

ANGUS COUNCIL**POLICY AND RESOURCES COMMITTEE - 19 MARCH 2002****MONTROSE PORT AUTHORITY - THE MONTROSE PORT AUTHORITY HARBOUR REVISION
(CONSTITUTION) ORDER 2002****REPORT BY THE DIRECTOR OF LAW AND ADMINISTRATION****ABSTRACT**

This Report advises members of (1) further discussions which have taken place with regard to proposed changes to the Constitution of the Montrose Port Authority and the method of appointing members thereto; (2) the publication of the draft Montrose Port Authority Harbour Revision (Constitution) Order 2002; and (3) the procedure to be followed for the making of objections to the draft Order.

1. RECOMMENDATIONS

It is recommended that the Committee:-

- (i) notes the publication of the draft Montrose Port Authority Harbour Revision (Constitution) Order 2002; and
- (ii) agrees to homologate the decision of the Convener and Vice-Convener of this Committee in instructing the Director of Law and Administration to object to the draft Order on the ground that no regard has been had to the Council's interest in appointing members to the Port Authority, and that the Order should incorporate provision for the Council to appoint two members, such appointments to be made on "Nolan principles".

2. INTRODUCTION

Reference is made to Article 9 of the minute of meeting of the Policy and Resources Committee of 23 October 2001 when the Committee noted the position with regard to the proposed changes to the Constitution and method of appointment of members of the Montrose Port Authority. The Committee instructed me to write to the Scottish Executive setting out the Council's views:-

- that the removal of the right of the Council to nominate a number of members would be anti-democratic
- that it was important that the local community should be represented on the Port Authority and the appropriate representatives of that community would be elected members both of Angus Council and Montrose Community Council
- that Councillors should not require to go through some further selection process when they had already been subject to an election system which in itself is as fair, open, transparent and subject to independent scrutiny as any system under Nolan principles.

A copy of the response from the Scottish Executive to that letter is attached and it will be noted that Government policy in this regard is to widen the scope of the appointment procedure to Trust Port Boards to open competition, to provide the opportunity to all Port users and stakeholders who wish to do so to be able to put themselves forward as candidates. The intention is therefore stated as being to establish Boards which are independent and fit for purpose rather than the traditional situation in Trust Ports where most Board members are appointed to represent particular interest groups.

3. DRAFT ORDER - MEMBERSHIP

The draft Montrose Port Authority Harbour Revision (Constitution) Order 2002 has now been published and advertised, with 42 days allowed for objections. The date for submission of objections was Monday 18 March 2002. The Constitution Clause provides that:-

"on and after the new constitution date the authority shall consist of -

- (a) six members appointed by the authority; and
- (b) the Chief Executive, the Finance Director and the Commercial Manager for the time being respectively of the authority."

Each member appointed is to be a person who appears to have special knowledge, experience or ability appropriate to the efficient and economic discharge by the authority of their functions, including in particular special knowledge, experience or ability in one or more of a number of matters. The list of skills and experience includes "local community interests", the intention of the Executive being that this would enable at least one Board post to have a job description where the background and abilities of Councillors, among others, would be apposite to the range of skills and experience required.

Discussion has taken place with the Scottish Executive regarding the possibility of the Council retaining the right to appoint two members to the Board of the Port Authority on the basis of compliance with the "Nolan" principles. The Scottish Executive has confirmed that this would be acceptable. This would mean that the Council would be required to undertake a competitive, advertised, open recruitment process in line with existing local authority recruitment practices. Board vacancies would be advertised with a job description agreed with the Port Authority. Appointments would require to be open to all, not restricted to Council members. Appointments would be made on the basis of fitness for purpose.

In terms of making these appointments, however, the Executive does not see this as being a matter for the Council. It is intended that the Board appointments to be undertaken directly by the Port Authority would comprise a three member panel chaired by the Chairman or Vice-Chairman of the Port Authority, a Port stakeholder representative and a third member who would be independent. The Executive advise that they could accept that the third member of the panel be an Angus Council representative in 2 years out of 3, with the Montrose Community Council being represented in the other year. The Executive considers that this option might be attractive to the Council because it would give the Council an equal say in the appointment of all Port Authority Board members in 2 out of every 3 years in which appointments are made. The Executive would not be prepared to accept an interview panel where any one interest was in the majority - the "Council appointments" would therefore be made by a selection panel where the Council had minority representation.

4. SUBSEQUENT PROCEDURE

As stated above the date for submission of objections to the draft Order is Monday 18 March 2002. If no objections are received within that period or if all objections have been withdrawn, Scottish Ministers then refer the draft Order to the National Ports Council for consideration. If there are objections, an inquiry would be held unless Ministers were of the opinion that the objections are frivolous or too trivial to warrant the holding of an inquiry. Once an inquiry has been held, Ministers refer the draft Order, the objections and the reports of any person who held the inquiry to the National Ports Council for consideration.

The National Ports Council reports back to Scottish Ministers who consider this report and the documents reported on and who may then make the Order applied for in the form of the draft submitted or subject to such modifications as they think fit. Where Ministers propose to make the Order with modifications which appear to substantially affect the character of the Order the Order shall not be made until all interested parties have had time to consider and comment on the proposed modifications.

5. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this Report. However, if an inquiry is held, it is possible that the Council would be required to pay all the expenses. There is no budget provision for this.

6. HUMAN RIGHTS IMPLICATIONS

There are no human rights implications arising as a result of this Report.

7. CONCLUSION

It is clear that the terms of the draft Order do not meet the stated position of the Council in this regard. Given the timescale for making objections the Convener and Vice-Convener of the Policy and Resources Committee agreed to instruct that objections be made on the grounds that the Council considered it should retain the right to appoint members to the Port Authority, albeit that such appointment would be carried out on the basis of "Nolan principles".

8. CONSULTATION

The Chief Executive and the Director of Finance have been consulted in the preparation of this Report.

CATHERINE A COULL
Director of Law and Administration

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing this report.

The (Draft) Montrose Port Authority Harbour Revision (Constitution) Order 2002

Correspondence with the Scottish Executive as contained in file 12/40