

## Chief Executive's Office

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Ian McCulloch  
Bircham Dyson Bell LLP  
50 Broadway  
London  
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Your ref:  
PXT/IHM/Y059633

Date:  
20 December 2011

Dear Ian,

### **HARBOURS ACT 1964 – Fraserburgh Harbour Revision Order**

1. I refer to the application submitted on behalf of your client, Fraserburgh Harbour Commissioners (the Commissioners) on 6 October 2011 for the making of the **Fraserburgh 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 main purpose of the HRO is to authorise the Commissioners to construct and maintain works in Fraserburgh harbour. This would involve:-

- the creation of a new entrance to the North Harbour with storm gates and opening bridge
- the blocking up of the existing entrance
- strengthening works to existing quays
- construction of a new control tower
- reclamation of part of the North Harbour
- dredging of the harbour.

3. The order also makes provision for the temporary closure of part of the harbour during the works and includes some amendments to the constitution and borrowing requirements of the Commissioners.

#### **Pre-application Consideration of Environmental Impact**

4. Having been advised of the intention to make an application, Ministers consulted with the Aberdeenshire Council, Scottish Natural Heritage (SNH) and Scottish Environment Protection Agency (SEPA) to determine whether the proposed order would authorise a project which falls within Annex I or II of 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.

5. Following that consultation Ministers concluded that the works were a project falling within Annex II but that it was not a relevant project by virtue of its size. In accordance with paragraph 5 of schedule 3 to the 1964 Act they advised the Commissioners accordingly on 30 September 2011.

### **The Application**

6. The Commissioners, as the authority engaged in improving, maintaining and managing the harbour, submitted an application for an HRO to Scottish Ministers on 6 October 2011.

7. Notice of the application was advertised in the Aberdeen Press and Journal and the Fraserburgh Herald on 13 and 20 October 2011 in the Edinburgh Gazette on 14 October 2011. Scottish Ministers received no objections within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 24 November 2011.

### **Consultation**

8. Before Ministers determined the application they consulted with, SNH, SEPA, Aberdeenshire Council, the Royal Yachting Association (RYA), the Northern Lighthouse Board (NLB) and the Chamber of Shipping (CoS) as their statutory consultees. No comments were received from the Council, RYA or CoS. NLB commented on the ongoing navigational lighting requirements in the harbour. SEPA commented on the potential flood risk to the control tower and recommended a full assessment of the risk and that the contractor takes appropriate measures during construction. SNH advised that an appropriate assessment should be undertaken to consider the impacts on cetaceans in respect of the Moray Firth Special Area of Conservation (SAC) and they provided additional advice to inform that assessment.

### **Appropriate assessment**

9. Regulation 48 of the Habitats Regulations applying to European Sites provides 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." Ministers made an assessment of the impacts of the project on the qualifying interests of the Moray Firth SAC and concluded that with the mitigation measures included in the order, the works would not have an adverse effect on the integrity of the site.

### **The Scottish Ministers' Consideration and Decision**

10. 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 these objectives. They have considered the application and the results of their consultation and they have decided to make the Order in the form in which it was submitted.

### **Right to Challenge Decision**

11. 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

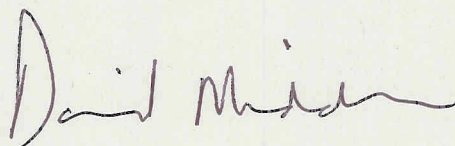
weeks from the date on which the HRO becomes operative, make an application for the purpose to the Court of Session as the case may be.

**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**

12. 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

A handwritten signature in dark ink, appearing to read 'David Middleton', written in a cursive style.

**DAVID MIDDLETON**  
Chief Executive

