

## Aviation, Maritime, Freight & Canals

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Charles Scott  
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Date:  
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By email to [charles.scott@shepwedd.com](mailto:charles.scott@shepwedd.com)

Dear Charles,

1. I refer to the application submitted on behalf of your client, Aberdeen Harbour Board (AHB) for the making of the Aberdeen Harbour Revision Order (the order) under section 14 of the Harbours Act 1964 (the 1964 Act). This letter conveys Ministers' decision following their consideration of the application and representations made on it.
2. For the avoidance of doubt, this decision is separate to Scottish Ministers consideration of the Marine Licence Applications for some of the related works contained within the order. Ministers' decisions on these applications will be issued separately in due course.

### Purpose of the HRO

3. The order would authorise the construction and operation of an extension to Aberdeen Harbour in Nigg Bay to the south of the current harbour and extend the limits of the harbour to include the new facility.
4. The works authorised to be constructed include
  - a. breakwaters extending from both north and south shores of the bay
  - b. new quayside, including quay walls and pier walls and associated structures
  - c. excavation, reclamation, infilling and surfacing of an area of land behind the quays
  - d. various buildings, port support and security facilities
  - e. water storage tanks, a fuel depot, bulk commodity storage tanks and electricity substations
  - f. shore lighting and navigation aids

### Pre-application Consideration of Environmental Impact

5. Having been advised of the intention to make the application, Ministers consulted with Scottish Natural Heritage (SNH), Scottish Environment Protection Agency (SEPA), Aberdeen City Council (ACC) and AHB 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 of the 1964 Act.

6. Following that consultation Ministers concluded that the works were a project falling within Annex I and in accordance with paragraph 6 of schedule 3 to the 1964 Act they advised AHB accordingly on 10 January 2014 and provided advice on the content of the required Environmental Statement.

## The Application

7. AHB is the statutory harbour authority for Aberdeen harbour and they submitted an application for a revision order under section 14 of the 1964 Act to Scottish Ministers on 4 November 2015.
8. The application was advertised in the Edinburgh Gazette and in the Press and Journal on 6 and 13 November 2015.

## Objections

9. During the 42 day period, which ended on 18 December 2015, Ministers received 28 objections from the Royal Yachting Association (RYA), SEPA, SNH, the Royal Society for the Protection of Birds (RSPB), Whale and Dolphin Conservation (WDC), ACC, 21 local residents and a local fisherman.
10. The grounds of the objections by local residents are similar to each other in many respects and in several cases were framed in identical terms. They relate to loss of amenity around Nigg Bay and concerns over increased traffic and pollution, impact on wildlife particularly dolphins and sea birds, noise, visual impacts and lack of communication. The fisherman's objection was on the loss of fishing grounds and increased risk to fishing gear. ACC's objection related to vertical limits of deviation (that could impact the heights of proposed structures), road infrastructure and environmental impacts. The RYA objection highlighted issues with the byelaw and directions powers within the order. SNH, RSPB and WDC's objections related to measures required to mitigate the impact on marine mammals and birds.
11. Following the 42 day period AHB responded in writing to all objectors and met with ACC, SNH, RSPB, WDC and the local fisherman to discuss their concerns and any mitigating conditions which could reasonably be included in the order. They offered face to face discussions to local residents who had made representations but that offer was not taken up.
12. As a result of discussions with AHB, ACC withdrew its objection, however they restated concerns over heights of structures and the content of the Environmental Statement on which issues they deferred to any decision by Ministers on these matters.
13. We understand that ACC and AHB are considering a separate legal agreement on matters related to the development where it would not have been competent to consider these within the terms of the HRO. Scottish Ministers are not party to, or sighted on this agreement.
14. As a result of these discussions AHB provided further environmental information in response to some of the issues raised. As this was considered to be information to be

taken into account in the assessment of environmental impact, it was subject to a further period of consultation. That consultation ended on 3 June 2016.

## Handling and Consideration of objections

15. In terms of paragraph 18 of schedule 3 of the 1964 Act, where there are unresolved objections, it is open to Ministers to cause a public inquiry or hearing to be held, although it is not a requirement. Ministers were of the view that in this case the objections were capable of being handled by written representations.
16. AHB provided its representations in respect of the outstanding objections and proposed a revised draft order and these were sent to the objectors for response. The local fisherman subsequently withdrew his objection and only 3 local residents responded with further representations. RYA, WDC and SNH also responded and the latter subsequently withdrew their objection.
17. Following the exchange of representations the objections from RYA, WDC and 21 local residents remained unresolved although WDC had indicated that they would withdraw the objection subject to conditions which are now included in the revised draft order.
18. The RYA's objection relates to the provisions for general direction and byelaw powers. The provisions in this draft order are similar to other orders made in Scotland and although we note the objection from the RYA, Ministers are satisfied that the powers sought are appropriate and proportionate for the safe and efficient management of the harbour.
19. The issues raised by the local residents cover a wide variety of issues. In many cases overlapping with the concerns of the environmental advisers who are now satisfied with the mitigation measures proposed to reduce impacts on the environment and protected species. The other matters generally relate to loss of local amenity by the construction of harbour infrastructure on what is currently green space and an accessible bay.
20. Although ACC formally withdrew its objection, Ministers noted the residual concerns relating to the vertical limits of deviation and the contents of the EIA in relation to cumulative impacts of the development. With regard to the limits of deviation, Ministers consider that these matters can be appropriately addressed within the Construction Environmental Management Documents and no amendment to the Order is required. Issues relating to the cumulative impacts formed part of the consideration of the Appropriate Assessment as noted below.
21. Scottish Ministers have carefully considered the objections received from local residents. Many of the environmental concerns highlighted were also raised by the environmental bodies consulted whose objections have been withdrawn as a result of the mitigation being put in place and this should address the concerns raised by the residents.
22. On loss of amenity from building on Nigg Bay, this was the only option considered viable by AHB to take the project forward, highlighting the growing restrictions within the existing harbour and need to accommodate ever larger vessels to ensure the harbour remains operational within its existing markets and competitive in attracting new business.
23. The benefits to the local area and economy from the harbour extension in terms of employment and wider economic benefits (including the wider supply chain) have therefore to be weighed against this loss of amenity.

24. On balance, taking into account the wider factors, it is considered that the remaining objections should be set aside on this basis. It is also noted that the project is one of National Significance within the Third National Planning Framework, the Local Authority withdrew its objections and that various measures will be put in place during construction and operation of the harbour to reduce noise and light pollution and to manage traffic in the area.
25. Furthermore, in addition to the consideration noted above, we understand that AHB is working closely with ACC to develop a plan for local amenity improvements and landscaping in the vicinity of the new facility.

## Habitats Regulations Assessment

26. It is a requirement of regulation 48 of The Conservation (Natural Habitats, &c.) Regulations 1994 as amended, (the "Habitats Regulations") applying to European Sites that "where an authority concludes that a development proposal unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated."
27. SNH has advised that an appropriate assessment is required on the impact of the project on the Moray Firth Special Area of Conservation (SAC), the Ythan Estuary, Sands of Forvie and Meikle Loch Special Protection Area (SPA), River Dee SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland Coast SAC Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, Montrose Basin SPA, Firth of Tay and Eden estuary SPA, Forth Islands SPA, and Firth of Forth SPA.
28. This assessment has been carried out on Scottish Ministers' behalf by Marine Scotland and concludes that with the mitigation measures proposed in the revised order the project can be consented. The Appropriate Assessment will also be used to support the Marine Licence decisions taken by Ministers.

## Scottish Ministers' Consideration

29. 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.
30. As the current harbour in Aberdeen is working almost at capacity and is unable to expand within the current footprint, the proposed expansion in Nigg Bay will allow the harbour business to grow and provide improved facilities for various sectors including cruise, oil and gas and decommissioning. Ministers were satisfied that the modified draft order meets the first two of these requirements.
31. Ministers are minded to make the order with modifications which they do not consider substantially affect the character of the order but which include mitigation measures which address, where possible, the concerns of objectors on the environmental impacts. A draft of the order to be laid in Parliament is attached at ANNEX A.

32. As the order, if made, will authorise the carrying out of work which constitutes a national development (within the meaning of the Town and Country Planning (Scotland) Act 1997), section 54A of the 1964 Act requires that a draft of the order be laid before the Scottish Parliament. It can only be made if the draft is approved by resolution of the Parliament. If made the order will come into force on the day following its making. It is intended to lay the order before Parliament on 28 October 2016.

### Right to Challenge Decision


33. If and when the order is made, then 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.

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

### Availability of Decision

35. A copy of this letter is being sent to all those who were consulted/made objections or representations on the order and will be published on the Transport Scotland website

Yours sincerely



**JOHN NICHOLLS**  
Director – Aviation, Maritime, Freight & Canals

