

CÒMHDHAIL
ALBA

TRANSPORT
SCOTLAND

Your ref:
DURKINJ/163918-
000003

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Dear Joe

HARBOURS ACT 1964- CALEDONIAN MARITIME ASSETS (KENNACRAIG) HARBOUR REVISION ORDER

1. I refer to the application submitted on behalf of your client, Caledonian Maritime Assets Ltd (CMAL) on 19 November 2009 for the making of the **Caledonian Maritime Assets (Kennacraig) Harbour Revision Order** ("the HRO") under section 14 of the Harbours Act 1964 ("the 1964 Act"). This letter conveys the Scottish Ministers' decision on this application.

Purpose of HRO

2. The purpose of the HRO is to authorise CMAL to construct and maintain works in West Loch Tarbert and on adjacent land at Kennacraig in Argyll and Bute at the Company's ferry harbour. This would involve:-

- the reclamation and infilling of an area of bed of West Loch Tarbert and the levelling of that area together with the adjoining land to form an area of 0.5 hectares;
- a mechanically operated single deck linkspan, providing access to and from vessels, extending from the reclaimed area, including supporting piled bankseat and lifting frame with supporting dolphin structures;
- an open piled jetty structure forming a berthing and mooring line, including inner and outer berthing dolphins, accessed via steelwork access ramps from the jetty structure and incorporating a fixed and adjustable passenger access gangway;
- a two storey terminal building to be constructed over reclaimed land comprising passenger and baggage handling, sales areas, management offices, staff welfare facilities and stores areas;
- a strengthening of the existing causeway using fill and rock armour, including a widening and an increase in the level of that causeway;



1

- the reclamation and infilling of an area of the bed of West Loch Tarbert and the levelling of that area together with the levelling of the adjoining land to form an area of 0.74 hectares for the parking of vehicles; to be retained on the seaward limits by rock armoured revetments;
- the reclamation and infilling of an area of the bed of West Loch Tarbert and the levelling of that area together with the levelling of the adjoining land to form an area of 0.35 hectares for the marshalling and parking of vehicles; to be retained on the seaward limits by a rock armoured revetment; and
- a single storey split level building, comprising ticketing and check-in facilities for passenger and freight vehicles.

Pre-application Consideration of Environmental Impact

3. Having been advised of the intention to make an application, Ministers consulted with CMAL, Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”) and Argyll & Bute Council to determine whether the proposed order would authorise a project which falls within Annex I or II of the Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC and if so whether it was a relevant project in terms of paragraph 4 of schedule 3 to the 1964 Act.

4. Following that consultation Ministers concluded that the works were a project falling within Annex II but that it was not a relevant project as it is unlikely to have significant effects on the environment. In accordance with paragraph 5 of schedule 3 to the 1964 Act they advised CMAL accordingly on 18 November 2009.

The Application

5. CMAL is the statutory harbour authority for Kennacraig. Kennacraig was previously vested in the Scottish Transport Group who were the harbour authority for the port. By virtue of article 3(2) of, and Schedule 2 to, the Transport (Scotland) Act 1989 (Transfer of Shipping Companies) Appointed Day Order 1990 (S.I. No. 552 (S.71)), the port became vested in Caledonian MacBrayne Limited which became and remains the harbour authority for the port. On 2 October 2006, the Registrar of Companies for Scotland gave a certificate that Caledonian MacBrayne Limited having changed its name by special resolution was then incorporated under the name of Caledonian Maritime Assets Limited.

6. CMAL submitted an application for an HRO to the Scottish Government on 19 November 2009.

7. Notice of the application was advertised in the Oban Times on 26 November and 3 December 2009, the Argyllshire Advertiser and the Campbeltown Courier on 27 November and 4 December 2009 and in the Edinburgh Gazette on 27 November 2009.

Objections

8. Scottish Ministers received four objections within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 6 January 2010; 2 objections were from environmental bodies and 2 were from residents of West Loch Tarbert.

9. Two of the objections were from Scottish Natural Heritage (SNH) and Scottish Environment Protection Agency (SEPA), which were later withdrawn:-

- SNH had no objection about the development but recommended conducting a pre-construction otter survey to minimise potential ecological impact arising from the development. A survey was conducted confirming there were no otter holts or resting sites in the area so SNH were content to withdraw their objection.
- SEPA objected on the basis of lack of information regarding waste water and surface water drainage leading from the increased car parking area. SEPA later confirmed they had received a satisfactory response from CMAL to their query and withdrew their objection.

10. The other two objections were from residents of West Loch Tarbert. The objectors were concerned about:-

- why there was no requirement for an Environmental Impact Assessment (EIA);
- light pollution illuminating the sky at night and noise pollution from ship generators running overnight;
- wash and disturbance caused by MV Finlaggan and other ships within West Loch Tarbet, sewage discharge from the vessels and the impact of MV Finlaggan on the loch's benthos, local habitats and species, specifically shellfish;
- the impact from dredging; and
- that there was not enough detail in the submitted plans and the design of the terminal building is not suitable.

11. Following the 42 day notice period CMAL entered into correspondence with the objectors to attempt to address the issues raised. Scottish Ministers received copies of the correspondence from both parties.

12. Transport Scotland responded to the objectors explaining the EIA procedure for HROs. The opinion of all three consultees; SEPA, SNH and Argyll and Bute Council, was that an EIA was not required. The consultees were subsequently given the objectors' specific concerns and reiterated their original opinion that an EIA was not required.

13. CMAL advised that a new lighting system has been designed to minimise light pollution. The building of a new pier will facilitate overnight plug in for vessels for mains supply, alleviating the noise pollution created by running generators at night. CMAL noted that there was no vessel speed limit but the vessels would always transit at a safe speed. Vessel sewerage was processed in a 3 stage anaerobic tank on all main vessels using the harbour, which met all current legislative requirements. Dredging would only be required during construction, and disposal would be guided by FEPA (now a Marine Licence) as prescribed under licence. CMAL met with the two objectors to discuss their plans in detail.

Written Representations and Conclusions on Objections

14. In terms of the 1964 Act, as amended by the Transport (Scotland) Act 2005, where there are unresolved objections, it is open for Scottish Ministers to cause a public inquiry or a hearing to be held, although this is not a requirement. Ministers were of the opinion that the objectors' points were capable of resolution by written representations and that neither a public inquiry nor a hearing was required in relation to this Order. A timetable for the process based on the objection procedure set out under the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 was used for the exchanges, as there is no specified procedure within the 1964 Act.

15. One objector restated their belief that the Scottish Ministers should have insisted on an EIA. They believed that the HRO for Kennacraig should not be considered



independently of the reasons for which it is required; which they cite is for the introduction of a new vessel which is larger than previous ones. They requested that the resolution of issues raised in an annex to their written representations should be secured as conditions of the HRO. These included concerns over public consultation, quality of information, project definition, increased traffic in West Loch Tarbert, light and noise pollution, and the visual impact of the new terminal building.

16. The second objector responded on the grounds that they believed the main aim for the HRO is to improve the capacity and berthing facilities for the ferries. They noted concern that the harbour upgrade and the ferry activity were being treated separately by CMAL and the Scottish Government and that the need for an EIA had been denied. They expressed disappointment at the quality of the advice offered by SEPA, SNH and Argyll and Bute Council in relation to the need for an EIA and noted concern about the treatment of sewage and whether it would be properly managed. They also expressed concern about the impact of ferries on West Loch Tarbert in relation to a local oyster cultivation business.

17. CMAL made representations noting that the HRO was necessary to improve the embarkation and disembarkation for foot passengers using the new vessel MV Finlaggan. Current facilities require foot passengers to use the vehicle access ramp, resulting in greater health and safety implications. Raising and widening the causeway would create better safety around the port. Reclaiming land to facilitate parking and marshalling would ensure the harbour could effectively cope with capacity constraints. CMAL reiterated their belief that overnight light and noise pollution would decrease with the installation of a modernised lighting system and shore plug in electricity supply allowing vessels to switch off their engines overnight.

18. After giving due consideration to the objections raised and correspondence received, Scottish Ministers determined that:-

- Objections citing the lack of an environmental statement are not upheld. The standard procedures set out in the Harbours Act 1964 (as amended) were followed and the advice of SNH, SEPA and Argyll and Bute Council was that an EIA was not required.
- The introduction of MV Finlaggan on the Kennacraig route, and associated concerns regarding disturbance the use of this vessel may cause, is also not a relevant factor in relation to this HRO. Indeed, CMAL has been able to undertake works required to allow the vessel to use the port using powers within its existing legislation.
- Overall, it is considered that undertaking the works outlined in the Order will lead to improved facilities for passengers and vehicles whilst providing the opportunity to mitigate impacts on the surrounding area (in relations to noise and lighting). The existing terminal building will be replaced by a modern facility and external elements require prior approval by Argyll and Bute Council's Planning Department. Given Kennacraig is already an existing facility it is considered that CMAL has addressed the other concerns in relation to planning, noise and lighting.

The Scottish Ministers' Consideration

19. Section 14(2) (b) of the Harbours Act requires that an HRO shall not be made in relation to a harbour unless the appropriate Minister is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

The Scottish Ministers are satisfied that this HRO meets these objectives and that the HRO should be made in the interests of securing the improvement, maintenance and management of the harbour in an efficient and economical manner. The Scottish Ministers considered the objections made and not withdrawn and the written representations received and have decided to make the Order with modifications which do not appear to them to substantially affect the character of the order. The proposed modifications are:-

- Article 6 - Power to dredge

The words “and may blast any rock in the area so described” are to be deleted.

- Article 8 - Tidal Works

A reference to paragraph (2) of Article 3 (power to construct works) was omitted from Article 8 (3) of the draft published order and an amendment to rectify this is proposed.

- Article 14 - Period for completion of works

The words “as a harbour” in paragraph (5) line 3 should be deleted from the draft published order as Kennacraig is already a harbour

- New article 18 - Lighting requirements for harbour

Including provisions for CMAL to install and maintain in the harbour a lighting system designed to minimise light pollution occurring outwith the harbour limits. This was added to reflect CMAL’s commitment to minimising impact on properties in the vicinity, subject to meeting health and safety requirements within the port.

Right to Challenge Decision

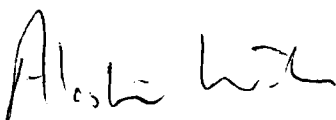
20. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HRO on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which the HRO becomes operative, make an application for the purpose to the Court of Session as the case may be.

A person who thinks they may have grounds for challenging the decision to make the HRO is advised to take legal advice before taking any action.

Availability of Decision

21. A copy of this letter has been sent to all those who were consulted on or made objections to the order and will be published on the Scottish Government website.

Yours sincerely



ALASTAIR WILSON
Director



