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Date:  
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Dear Neil

## **HARBOURS ACT 1964 - CALEDONIAN MARITIME ASSETS LIMITED (BRODICK) HARBOUR REVISION ORDER 2015**

1. I refer to the application submitted on behalf of your client, Caledonian Maritime Assets Ltd (CMAL) on 1 April 2014 for the making of the **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**

The purpose of the HRO is to authorise CMAL to construct and maintain works at Brodick. This would involve:-

- an open piled jetty structure forming the berthing and mooring line, and incorporating a fixed and adjustable passenger access gangway ;
- the reclamation and infilling of an area of the bed of Brodick Bay and the levelling of that area together with the levelling of the adjoining land and providing access for the marshalling and parking of vehicles to be retained on the seaward limits in part by rock armoured revertments and, as to the remainder, by a solid faced quay wall.
- a mechanically operated single deck linkspan, providing access to and from vessels, extending from the reclaimed area, including supporting piled bankseat and lifting frames with supporting dolphin structures;
- a two storey terminal building to be constructed over reclaimed land to be used for passenger and baggage handling, sales areas, management offices, staff welfare facilities and stores areas;
- a single storey split level building being the building to be used as ticketing and check-in facilities for passenger and freight vehicles.

- a water storage tank and pump house building to be used for ship supply;
- lighting columns not exceeding 15 metres in height; and
- demolition of existing pier and other structures

## Pre-application Consideration of Environmental Impact

2. Having been advised of the intention to make an application, Ministers consulted with POCL, Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”) and North Ayrshire 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.

3. Following that consultation Ministers concluded that the works were a project falling within Annex II and that it was not a relevant project. In accordance with paragraph 5 of schedule 3 to the 1964 Act they advised CMAL accordingly on 13 September 2013.

4. This decision meant that no Environmental Statement was required and therefore no Environmental Impact Assessment was undertaken. However, on the advice of SNH, CMAL undertook a separate Otter Survey and Japanese Knotweed Assessment for the site.

## The Application

5. CMAL is the statutory harbour authority for Brodick. An application has been made by CMAL for an HRO under section 14 of the Harbours Act 1964. CMAL submitted an application to the Scottish Government on 1 April 2014.

6. Notice of the application was advertised in the Arran Banner on 12 and 23 April 2014 and in the Edinburgh Gazette on 11 April 2014.

## Objections

7. Scottish Ministers received four objections within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 23 May 2014; the objections were received from Royal Yachting Association (RYA), Arran Elderly Forum (AEF), Arran Civic Trust (ACT) and Dr Sally Campbell, a local resident:

- RYA had no objection in principle to the works proposed to be authorised by the Order but had issues with the form of the direction to vessels powers proposed to be conferred by the Order.
- AEF were concerned by the distances elderly foot passengers will be required to walk to reach the terminal from the local bus terminal, the perceived inadequacy of the elevator provision to the ticketing area, lack of mechanical assistance to take elderly passengers onto the vessel from the waiting area and insufficient car park places for islanders travelling to the mainland for the day.
- The objection from ACT related to the architectural standards of the development and its user friendliness for foot passengers.

- Dr Campbell's concerns were about the walking distances for foot passengers, accessibility for elderly and disabled people, and the design of the terminal, in similar terms to the ACT..

8. 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.

9. CMAL wrote directly to each of the objectors and alleviated some of their concerns. CMAL confirmed that if the proposed Order was granted and contained Article 34 (Harbour directions to vessels), they would be prepared to comply with the National Directions Panel's non-statutory Code of Conduct in respect of harbour directions. Article 34 has since been removed by CMAL. CMAL also explained that the bus stances are located as close to the terminal as possible, with the furthest bus stance 50 metres away. The walkway would be completely covered, not involve crossing roads, have seating along the route, plus the ferry operator would continue to offer individual assistance to passengers embarking/disembarking. There would be 2 x 13 person lifts in operation.

10. When pressed on the status of their objection following the meetings, RYA agreed to withdraw their objection and the other 3 objectors did not respond. Following this correspondence Scottish Ministers agreed to deal with the remaining objections via written representations. The 3 remaining objectors declined to submit further comments during the written representation process.

### **Written Representations and Conclusions on Objections**

11. 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.

12. CMAL made representations noting that the HRO was necessary to secure the improvement and maintenance of the harbour in an efficient and economical manner to ensure the continued smooth running of its ferry services.

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

- Further walking distances for passengers is inevitable due to the new pier needing to be situated in deeper waters to allow the newer larger vessels to berth. CMAL held four public meetings earlier in the process and amended their proposals following feedback to ensure the walkway was as short a distance as possible, and completely covered. In addition, it is important to note that the operator would continue to offer assistance to any individual passengers who require help boarding the vessel.
- Regarding the size of the proposed ferry terminal building, CMAL have undertaken analysis future demand, and have included capacity for a potential for increasing number of passenger and vehicles, with the terminal having a 60 year design life. The current smaller terminal building is noted as often being at capacity.



- Transport Scotland officials visited Oban harbour terminal to investigate the use of the lift for passengers during peak travel time. Objectors had commented on lengthy queues in Oban for passengers using the lift, but the lift usage appeared busy but manageable. CMAL countered this objection by planning to install two 13 person lifts at Brodick, instead of one at Oban.
- ACT and Dr Campbell objected to the visual design of the terminal building. CMAL changed the design of the proposed building considerably from initial plans, following specific feedback from local residents who attended the 4 public meetings or submitted comments online via the website. Initial proposals were for a single story building, but this was amended to a two story terminal mainly to ensure safety at vehicle and pedestrian crossovers. The architects are based in Ayrshire and have designed a building using mainly local materials, including a red sandstone outer layer used for many buildings in Brodick and on Arran.

### **The Scottish Ministers' Consideration**

14. 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.

### **Right to Challenge Decision**

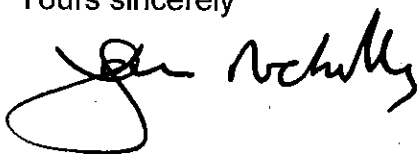
15. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HRO on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which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

16. 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



**JOHN NICHOLLS**  
Director

