

1 Introduction

- 1.1 This statement relates to the application by Argyll and Bute Council for the proposed Oban Harbour Revision Order 2023 ("the HRO"). Argyll and Bute Council ("the Council") is the statutory harbour authority for Oban.
- 1.2 The application, made to the Transport Scotland dated 10th November 2023 is accompanied by:
 - 1.2.1 A copy of the draft HRO;
 - 1.2.2 This statement;
 - 1.2.3 The fee for the application, by BACS, in the sum of £4,000; and
 - 1.2.4 Copies of the following legislation:
 - 1.2.4.1 Pier and Harbour Orders Confirmation Act 1862
 - 1.2.4.2 Pier and Harbour Orders Confirmation Act 1864
 - 1.2.4.3 Piers and Harbour Orders Confirmation (No.5) Act, 1896
 - 1.2.5 Copies of the following reports:
 - 1.2.5.1 Argyll and Bute Council Harbour Board reports dated 2 September 2021, 3 March 2022, 4 August 2022, 1 September 2022, 22 December 2022 and 2 March 2023; and
 - 1.2.5.2 Caledonian Economics Oban Bay Options Appraisal report dated November 2021
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Scottish Ministers by section 14 of the Harbours Act 1964. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- 1.4 The HRO extends the harbour limits into Oban Bay. It also updates the existing legislation for Oban harbour in line with the current needs of the Council as the harbour authority for Oban harbour and Oban harbour users from the date it comes into force. The Order extends the harbour limits and confers updated powers on the Council, including powers to lease and powers as regards the making of byelaws and issuing of general special directions.

2 Oban Harbour Authority

- 2.1 Oban harbour ("the harbour") is a busy working port on the west coast of Scotland. The Council is the Statutory Harbour Authority for the north and south piers of the harbour under the Piers and Harbour Orders Confirmation Acts 1862, 1864 and 1896. The Council is responsible for the administration, maintenance and improvement of the harbour.
- 2.2 There is a separate statutory harbour authority within Oban Bay which is responsible for the administrative, maintenance and improvement of the railway pier. The limits of the railway pier and the powers of its harbour authority were defined by the Callander and Oban Railway Act 1897. Under the 1897 Act, the harbour authority was the Callander and Oban Railway Company. The harbour authority is now CMAL. This Order does not make any alterations to the limits of the harbour including the railway pier, nor does it alter the powers of CMAL as harbour authority for the railway pier.
- 2.3 **Background leading to the HRO**
- 2.4 The current limits of the Council's jurisdiction as harbour authority are tightly drawn around the north and south piers of Oban harbour. Most of Oban Bay is not regulated by any harbour authority. The Bay is frequently used for commercial and recreational maritime activities, including large ferries and a fishing fleet. The lack of regulation over the Bay means that no existing harbour authority has jurisdiction to manage the flow of maritime traffic and to ensure the safety of all vessels and persons on the waters of the Bay. In addition, the differing existing jurisdictions within Oban Bay has led to confusion over responsibilities between the harbour authorities.
- 2.5 Existing powers of harbour management are contained, in respect of the Council, within harbour legislation dating to the late nineteenth century. The existing legislation does not contain powers needed for management of a modern harbour. In particular, it does not contain appropriate powers of general or special direction, or general powers to manage, maintain and develop the harbour in accordance with modern practice.
- 2.6 In 2018 the Oban Bay Management Group (OBMG) was tasked to consider means for better regulating the wider Oban Bay area in the interests of safety and appropriate harbour management. OBMG 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 those that were later appraised, and it was highlighted that each of the operational models would be similar and the positive safety impacts would be equivalent.
- 2.7 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 idea of creating a trust port was also considered at this time.

2.8 The Council considered providing formal support for CMAL to assume responsibility as harbour authority for the entirety of Oban Bay. However, after consultation with interested parties in 2018, the Council did not proceed with this option. It also provided support to a community group, the Oban Harbour Community Development Association (OCHDA) to allow the latter to develop a proposal for Oban harbour to become a trust port with a harbour authority which was neither the Council nor CMAL. The Council provided this support in order that a trust port plan could be fully developed and considered against other potential options for the future of the harbour.

2.9 The Council's Harbour Board agreed to conduct an independent options appraisal process to determine the preferred option for the future management of Oban Harbour. Council Officers commissioned Caledonian Economics, a management consultancy specialising in public infrastructure, to carry out the independent appraisal exercise, with the results presented to the Harbour Board in December 2021. These options were as follows:

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;*
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.*

2.10 In December 2021 the Harbour Board agreed that either Options 4 or 5 provided the most efficient route to addressing the safety concerns that underpinned the drive for reform. The Harbour Board determined that Options 4 and 5 should be progressed. Council Officers were requested to engage with CMAL, through the OBMG, on the basis that the Council's preference was that it should be the Harbour Authority for the unmanaged section of Oban Bay. The Harbour Board agreed to begin the process of an application for a Harbour Revision Order covering the unmanaged section of Oban Bay and to expedite the process.

3 Consultation

- 3.1 The Council engaged in a pre-application public consultation between 15th July and 26th August 2022. It publicised its draft HRO upon its website and invited comments from members of the public. The Council also sent copies of the HRO directly to CMAL, the Commissioners of the Northern Lighthouse Board, the Maritime and Coastguard Agency, CFL, and the Oban Community Harbour Development Association (OCHDA), a voluntary local community group, and invited from those groups. Finally, the Council has also consulted Transport Scotland on the drafting of the HRO prior to application.
- 3.2 The Council has amended a number of draft provisions further to that consultation, including in relation to general and special directions, and to safeguard the interests of CMAL in carrying out its functions as a separate harbour authority within Oban Bay.
- 3.3 A number of provisions were suggested which would govern the manner in which the Council would exercise its operational functions as harbour authority. Further to discussion with relevant bodies, the Council determined that such matters were best dealt with by other means, rather than by inserting such provisions within the HRO which may impede operational flexibility.
- 3.4 The consultation exercise resulted in a suggestion that the HRO make provision for a consultative harbour board that the Council would require to consult in the exercise of its statutory functions as harbour authority. The Council has not provided for such a body within the HRO. The purpose of the Order is to set out the Council's rights and duties as statutory harbour authority. It would not be appropriate to include provision for a consultative body that does not have statutory powers/obligations within the Order. Similarly, the Council's powers as SHA cannot be unduly fettered by the existence of a separate statutory board.
- 3.5 However, the Council, as harbour authority for Oban, has a continued commitment to continue to consult on the governance, management and operation of Oban harbour with interested bodies, community groups and members of the community. Such commitment is in accordance with recognised principles of good governance and consultation. The Council will have regard to the Scottish Government's Consultation Good Practice Guidance in engaging in such consultations.

4 Need and justification for the HRO

- 4.1 The HRO extends the limits of the port beyond its existing limits to cover a significant section of Oban Bay.
- 4.2 To determine the appropriate external limits of the Harbour area, a Navigational Risk Assessment (NRA) was carried out 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).

- 4.3 The NRA methodology was approved by, and the results will be reviewed as part of this process 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.
- 4.4 The data gathered during this process confirms that the proposed external limits put forward by Argyll and Bute Council are justified and should now form part of the HRO application.
- 4.5 The HRO also confers further modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the harbour. In particular, the HRO would confer modern general powers on the Council to improve, maintain and manage the harbour and its facilities, to acquire, dispose of, manage, use or develop land, to give general directions to vessels, persons and vehicles using the port, together with powers exercisable by the Harbour Master appointed by the Council to give special directions to vessels, and to make byelaws. These powers and the extension of the harbour limits are required to support the efficient and safe management of the harbour. The powers conferred on the Council as harbour authority are similar to powers recently conferred on other Scottish harbour authorities by way of harbour order, as set out further below.
- 4.6 The HRO also seeks to consolidate the Council's powers as harbour authority within one enactment. In so doing, it repeals extant provisions from previous harbour enactments of local application which are therefore obsolete or superseded.
- 4.7 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers, which have been devolved to Transport Scotland, to make an order under that section in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 of the 1964 Act.
- 4.8 Section 14(2)(a) of the 1964 Act requires that a written application be made to Transport Scotland by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that the Ministers must be:

"satisfied that the making of the orders is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical

manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships".

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 4:

"imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above".

And at paragraph 6:

"Settling (either for all purposes or limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled".

4.9 The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

4.9.1 (a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or managed by a harbour authority (the Council) in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act;

4.9.2 (b) section 14(2) of the 1964 Act because:

4.9.2.1 (i) the application is made upon the written application of the Council, which is the harbour authority engaged in improving, maintaining or managing the harbour; and

4.9.2.2 (ii) the making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

4.9.3 (b) section 14(2A) of the 1964 Act because the objects of the HRO include the repeal of superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour, or consolidating any statutory provisions of local application affecting the harbour.

4.10 The objects for which the HRO are being made include:

4.10.1 Paragraph 3 of Schedule 2 to the 1964 Act:

Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provisions of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—

(a) improving, maintaining or managing the harbour;

(b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or

(c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

4.10.1.1 The HRO repeals extant provisions of legislation of local application affecting the harbour at article 43 (described within the Schedule).

4.10.1.2 The making of the HRO will therefore enable the object contained within paragraph 3 of Schedule 2 to the 1964 Act to be achieved.

4.10.2 Paragraph 4 of Schedule 2 to the 1964 Act:

Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above.

4.10.2.1 The HRO confers on the Council general powers in respect of the harbour, powers to dredge and restrictions on dredging, power to provide parking places, provisions as to damage, powers to enter into arrangements to provide supplies, powers to provide moorings, powers to remove obstructions and goods, powers to make byelaws, powers to provide general directions to vessels, powers to provide special directions to vessels, powers to enforce general and special directions, and powers to deal with vessels adrift at articles 5, 9 – 18 and 20 - 29.

4.10.2.2 The making of the HRO will therefore enable the object contained within paragraph 4 of Schedule 2 to the 1964 Act to be achieved.

4.10.3 Paragraph 6 of Schedule 2 to the 1964 Act:

Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled.

4.10.3.1 The HRO provides for an extension of the area within which the Council exercises jurisdiction, and settles the limits within which the Council is to have such jurisdiction, at article 4.

4.10.3.2 The making of the HRO will therefore enable the object contained within paragraph 6 of Schedule 2 to the 1964 Act to be achieved.

4.10.4 Paragraph 9 of Schedule 2 to the 1964 Act:

Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes.

4.10.4.1 The HRO confers powers on the Council to dispose of land, buildings or harbour facilities (including by way of sale, lease, exchange or otherwise) which is no longer required by the Council for the purposes of the harbour at article 6(2).

4.10.4.2 The making of the HRO will therefore enable the object contained within paragraph 9 of Schedule 2 to the 1964 Act to be achieved.

4.10.5 Paragraph 11 of Schedule 2 to the 1964 Act:

Empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the harbour.

4.10.5.1 The HRO confers powers on the Council to levy harbour charges other than ship, passengers and goods dues at article 30.

4.10.5.2 The making of the HRO will therefore enable the object contained within paragraph 11 of Schedule 2 to the 1964 Act to be achieved.

4.10.6 Paragraph 12 of Schedule 2 to the 1964 Act:

Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.

4.10.6.1 The HRO clarifies liability for charges payable to the Council in respect of vessels or goods at article 31, confers the power to grant exemptions and rebates at article 32, requires the production of accounts of goods at article 33, provides for security for charges at article 34, provides for liens for charges at article 35, provides for enforcement powers in respect of any refusal to pay charges at article 36, provides for specific exemptions from charges at article 37, and confers on the Council the power to impose conditions at article 38.

4.10.6.2 The making of the HRO will therefore enable the object contained within paragraph 12 of Schedule 2 to the 1964 Act to be achieved.

4.10.7 Paragraph 13 of Schedule 2 to the 1964 Act:

Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.

4.10.7.1 The HRO provides that the Council may maintain a reserve fund in respect of revenue generated on account of the harbour undertaking, and makes provision for the application of moneys in that reserve fund, at article 39.

4.10.7.2 The making of the HRO will therefore enable the object contained within paragraph 13 of Schedule 2 to the 1964 Act to be achieved.

4.10.8 Paragraph 16A of Schedule 2 to the 1964 Act:

Imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.

4.10.8.1 The HRO provides that the Council may enact byelaws for the protection of the natural beauty and natural features of the harbour at article 20(2)(o).

4.10.8.2 The making of the HRO will therefore enable the object contained within paragraph 16A of Schedule 2 to the 1964 Act to be achieved.

4.10.9 Paragraph 17 of Schedule 2 to the 1964 Act:

Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour.

4.10.9.1 The HRO confers on the Council the power to acquire land and to manage, use or develop land for the purposes of the harbour undertaking at article 6, to appropriate parts of the harbour for the exclusive, partial or preferential use or accommodation for any particular trade, activity, person, vessel or class of vessels or goods at article 7, to lease land, works, buildings, equipment or other property forming part of the harbour at article 8.

4.10.9.2 The making of the HRO will therefore enable the object contained within paragraph 17 of Schedule 2 to the 1964 Act to be achieved.

5 The contents of the HRO

5.1 This section of the statement explains:

5.1.1 The purpose of including each provision in the draft HRO;

5.1.2 The legal effect of including each provision in the draft HRO;

5.1.3 Whether the use of those provisions is preceded in any other made Scottish harbour orders and, if so, which harbour order; and

5.1.4 The object(s) in Schedule 2 to the 1964 Act which those provisions achieve(s).

5.2 Articles 1, 2 and 3 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

Article in HRO	Purpose of provision	Precedent	Legal effect	Objects
4	To define and extend the limits of the harbour. This article sets out the limits of the railway pier so as to exclude it from the jurisdiction of the Council. It clarifies for the avoidance of doubt that the railway pier does not fall under the jurisdiction of the Council,	Article 16 of the Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019	This article defines the limits of the Council's jurisdiction as harbour authority within the limits set by article 4.	Paragraph 6 of Schedule 2 to the 1964 Act.

	as the railway pier is subject to a separate statutory harbour authority.			
5	To provide that the Council may take such steps as it may consider necessary or expedient from time to time for the improvement, maintenance and management of the harbour, its facilities and accommodation.	Article 13 of the Eyemouth Harbour Revision Order 2021	This article confers on the Council general powers in respect of the improvement, maintenance and management of the harbour.	Paragraph 4 of Schedule 2 to the 1964 Act.
6	To permit the Council to acquire land for the purpose of the harbour undertaking, to allow it to dispose of property no longer required for the purposes of the harbour undertaking, and to allow it to manage and develop land belonging to it.	Article 16 of the Eyemouth Harbour Revision Order 2021	This article provides that the Council may, for the purposes of the harbour undertaking, acquire land (including by purchase, exchange, lease or otherwise), dispose of land, buildings or harbour facilities (including by sale, lease, exchange or otherwise) which is no longer required for harbour purposes, and manage, use or develop land belonging to it as it sees fit.	Paragraphs 9 and 17 of Schedule 2 to the 1964 Act.
7	To allow the Council to set aside land for the use of particular trades, activities, persons vessels or types of vessels or goods	Article 14 of the Eyemouth Harbour Revision Order 2021	This article provides that the Council may appropriate land or other property of the Council in the harbour for particular trades, persons or activities, to allow the Council to make reasonable charges and terms and conditions for such use, to allow the harbour master to enforce the terms of any appropriation, and to require the Council to have regard to public rights of navigation and public rights of way in the harbour	Paragraph 17 of Schedule 2 to the 1964 Act.
8	To allow the Council to lease or license property belonging to it within the harbour as it sees fit, other than in accordance with the terms of article 6 (i.e. to do so when the land is still required for harbour purposes).	Article 15 of the Eyemouth Harbour Revision Order 2021	This article permits the Council to lease or grant the use or occupation of land and other property belonging to the Council within the harbour on such terms and conditions as may be agreed.	Paragraph 17 of Schedule 2 to the 1964 Act.

9	To permit the Council to dredge the bed and foreshore of the harbour and approaches, and thereby maintain the harbour in efficient working order, and to control the deposit of dredged material.	Article 17 of the Eyemouth Harbour Revision Order 2021	This article grants powers to dredge to the Council within the harbour area and approaches, and controls the deposit of dredged material.	Paragraph 4 of Schedule 2 to the 1964 Act.
10	To control dredging and the construction, maintenance etc of works within the harbour area, and to require any such works or dredging to be licensed by the Council. This provision contains enforcement powers for the Council in respect of any contravention of this provision. Saving is made for CMAL in its position as harbour authority for the railway pier, but requires CMAL to consult with the Council prior to undertaking dredging in relation to the approaches to the railway pier.	Article 7 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016	This article gives the Council powers to control dredging and the maintenance, construction of etc of works within the harbour area, require licensing of such works or dredging by the Council, to provide enforcement powers in respect of any breach of this provision, and to exclude CMAL from those provisions in relation to the approaches to the railway pier subject to a requirement to consult prior to carrying out any dredging works.	Paragraph 4 of Schedule 2 to the 1964 Act.
11	To allow the Council discretion to provide parking places within the harbour premises, including powers to make reasonable charges and construct and maintain relevant infrastructure. This provision is in the interests of regulating the carrying on of activities in the harbour, and in the interests of the efficient and economic use and management of the harbour.	Article 11 of Tobermory Harbour Empowerment Order 2017	This article permits the Council discretion to provide parking places within the harbour premises, including powers to make reasonable charges and construct and maintain relevant infrastructure.	Paragraph 4 of Schedule 2 to the 1964 Act
12	To allow the harbour master to require the master of a vessel to declare the overall length and maximum draught of the vessel. Provisions are made for the enforcement of any such requirement. This provision is in the interests of managing the harbour and ensuring safe	Article 33 of the Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019	This article allows the harbour master to require the master of a vessel to declare the overall length and maximum draught of the vessel. Provisions are made for the enforcement of any such requirement.	Paragraph 4 of Schedule 2 to the 1964 Act.

	navigation and berthing within the harbour.			
13	To make provision as to the recovery of costs incurred by damage to any property of the harbour by any persons contravening harbour enactments, or any vessel, and to clarify liability for any such costs. This provision is in the interests of managing the harbour and ensuring the Council can recover the costs of rectifying any damage caused by any other person/vessel.	Article 10 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article makes provision as to the recovery of costs incurred by damage to any property of the harbour by any persons contravening harbour enactments, or any vessel, and to clarify liability for any such costs. Saving provisions are made for other rights or liabilities under common law or statute, including criminal liability.	Paragraph 4 of Schedule 2 to the 1964 Act.
14	To prevent obstruction of the harbour master or any other person carrying out functions under this Order. This provision is in the interests of efficient and effective management of the harbour.	Article 11 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that intentional obstruction of the harbour or other persons carrying out duties under this order amounts to a criminal offence punishable by a fine not exceeding level 2 on the standard scale.	Paragraph 4 of Schedule 2 to the 1964 Act.
15	To allow the Council to make arrangements for providing supplies to vessels using the harbour. This provision is in the interests of efficient and effective use and management of the harbour.	Article 18 of the Eyemouth Harbour Revision Order 2021.	This article allows the Council to make arrangements to provide and supply fuel, ice etc to vessels using the harbour, including the provision and maintenance of pipelines, storage tanks, plant, equipment etc, and to allow ancillary and necessary works for that purpose.	Paragraph 4 of Schedule 2 to the 1964 Act.
16	To allow the Council to lay down, maintain and remove moorings, buoys within the harbour area, to allow the Council to charge vessels for use of the same, to allow licensing of moorings and enforcement powers in respect of any moorings laid down in contravention of this provision. This provision is in the interests of efficient, safe and effective use and management of the harbour, and to allow the Council to appropriately	Article 20 of the Eyemouth Harbour Revision Order 2021 Article 15 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article allows the Council to lay down, maintain and remove moorings, buoys within the harbour area, to allow the Council to charge vessels for use of the same, to allow licensing of moorings and enforcement powers in respect of any moorings laid down in contravention of this provision.	Paragraph 4 of Schedule 2 to the 1964 Act.

	regulate berthing of vessels within the harbour area.			
17	To permit the Council to remove obstructions to proper use of the harbour which are not vessels, vehicles or wrecks, in the interest of effective and efficient management and use of the harbour and safe navigation.	Article 22 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article makes provision as to the removal of items causing or likely to become an obstruction to the proper use of any part of the harbour, where those items are not a vessel or vehicle, or a wreck. Provision is made as to the return of any such items to their owners as may be marked as such or known to the Council. Provision is made for any such items where ownership is not proven or known to become property of the Council. Provision is made for the disposal of items of a specified nature by the Council, and the recovery of the expense of removing the item from the owner of the item.	Paragraph 4 of Schedule 2 to the 1964 Act.
18	To allow the Council to remove goods left within the harbour premises, in the in the interest of effective and efficient management and use of the harbour.	Article 24 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article makes provision for the Council to require the owner of goods left within the harbour premises to remove them, and where the goods are not so removed by the owner, to remove them. The expenses and risk of any such removal shall be borne by the owner of the goods. Provision is made for such goods to be subject to a lien for the cost of removal and any charges payable to the Council under Part 4 of the Order.	Paragraph 4 of Schedule 2 to the 1964 Act.
19	To require the Council to prepare an annual statement of accounts each financial year.		This article provides that the Council must prepare a statement of annual accounts each financial year. Provision is made for the Council to make the accounts available for three months from the date of preparation for inspection by members of the public. Provision is also made to require the Council to	Paragraph 13 of Schedule 2 to the 1964 Act.

			provide a copy of the accounts to those that request one.	
20	To allow the Council to make byelaws for the efficient management and regulation of the harbour. This provision is in the interests of the efficient and effective management and use of the harbour, of safe navigation and of regulating the carrying on of activities on harbour land.	Article 22 of the Eyemouth Harbour Revision Order 2021 Article 14 of the Tobermory Harbour Empowerment Order 2017	This article provides that the Council may make byelaws for the efficient management and regulation of the harbour, and for specified purposes. Provision is made for byelaws to impose penalties upon persons found guilty of offending against the provisions of those byelaws. Existing byelaws are to remain in place.	Paragraphs 4 and 16A of Schedule 2 to the 1964 Act.
21	To make provision as to the confirmation of byelaws by the Scottish Minister, and to set out the procedure for the same. This provision is in the interests of the efficient, effective and transparent management and regulation of the harbour.	Article 26 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that byelaws must be confirmed by the Scottish Ministers before they may come into operation. It makes provision for the notification of byelaws within the Edinburgh Gazette and a local newspaper, and for the notification of objections or representations to the Scottish Ministers. It provides for the confirmation of the byelaws by the Scottish Ministers, subject to any modification as they see fit, or their refusal. Where the Scottish Ministers propose any modification, they must notify the Council and require the Council to notify any persons concerned with the modification. In doing so, the Scottish Ministers must allow time for any comments to be made in respect of the modification and shall have regard to any such comments. Once confirmed, any byelaws shall be made available by the Council for inspection without payment.	Paragraph 4 of Schedule 2 to the 1964 Act.
22	To allow the Council, after appropriate consultation, to give general directions for	Article 24 of the Eyemouth Harbour	Article 18 provides that the Council, after consultation with the Royal Yachting	Paragraph 4 of Schedule 2 to the 1964 Act.

	specified purposes in the interests of safe navigation and the efficient and effective management of the harbour. Provision is made for consultation with bodies other than the Royal Yachting Association and the UK Chamber of Shipping in response to consultation comments from CMAL and the Northern Lighthouse Board.	<p>Revision Order 2021.</p> <p>Article 27 of the Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019</p> <p>Note that provisions similar to those contained within article 18 (Special Directions) of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 have been moved into this article further to consultation with CMAL. Additional powers of general direction have also been added following consultation with CMAL.</p>	Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency, and other harbour users, gives directions for certain purposes and as applying to all or certain classes of vessels, for all or part of the harbour and at all or at specified times. Provision is also made for the revocation of any such directions after consultation with the aforementioned organisations and harbour users.	
23	To make provision as to the publication of general directions, in the interests of safe navigation and the efficient and effective management of the harbour. Updated general direction provisions are made in concurrence with the terms of the Port Marine Safety Code (November 2016) published by the UK Department of Transport.	Article 17 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018 (with additional reference to publication on a website and removal of provisions as to charging).	This article provides for the publication of notice of general directions, and the amendment or revocation of the same, in a newspaper circulating in the locality of the harbour and on a website maintained by the Council.	Paragraph 4 of Schedule 2 to the 1964 Act.
24	To allow the harbour master to give special directions in respect of specific vessels, in the interests of safe navigation and use of the harbour.	<p>Article 18 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018.</p> <p>Article 18 of the Tobermory Harbour Empowerment Order 2017</p>	This article provides that the harbour master may give special directions in respect of specific vessels for certain purposes.	Paragraph 4 of Schedule 2 to the 1964 Act.

		Article 18 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016		
25	To provide that failure to comply with a special or general direction commits a criminal offence. This provision is in the interests of safe navigation and use of the harbour, and efficient and effective regulation and management of the harbour.	Article 28 of the Eyemouth Harbour Revision Order 2021.	This article provides that a master of a vessel who fails to comply with a special direction without reasonable excuse is guilty of an offence. Any person who fails to comply with a general direction without reasonable excuse is also guilty of an offence.	Paragraph 4 of Schedule 2 to the 1964 Act.
26	To provide for the enforcement of special directions, in the interests of safe navigation and use of the harbour.	Article 29 of the Eyemouth Harbour Revision Order 2021	This article makes provision as to enforcement of special directions by the harbour master, and for recovery of reasonable expenses by the Council in respect of said enforcement.	Paragraph 4 of Schedule 2 to the 1964 Act.
27	To provide that the master's responsibility for his vessel remains undiminished, in the interests of ensuring that the position of the master of his vessel at common law and under statute is unaffected within the harbour area.	Article 27 of the Eyemouth Harbour Revision Order 2021	This article provides that the giving of general or special directions does not diminish or affect the responsibility of the master of the vessel in respect of the vessel, person on board, its cargo or any other person or property.	Paragraph 4 of Schedule 2 to the 1964 Act.
28	To provide for criminal liability on the owner or master of a vessel in the event that it is adrift within the harbour. This provision is in the interests of safe navigation and use of the harbour.	Article 31 of the Eyemouth Harbour Revision Order 2021.	This article provides that the owner or master of a vessel adrift in the harbour is guilty of an offence. It also provides that it shall be a defence for the owner or master to prove that the vessel did not become adrift as a result of any fault of that person.	Paragraph 4 of Schedule 2 to the 1964 Act.
29	To provide that the harbour master may enter and inspect vessels to enforce relevant harbour enactments and byelaws, and to prevent and extinguish fire. This provision is in the interests of safe navigation and use of the harbour, and efficient	Article 30 of the Eyemouth Harbour Revision Order 2021. Article 12 of the Dumfries and Galloway Council (Kirkcudbright)	This article provides for the harbour master to enter and inspect vessels within the harbour for certain purposes, with prior written notice having been given at least 24 hours in advance.	Paragraph 4 of Schedule 2 to the 1964 Act.

	and effective harbour management and use.	Harbour Revision Order 2018		
30	To permit the Council to take reasonable charges other than ship, passenger and goods dues, in the interests of the efficient and effective management of the harbour.	Article 27 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that the Council may make reasonable charges in respect of objects such as dracone, floating docks, cranes, rigs, drilling rigs, or floating plants, which are not ships, entering, using or leaving the harbour. The Council may make such reasonable charges for services and facilities provided by it in relation to the harbour, where such charges are not ships, passenger or goods dues as defined by section 57 of the Harbours Act 1964.	Paragraph 11 of Schedule 2 to the 1964 Act.
31	To clarify liability for charges owed to the Council.	Article 33 of the Eyemouth Harbour Revision Order 2021	This article provides that charges payable to the Council are payable by the owner or master of the vessel, in respect of a vessel or the owner, consignee or shipper of goods, in respect of goods. Where a charge payable to the Council may be recovered from more than one person, such persons shall be jointly and severally liable.	Paragraph 12 of Schedule 2 to the 1964 Act.
32	To permit the Council to grant rebates and exemptions from charges as it sees appropriate.	Article 34 of the Eyemouth Harbour Revision Order 2021.	This article permits the Council to grant exemptions (where total or partial) to allow rebates or make compositions in respect of any person with respect to charges. Such arrangements do not require to be required to be entered onto the list of ship, passenger and goods dues kept at the harbour office.	Paragraph 12 of Schedule 2 to the 1964 Act.
33	To require masters of vessels to provide accounts of goods, in the interests of charging accurately and proper management and use of the harbour facilities.	Article 30 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article requires the master of a vessel with goods to be unshipped or shipped within the harbour to provide an account of such goods or bill of lading or manifest. In respect of goods which are to be	Paragraph 12 of Schedule 2 to the 1964 Act.

			unshipped within the harbour the master must additionally provide the name of the consignee of the goods, along with the time such goods are to be unshipped. Provision is made for the resolution of disputes as to the weight or quantities of such goods in respect of which charges may be payable. A person who fails to comply with any part of the provisions of this article is guilty of an offence.	
34	To permit the Council to require a person to provide security in respect of any charges that the Council may charge.	Article 32 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that the Council may require the deposit or guarantee of a sum of money as security in respect of charges which are incurred or are about to be incurred by a person. Where such deposit or guarantee is not made, the Council may detain the vessel or goods in the harbour or harbour premises until the deposit or guarantee is made or until the charge is paid.	Paragraph 12 of Schedule 2 to the 1964 Act.
35	To provide for a right of lien in respect of certain persons.	Article 33 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article makes provision for a right of lien in respect of certain persons.	Paragraph 12 of Schedule 2 to the 1964 Act.
36	To ensure payment of charges in respect of the use of harbour facilities, in the interests of economic management of the harbour and its facilities.	Article 34 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that the harbour master may prevent a vessel from using facilities provided by the Council where the master of the vessel refuses to pay charges.	Paragraph 12 of Schedule 2 to the 1964 Act.
37	To require the Council to exempt certain classes of vessels from charges.	Article 35 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides for exemptions from charges levied by the Council in respect of certain categories of vessels, passengers or goods, or officers of the Department of Transport or Scottish Ministers in execution of their duty.	Paragraph 12 of Schedule 2 to the 1964 Act.

38	To permit the Council to set terms and conditions in respect of the payment of charges, in the interests of economic management of the harbour and its facilities.	Article 36 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that the Council may specify terms and conditions in respect of the payment of charges, including the time when the charge falls due for payment and the provision of information to the Council.	Paragraph 12 of Schedule 2 to the 1964 Act.
39	To allow the Council to maintain a reserve fund and to allow it to maintain a combined reserve fund in respect of all other harbour undertakings of the harbour, in the interests of securing the financial affairs of the harbour undertaking.	Article 37 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	This article provides that the Council may carry a reasonable amount forward to the reserve fund if the revenue generated by the harbour exceeds the expense of it in any financial year, and put those funds to use for specified purposes. It provides that the Council can maintain a combined reserve fund in respect of its other harbour undertakings.	Paragraph 13 of Schedule 2 to the 1964 Act.
40	To save the rights, duties and privileges of the Commissioners of Northern Lighthouses.	Article 36 of the Eyemouth Harbour Revision Order 2021.	This article provides a saving in respect of the provisions of the Order for the rights, duties and privileges of the Commissioners of Northern Lighthouses.	Paragraph 17 of Schedule 2 to the 1964 Act.
41	To save the rights, duties and privileges of CMAL in its capacity as a harbour authority within Oban Bay, and as a ferry operator within the harbour area.	Article 39 of the Tobermory Harbour Empowerment Order 2017	This article provides a saving in respect of the provisions of the order for the rights, duties and privileges of CMAL, and provides that the Council must consult with CMAL when the Council seeks to exercise its powers under articles 5, 9, 20 or 22 in a manner that is likely to materially affect CMAL or the ferry operator's regular operations.	Paragraph 17 of Schedule 2 to the 1964 Act.
42	To save the rights, powers etc of the Crown.	Article 37 of the Eyemouth Harbour Revision Order 2021.	This article provides a saving in respect of the provisions of the Order for the estate, right, power, privilege, authority or exemption of the Crown. It provides that any land or rights of whatsoever description belonging to His	Paragraph 17 of Schedule 2 to the 1964 Act.

			Majesty in right of the Crown or held by a government department or held in trust for His Majesty for the purposes of a government department shall not be interfered with by the Council without consent in writing from Crown Estate Scotland, relevant government department or relevant person.	
43	To give effect to the repeal or revocation of various obsolete provisions of harbour enactments of local application.	Article 38 of the Eyemouth Harbour Revision Order 2021	This article specifies the enactments that the enactments mentioned in Schedule 1 to the Order are repealed to the extent specified in that same schedule.	Section 14(2A) of the 1964 Act.

6 Conclusion

- 6.1 In light of the above, the proposed HRO satisfies the requirements of section 14(1) of the 1964 Act as it relates to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties, for objects specified under Section 14(2A) and Schedule 2 to the 1964 Act.
- 6.2 The Council therefore considers that the Scottish Ministers are entitled to make the HRO under section 14(1) of the 1964 Act.

On behalf of Argyll & Bute Council

10th November 2023