *“not to dispose of [surplus] land at less than the best consideration”* which in practice means not less than market value. The North Pier assets clearly are not 'surplus', and it is not clear under what circumstances a lease might be interpreted as a disposal, however in any case the 'no less than market value' principle should still apply, and the Council has engaged Graham + Sibbald to look at this point.

#### 4.5 Funding and Conditions of Grant Awards

##### 4.5.1 Development funding

The developments at the North Pier form part of a wider programme of developments in Oban which in turn are part of the CHORD <sup>13</sup>initiative.

The Transit Berthing Facility was funded by £1.5 million from the Council's CHORD allocation, £0.7 million grant from the Scottish Government Regeneration Capital Grant Fund (RCGF), and £0.3 million grant from Highlands and Islands Enterprise (HIE). The Harbour Master Building with its facilities for visiting sailors were paid for from the CHORD budget.

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<sup>11</sup> Oban, Lorn and Isles Committee, Oban: North Pier Harbour Building and North Pier Pontoons – Project Closure 11 March 2020

<sup>12</sup> Corporate Asset Management Strategy, Council Strategic Asset Management Board 25 Feb 2021

<sup>13</sup> CHORD - Campbeltown, Helensburgh, Oban, Rothesay, Dunoon

#### 4.5.2 Government Funding

The project to develop a facility for maritime visitors was instigated by a local community interest group, Oban Bay Marine, who for some years tried to progress the idea. Despite widespread public support and a clear need, the project was deemed not commercially viable and therefore that persistent market failure existed.

The RCGF application<sup>14</sup>, and wider justification for public sector provision of the services built on the existence of market failure:

- *“The Project makes a strong economic and social case for public sector provision and hence addresses that market failure.”*

The terms of the SG RCGF<sup>15</sup> grant and the HIE<sup>16</sup> grant explicitly preclude ‘disposal’ of the asset. The SG RCGF requires that:

- *“The Grantee shall not, without prior written consent of the Scottish Ministers, dispose of any asset funded, in part or in whole, with Grant funds within 15 years of the asset being acquired or developed.”<sup>17</sup>*
- and *“...the Scottish Ministers shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale”.*
- and *“...where the grantee subsequently transfers ownership, they must place a clawback provision and security on the property to ensure this condition can be met”*
- and *“The Grant is made to enable the Grantee to carry out the Project”<sup>18</sup>.*

The HIE grant includes the following conditions<sup>19</sup>:

- *“The Obligant shall not without the prior written consent of HIE discontinue or dispose of the Project or any substantial part of it or make any alteration that is in the reasonable opinion of HIE a material alteration to the character of the Project.”*
- *“The Obligant shall not without the prior written consent of HIE sell or dispose of their property or buildings or sell or dispose of or remove any of the plant, equipment or other assets used in connection with the Project and which have been acquired or improved with the benefit of the Financial Assistance.”*

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<sup>14</sup> RCGF 2017/18 Second Stage Application Form Oban Maritime Quarter – Transit Berthing Facility

<sup>15</sup> RCGF-16-05 - Argyll and Bute Council - Oban Maritime Quarter - Offer

<sup>16</sup> HIE Argyle (sic) Bute Council Undertaking - Execution Version

<sup>17</sup> Article 6

<sup>18</sup> Article 2

<sup>19</sup> Article 1 parts (3) and (4)

The terms 'sell, dispose, disposal, transfer ownership, alteration' are used at various points in the grant award conditions. These terms are not precisely defined, but it seems clear that when the grants were made, the expectation was that responsibility for control of the asset, and the benefits of asset, would stay in the public sector. Should the Council wish to lease the assets to a third party, it should consider taking professional advice on whether (or under what circumstances, terms and length) a lease could be interpreted as a disposal or a material alteration of the character of the project.

The Council must seek the consent of HIE and the Scottish Ministers before agreeing to such a change. In response, and in addition to the interpretation of 'disposal', HIE and the Scottish Ministers could view a proposal to transfer control of the project assets to a private third party as undermining the original 'market failure' justification for public sector intervention. They can be expected to:

- seek assurances that the Council, after carrying out suitable due diligence and investigations, was satisfied that the incoming operator was (or would be at the point of execution) financially sound and sustainable. Presumably this would also be conditional on the Harbour Order being in place;
- require a binding commitment on the operator to properly maintain and insure the assets<sup>20</sup>;
- seek evidence that the operator is committed to continuing to deliver the positive social and economic impacts set out in the business case, for example in the form of a long term strategic development plan or port master plan<sup>21</sup>;
- possibly change the terms of the grant/grants because the controlling party and beneficiary (i.e. the recipient of revenues from the use of the assets) would become a private third party, not the Council; or,
- in the most extreme case, ask for the grant(s) to be returned.

#### **4.5.3 Council Funding and Budget Impact**

The CHORD capital fund (used to pay for part of the Transit Berth and all of the Harbour Master Office and facilities) was borrowed from the Public Works Loans Board (PWLB) under the Prudential Borrowing rules. The rules surrounding the treatment of PWLB loans and Council Treasury management are complex and require specialist interpretation.

The Council would need to confirm whether any proposed changes to the management, maintenance and control arrangements of the assets would have any knock-on impacts on the Council cost of borrowing (or ability to borrow). It would also need to confirm whether the accounting treatment of the asset might be affected, which could have other budgetary impacts.

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<sup>20</sup> this requirement is also set out in the Modern Trust Ports for Scotland Guidance for good governance, sections 3.2.5 and 3.4. TransportScotland

<sup>21</sup> *ibid* sections 3.1.3 and 3.1.4

The Council's Oban operation is a major part of its piers and harbour portfolio, It would need to consider the potential loss of economy of scale and hollowing out of its operations in terms of the overall manpower and resource available to provide services across the entire portfolio.

If the Trust Port option progresses, the Council would need to consider, develop contingency plans, and weigh up the ongoing financial risk for, a scenario where an incoming operator failed. Whilst Transport Scotland would address the failure of the SHA duties, the Council would be in the position having to take responsibility for the facilities back into its own hands after a period when the operator had struggled to meet its obligations. While good initial due diligence and ongoing performance monitoring can minimise the chances of this happening, the operator would bear demand, revenue and operating cost risks. As we have seen during the last two years, these risks are real.

#### 4.5.4 Conclusion

The overall message is that in the event that the Council signed up to a transfer of responsibility for the assets (on whatever basis) to a new Trust Port it would need clearance from the grantors, including clarity on whether the terms of the grants might change. The grantors might be reluctant to provide this clarity on a 'what if' basis.

The Council would also need to understand how a proposed transfer of responsibilities might impact on their Treasury, accounting, capital and revenue budgets. This is complex, but whatever is the case, the terms of a lease would need to reflect the overall cost to the Council, not just a 'market value' rental.

Lastly, the Council may need to consider having business continuity plans in place to cope with a scenario where an incoming operator failed and the Council took back these strategic assets in the middle of Oban.

#### 4.6 Funding of Future Developments

The idea of an extension to the North Pier has been discussed for years and in 2016 a Concept Design Report was produced<sup>22</sup>. This placed North Pier extension as part of the Council's wider vision for regeneration, and complementary to the Transit Berthing Facility. It highlighted growth in the marine tourism sector and envisaged the North Pier extension as catering for commercial vessels including cruise liners which currently have to anchor in deeper water and ferry passengers to land using tenders. This has been identified as a safety risk.

At the time it was envisaged that it would be delivered (and paid for) by the public sector within the Lorn Arc programme. The focus of that programme has since moved elsewhere, but the North Pier Extension could be a good fit for funding as part of the new RGD<sup>23</sup> (*Tourism – Creating a World Class Visitor Destination* is a major theme) and

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<sup>22</sup> North Pier Extension, Concept Design Report, Fairhurst, September 2016

<sup>23</sup> Argyll and Bute Rural Growth Deal - Heads of Terms Agreement, February 2021



possibly also under the forthcoming 'Levelling Up' initiative. The Council would also be able to access its own capital allocation and PWLB borrowing.

Cost estimates have not been updated since the 2016 report, but it is likely to be above £5 million in today's terms.

At this early stage it is difficult to say whether, if the North Pier assets were being leased to a third party, all or any of these sources of funding would still be open to the Council. However, public bodies are likely to have access to a wider pool of resources (grants and low cost PWLB borrowing) than a private entity such as a Trust Port, and already have a wider team of professionals with experience of grant funding application.

If a North Pier extension it is to happen, public funding will be key. Trust Ports elsewhere are developing based on the strength of their balance sheets with development loans secured against physical assets. In most instances as the asset is built, financing up to an agreed proportion of the 'work in progress' asset value becomes available, with grant funding making up much of the difference.

#### **4.7 State Aid and Fair Competition**

The transition period for the European State Aid laws is coming to an end and its replacement, the Subsidy Control Bill is making its way through parliament.

At the time of the RCGF application public funding for the project was not considered to be State Aid on the basis that it would be *"a Council owned asset and remain so as part of the marine estate and operational functions of the North Pier."*

It went on to say that *"...any interested party can apply to run the facility under license i.e. no distortion in competition would be anticipated as a result of this public sector investment."*

Taking this at face value, it appears that a lease of the facilities to a third party such as a new Trust Port (as a licensee running the facility) would be acceptable in terms of the State Aid position at the time the grant award was made. However specific legal advice would be needed to confirm this and to advise on any implications arising from the Subsidy Control Bill when enacted, were a lease to be under consideration.

The same question would arise and have to be answered if the North Pier Extension went ahead and public funds were used.

Throughout the history of the project, it has been highlighted that there are potential synergies with marinas in the areas (including Kerrera, Dunstaffnage and Croabh), but also potential conflicts. It is understood that one of the original reasons the Transit Berth Facility concept was for short visits only was to minimise direct competition with local marinas who provide longer stay options.

#### 4.8 Strategic Fit and Best Value – Discussion and Conclusions

When considering whether to transfer responsibility for any of the North Pier assets, the Council would need to consider the fundamental nature of the assets. They are ‘strategic’ in every sense: they are physically and economically in the centre of the field of view of one of the most important centres for tourism in Scotland. The Council would need to be very confident that the assets would be maintained and operated properly, not only in the literal sense of physical maintenance of structures, but also in the broader sense of the assets as the lynchpin of an area of great economic importance.

The Council would also need to consider recommendations of the Accounts Commission report in respect of Best Value, the terms of the funding for the recent developments at the North Pier, and the potential impact on the North Pier extension and future developments at the site. Points to note are:

1. The transfer of responsibility to a community-driven Trust Port Authority on a ‘market value’ lease basis would not be obviously counter to the Best Value principles, and would align with the community-related aspects of Best Value. However, before agreeing the Council would need to be able to demonstrate that it had carried out a robust options appraisal and was satisfied that the organisation concerned:
  - a. had demonstrated how they would implement their commitment to engagement, transparency and accountability, to reflect the interests of all stakeholders including communities on the islands that depend on Oban for lifeline services;
  - b. was constituted and operated in a way that guaranteed genuine and meaningful involvement and control of the local communities of Oban and the islands alongside other stakeholders;
  - c. had a demonstrable record of effective operational, financial and risk-management and was on a financially secure footing, so that the risk was minimised of the Council having to step back in and rescue the asset in a distress situation;
  - d. was obliged to maintain and insure the asset to a proper standard<sup>24</sup>;
  - e. was obliged to manage and operate the asset so as to deliver (and continually improve) on the social and economic impacts;
  - f. had a long term plan to develop the port as a strategic part of the town’s economic infrastructure<sup>25</sup>.
2. It is reasonable to assume that the original grant funders (HIE and Scottish Ministers) would expect similar assurances before agreeing to any change of responsibilities for the North Pier assets which they supported financially, and it is possible they may seek to change the terms of the support. In this scenario the Council would need to be able to demonstrate (as part of its Best Value

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<sup>24</sup> as set out in the Modern Trust Ports for Scotland Guidance for good governance, section 3.4

<sup>25</sup> *ibid* section 3.1.4

case) that it was no worse off than it would otherwise have been, presumably by passing additional costs on via the lease. The same would be true of any impacts arising from the use of PWLB borrowing.

3. With respect to a future North Pier Extension:
  - a. a future business case would be made more complicated if the site were leased to a third party at the time compared to it staying in full control of the Council. This is because the business case would need to consider lease-related interface issues such as rights of access to carry out works, operational impacts, loss of revenue and so on;
  - b. at this stage it is only possible to speculate on the terms of any future grant funding (whether RGD, 'levelling up' or another source), but it is likely that they would contain similar conditions to the current HIE and RCGF grants, i.e. on the basis that the Council is the applicant and that they own and manage the asset. Furthermore, only the Council would have access to low cost PWLB borrowing to meet costs not covered by other grants and funders;
  - c. the outcome that must be avoided would be one where the asset were leased to a third party, and as a result a proposed development which would provide wider economic benefits to Oban was not eligible for grant funding and therefore presumably either not go ahead, or have to rely on costlier commercial finance.

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.

However, this is not to say that such a transfer should be ruled out forever, if a Trust Port is ultimately determined to be a viable option. A situation is foreseeable where:

- a new Trust Port Authority has established a track record of successfully delivering its core responsibilities of marine safety and vessel management on a financially sustainable basis;
- the new Trust Port Authority has published a long term strategic growth plan or port master plan for the development of the port as a strategic part of the town's economic infrastructure and aligned with the RGD principles;
- there is clarity on any financial consequences to the Council of the arrangement, so that the lease charges are set at a level that leaves the Council no worse off;
- the parameters of the North Pier Extension are better understood, including the costs, development programme, and funding terms.

## **5 Islands Community Impact**

### **5.1 The Islands (Scotland) Act 2018**

The Islands (Scotland) Act 2018 places specific duties in relation to island communities on certain public authorities referred to as 'relevant authorities'. These include the requirement to prepare an island communities impact assessment in relation to a policy, strategy, or service, which, in the authority's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions. Oban is the point of embarkation for many island ferry services and the landing point for islanders going about aspects of their daily lives.

Argyll and Bute Council, Caledonian Maritime Assets Limited, Crown Estate Scotland, David MacBrayne Limited (i.e. CFL) are all listed as relevant authorities under the Act, Trust Ports are not.

### **5.2 Background**

Oban is the hub for lifeline transport connections to the islands, primarily Tiree, Coll, Kerrera (from Gallanach and which would fall inside the limits currently proposed for a Trust Port SHA), Lismore (for which Oban provides the only vehicle ferry link), and Mull (for which Oban provides the main vehicle ferry link), and also Colonsay, Barra and South Uist (winter).

Any changes to the arrangements at Oban could have implications to the islands and for this reason the impact on the islands should be considered in an Island Community Impact Assessment in a form consistent with the Islands (Scotland) Act 2018. This can be done at a high level at this stage, although a more detailed assessment may be needed in due course if it is felt that impacts could be significant.

In the course of carrying out this study, the community councils in Coll, Lismore, Mull and Oban (covering Kerrera) and Tiree were contacted and invited to discuss. The Scottish Islands Federation and Isle of Kerrera Development Trust were also contacted. Of these, representatives from the following provided views:

- Oban Community Council;
- Tiree Community Council;
- Scottish Islands Federation.

### **5.3 Islands Impact – major routes**

The main concern for islanders is the protection of the lifeline ferry services which CFL is legally bound to provide. Any development that would improve ferry reliability, frequency and timekeeping would be seen as positive, and any development that risked eroding these or led to price increases would be strongly resisted.

It was pointed out that the longer routes (notably the Oban-Coll-Tiree service where there is no alternative) are already stretched. The services are at the mercy of the weather, and 2020 and 2021 have been particularly difficult for this route due in various ways to the pandemic and problems with vessels both on the route itself and elsewhere in the network.

It was also pointed out that working hours regulations and restrictions on the availability of back-up crews meant that even a small delay in berthing a vessel can result in a later sailing being cancelled because the crew is out of hours.

Despite these challenges and their impact on the daily lives of islanders, there is a general sense of goodwill towards CFL and appreciation of the services they provide under sometimes difficult circumstances.

#### 5.4 Islands Impact – other users

On the inshore islands, Kerrera and Lismore, private and small business boat users enjoy the freedom to travel to Oban at will. This is part of the fabric of normal life on the islands and any changes that restrict this freedom unduly (whilst recognising that safety is paramount) or add cost, will be unwelcome.

Similarly, services bringing school pupils to and from the islands to Oban must not be affected.

### 6 Structural Advantages

The structural advantages and disadvantages of the options under discussion were laid out in the OBMG Consultation Presentation in 2018. Little has changed in the intervening years in terms of the structural pros and cons. For the record, the options and OBMG’s assessment of them are shown below.

	Extend Argyll and Bute Council’s harbour area	Extend CMAL’s harbour area	Establish a new trust harbour	A joint (hybrid) arrangement between CMAL and the Council
Conserve the environment	✓✓	✓✓	✓✓	✓✓
Manage marine incidents	✓✓	✓✓	✓✓	✓✓
Govern effectively	✓✓	✓✓	✓✓	XX
Act as a single point of contact for users	✓✓	✓✓	✓✓	✓✓
Cost effectiveness	✓✓	✓✓	XX	XX
Timely implementation	XX	✓✓	XX	XX

Since then the hybrid arrangement has been ruled out, and the consultation which followed found strong support for the creation of a Trust Port for Oban which was described in the consultation survey as 'run by a local board'.

The proponents of the Trust Port initiative, as volunteers, have done an enormous amount of work in developing the case. Their case has two central themes:

- a Trust Port is an independent statutory body, governed by its local legislation, run by an independent board who manage the assets of the trust for the benefit of stakeholders;
- a Trust Port operates in a commercial environment with no direct public funding and compete in the open market. There are no shareholders and surpluses must be used to support the long term viability of the port.

The precise definition of who the 'stakeholders' would be built into the Trust Port constitution, and is expected to include port users, the local community, the local authority, employees and their representatives, related interest groups, central government, local and regional businesses<sup>26</sup>. Future Generations are described as being the ultimate stakeholders in the Scottish Government guidance.

The interests of these groups is the guide by which Trust Port boards direct the port, and boards must, therefore, strike a balance that respects the interests of all stakeholders in achieving the objectives of the port as an independent entity. The description of a Trust Port as being 'run by a local board', as it was described in the 2018 consultation, could be interpreted as meaning 'a board of locals'. The local community, as explained above, is only one among a diverse group of stakeholders.

The mechanism by which stakeholders have a say in the operations, appointments of trustees and application of surpluses is quite different from, for example, a typical community development trust (where the Membership is often drawn from a specific geographic area and who have a direct say in the appointment of trustees from among them). It is understood that the proposals are that trustees would be remunerated and selected by an interview panel made up of representatives from a range of relevant public and private bodies and community groups.

This compares to the Council which has a direct system of local democratic accountability and CMAL/CFL as companies owned by the government and accountable on that basis. Also, the Council, CMAL and CFL each has a duty to consult island communities on major issues under the Islands (Scotland) Act 2018. The Act does not cover Trust Ports.

Unlike the Council, a Trust Port is liable to pay corporation tax on profits. CMAL and CFL are also liable for tax on profits.

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<sup>26</sup> Modern Trust Ports for Scotland Guidance for good governance, section 1. Transport Scotland and OCHDA Document G2/T9

While Trust Ports have the power to borrow commercially up to specified borrowing limits set out in their Harbour Order (and many Trust Ports do), as a private entity this would be subject to the credit conditions and securities defined by the lender, and the cost of finance will be higher than a Council can obtain from the PWLB. This point is discussed in more detail later.

In conclusion, each of the options has its structural advantages and disadvantages. The single-purpose nature of a Trust Port, the opportunity to 'bake in' stakeholder representation mechanisms, and the principle of retaining surpluses within the port are clearly appealing aspects of Trust Ports.

On the other hand, the retention of surplus already happens under the current arrangement, albeit across a wider portfolio of locally held assets where risk is shared and managed. Similarly, the stakeholders in a port are a large and very diverse group, and the local community of Oban (people and businesses) will only be one voice among many. This compares to a Council which has a direct democratic link between the community and the decision making body through elected representatives sitting on constituted Boards with transparent responsibilities and accountabilities for the local area and for harbour services.

## **7 Pathway to Implementation:**

### **7.1 Stage of Development and Completeness**

The process for applying for a Harbour order is outlined in Annex B of the Transport Scotland guide to Harbour Orders<sup>27</sup>. Any submission requires careful preparation because it will be subjected to detailed scrutiny before a recommendation can be made to Ministers. Legal advice would be needed regarding how the duties to consult island communities that lie in the Islands (Scotland) Act 2018 should be discharged within Harbour Order process.

The OCHDA volunteer group, as proponents of the Trust Port, have produced an impressive amount of material in preparation for a Harbour Order application. Much of this is derived from information provided by the existing SHAs in Oban, OBMG and drawn from material published by Transport Scotland. That said, a great deal of work remains to be done. In the course of this study we have not seen a clear plan which identifies the activities, expertise, resources and finance needed to compile the application and carry out the statutory steps (including public consultation) leading to a decision and a Harbour Order being executed from any of the potential applications.

This process will be expensive. Both the Council and CMAL have the in-house resources, expertise and access to finance needed to progress an application without needing to go through a fund raising stage. In the case of a Trust Port application, we were told that the necessary funds are available when needed (from private or 'crowd-funded' sources) but neither the estimated amount required nor details of the sources, are known.

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<sup>27</sup> <https://www.transport.gov.scot/transport-network/ports-and-harbours/harbour-orders/>

It is natural that the application and approval process will be more complex for a Trust Port. Whereas either CMAL or the Council would be applying on the basis of extending duties that they already successfully discharge, a Trust Port would be a completely new legal entity, and as such would be expected to demonstrate that it will be a robust and sustainable steward of the duties that would be bestowed upon it by the Scottish Ministers. Some of this is already covered in the summary business case prepared by OCHDA<sup>28</sup> and supporting documents (notably the detailed papers on governance and harbour limits), but a lot of work is still to be done covering:

- **Strategy and Business Development Plans:**
  - long term strategic growth plan or port master plan for the development of the port as a strategic part of the town's economic infrastructure and aligned with the RGD principles;
  - plans to deliver meaningful economic and social impacts in line with its constitution;
  - its place as a development partner in the wider local and regional economic development ecosystem.
- **Contractual/commercial structure:**
  - proposed VAT status;
  - is a charity/holdco/trading co structure is envisaged/permitted;
  - tax minimisation strategy.
- **Detailed financial forecasts demonstrating long term viability/sustainability covering:**
  - income estimates by vessel type (private leisure/tourism business/commercial/ferry etc) including monthly and seasonal variations and forecast growth scenarios;
  - monthly and seasonal expenditure estimates backed up by actual estimates/quotes as far as possible. Note that Council costs may not be comparable because of the challenges in separating overheads, Council bulk/special purchasing terms, superannuation and personnel costs and so on;
  - the approach to maintaining and insuring the assets. This is likely to require an allowance for routine inspection and maintenance, a maintenance reserve to be built up to cover periodic planned maintenance and/or replacement of major items, and insurance policies that cover other liabilities. These are currently shown as a provision in the estimates, but there is no explanation of the level of reserves thought necessary or how they will be built up;
  - initial and ongoing working capital requirements (including an explanation of how this will be financed and evidence that the capital is available/committed);
  - financing requirements to cover fixed assets and similar cost such as office equipment, communication/tracking/surveillance equipment,

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<sup>28</sup> an outline has been prepared by OCHDA 'OCHDA\_Business\_Case\_Summary.pdf' October 2021. It is noted that this, and other supporting documents including on Governance, Board Structure and Staffing have begun to address some of these issues.



- marine safety equipment, vessels (for example a RIB if an on-water presence is required);
- forecast annual accounts including tax computations and VAT cashflows
- **Organisation and staffing** - number of staff, roles, qualifications/experience, recruitment plan, TUPE implications. This will need to tie in with seasonal variations and growth forecasts.

Regulatory operational aspects will also need to be addressed including:

- **Vessel Traffic Management Assessment** - Under the Harbours Act 1964, a SHA has powers and duties within its port limits. Specifically, within the context of Vessel Traffic Management (VTM) there is a responsibility for Harbour Authorities to establish the need for a Vessel Traffic Services (VTS) or provision of Local Port Services (LPS) by means of a Formal Risk Assessment (FRA) into the safety of navigation. This assessment is required by any port or harbour that states it is compliant with the Port Marine Safety Code and follows the advice provided in the Maritime and Coastguard Agency's (MCA) Marine Guidance Note (MGN) Number 401 (MCA, 2018). The FRA process follows a number of guidance notes issued by the International Maritime Organization (IMO) and the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA). These are listed in the Appendix.
- **Pilotage Assessment** - All SHAs have a responsibility under the Pilotage Act 1987 to assess if a Pilotage Service is required in the interest of marine safety. The Pilotage Act, Section 2, states:

*"Each competent harbour authority (CHA) shall keep under consideration:*

- a) whether any and, if so, what pilotage services need to be provided to secure the safety of ships navigating in or in the approaches to its harbour; and*
- b) whether in the interests of safety pilotage should be compulsory for ships navigating in any part of that harbour or its approaches and, if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships".*

This means that a CHA has a duty to assess its pilotage services; this assessment must include the area and circumstances in which Pilotage Directions apply. Under Section 7 of the Pilotage Act, a CHA must specify to which ships they apply and the area and circumstances in which they apply, which is also included as a requirement in the Port Marine Safety Code (DfT, 2016). A requirement for CHAs is the publication of directions, communicated through the publication of Pilotage Directions. The assessment should also cover the authorisation of pilots and the granting of Pilotage Exemption Certificates (PECs). Specific references can be found in the Appendix.

- **pollution control** – it is understood that the proponents of a Trust Port intend adopting the pollution plan currently in place and operated by OBMG. This has

been approved by MCA and it is assumed that existing SHAs and any future SHA would continue to fulfil their responsibilities in this regard, working with SEPA and other stakeholders as required.

## **7.2 Implementation Timescales**

Various experts interviewed during the course of this study have indicated – as a working estimate - that a well-resourced organisation should be able to obtain a Harbour Order in around 18 months, provided no problems are encountered during the statutory consultation stage.

On this basis, with a fair wind either the Council or CMAL/CFL should be able to have a new Harbour Order in place in time for the 2023 sailing season. As noted in 2018, because marine assets are CMAL's core business, they might be able to make faster headway than the Council.

Because the task of developing an application is greater, because of the need for a fund-raising stage, and because the process of considering an application will be broader, it is improbable that a Trust Port could achieve a Harbour Order within the same timescales.

In addition to the various business planning and regulatory activities described in the preceding section, there would also be a stage of organisational development, capitalisation, recruitment and selection of Board, recruitment and selection of staff, and mobilisation of all of these. This is all time-consuming work.

Assuming it would be sensible to avoid a change to the management arrangements during the summer sailing season, therefore the earliest a Trust Port could assume SHA responsibilities would be in time for the 2024 sailing season and 2025 might be a more realistic target.

## **7.3 Development and Implementation Uncertainties and Risks**

Any process of planning and implementing new organisational arrangements has uncertainties and risks. Many of these are common across all the options, for example a resurgence of Covid, a major marine incident, or the effect of the restriction period preceding elections at local, Scottish and UK levels.

Others are more specific to the options on the table and the more complex the application, the greater the potential risk of delay.

In 2018 it was thought that the CMAL/CFL option would be the quickest to implement, but this option, and any option, would go through the statutory consultation and the concomitant possibility of objections being raised which could slow the process.

## **7.4 Financial Analysis and Assumptions**

OCHDA, as proponents of a Trust Port, have prepared a high level financial summary of annual revenues and costs based on forecasts of vessel movements and drawing on a number of sources including Council budgets and OBMG estimates. They acknowledge that additional work is needed to test the robustness of the Trust Port viability and highlight that the figures covering revenue maintenance of the pier and pontoons, the creation of a capital fund for investment and repairs and rental payments to the Council are provisional amounts<sup>29</sup>.

The financial summary is not a cashflow forecast or forecast accounts and does not take into consideration tax or timing of revenues and expenditure. Nor does it appear to consider development and mobilisation costs, or allow for procuring capital assets.

Headline vessel movement numbers from the report are:

- total vessel movements exceed 32,000 transits per year;
- total vessel movements to/from the North Pier and Pontoons are over 17,000 per year;
- there are more than 10,000 scheduled CFL ferry movements per year;
- activity is seasonal. Analysis of the records for one of the peak summer months confirms that the patterns which are visible on an annual scale are even more clearly defined during the peak season, reflecting both the popularity and seasonal pattern in the use of the North Pier Pontoons. More than two thirds of vessel movements within the Harbour during the peak season are to or from the combined North Pier facility.
- There are more than 15,000 'large vessel' movements in the harbour each year, two thirds of which are the CFL ferries.

A summary of the figures on a conservancy-only basis and including the North Pier assets is shown below.

	Conservancy and NP	Conservancy only
<b>Turnover</b>	697,700	375,700
Admin and Cost of Sales	-650,300	-371,600
Other operating income	0	0
<b>Operating Profit</b>	47,400	4,100
<b>Operating margin</b>	7%	1%
Interest receivable	0	0
Interest payable	0	0
<b>PBT</b>	47,400	4,100

As stated above, the assumptions can generally be traced back to Council budgets or OBMG estimates, and some have been adjusted on the basis of other information. It would be part of the normal business planning process for confidence in these estimates to increase as more information becomes available. It would also be normal

<sup>29</sup> Conservancy charges and financial summaries Including a review of vessel movements in Oban Harbour. OCHDA. August 2021

for the proponents of such a venture to develop a financial model (cashflow and accounts) that will allow the stakeholders and Board to see the full financial picture in terms of long term viability and capitalisation needs.

Before entering into a commercial relationship, especially so with a fledging private entity, the Council would be acting prudently if it were to seek independent verification of the inputs and calculations from a suitably qualified port operations specialist, and of the accounting and tax assumptions from a suitable firm. It is likely that Transport Scotland would seek a similar independent view before approving a Harbour Order.

As noted elsewhere in this report and highlighted in the Transport Scotland guidance, proper planning and provisioning for planned and unforeseen maintenance of the assets is of particular importance.

## 7.5 Comparators – other Trust Ports

The initial financial projections for a Trust Port estimate an operating surplus (pre-tax) of £47,400 (approximately 7% of gross income of £697,700).

For guidance, recent accounts of established Trust Ports were reviewed. Direct comparability is always difficult but the broad profitability ranges observed are useful in guiding future development of the Trust Port business case.

Extracts from their Income and Expenditure Accounts are set out below:

		Aberdeen £000s			Stornoway	
<u>I&amp;E</u>		<u>2020</u>	<u>2019</u>	-	<u>2019</u>	<u>2018</u>
<u>Extracts</u>						
<b>Turnover</b>		33,051	38,041		3,928,533	3,576,145
<b>Operating Margin</b>		51.1%	56.3%		22.7%	13.5%
<b>Surplus/profit after tax</b>		11,934	15,807		613,654	339,387
<b>Net profit margin</b>		36.1%	41.6%		15.6%	9.5%
		<b>Scrabster*</b>			<b>Inverness#</b>	
<u>I&amp;E</u>		<u>2020</u>	<u>2019</u>	-	<u>2020</u>	<u>2019</u>
<u>Extracts</u>						
<b>Turnover</b>		3,912,983	3,917,472		1,474,239	1,829,372
<b>Operating Margin</b>		26.6%	29.6%		13.8%	21.3%
<b>Surplus/profit after tax</b>		788,270	930,589		270,806	403,990
<b>Net profit margin</b>		20.1%	23.8%		18.4%	22.1%

\* Scrabster has shown a significant loss for the year to 31 March 2021, in part due to the pandemic.  
# Inverness Surplus/Net Profit Margin are pre-tax figures

These accounts show a range of operating margin between 56% and 13%. Whilst there are contingencies built into the cost side presented in the financial report, the overall operating margin of 7% looks slim by comparison and further modelling should include

sensitivities to provide assurance that a new Trust Port could survive the impact of increased or unexpected running costs.

A summary of net and fixed assets of the other Trust Ports reviewed are included in the table below:

<b>Balance Sheet Extracts</b>	<b>Aberdeen</b>	<b>Stornoway</b>	<b>Scrabster</b>	<b>Inverness</b>
	31/12/2020	31/12/2019	31/03/2020	31/03/2020
<b>Fixed Assets incl Assets under Construction</b>	£340.7m	15,601,518	33,999,433	10,870,972
<b>Investment Properties</b>	£31.5m	1,425,100		
<b>Net Assets</b>	£256m	7,969,547	12,354,903	9,303,633

The financial report recognises the need for further financial forecasting with discussion over access to the North Pier assets being highlighted as a critical path item.

Other Trust Ports borrow commercially, for example part of the financial package for the Aberdeen Harbour is provided by EIB, secured against the assets of Aberdeen Harbour. Likewise, Scrabster has long term borrowings secured over land and buildings owned by the Harbour Trust.

It is recommended that future modelling is over a sufficient number of years to incorporate the lifecycle of the North Pier assets (regardless of whoever is ultimately responsible their maintenance) and that the intentions for the Balance Sheet are made clear as this will include any potential Capital Fund/Reserving, indicate Working Capital sufficiency and dictate a new Trust Port's ability to borrow commercially to finance future developments.

## 7.6 Conclusions – Implementation Pathways

Both the Council and CMAL/CFL are capable of taking on the role of SHA for Oban at relatively short notice. They already do so for parts of Oban Bay and elsewhere on the West coast, and in the course of this study both have indicated that they would be prepared to do so for the wider area if required.

While all applications for a Harbour Order would be subjected to the same level of scrutiny before being approved, it is self-evident that an application from a new private organisation will be subject to broader-based examination than an application from an existing government-backed public body that is already performing similar functions in the area.

In the case of a proposed Trust Port, in addition to the regulatory operational aspects, the applicant will be expected to demonstrate that the proposed Trust Port would be financially robust, that its governance structure would be sustainable in the long term, and that sound succession plans will ensure that its board has access to the necessary range of skills and experience, whilst remaining fresh, diverse and open to new ideas. It will be expected to demonstrate (especially to the community of Oban) that claims of community participation are genuine and that mechanisms are

enshrined so that the community of Oban would always have a meaningful say in important decisions including board representation.

For the above reasons, it is clear that an application from a new organisation will take longer to develop - and therefore to be considered and approved – than from an existing public sector service provider.

Claims that there is local resistance to CMAL/CFL becoming the Harbour Authority for the Bay seem to stem from the consultation carried out in 2018. Some stakeholders thought this public resistance would be a very significant barrier to a successful statutory consultation on a CMAL/CFL Harbour Order proposal.

Taking all the above into account, whilst in theory the quickest path to securing the required safety improvements would be for CMAL/CFL to progress a Harbour Order (as indicated in the 2018 report), in practice the Council may have a smoother passage through the statutory consultation and approval processes.

The following section describes an approach which could achieve the positive safety impacts as quickly as possible while supporting the development of a Trust Port as a possible long term permanent solution.

## 8 Conclusions

1. All the stakeholders agree that the status quo is not an option. While a number of proportionate safety improvements have been made in response to previous risk assessments, any further improvements would require the legally enforceable powers of a SHA covering Oban Bay and its approaches.
2. All the stakeholders agree that the principle of a Trust Port for Oban is sound, subject to any Trust Port demonstrating that it could be transparent, accountable, sustainable and financially viable. Evidence from around the country demonstrates that many Trust Ports are viable, vibrant, organisations that have a positive impact on their local communities. They are generally profitable and have sound balance sheets.
3. Before a Harbour Order is approved, Ministers (advised by Transport Scotland) will expect its applicant (whether Council, CMAL/CFL or the proponents of a Trust Port) to be able to demonstrate convincingly that its proposals are safe and effective from an operational perspective, and viable and sustainable from a financial perspective.
4. From the operational perspective, the options are similar. Each would have to comply with the same standards and regulations to become a SHA. This would include pollution control plans such as those approved by MCA that are already in place.
5. Both the Council and CMAL/CFL are capable of taking on the role of SHA for Oban at relatively short notice. They already do so for parts of Oban Bay and elsewhere on the West coast, and both have indicated that they would be prepared to do so for the wider area if required.
6. While all applications for a Harbour Order would be subjected to the same level of scrutiny before being approved, it is self-evident that an application from a new private organisation will be subject to broader-based examination than an application from an existing public body that is already performing similar functions in the area, and that such an application would take longer to prepare and longer to assess.
7. Taking all the above into account, whilst in theory the quickest path to securing the required safety improvements would be for CMAL/CFL to progress a Harbour Order to assume responsibility for the entire body of water, in practice the Council may have a smoother passage through the statutory consultation and approval processes.
8. Either way, this could be done on the basis that it could be an interim measure, such that the SHA responsibilities would transfer to a new Trust Port at some point in the future, as long as the Trust Port were able to meet the key tests outlined above, and it was considered by all relevant parties that the Trust Port

solution was the right one. Legal advice would be needed on precisely how to achieve this, were the parties to be minded, but one option to consider would be include within the first Harbour Order a second (draft) Harbour Revision Order that would transfer the SHA powers to the Trust Port once it had satisfied Transport Scotland that it met the appropriate standards. This should include a backstop date at which point the option to transfer would cease.

9. In this way, two key objectives about which there is no dissent, could be met: the immediate objective of delivering the safety improvements as soon as possible, and the longer term objective of setting up a viable Trust Port.
10. The analysis produced by OCHDA, and the financial reports of other Trust Ports, highlight the significance of berthing fees and other services, in addition to conservancy fees, to generating surpluses. A Trust Port must set its harbour dues at a level that allows for proper maintenance of the harbour and/or conservancy duties, and geared to attaining the target level of profitability<sup>30</sup>. Naturally, the greater the revenue, the greater the scope to generate surpluses.
11. This brings us to the question of the North Pier assets. The Transit Berth pontoons and the new Harbour Master's building (together with other improvements to the pier) were funded by a combination of A&BC capital from the CHORD budget, RCGF and HIE. The terms of the SG RCGF grant and HIE preclude 'disposal' of the asset and it is not clear whether (or under what circumstances) a lease might constitute a disposal.
12. From a Best Value perspective, it would be a very positive for the Council to work in collaboration with all parties to find an agreed outcome. It would also be positive to note that the public investment in the assets have been demonstrably successful in addressing the market failure that was part of the original business case.
13. However, a robust commercial agreement would be needed to protect the Council and community interests and the investment of public money. This agreement would have to ensure that the asset would be operated in ways that were consistent with the original objectives of the investments, would be properly maintained<sup>31</sup>, congruent with the long term vision for the economic development of the area, reflected the wider market, and avoided (or compensated for) losses of efficiency or 'hollowing out' of the Council's other operations.
14. There is also a question of future developments at the North Pier. Extending the North Pier will permit more, larger vessels to berth. There is clear potential to increase revenues materially. Other Trust Ports raise commercial development finance secured against physical assets on the port's balance

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<sup>30</sup> Modern Trust Ports for Scotland Guidance for good governance, section 3.4. Transport Scotland

<sup>31</sup> This requirement is also set out in the Guidance for good governance sections 3.2.5 and 3.2.6.



sheet. If a Trust Port in Oban had a sufficiently strong balance sheet and could evidence solid year-to-year performance it could borrow to fund the North Pier extension alongside grants. By comparison, the Council has immediate access to cheaper borrowing (subject to the Prudential Borrowing rules) and possibly a wider pool of grant support, and financial risk is spread across a wider portfolio.

15. Thus, the Best Value equation for the Council is complex. A transfer of the assets on a sound commercial basis to a Trust Port that had proven itself to be financially robust, competent and with a clearly deliverable vision for the future development of the harbour would be a successful long term outcome, especially so if the assets were further developed to bring additional revenue to the port and additional tourist visitors to the town.
16. On the other hand, a transfer that ended in the Council resuming the assets in a distress scenario would represent an unreasonable financial risk for the Council.
17. 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, there are too many uncertainties around a proposed transfer of the assets for the Council to be able to say with confidence that the transfer would represent Best Value. For this reason, it is recommended that the assets remain in full Council control at this time.
18. This is not to say that such a transfer should be ruled out forever. There is a possible course to a future scenario where a Trust Port takes on these responsibilities, subject to satisfying the requirements outlined previously in this report, and all parties agreeing to that being the best outcome.
19. **Phase 1** – the Council (or CMAL/CFL if agreed by all parties) progress a Harbour Revision Order to become the SHA covering the waters in question. This could include a feature (perhaps an additional draft HRO, subject to legal advice) that would transfer the SHA responsibilities to a new Trust Port when specific conditions are met.
20. **Phase 2** – the new Trust Port would take on SHA responsibilities on a ‘wet port’<sup>32</sup> basis when the conditions are met. A handover period (perhaps one summer season of shadowing before the SHA responsibilities are handed over) would be wise. It is appreciated that at this point that the costs and remuneration policies of the Trust Port mean that it is unlikely to generate significant surpluses on conservancy fees alone. After the cost structure is agreed, if the conservancy fees required to cover costs were of a level where the stakeholder agreed they might negatively impact vessel traffic revenues,

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<sup>32</sup> The exact limits of the ‘wet port’ are to be defined, but all waters up to the berthing faces of the North Pier and Transit Berth pontoons would minimise the need for a communications interface between SHAs as vessels enter the lagoon.

then public sector stakeholders could consider if they wish to provide additional support (whether in cash or kind, and subject to strict controls) to allow a lower conservancy fee.

21. **Phase 3** – after a further period to demonstrate competent management of the waters, good governance and community engagement, the Trust Port would take on the lease of the North Pier assets and the Council's remaining SHA responsibilities in Oban. At this point any support from the public sector stakeholders would end and the Trust Port would operate thereafter as a fully independent and self-sufficient entity.
22. The experts consulted felt that it would be very challenging for anyone to secure a Harbour Revision Order before the summer 2022 season, and that early 2023 (ready for the summer season) was a realistic target if the applicant was a body that was already operating as a SHA in the area and could evidence existing competence and viability.
23. This would allow the proponents of the Trust Port, say, a year after the first full operational season under new HRA arrangement to fully develop, capitalise and mobilise the organisation with a view to shadow running over the summer 2025 season, and taking on the 'wet port' responsibilities for the summer 2026 season.
24. Assuming that the 'wet port' operations went smoothly for two summer seasons, the Trust Port could become fully self-supporting, including taking on the lease of the North Pier assets and associated revenue collection, for the start of the summer 2028 season.
25. These dates may need to be modified depending on how plans to develop the North Pier unfold. Since works on the commercial berths would impact revenues while the work was being carried out, but increase revenues once complete, the parties would need to agree whether this work should happen during the 'wet port' phase, and ensure that the terms of a lease for the assets to reflected the development risks and revenue risks/upside for the parties.

## 9 Outcomes

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.

Appendix 1

**Formal Risk Assessment References**

The FRA process follows a number of guidance notes issued by the International Maritime Organization (IMO) and the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA). These are namely:

- IMO, Revised Guidelines for Formal Risk Assessment (FRA) for use in the IMO rule making process (2018) (IMO, 2018);
- IMO, Resolution A857(20), Guidelines for vessel traffic services (1997), (IMO, 1997);
- IALA, Recommendation V-119, The implementation of vessel traffic services Ed 2.0 (2009) (IALA, 2009);
- IALA, Guideline 1018, Risk-management Ed 3.0 (2013), (IALA, 2013);
- IALA, Guideline 1089, Provision of VTS services Ed 1.0 (2012), (IALA, 2012);
- IALA, Guideline G1142, The provision of local port services other than VTS Ed 1 (2018), (IALA, 2018);
- IALA, Guideline G1111, Preparation of operational and technical performance requirements for VTS systems (2015), (IALA 2015);
- MCA 'MGN 401 (M+F) Amendment 2 – Navigation: Vessel traffic services and local port services in the UK' (MCA 2018);
- DfT 'Port Marine Safety Code' (DfT, 2016); and
- DfT 'A Guide to Good Practice on Port Marine Operations' (DfT, 2018).

**Pilotage References**

- DfT, 2016. Port Marine Safety Code. Department for Transport, November 2016.
- DfT, 2018. Port Marine Safety Code Guide to Good Practice, Southampton: Maritime and coastguard agency. Department for Transport (DfT), February 2018.
- IALA, 2009., The implementation of vessel traffic services, Recommendation V-119, Ed 2.0.. International Association of Marine Aids to Navigation and Lighthouse Authorities, 2009.
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