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Dear Lara

1. I refer to the application submitted by Ashfords LLP Solicitors on behalf of your client, Clydeport Operations Limited (the applicant), for the making of the Clydeport (COP 26 etc.) Harbour Revision Order 2021 (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 aims to carry out the following:
- Permanently extend the limits of the port to include the docks and works.
 - Confer updated general functions on the applicant.
 - Enable the applicant to issue general directions, and the applicant's harbourmaster to issue special directions, to vessels.
 - Provide for the enforcement of any such directions.
 - Amend the 1965 Order to, amongst other things, update certain definitions.
 - Temporarily extend the limits of the port between 27 October 2021 and 15 November 2021 (the COP 26 period) to include a temporary additional area near the COP 26 event campus so that during that period the applicant will be the harbour authority for that area and will be able to exercise their powers and functions (except the power to dredge) there.

Application process

3. Public notices were placed in the Edinburgh Gazette on 20 August 2021, and the Oban Times and the Herald on 19 and 26 August 2021.
4. The 42 day notice period ended on 30 September 2021, with one objection received from the Royal Yachting Association and Royal Yachting Association Scotland (RYA). In summary, the objection:
- Noted certain terms used in the Order were not defined.
 - Noted concerns about the procedure for making general direction.
 - Proposed amendment to the offence provisions at article 8.

- Contained the RYA's established opposition to the breadth of general direction making powers.

5. The applicant engaged with the RYA, and agreed to amend the Order to address most of the points raised in the objection. However, they declined to amend the proposed provisions concerning general directions. The RYA appreciated the applicant amending the Order in part, but did not withdraw their objection.

Objections handling and consideration

6. Ministers agreed on 4 October 2021 to handle the RYA objection via written representations. However, neither the RYA nor the applicant opted to make further representations in respect of the proposed Order.

7. The RYA's remaining objections to the applicant's proposals concerned the provisions regarding powers of general direction. They believed, firstly, that the proposed procedure for making a general direction did not sufficiently provide for appropriate checks and balances in respect of the exercise of such powers.

8. The procedure for making general directions set out in the Order is broadly in accordance with the usual procedure for the exercise of general direction making powers to be found in other recent Scottish Harbour Revision Orders. This procedure includes, in particular, a requirement to consult with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland and other appropriate persons or organisations. This consultation requirement provides sufficient safeguards.

9. The RYA also objected in general terms to the scope of the proposed general direction making power.

10. The Port Marine Safety Code, endorsed by the UK Government, the devolved administrations and representatives from across the maritime sector, sets out a national standard for every aspect of port marine safety and aims to enhance safety for everyone who uses or works in the UK port marine environment. It recommends that harbour authorities, like the applicant, secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters. The Clyde is Scotland's largest and busiest recreational boating harbour. It is also a busy commercial port. In the circumstances, Ministers support the applicant's case for the need for powers of general direction to enable compliance with the Port Marine Safety Code. I should also be noted that the RYA's concerns do not seem to be shared by the UK Chamber of Shipping, which was consulted on the Order and made no objection.

11. Ministers agree that the powers sought by the applicant to expand its limits are reasonable, as are the powers sought to appropriate or set apart a part of the harbour. They also determine that none of these powers unreasonably limits the public right of navigation.

12. 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 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.

13. It has been determined that the proposed Order is conducive to improving the management of the harbour in an efficient and economical manner. Ministers have decided to make the order with the modifications outlined below.

Summary of modifications

14. The modifications proposed by the applicant in response to comments made in the RYA's objection are as follows:

- **Article 2** – (i) Slight amendments to the definitions of the terms “permanent port limits plan”, “temporary port limits plan” and “temporary additional area” in response to the RYA's comments; and (ii) addition of a definition of the term “personal watercraft” (reflecting the definition in the Recreational Craft Regulations 2017).
- **Article 5** – Amendment to paragraph (1) to remove ‘or protection of property’ from the scope of the power to make general directions.
- **Article 8** – Addition of paragraph (3) to provide a defence of reasonable excuse in relation to proceedings for the offence of breach of a special direction given under article 7(1)(h).
- **Article 12** – Amendment to insert definitions of “personal watercraft” and “jet bike” into article 5(1) of the 1965 Order.

15. Other modifications proposed by the applicant include:

- **Article 2** – (i) amendment to the term “Clydeport Acts and Orders 1965 to 2018 and the definition therefore to make reference to the Clydeport Operations Limited (Greenock Ocean Terminal Cruise Berth) Harbour Revision Order 2018; and (ii) addition of the Office address of the applicant.
- **Article 3** – Formatting updated to correct errant numbering.
- **Article 12(1)(b)** – Addition of reference to “hover vehicle” in the new definition of “vessel” to be substituted at article 5(2) of the 1965 Order.

16. Ministers consider that none of the above modifications substantially affect the character of the Order.

Right to challenge decision

17. Any person who desires to question its making 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.

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

Availability of decision

19. 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.

20. 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



Karl Zaczek
Ports Policy Manager
Aviation, Maritime, Freights and Canals