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Your ref:
DURKINJ/163918-
000005

Our ref:

Date:
24 June 2011

Dear Joe

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

1. I refer to the application submitted on behalf of your client, Caledonian Maritime Assets Ltd ("CMAL") on 17 November 2010 for the making of the **Caledonian Maritime Assets (Port Ellen) 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 Loch Leodamais and on adjacent land at Port Ellen on the Isle of Islay in Argyll and Bute at the Company's ferry terminal. This would involve:-

- the reclamation and infilling of an area of bed of Loch Leodamais and the levelling of that area together with the adjoining land to form an area of 1.24 hectares;
- the provision of a mechanically operated single deck linkspan, providing access to and from vessels extending from the reclaimed area noted above including supporting piled bankseat and lifting frame with supporting dolphin structures;
- an open piled jetty structure connecting to the reclaimed works above, forming the 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 one and a half storey terminal building constructed over the reclaimed land, comprising passenger and baggage handling, sales area, management offices, staff welfare facilities and stores area; and

- a solid faced quay wall (including berths for vessels) extending into the sea to enclose and reclaim an area of 0.085 hectares, to be surfaced and used as a general quayside working space.

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 by virtue of its size. In accordance with paragraph 5 of schedule 3 to the 1964 Act they advised CMAL accordingly on 23 June 2010.

The Application

5. CMAL is the statutory harbour authority for Port Ellen. Port Ellen 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 17 November 2010.

7. Notice of the application was advertised in the Courier & Advertiser (Argyllshire/Campbeltown) on 26 November and 3 December 2010, the Oban Times on 25 November and 2 December 2010 and in the Edinburgh Gazette on 26 November 2010.

Objections

8. Scottish Ministers received one objection from a resident of Islay within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 6 January 2011.

9. The objector, a resident of the Isle of Islay, was concerned about:-

- the practical, economic and environmental reasons for undertaking harbour works at Port Ellen, both in the short term under current consents, and in the longer term under the consents to be so authorised by this harbour revision order;

- that the works consented under this harbour revision order were premature and consent should not be given until the findings of the Ferries Review were known;
- the objector also argued that developing Port Ellen was not a good use of resources when Port Askaig could adequately serve Islay and this would also lead to a reduction in CO2 emissions, as the journey to Port Askaig was shorter than to Port Ellen; and
- also commented that investment in the island's roads would probably be more of a priority to islanders.

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

11. CMAL advised that the current infrastructure at Port Ellen was reaching the end of its serviceable life and that they are contractually bound to provide suitable infrastructure at Port Ellen for use by the ferry operator. It was noted that the Ferries Review is anticipated later this year and works authorised by this order are not planned until 2015. CMAL acknowledges that if the Ferries Review reports a change in their contractual obligations, then this will be taken into account in any works planned for the future. The routes for lifeline ferries are included in the Public Service Contract (PSC), and they have no locus to change this. CMAL noted that it is contracted to supply the port infrastructure and the vessels to operate the services identified in the PSC and will ensure that their facilities are as environmentally considerate as possible.

12. CMAL highlighted that the immediate works to which the objections had been raised were being undertaken under its existing legislation in order to ensure that the port remained operational.

Written Representations and Conclusion on Objections

13. 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 objector's 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.

14. No further comments were received from the objector or applicant. Both referred to the correspondence already copied to Scottish Ministers as stating their respective cases.

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

- the applicant already has responsibility for maintaining the current infrastructure and ferry service routes at Port Ellen;

- the initial works being undertaken will rely on existing powers already in place and do not form part of the HRO application under consideration by Scottish Ministers;
- the HRO works will help to address the passenger and vehicle congestion issues also noted by the objector;
- funding of the HRO works is a matter for the applicant and not for consideration in the making of this HRO;
- issues relating to the outcome of the Ferries Review are not relevant to the making of this HRO; and
- general roads infrastructure investment on Islay is not a relevant matter in relation to the making of this HRO.

The Scottish Ministers' Consideration

16. Section 14(2) (b) of the Harbours Act requires that a Harbour Revision Order 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.

17. 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 objection made and not withdrawn and the written representations received and have decided to make the Order in the form submitted to them.

Right to Challenge Decision

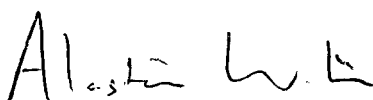
18. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HRO on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which 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

19. 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