

Aviation, Maritime, Freight & Canals

Victoria Quay, Edinburgh EH6 6QQ
dario.dallacosta@transport.gov.scot



Carolyn A Wallace
Solicitor (Contracts and Conveyancing) and Notary Public
The North Ayrshire Council
Legal Services
1st Floor West
Cunninghame House
Irvine KA12 8EE

Date:
30 May 2023

cwallace@north-ayrshire.gov.uk

Dear Carolyn

1. I refer to the application submitted by North Ayrshire Council (the Council), for the making of the Millport Harbour Revision Order 2023 (the Order) under section 14 of the Harbours Act 1964 (the 1964 Act). This letter conveys the Ministers' decision following their consideration of the application.

Purpose of the Order

2. The Order empowers the Council to construct and maintain works in Millport Harbour and to mark and regulate a new navigation channel, all as required to support the Millport Coastal Flood Protection Scheme.

Application process

3. Public notices were placed in the Edinburgh Gazette on 22 June 2022 and the Largs and Millport Weekly News on 22 and 29 June 2022. The 42-day notice period ended on 3 August 2022.

Objections

4. Observations were received from the Northern Lighthouse Board and the Maritime and Coastguard Agency, while Clydeport Operations Limited (Clydeport) offered a number of recommendations. These recommendations resulted in changes to the Order.

5. One objection was received from the Royal Yachting Association (RYA).

Objections handling

6. The applicant corresponded with the RYA, who agreed to a number of changes to the Order. The RYA withdrew their objection on that basis.

Proposed modifications

7. Following the recommendations from Clydeport, the following changes were made:

- Article 2 includes the following new definitions, which read:
 - “the 1965 Order” means the Clyde Port Authority Order 1965.
 - “the Clyde Navigation Acts 1858 to 1965” means the Clyde Navigation Consolidation Act 1858, the Clyde Navigation (Glasgow Harbour Tramways) Act 1864, the Forth and Clyde Navigation (Capital) Act 1866, the Clyde Navigation (Amendment) Act 1868, the Clyde Navigation (Stobcross Dock) Act 1870, the Clyde Navigation Act 1873, the Clyde Navigation Act 1878, the Clyde Navigation Act 1883, the Clyde Navigation Act 1884, the Clyde Navigation Act 1887, the Clyde Navigation Act 1890, the Clyde Navigation Act 1891, the Clyde Navigation Act 1894, the Clyde Navigation Act 1897, the Clyde Navigation Act 1899, the Clyde Navigation Act 1904, the Clyde Navigation Act 1905, the Clyde Navigation Order 1907, the Clyde Navigation Act 1911, the Clyde Navigation Order 1914, the Clyde Navigation Act 1929, the Clyde Navigation Order 1950, the Clyde Navigation Order 1957, the Clyde Navigation Order 1960, the Clyde Navigation Order 1963, the Clyde Navigation Order 1964 and the Clyde Navigation (Superannuation) Order 1965.
 - “Clydeport” means Clydeport Operations Limited (Company number: SC134759).
 - “the Clydeport Acts and Orders 1965 to 2021” means the 1965 Order, the Clyde Port Authority Revision Order 1968, the Clyde Port Authority Order 1969, the Clyde Port Authority Order 1971, the Clyde Port Authority (Hunterston Ore Terminal) Order 1973, the Clyde Port Authority Scheme 1991 Confirmation Order 1992, the Clydeport (Closure of Yorkhill Basin) Harbour Revision Order 2002, the Clydeport (Closure of Govan Basin) Harbour Revision Order 2004, the Clydeport Operations Limited (Greenock Ocean Terminal Cruise Berth) Harbour Revision Order 2018 and the Clydeport (COP 26 etc.) Harbour Revision Order 2021.
 - “Clydeport Harbour Master” means any person appointed by Clydeport to be the harbour master for the Clydeport jurisdictional area and includes that person’s deputies and assistants and any other person for the time being authorised by Clydeport to act, either generally or for a specific purpose, in the capacity of harbour master for the Clydeport jurisdictional area.
 - “Clydeport jurisdictional area” means the port as defined in section 5(1) of the 1965 Order, the limits of which are described in section 14 of the 1965 Order.
 - “the Greenock Port and Harbour Acts 1913 to 1957” means the Greenock Port and Harbour Consolidation Act 1913, the Greenock Improvement Order 1919, the Greenock Port and Harbours Order 1920, the Greenock Port and Harbours Order 1922, the Greenock and Port Glasgow Tramways Company Act 1928, the Greenock Port and Harbours Order 1943, and the Greenock Port and Harbours Order 1957.
- Article 18 has been introduced, which reads:

In relation to the Clydeport jurisdictional area, if there is a conflict between a special direction given by the Clydeport Harbour Master, a general direction or byelaw given by Clydeport, or other regulation applying to the Clydeport jurisdictional area, and—

- (a) any special direction given by the harbour master,
- (b) any general direction or byelaw made by the Council, or
- (c) any regulation in this Order,

the special direction of the Clydeport Harbour Master, general direction or byelaw given by Clydeport, or other regulation applying to the Clydeport jurisdictional area, as appropriate, will take precedence.

- Article 20 has been introduced, which reads:

Nothing in this Order or in any byelaws, special directions or general directions made under it shall alter, prejudice, derogate or affect the jurisdiction of, or any rights, powers, privileges or authorities conferred on or vested in or enjoyed by Clydeport or the Clydeport Harbour Master under any enactment, including the Clydeport Acts and Orders 1965 to 2021, and the unrepealed provisions of the Clyde Navigation Acts 1858 to 1965 and the Greenock Port and Harbour Acts 1913 to 1957.

8. Following consultation with the RYA, the following changes were agreed:

- Article 2 includes a new definition which reads:

“personal watercraft” means a watercraft intended for sports and leisure purposes of less than 4 metres in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull.

- Article 10 includes a new provision (Item 3) which reads:

Where byelaws under this section make the carrying out of specified activities, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master as mentioned in paragraph (2)(m), the harbour master may take such action as may be reasonably required in default of compliance with any such approval, condition, control or direction.

- Item 1 of Article 12 has been amended to read:

The Council may, after consultation with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland, Clydeport and such other persons as the Council considers are representative of users of the harbour and in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons, give general directions for any of the following purposes.

- Item 3 of Article 12 has been amended to read:

The Council may, after consultation with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland, Clydeport and such other persons as the Council considers are representative of users of the harbour, revoke or amend any general direction.

9. The modifications made are not considered to substantially affect the character of the Order.

Scottish Ministers' consideration

10. Section 14(2)(b) of the 1964 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 Harbour Revision 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.

11. Our assessment is that the proposed Order is conducive to improving the management of the harbour in an efficient and economical manner.

12. Based on the arguments in respect of the objection and the issues previously agreed between the trustees and objector, Ministers agreed that the Order be made with the proposed modifications.

Right to challenge decision

13. Any person who desires to question the making of this Order on the grounds that there was no power to make it or that a requirement of the 1964 Act was not complied with in relation to it may, within six weeks from the date the Order comes into force, make an application for this purpose to the Court of Session.

14. Any person thinking of challenging the decision to make the Order is advised to seek legal advice before taking any action.

Availability of decision

15. Once the Order is made, the applicant must:

- Publish notice of the making of the Order in the Edinburgh Gazette and one local paper.
- Send copies of the notice to the people/organisations notified of the original application.
- Copy the notice to Transport Scotland.

16. A copy of this letter will be sent to all those who were consulted on the Order and will be published on the Transport Scotland website.

Yours sincerely



Dario Dalla Costa

Ports Policy Advisor

Aviation, Maritime, Freights & Canals