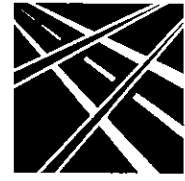


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Date:
12 February 2013

Dear Mr Durkin

HARBOURS ACT 1964 – CALEDONIAN MARITIME ASSETS (LOCHALINE FERRY SERVICES SLIPWAY) HARBOUR EMPOWERMENT ORDER 2013

1. I refer to the application submitted on behalf of your client, Caledonian Maritime Assets Ltd (CMAL) on 4 August 2010 for the making of the **Caledonian Maritime Assets (Lochaline ferry services slipway) 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. CMAL has been aware that there was no Statutory Harbour Authority status and appropriate legislation in place at some of the ports contained within the Harbour Operating and Access Agreement [between CMAL and CalMac Ferries Limited] including at the ferry slipway area at Lochaline in the Sound of Mull in the Highland Council area.

3. The HEO would confer on CMAL harbour authority status. CMAL would then be supported in law to deliver its harbour authority and contractual obligations for the ferry pier at Lochaline and be empowered to maintain and operate the works in the harbour (i.e. the existing infrastructure) and, within the harbour limits, reconstruct, replace and relay the works. It would also empower CMAL to regulate, manage, mark and light the harbour area, provide accommodation and harbour facilities, and issue special directions to vessels through their Harbour Master. The order identifies the harbour limits.

Pre-application Consideration of Environmental Impact

4. As the HEO does not authorise any works, there was no requirement to consider the need for an environmental statement or Appropriate Assessment under the Conservation (Natural Habitats & Etc) Regulations.

The Application

5. The draft order was submitted to the Scottish Government on 4 August 2010.
6. Notice was published in the Oban Times on 12 and 19 August 2010, the Lochaber News on 12 and 19 August 2010, and in the Edinburgh Gazette on 13 August 2010.

Objections

7. Scottish Ministers received twelve objections within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 23 September 2010;

8. Two of the objections were from the Scottish Environment Protection Agency (SEPA) and the Royal Yachting Association (RYA), which were later withdrawn:-

- SEPA objected on the grounds of lack of information about works, which they withdrew after being informed no works were included in the Order.
- RYA objected to the harbour limits covering a large section of the entrance to the Loch and to the special directions powers. RYA withdrew their objection after CMAL altered the harbour limits and amended the drafting of their special directions.

9. The other 10 objections came from local residents and users of the harbour. These were divided into the following issues:-

- Concern about the extent of the harbour limits and access to the strip of loch side for launching and recovery of dinghies and boats.
- Concern that access would be restricted at the old stone jetty/village pier, and at the graving dock, that the crucial turning area for the approach to the old pier was restricted and that access from the old pier to the social club was excluded.
- Questioning the need for a harbour order when any works required could be consented under Section 34 of the Coast Protection Act 1949.
- Belief that there should be a partnership between the Mooring Association, the Old Pier Association and the Morvern Development Company for the management of the harbour.
- Concern that CMAL might be privatised in the future and a privatised company would restrict access further.

10. In response to the objections, CMAL altered and reduced the harbour limits and amended the drafting of their special directions. SEPA, RYA and one interested individual withdrew their objections. When pressed on the status of their objection following the amendment to the harbour limits, six objectors did not respond and three objectors refused to withdraw their objections.

11. Following this correspondence an impasse was reached with the three local objectors, despite assurances from CMAL that limits had been amended to alley their concerns.

Consideration of Objections

12. Concerns about the limits of the harbour were fully considered by CMAL. Revised proposals reduced the limits considerably. In correspondence with Highland Council regarding use of an adopted road which residents use to access the social club, CMAL

agreed to 'yellow hatch' paint an area of the road to ensure it is kept clear to allow vehicles to turn. These amendments guarantee access for the public at all times to the areas where concerns had been raised.

13. CMAL would have a statutory obligation to provide a public right of navigation to the pier and slipway and through the harbour area. They would not restrict or prevent any movement through the channel within the harbour limits provided users did not interfere with ferry operations and conduct their activities in a responsible and safe manner. CMAL has said that it will not close the loch at any time and recognises that the loch is a natural safe haven.

14. The pier, roadway and land as identified in the plans has been in CMAL ownership for some time, and there has not, to CMAL's knowledge, been any restriction on access to the old pier ever imposed. This will not change. Given Lochaline is already an existing facility, it is felt that CMAL has addressed the concerns raised by the objectors.

The Scottish Ministers' Consideration

15. Section 16(5) of the Harbours Act requires that an HEO 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.

16. The Scottish Ministers are satisfied that this HEO meets these objectives and that the HEO 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 objections made and not withdrawn and have decided to make the Order with modifications

17. The following two amendments to the order were required to reflect changes made to the harbour limits and the special directions in consultation with objectors:

Article 12- Harbour limits

The schedule containing the plan has been amended to reflect the reduced seaward and land limits of the harbour limits.

Article 16- Special directions to vessels

The references to "any vessel" have been changed to "a vessel" in article 16(1) (a), (b) and (c) and the area restricted to "in the harbour" in article 16(1) (b) and (d).

18. These amendments have been made to address the concerns of objectors and effectively remove the reasons for the issues raised. Although they are relatively minor, it was considered that they do substantially affect the character of the order.

19. In these circumstances Ministers were required to make all reasonable attempts to inform those who may have an interest prior to making any Order, in case they wish to make comment. In this instance we would cite those who raised objections and did not withdraw these as being those with an interest. They were sent details of the amendments in a letter dated 7 November 2012 and were given a 42 day period to make any further comment. Although two of the objectors responded to the letter there were no new issues raised in

relation to the original objections which would be reason for the Order not to be made, as set out in this letter.

20. With regard to the objection suggesting an alternative proposal in the future for another organisation or group of organisations to become the harbour authority Scottish Ministers can only deal with the application received, and consider it within the terms of the Harbours Act 1964 as outlined above.

Right to Challenge Decision

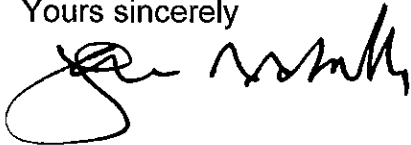
21. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HEO on the ground that there was no power to make the HEO or that a requirement of the 1964 Act was not complied with in relation to the HEO may, within six weeks from the date on which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

Availability of Decision

22. 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