

Aviation, Maritime, Freight & Canals

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Alastair Wood
Savills
8 Wemyss Place
Edinburgh
EH3 6DH

Your ref:

Our ref:

Date:
8 August 2014

Dear Alastair,

HARBOURS ACT 1964 – PORT OF ARDERSIER HARBOUR REVISION ORDER 2014

1. I refer to the application submitted on behalf of your client, Port of Ardersier Ltd ("the Company") on 4 October 2013 for the making of the Port of Ardersier 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

2. The purpose of the HRO is to empower the Company to construct port facilities at the former McDermott Yard at Ardersier and to operate that port as harbour authority in place of Whiteness Marina Company.

The Application

3. The Company as the authority engaged in improving, maintaining and managing the Harbour, submitted an application for an HRO to Scottish Ministers on 4 October 2013.

4. Notice of the application was advertised in the Edinburgh Gazette on 4 October and in the Inverness Courier on 4 and 11 October 2013. During the 42 day consultation period which ended on 15 November, 5 objections were received.

Objections

5. Objections were received from Port of Inverness (POI), Scottish Natural Heritage (SNH), Whale and Dolphin Conservation (WDC), Royal Society for the protection of Birds (RSPB) and Ministry of Defence (MOD). POI sought to insert a provision in the order limiting the use of the port to energy related purposes on the grounds that this was what was proposed and the Environmental Statement had not assessed the potential effect of a more general cargo operation on the current port and stakeholders in Inverness. The MOD had concerns about byelaw and direction powers which could conflict with activity in the Fort George firing range

which neighbours the jurisdiction of the harbour. The remaining 3 objectors had concerns over the impact on various European sites and protected bird and marine mammal species and wished to see further mitigation measures in the order to protect these interests.

6. The company entered into negotiations with all objectors and offered various modifications to the order to satisfy their concerns. They proposed a schedule of measures to mitigate the potential impacts on birds and marine mammals, particularly bottle nosed dolphins and seals, together with modifications to the order giving effect to these measures. These proposed modifications enabled SNH, RSPB and WDC to withdraw their objections.

7. The company proposed further modifications to the sections on byelaws and directions to ensure that these would not conflict with operations at Fort George and as a result the MOD withdrew their objection to the order.

8. The company felt that they would be unable to negotiate away the objection by POI and this objection was subject to a formal process of written representations. Both the Company and the objector provided additional arguments in favour of their respective cases. The company subsequently suggested that it would be willing to add a conditional use article to the order however the objector was not satisfied that the text proposed would achieve their aims. The option to include such a restriction or not was considered by Scottish Ministers along with the other modifications proposed to the order.

The Scottish Ministers' Consideration and Decision

9. 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. Ministers consider that this Order meets the first of these objectives.

10. Ministers also considered whether or not to include a restriction within the order limiting the use of the port to energy related purposes. Ministers have decided not to include such a restriction as they do not consider that there is real competitive threat to Port of Inverness and do not wish to create a precedent whereby they direct any port as to the type of business or market in which they should operate. They consider that ports should be open to all on payment of dues as they operate in a fully commercial market.

11. Ministers have agreed to make the order with modifications to allay concerns of objectors on byelaws and directions in to include a schedule of mitigation measures to protect marine mammals and birds from the potential impacts of the project. Ministers do not consider that the modifications substantially affect the character of the order.

Right to Challenge Decision

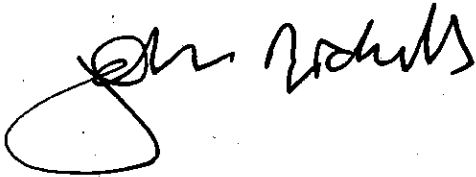
12. The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HRO on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which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

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

13. A copy of this letter has been sent to all those who were consulted on or objected to the Order and will be published on the Transport Scotland website.

Yours sincerely



JOHN NICHOLLS
Director – Aviation, Maritime, Freight & Canals