

**OBAN BAY UPDATE**

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**1.0 INTRODUCTION**

- 1.1 This report is provided to update Members on the status of plans to establish the Municipal Oban Harbour and the progress of the Oban Harbour Revision Order (HRO).
- 1.2 The HRO includes proposed external harbour limits which have been justified by an independent Navigational Risk assessment (NRA) process.

**2.0 RECOMMENDATIONS**

It is recommended that the Harbour Board:-

- 2.1 Notes the update provided in this report;
- 2.2 Notes the comments referenced from the Consultation period and the Council's response thereto;
- 2.3 Approves the draft HRO for submission to Transport Scotland as the submission to be confirmed as an HRO;
- 2.4 Notes that the HRO will be submitted to Transport Scotland in the first case on an informal basis as part of their best practice advice and that should there be any material alterations requested by Transport Scotland then they will be brought back to the Harbour Board for approval; and
- 2.5 Notes the governance arrangements in respect of the Harbour Authority.

**3.0 DETAIL**

**Harbour Revision Order (HRO)**

- 3.1.1 The draft HRO has been produced by the Service with advice from the Council's Legal Services in liaison with external advisers. This was posted on the Council's website for public responses and issued to statutory consultees and others for comment. We received comments from Transport Scotland, Caledonian Maritime Assets Ltd (CMAL), CalMac Ferries Ltd (CFL), Northern

Lighthouse Board (NLB) and Oban Community Harbour Development Association (OCHDA) among others which were reviewed by our legal team and incorporated where appropriate in the final draft. The HRO is shown in appendix 1.

Comments and feedback from the consultation can be found here [\(Click here\)](#)

- 3.1.2 The draft will be issued to Transport Scotland who will accept this, in the first instance on an informal basis. This is considered to be best practice and allows Transport Scotland the opportunity for informal discussion with the Council on the content before they then accept as a formal submission for public consultation. Transport Scotland will undertake a 42 day period public consultation. The draft Order before members today along with the Harbour limits, if approved, will be submitted to Transport Scotland as the submission to be confirmed as an HRO.
- 3.1.3 An HRO lays out the some of the powers which the Harbour Authority will need to effectively run the day-to day operations. Other powers are detailed in historical Acts, some of which need modernising, clarifying or repealed to ensure modern language and practices are reflected appropriately. The HRO also sets out the limits of the Statutory Harbour Authority's jurisdiction in the form of harbour limits. Transport Scotland, as part of their process, will require justification for the requested powers and limits to ensure their effects are reasonable and just. The powers and effects are shown in appendix 2. The harbour limits are shown in appendix 3.

### **Navigational Risk Assessment (NRA)**

- 3.1.4 In the process of raising a HRO there is a requirement for a Navigational Risk Assessment (NRA) as part of the assessment process to understand the current level of marine risk and proposed mitigation for reducing the risk. This follows the requirements of the Port Marine Safety Code (DfT, 2016).
- 3.1.5 The NRA will be reviewed by the Maritime and Coastguard Agency (MCA) as the competent authority with a marine safety remit for Oban Bay as most of the area is currently outside of a statutory harbour area. It is used to inform, and provide justification for, the external limits and jurisdiction of Oban Harbour as well as the required degree of traffic monitoring and therefore staffing levels.
- 3.1.6 Summer observations were completed over the busiest period of traffic from 18<sup>th</sup> to the 31<sup>st</sup> July 2022 and also included engagement with users as well as a Hazard Identification session (HazID) where users could comment and provides additional input to augment the observational data.

### **External Harbour Limits**

- 3.1.7 The NRA establishes a navigational baseline on which a decision can be made on the external limits of the Harbour. It is incumbent on the HRO applicant to justify any extension to the jurisdiction of its Harbour area in terms of improving safety for users and the data gleaned from the busiest period of the summer

fulfils that need.

- 3.1.8 The data gathered during this process by ABP Mer confirms that the proposed external limits put forward by Argyll & Bute Council are justified and should now form part of the HRO application. A further winter observation period required by the MCA is being conducted in early December and will highlight any additional mitigation measures which may be required by the winter traffic pattern.

### **Consultation**

- 3.1.9 In addition to the formal HRO process, an informal consultation was carried out over a 6 week period. As part of this process details were sent to over 1000 addresses including all statutory consultees; Argyll & Bute Council Elected Members; Commercial and organised groups with an interest in Oban Bay; Community Councils; 899 individuals within both Oban, Lorn and the Isles Wards, who have subscribed to the 'keep in the loop' subscription service and was open to the general public via the Argyll & Bute Council website.
- 3.1.10 The results have been published on the website ([Click here](#)) and are summarised below:

### **Oban Bay as a Municipal Port: Summary of responses from consultation**

Total responses to mail address	65	
Responses supportive of Municipal Port	36	(55.4%)
Responses against Municipal Port	17	(26.1%)
Responses neutral to Municipal Port	12	(18.5%)

All of the responses were examined and core themes were identified from the questions, statement and comments.

The table below summarises those themes and provides a response to each:

<b>Questions &amp; comments received in the 'Against' and 'Neutral' categories (summary)</b>	<b>Response</b>
Does the Oban Bay Management Group support the Municipal Harbour?	Argyll and Bute Council's plans for a Municipal Harbour have the full support of the Oban Bay Management Group.
Oban is a distinct and complex harbour; how can we be confident that Argyll and Bute Council has the expertise to run it?	Argyll & Bute Council have a Harbour Master at Oban with a great deal of experience both in general marine terms and specifically in managing Oban Bay. Oban Bay is one of 39 piers and harbours managed by Argyll & Bute Council, including five Statutory Harbour Authorities and one Competent Harbour Authority. Within the Roads and Infrastructure Services, the Marine Department have and

	extensive range of experience supported by (among others) Legal, HR & Technical Design colleagues.
What will the staffing be and what hours will the Harbour operate?	It is envisioned that the Harbour will operate between 06:00 and 23:00 with up to three Assistants working with the Harbour Master.
How will Argyll and Bute Council govern the harbour and ensure the local community and stakeholders are involved?	Argyll & Bute Council has Elected Members directly involved through the transparent workings of the Harbour Board, representing not only the local Oban area but also the wider Islands Communities who also rely on Oban. There will be the required and appropriate Harbour User / Stakeholder Groups which will meet regularly.
Will the extra charges discourage visitors and where will any profits go?	Argyll & Bute Council will receive most of its income from fees and charges from larger vessels and CalMac (CFL), whereas locals and local business will benefit from any developments made to encourage visitors to Oban. Conservancy charges etc. made on non-leisure craft are to cover the costs of maintaining the port and the duties required of the Harbour Authority (whomever that may be) in keeping the Port safe and open for business.
Are there any plans for upgrading the port facilities?	There are plans at an early stage which look at an extension of the North Pier. The scope of the proposal would include extending and strengthening the North Pier by up to an additional 50m and dredging to a usable uniform depth of 5m to facilitate and future proof the berthing face for commercial customers. The works would help to ensure a safe and efficient through traffic management of commercial and private vehicles using the pier.
Why do we need any change, surely existing COLREGS are enough for safety?	The formal management of the larger bay area allows the Harbour Authority to enforce legislation (like COLREGS) and other safety rules (like speed limits). Without the inclusion of the larger bay area in a new HRO, there is the possibility of disruption or incidents which take place outside the jurisdiction of the existing Authorities. Local leisure and regular users should not notice much of a difference in the Day-to-Day running of the Bay.

Will the harbour eventually be transferred to CMAL or run for the benefit of CalMac ferries?	Oban Bay is recognised as an important strategic asset within Argyll & Bute. The Council will run and maintain Oban Harbour for the benefit of all users, including CFL (CalMac) and that after a period of bedding in, there will be a further report to Members on the potential for and exploration of the future development of a Trust Port.
Will small leisure craft still be able to launch for free and have access to the bay?	Argyll & Bute Council operates an 'Open Port' policy which ensures that safe access and safe use of our Ports and Harbours is enjoyed by the public. Leisure craft will be exempt from Conservancy Fees.

The Council have been keeping groups and the general public informed through regular updates on the Argyll & Bute Council website which can be viewed by using the following link:

[Click here](#)

### **Governance arrangements**

- 3.2.1 The Council's Constitution sets out that its functions as a harbour authority are carried out by the Harbour Board which is a committee of the Council consisting of elected members and is authorised to discharge the powers and duties of the Council as a Statutory Harbour Authority in respect of general and specific statutory duties. The Council as the legal body required to exercise the functions of the harbour authority, is named as the harbour authority within the text of the draft Order.
- 3.2.2 The HRO will designate the Council as the harbour authority for the Harbour. This designation will not affect CMAL's existing position as harbour authority for the Railway Pier, nor will it affect the existing rights and duties of the Northern Lighthouse Board.
- 3.2.3 Some of the feedback asked that the Council either manage the harbour area at Oban through a body named the Oban Harbour Board, or a sub-committee of the existing Harbour Board named the Oban Advisory Committee with delegated executive powers and having a membership consisting of 50% elected members (i.e. councillors) and 50% major stakeholders.
- 3.2.4 The feedback also made reference to the Ports Good Governance Guidance, which is produced by the UK Department of Transport. Part C of that guidance states that harbour management committees for local authority owned ports should ideally consist of approximately 50% local authority elected members and the remainder external appointees. However, the Department of Transport states in the guidance it applies to statutory harbour authorities in England and,

in certain circumstances, Wales. The guidance does not directly reference Scottish Councils or Statutory Harbour Authorities and is not legally binding.

- 3.2.5 The feedback also indicated a desire to have community engagement in the operation of the harbour. The Harbour Board, in exercise of its functions will consult with harbour users and other interested groups (including community groups) on the operation/management and development of Oban harbour. It is willing to put in place appropriate arrangements to that end. At present, there is a management committee which the Council uses to consult with other users of Oban harbour.
- 3.2.6 A consultative forum would not have any formal powers over the operation of Oban harbour so the draft Order cannot make provision for it. The purpose of the Order is to set out the Council's formal powers as harbour authority over the Oban harbour area. However, the Council can seek agreement amongst interested parties as to the arrangements for consultation and can, if appropriate, set those arrangements out separately in writing.

### **Next Steps**

- 3.2.7 The key statutory and notable milestones for subsequent reports to the Harbour Board are:
- (1) Any clarifications or amendments requested by Transport Scotland or MCA will be presented to a further Harbour Board meeting for Members review and approval.
  - (2) Advertisement of the application in Edinburgh and local press following receipt of the HRO by Transport Scotland.
  - (3) 42 days for formal consultation as per the HRO process.
  - (4) Addressing any issues and objections.
  - (5) Decision by Ministers on HRO.
  - (6) Order is made.

## **4.0 CONCLUSION**

- 4.1 This report provides an update to Members on the status of plans to establish the Municipal Oban Harbour and the progress of the Oban Harbour Revision Order (HRO).
- 4.2 The HRO includes proposed external Harbour Limits which have been justified by an independent Navigational Risk assessment (NRA) process.

## **5.0 IMPLICATIONS**

- 5.1 Policy – The Harbour Board agreed in December 2021 that the Council should proceed to make the arrangements to formally manage the unmanaged section of Oban Bay.

- 5.2 Financial – No financial implications at this stage. As the proposal develops further detail will be brought to the Harbour Board.
- 5.3 Legal – the HRO process is a formal legal process set out in the 1964 Harbours Act.
- 5.4 HR – HR implications will be identified as the proposal progresses.
- 5.5 Fairer Scotland Duty:
  - 5.5.1 Equalities – None known.
  - 5.5.2 Socio-economic Duty – None known.
  - 5.5.3 Islands – consultation will continue to include island communities with special interest and connections with Oban as required by the process.
- 5.6 Climate Change – due regard will be given to climate change with a view to minimising any climate change impact and these will be considered as and when they arise.
- 5.7 Risk - The Council progressing to become a Municipal Port Authority for the unmanaged areas of Oban Bay increases the safety within Oban Bay. There is a risk that there could be a number of objections and representations during the process which could impact on timescale and these will be considered as and when they arise.
- 5.8 Customer Service – Improved and safer environment for all users.

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**Jim Smith**, Head of Roads and Infrastructure

**Policy Lead for Roads and Transport**, Councillor Andrew Kain

December 2022

**For further information contact:** Jim Smith, Head of Roads and Infrastructure, or Scott Reid, Marine Operations Manager

## **APPENDICES**

Appendix 1. Proposed HRO draft for submission to Transport Scotland

Appendix 2. Purpose and Effects note

Appendix 3. Proposed external limits to Oban Harbour