

Director  
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Lee Tearle  
Bircham Dyson Bell LLP  
50 Broadway  
London  
SW1H 0BL

Date 31 October  
2013

Dear Mr Tearle,

## **HARBOURS ACT 1964 – THE WHITEHILLS HARBOUR AND MARINA (CONSTITUTION) ORDER**

1. I refer to the application submitted on behalf of your client, Whitehills Harbour Commissioners on 12 August 2013 for the making of the Whitehills Harbour and Marine (Constitution) under section 14 of the Harbours Act 1964 ("the 1964 Act"). This letter conveys the Scottish Ministers' decision on this application.

### **Purpose of HRO**

2. The purpose of the HRO is to modernise the constitution of the trust to fully meet the requirements of the "Modern Trust Ports for Scotland Guidance for good governance"

### **The Application**

3. The trust as the authority engaged in improving, maintaining and managing the harbour submitted an application for an HRO to Scottish Ministers on 12 August 2013.

4. Notice of the application was advertised in the Edinburgh Gazette on 13 August and in the Banffshire Journal on 13 and 20 August. During the 42 day consultation period which ended on 24 September 2013 no objections were received.

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

5. 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.

6. The Scottish Ministers are satisfied that this HRO meets these objectives and that the order should be made with minor modifications which do not substantially affect the character of the order.

## Modifications

7. The timescale from the end of the consultation period within the Order (as drafted) did not provide a sufficient period to enable the appointments process for new trustees to be completed by the required date. To address this minor changes were made to the dates in the order.

8. The reference to "October" in the definition of application date was changed to "November" and the reference to "November" in the appointment date was changed to "December".

## Right to Challenge Decision

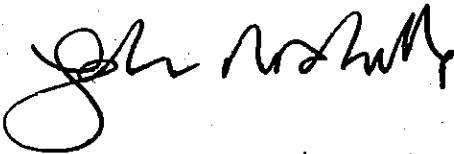
9. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HRO on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which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

**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

10. A copy of this letter has been sent to all those who were consulted on the order and will be published on the Scottish Government website.

Yours sincerely



**JOHN NICHOLLS**  
Director