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Date:
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Dear Elaine

HARBOURS ACT 1964 - PORT OF CAIRNRYAN HARBOUR REVISION ORDER

1. I refer to the application submitted on behalf of your client, Port of Cairnryan Limited (POCL) on 12 June 2012 for the making of the **Port of Cairnryan Harbour Revision Order** ("the HRO") under section 14 of the Harbours Act 1964 ("the 1964 Act"). This letter conveys the Scottish Ministers' decision on this application.

Purpose of HRO

The purpose of the HRO is to authorise POCL to construct and maintain works in Port of Cairnryan. This would involve:-

- a rock armoured revetment with steel piling for parts of its length extending into Loch Ryan and enclosing an area of 14,100sqm/1.41ha of the bed of Loch Ryan and incorporating part of an existing revetment and the enclosed area to be used for access to the double-deck linkspan comprising hard standing for marshalling and parking vehicles;
- a double-deck linkspan adjustable in level at its seaward end including foundation structures on driven piles and a sloped approach with associated piled foundations and shown on sheet number 2 and sheet number 3 on the deposited plans;
- a row of fender support structures running approximately north-south and situated to the west of existing Berth 1; the support structures inter-connected and connected to the existing Berth 1 quay wall by a series of pedestrian walkways;
- security fences having a height not exceeding 3.5 metres to be constructed;
- a two storey building to be used as a workshop with accommodation for maintenance staff and offices.

Pre-application Consideration of Environmental Impact

2. Having been advised of the intention to make an application, Ministers consulted with POCL, Scottish Natural Heritage ("SNH"), Scottish Environment Protection Agency ("SEPA") and Dumfries and Galloway Council to determine whether the proposed order would authorise a project which falls within Annex I or II of the Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC and if so whether it was a relevant project in terms of paragraph 4 of schedule 3 to the 1964 Act.

3. Following that consultation Ministers concluded that the works were a project falling within Annex II and that it was a relevant project due to its location. In accordance with paragraph 5 of schedule 3 to the 1964 Act they advised POCL accordingly on 29 July 2011.

The Application

4. POCL is the statutory harbour authority for Port of Cairnryan. POCL is wholly-owned by P&O European Ferries (Irish Sea) Ltd, part of the P&O Ferries group. An application has been made by POCL for a HRO under section 14 of the Harbours Act 1964. POCL submitted an application to the Scottish Government on 12 June 2012.

5. Notice of the application was advertised in the Stranraer and Wigtownshire Free Press on 14 and 21 June 2012 and in the Edinburgh Gazette on 15 June 2012.

Objections

6. Scottish Ministers received nine objections within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 26 July 2012; two objections were from the operators and owners of a shellfish company working in Loch Ryan and seven were from residents living near the port.

7. The two objections received from the operators and owners of a shellfish company working in Loch Ryan were concerned at potential disruption to silt in the water caused by the works, loss of oyster seabed, and increased harbour limits.

8. The other seven objections noted the following issues:-

- objecting to noise from the harbour during construction
- lorries using roads in the village
- Concern about using rock from a nearby quarry for infill
- Concern over increased traffic using the port
- Ongoing noise from lorries driving over speed bumps, use of the current linkspan and from parked refrigerated lorries.

9. Following the 42 day notice period POCL entered into correspondence with the objectors to attempt to address the issues raised. Scottish Ministers received copies of the correspondence from both parties.

10. POCL met with each of the objectors individually and confirmed to objectors that this Order will not result in additional port capacity and does not relate to the introduction of larger vessels. There are no plans to change either the port limits defined in the Order, nor the powers already held. POCL will provide the shellfish objectors with data of suspended sediment monitoring carried out by the contractor and clarified that the small volume of dredging will take place outside the oyster spat-fall season. POCL also assured residents

the local quarry would not be used for infill and that the proposed modern linkspan will create less noise than the current older model.

Written Representations and Conclusions on Objections

11. In terms of the 1964 Act, as amended by the Transport (Scotland) Act 2005, where there are unresolved objections, it is open for Scottish Ministers to cause a public inquiry or a hearing to be held, although this is not a requirement. Ministers were of the opinion that the objectors' points were capable of resolution by written representations and that neither a public inquiry nor a hearing was required in relation to this Order. A timetable for the process based on the objection procedure set out under the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 was used for the exchanges, as there is no specified procedure within the 1964 Act.

12. Two objectors withdrew their objections. Further representations were received from five of the seven remaining objectors.

These further representations noted the following issues:-

- Remaining concerns regarding noise during construction;
- Ongoing noise from lorries driving over speed bumps, use of the current linkspan and from lorries using a weighbridge;
- Objection remains from the shellfish company regarding loss of oyster seabeds;
- Environmental concerns regarding use of a nearby landfill site and a Deed of Undertaking relating to the previous 2007 Order.

13. POCL made representations noting that the HRO was necessary to secure the improvement and maintenance of the harbour in an efficient and economical manner to ensure the continued smooth running of its ferry services.

14. After giving due consideration to the objections raised and correspondence received, Scottish Ministers determined that:-

- Objections citing ongoing noise at the Port or lorries moving through the village are not relevant factors in relation to Ministers decision on whether or not to permit this Order. Construction works will be restricted to defined hours to minimise any disturbance to local residents. POCL have also confirmed that they will not be using the local quarry for any materials relating to the works, although this would not have been a relevant objection.
- Regarding the local shellfish company's objection to the Order because they have historic rights to use the seabeds in Loch Ryan and fear disturbance during construction will reduce the size of their farm, it had to be considered that a Harbour Order can be made under either section 14 or 16 of the Harbours Act 1964 only for the purposes set out in that Act. It is not for the Scottish Government to comment on what other rights a company or individual may have in regard to any other legislation or regulation. If a company has outstanding issues relating to other legislation that they wish to pursue with POCL, then these are matters for them to take up directly with POCL.
- Given Cairnryan is an existing facility, it is considered that POCL's proposals in their application will help address any local concerns in relation to operation and noise, as the modern infrastructure put in place while undertaking the works authorised by the order will improve conditions in this regard. This proposal is not intended to increase the use or size of vessels at the Port but will replace an old linkspan to ensure the

continued operation of the Port with the minimal disruption to current operations during construction.

The Scottish Ministers' Consideration

15. 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.

The Scottish Ministers are satisfied that this HRO meets these objectives and that the HRO should be made in the interests of securing the improvement, maintenance and management of the harbour in an efficient and economical manner.

Right to Challenge Decision

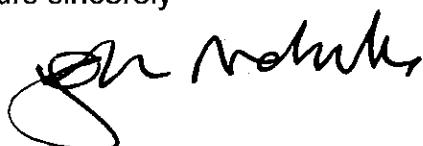
16. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HRO on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which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

Availability of Decision

17. 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