

## ANGUS COUNCIL

ITEM No. 9

## POLICY AND RESOURCES COMMITTEE - 23 OCTOBER 2001

## MONTROSE PORT AUTHORITY - PROPOSED REVISION ORDER 2001

## REPORT BY DIRECTOR OF LAW AND ADMINISTRATION

**ABSTRACT**

This Report advises members of discussions which have been taking place with regard to proposed changes to the constitution of the Montrose Port Authority and the method of appointing members thereto.

**1. RECOMMENDATIONS**

It is recommended that the Committee:-

- (i) note the position with regard to the proposed changes to the constitution and method of appointment of members of the Montrose Port Authority;
- (ii) consider the position of the Scottish Executive in this matter; and
- (iii) instruct me to write to the Scottish Executive setting out the Council's views.

**2. INTRODUCTION**

A Harbour Authority is a body which has been given statutory powers or duties for the purpose of improving, maintaining or managing the Harbour. Montrose Harbour Authority is of the type commonly known as a "Trust Port". It was established by a local private Act of Parliament which sets out the membership, method of appointment etc. The current membership of the Port Authority comprises 3 executive members appointed by the Secretary of State, 2 members appointed by Angus Council and 1 member appointed by Montrose Community Council.

However, early in 2000, the Department of the Environment, Transport and the Regions published a document entitled "Modernising Trust Ports - A Guide to Good Governance". This followed a review of Trust Ports which had been undertaken in 1998 involving a detailed scrutiny of the Trust sector with specific regard to the standards of corporate governance and accountability of its operation. The review highlighted a need for general improvement in the openness and accountability with which Trusts conducted their business and this guide to national standards of accountability was proposed as a benchmark to provide good practice for the future.

With regard to the guiding principles in respect of appointment to Trust Ports, the guide states that the objective is to obtain a board that is independent and fit for purpose rather than representative of particular interests. The intention is to open up the process to allow Trusts to range wider to locate the expertise (whether gained through professional or life experience) that they need to function effectively. This will ensure that people appointed to Trust Ports are more independent, selected in a more open and accountable manner and are fit for the purpose of providing the Port with effective, strategic direction.

The guide sets out the following 8 guiding principles of Trust Board appointment:-

**Responsibility** - the ultimate responsibility for making an appropriate appointment of someone fit for purpose rests with the chairman of the board.

**Merit** - all appointments should be governed by the overriding principle of selection based on merit and the well informed choice by the board of new members who through their abilities, personal experience and qualities match the needs of the Trust.

**Independence** - no appointment will be made to any board to provide representational rights for specific groupings. All appointments must result from an open and competitive selection process operated by a panel consisting of at least one member independent of the port.

**Equal Opportunities** - Trusts must sustain recruitment policies and practices aimed at delivering the principles of equal opportunity and achieving demographic balance on the board.

**Probity** - appointees must be committed to the principles and values of the Trust and be ready to fulfil those duties with integrity in a completely disinterested and impartial manner.

**Openness** - Board membership must depend on merit. It must be open to all those who can prove that they are fit for purpose through their ability to meet the criteria laid down for appointment to the board. Membership of another group or organisation should not be a precondition of acceptance.

**Transparency** - the principles contained in this guidance must be applied to the entire appointment process. Its workings must be transparent and information about the appointments made must be publicised.

**Proportionality** - appointment procedures must be geared to the nature of the post and the weight of its responsibilities. Within the basic framework of openness and accountability they need not be disproportionate in terms of time and effort to the importance of the post applied to. They should be seen to encourage applications from a broad cross section of the community.

The existing right of appointment by local authorities is recognised but it proposed that local authorities should seek to adopt Nolan procedures in making these appointments. Local authorities are asked to institute a competitive, advertised, open recruitment process in line with their existing recruitment practices. This should be against a job description agreed with the Trust Board and appointments should be open to all, not restricted to council members. As representatives of the local communities served by these ports local authorities should ensure that those they appoint to trust boards comply with the basic criteria set out in these standards and are able to make an effective contribution to the workings of the Trust. Local authorities should consider involving the chairman and chief executive/senior manager of the Trust in the selection process.

### 3. THE (DRAFT) MONTROSE PORT AUTHORITY REVISION ORDER 2001

Following some discussions regarding the way forward on this matter the Montrose Port Authority Revision Order 2001 was published as a draft in November 2000. The proposed Order provides that the Port Authority shall consist of 6 members appointed by the Authority together with the Chief Executive, Finance Director and Commercial Manager for the time being of the Authority. The 6 members to be appointed will require to be persons who 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 the following - management of harbours, shipping or other forms of transport, financial management, the laws relating to Scotland, safety or personnel management, commercial marketing or information technology, environmental matters affecting harbours and any other skills and abilities considered from time to time by the Authority to be relevant to the discharge by them of their functions. There is no provision for members to be appointed by either the local authority or the community council.

#### 4. CURRENT POSITION

Discussions involving the Leader of the Administration have taken place with the Port Authority in an attempt to find a way forward which would be acceptable to all parties. These culminated in a meeting in Montrose on 26 September which was also attended by representatives from the Scottish Executive and from Montrose Community Council. The Leader of the Administration made clear at that meeting his view that the Council would not consider the proposals to be acceptable. He considered 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 of Montrose Community Council; and 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.

This position was not accepted by the representatives from the Scottish Executive who, while accepting that the Council and community had an important role to play, adhered to the view that no body should retain rights of nomination. It was suggested that the best way for the Council's interest to be maintained would be for the Council to be represented on the interviewing panel. Alternatively it might be possible to retain a formal right of nomination if this was done on Nolan principles - ie by the Council advertising the vacancies and then carrying out interviews.

The meeting concluded that the Council would consider its position at this meeting and thereafter write to the Scottish Executive with their views. The Committee is therefore asked to consider the views set out above.

#### 5. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

#### 6. HUMAN RIGHTS IMPLICATIONS

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

#### 7. 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 paper, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), was relied on to any material extent in preparing this Report.

"Modernising Trust Ports - A Guide to Good Governance".

