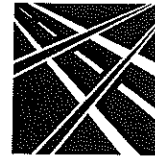


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**TRANSPORT
SCOTLAND**
CÒMHDHAIL ALBA

Elizabeth McLaughlin
Gillespie Macandrew LLP
5 Atholl Crescent
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Date:
17 March 2016

Dear Elizabeth,

HARBOURS ACT 1964 – LOCHBOISDALE AND GASAY HARBOUR EMPOWERMENT ORDER

1. I refer to the application submitted on behalf of your client, Lochboisdale Development Ltd (the Company) on 30 December 2014 for the making of the Lochboisdale and Gasay Harbour Empowerment Order ("the HEO") under section 16 of the Harbours Act 1964 ("the 1964 Act"). This letter conveys the Scottish Ministers' decision on this application.

Purpose of HEO

2. The purpose of the HEO is to confer powers on the Company to operate as a statutory harbour authority for the recently constructed harbour at Lochboisdale and Gasay, and to define those powers and the limits of jurisdiction of the Company.

The Application

3. The Company submitted an application for an HEO on 30 December 2014. The application was advertised in the Edinburgh Gazette on 6 January 2015 and in the Stornoway Gazette on 8 and 15 January 2015.

Objections

4. During the 42 day consultation period 2 objections were received from Caledonian Maritime Assets Ltd (CMAL) and the Royal Yachting Association (RYA).

5. CMAL's objection refers to a number of concerns regarding the interaction of the proposed new harbour authority with the existing ferry operations in the area. The RYA expressed concerns in a number of areas about the definition of the port and impacts on moorings along with concerns over the provisions relating to byelaws and directions, which they consider too wide.

6. These objections were subject to further written representations by all parties but ultimately both objectors maintained elements of their objection.

7. Ministers have considered the points made on all sides and determined that the order should be made with modifications which they consider achieve a balance between the demands of the objectors and the needs of the company. These include protections in regard to the lifeline ferry service and for the inner harbour authority and its harbour users as regards consultation on byelaws and directions and exemption from charges for transiting the new harbour area. Ministers consider that the direction powers are proportionate and in similar terms to those applicable in relation to other harbours in Scotland.

The Scottish Ministers' Consideration

8. Section 16 of the 1964 Act sets out the objectives for the achievement of which a Harbour Empowerment Order may be made when no person has sufficient powers to secure these. Section 16(5) requires that the Minister be satisfied that the making of the Order is desirable in the "interests of facilitating the efficient and economic transportation of goods or passengers by sea or in the interests of the recreational use of sea-going ships". Our assessment is that the proposed Order meets those criteria.

9. Following concerns on the quality of the drafting and the issues raised by objectors, Scottish Ministers have decided to make the Lochboisdale and Gasay Harbour Empowerment Order with modifications which appear to them to be necessary but which do not substantially affect the character of the order.

10. The proposed modifications relate to :-

- Improvements in clarity of defined terms and interpretation, particularly in relation to the Inner Harbour and its Authority, the Port and Port Premises and by removing unnecessary definitions.
- Tightening the range of powers granted to the new Authority and how it interacts with the existing Inner Harbour Authority.
- Providing protection to the Inner Harbour Authority in dredging its approaches and allowing users to transit the new harbour to access the Inner Harbour without charge.
- Clarifying and removing duplication from detailed matters on which byelaws may be made and to a lesser extent on matters of general direction and their enforcement.
- Provision for consultation between the new and existing harbour authorities in regard to making byelaws and directions.
- Removal of the article on Defence of due diligence which relates to provisions not included in the draft order.

Right to Challenge Decision

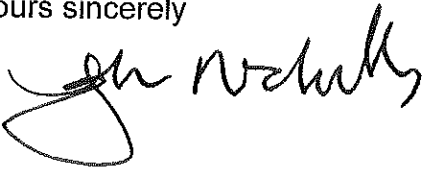
11. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HEO on the ground that there was no power to make the HEO or that a requirement of the 1964 Act was not complied with in relation to the HEO may, within six weeks from the date on which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

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

Availability of Decision

12. A copy of this letter has been sent to all those who were consulted or made representations on the order and will be published on the Transport Scotland website.

Yours sincerely



JOHN NICHOLLS
Director

