

Aviation, Maritime, Freight & Canals

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Dear Niall

1. I refer to the application submitted by Brodies LLP on behalf of your client Stornoway Port Authority (the Authority), for the making of the Stornoway Port Authority Harbour Revision Order 2019 (the Order) under section 14 of the Harbours Act 1964 (the 1964 Act). This letter conveys Ministers' decision following their consideration of the application.

Purpose of the HRO

2. The Order reconstitutes the Authority with effect from 1 May 2019. It provides for the Authority to consist of a body of up to 10 members with experience in relevant matters. Between 7 and 9 persons will be appointed by the Authority and those members will retire in rotation. The Chief Executive will also hold office as a member.
3. The Order includes other provisions with respect to the Authority's constitution, including provisions for the co-option of additional members and disqualification of members. In addition, the order amends the Stornoway Harbour Order Confirmation Act 1976 and consolidates existing provisions.
4. The Order also empowers the Authority to construct and maintain works in the harbour at Newton Marina and at Arnish.

Environmental impact

5. In line with standard procedures, and as required by the Harbours Act 1964, we carried out environmental screening for the works authorised by the Order. Our view was that an Environmental Impact Assessment would be required.
6. Ministers made a deferral direction under paragraph 20D of schedule 3 to the 1964 Act, as they were satisfied that an assessment of the effects of the project on the environment is being or will be carried out by Marine Scotland.

The application

7. The Authority is the statutory harbour authority for Stornoway Harbour and submitted an application for a revision order under section 14 of the 1964 Act to Scottish Ministers on 18 December 2018.
8. The application was advertised in the Edinburgh Gazette on 22 December and in the Stornoway Gazette on 20 and 27 December 2018.

Objections

9. During the 42 day consultation period, one objection was received from the UK Royal Yachting Association (RYA). The objection contained the RYA's general opposition to provisions on appointment of members, byelaws and general directions.
10. More specifically, the RYA objected to the wording of two articles in the proposed order stating that:
 - A reference to recreational and leisure boating activities should be included in the list of relevant skills for board members; and
 - The RYA should be a named consultee in the process of making general directions.
11. The objection was withdrawn upon the Authority engaging with the RYA to discuss the suggested changes and agreeing to amendments which satisfied the RYA's concerns.

Summary of modifications

12. Based on the issues raised by the objector, and the agreement between the Authority and the RYA, the following modifications have been agreed in the made order:
 - Article 5(5)(b) – adding the words “recreational, sporting and leisure activities including without prejudice to the generality, recreational and competitive boating activities” to the list of desirable knowledge and abilities;
 - Article 22(1) and (22(3) – revising to say “and such bodies representing harbour users as the Authority think fit”; and
13. Further minor modifications were made to correct errors noted in the order by the Authority:
 - Article 2 – adding sheet 8 of the deposited plans to the definition of “limits of deviation”;
 - Article 12 correction – The proposed road will link the Arnish Fabrication Yard to work no. 8, and not work no. 6.
 - Article 12 – adding the words “with the limits of deviation shown in red” to Work number 13;
 - Article 12 – adding the words “with the limits of deviation shown in green” to Work number 14; and
 - Article 12 – adding the words “with the limits of deviation shown in blue” to Work number 15.
14. The above modifications were not considered to substantially affect the character of the Order.

Scottish Ministers' consideration

15. 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.
16. It has been determined that the proposed HRO is conducive to improving the management of the harbour in an efficient and economical manner and would be in the interests of the recreational use of sea going ships. Scottish Ministers have decided to make the Order with the modifications highlighted above.

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. When the order is made, the Authority must:
 - Publish notice of the making of the order in the Edinburgh Gazette and a local paper;
 - Send copies to the people notified of the original application; and
 - Copy the notice to Transport Scotland.
20. A copy of this letter is being sent to all those who were consulted on the order and will be published on the Transport Scotland website.

Yours sincerely



Chris Wilcock

Director

Aviation, Maritime, Freight & Canals

