

ITEM	5
MANAGER'S REPORT NO.	47
COUNCIL MEETING	1981 10 05

RE: CITY OF VANCOUVER'S BRIEF RESPECTING GREATER
AUTONOMY FOR THE PORT OF VANCOUVER

MUNICIPAL MANAGER'S RECOMMENDATION:

1. *THAT the recommendation of the Director of Planning be adopted.*

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TO: MUNICIPAL MANAGER

FROM: DIRECTOR OF PLANNING

SUBJECT: CITY OF VANCOUVER'S BRIEF RESPECTING GREATER
AUTONOMY FOR THE PORT OF VANCOUVER

PLANNING DEPARTMENT
1981 SEPTEMBER 28

OUR FILE: 13.200

RECOMMENDATIONS:

1. THAT Council endorse the principle of establishing greater local autonomy for the Port of Vancouver.
2. THAT Council request staff to forward a copy of the following report to the Minister of Transport and to the City of Vancouver's Economic Advisory Commission.

REPORT

BACKGROUND:

The Honourable Jean-Luc Pepin, Minister of Transport, has recently outlined the intent of his Government to extend a higher degree of autonomy to NHB ports than permitted under current legislation. The Government's proposals are contained in a Bill which is to be considered soon after Parliament reopens in mid-October.

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The City of Vancouver's Economic Development Commission has prepared the attached 1981 August brief which outlines the rationale for decentralization; identifies certain basic principles for the establishment of new port authorities; and details proposals that would enhance the proposed Ports Policy from the perspective of the Port and the City of Vancouver.

As one of the jurisdictions within the Port, the Municipality of Burnaby has been requested to formally endorse the general thrust of the brief.

EXISTING SITUATION:

Staff has reviewed this brief and, in our view, it clearly outlines the need to provide local port authorities with a high degree of autonomy in administrative, operational and financial matters. If the Port of Vancouver is to meet the demands of ever-changing technology and maintain a competitive position with major west coast ports, it is essential that it be responsive to evolving local circumstances. This can only be achieved if the Port is provided with the responsibility for the administration and management of its affairs.

From the Municipal perspective, we have found it difficult to deal with port authorities on local matters involving land use, land tenure and development considerations as their staff is not empowered to make their own decisions in this regard.

In summary, we believe that it is beneficial to support the principles embodied in the attached brief and recommend that Council endorse the principle of establishing greater local autonomy for the Port of Vancouver.



A. L. Parr
Director of Planning

PB/tgg
attachments

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MUNICIPAL MANAGERS
OFFICE

A BRIEF RESPECTING THE QUESTION OF LOCAL PORT AUTONOMY

Prepared by

The Vancouver Economic Advisory Commission
August 27, 1981

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(Telephone: 873-7212)

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PREAMBLE

The existing legislation regarding the administration of NHB ports in Canada dates from 1936, almost one-half century ago.

While the provisions of the 1936 Act have in many respects served both the aims of Government and the needs of Canada's ports well, it is clear that their utility and relevance have been largely undermined by recent trends and developments, which in the aggregate constitute a set of circumstances fundamentally different from those which existed in the 1930s.

These 'trends and developments' are manifold and complex, but include, for example: an enormous increase in economic development throughout the world, and an accompanying expansion of international trade; the development of new 'multimodal' systems for containerised cargo and large bulk facilities; the post-1973 'energy crisis', characterising the 'Opec Decade'; greatly increased competition between ports; community demands for more sensitive, integrated and responsive approaches to the planning and development of ports situated within major urban areas; and so on. These factors have placed renewed emphasis on the need for port planning and investment at the national level, and at the local level, for a more responsive and hence effective system of local port management than that presently existing.' (Transport Canada, Canadian Ports: A New Management, TP 344: 1976).

This brief has three objectives:

1. to outline the rationale for decentralising certain powers of management to local port authorities in Canada;
2. to identify some of the basic principles which could be employed in the establishment of new port authorities; and
3. to indicate the degree of local support for the general principles embodied in the proposed Canadian Ports Policy and to suggest modifications and/or amendments that would enhance the proposed policy from the perspective of the port and community of Vancouver.

I. THE RATIONALE FOR A NEW PORTS POLICY

It is our view that a new ports policy embodying a decentralised approach to NHB port management and administration (1) accords well with recent Government policy initiatives, (2) would confer very significant advantages upon Canada's ports, (3) is broadly analogous to approaches adopted for many of the world's largest and most successful port operations, and (4) has increasing support among the ports of the nation, and their respective communities.

1. THE GOVERNMENT POLICY CONTEXT

Without attempting to present a comprehensive review of recent Government initiatives bearing on this issue, it may be useful to at least summarise some of those developments which appear to most clearly establish the philosophical and legislative basis for additional powers for local port authorities.

The concept of additional operational autonomy for regions and localities was established by the Glassco Commission of 1962-63, which recommended the decentralisation of Federal Government services '...on the reasoning that local offices have to be consulted by Ottawa in any case, and if the local personnel are competent, their advice will be accepted.' (Study of Harbour Administration in Canada, Information Canada, Ottawa: 1968). It was concluded that '...time and considerable correspondence and expenses will be saved if the local office is given the authority to make its own decisions in all cases, except those involving changes of government policy.' (Ibid.).

The acknowledged shortcomings of the existing statutory framework for port administration and management (with respect to, for example, the coordination of port development at the national level, the financial capabilities of local authorities, and so on) led to the inclusion in the Speech from the Throne in 1974 of the Government's intention to undertake a reorganisation of Canada's system of port management.

A special interdepartmental committee was struck, under the chairmanship of Mr. G. A. Scott, with a view to examining port management structures, and to develop a fresh management structure for port administration. The Scott Committee reported in July of 1975, recommending the establishment of '...a new single comprehensive ports organization based largely on a national ports policy and planning function, substantial local autonomy in the management of major ports, and regional participation in the port planning process.' (Transport Canada, op. cit.). Cabinet approved the general concept elucidated by the Scott Committee.

The basic principles and objectives of both the Glassco Commission and Scott Committee reports were to find expression in a subsequent legislative initiative. Bill C-6, 'An Act Respecting Canadian Ports' (The House of Commons of Canada, Third Session, Thirtieth Parliament, 26 Elizabeth II 1977), which was intended inter alia to establish

the broad objective of a national ports policy for Canada, namely, to foster the development of a ports system that:

- (a) is an effective instrument of support for the achievement of Canadian international trade objectives and of national, regional and local economic and social objectives;
- (b) is efficient;
- (c) provides accessibility and equitable treatment in the movement of goods and persons to users of Canadian ports;
- (d) provides local port Commissions with a high degree of autonomy to manage and operate the ports, consistent with the integrity and efficiency of the national ports system and the optimum deployment of resources; and
- (e) is coordinated with other marine activities and surface and air transportation systems.

(Bill C-6, House of Commons of Canada)

It was the express intention of the Bill to foster local port autonomy '...at ports of national significance at which there is demonstrable local interest in the management thereof and that are expected to be financially self-sufficient.' (Ibid.).

There is reason to believe that, if events had been allowed to take their course in Parliament, Bill C-6 would have been ultimately enacted. Due to a variety of factors - external and internal - this was not to be.

Recent events, however, suggest that the Government will be conferring more operational autonomy upon NHB ports. In May of this year, the Government of Canada published a new policy document (Canadian Ports Policy, Transport Canada - Marine, TP 3055: May 1981) outlining some proposed revisions to existing port legislation. It is our view that these revisions may enhance the ability of many of Canada's ports to more efficaciously administer and manage their operations, but we have serious concerns with specific reference to how these proposals might apply to the port of Vancouver (q.v. infra, Section II.).

2. THE LOCAL PERSPECTIVE

In our view, the decentralisation of certain powers to the local port authorities would confer considerable benefits upon all such ports in Canada, especially in the case of the larger operations which are characterised by a substantial international trade function.

In the case of Vancouver, there is a demonstrable need for local powers which would enable the port authorities to:

- (a) more expeditiously conduct day-to-day affairs ('administrative autonomy');
- (b) raise the necessary funds for port development and port operations ('financial autonomy'); and
- (c) respond more promptly to a vast and complex range of opportunities and challenges ('operational autonomy').

To illustrate: the Port of Vancouver is expecting a doubling of cargo tonnage in this decade, and is planning for a capital expenditure of some \$100 million over the next five years (these monies to be generated by port trade and business). Projects include, for example: new container cranes for VanTerm and Centennial Piers; a new cruise ship facility; an overpass for the entrance to the VanTerm facility; an expansion of the Roberts Bank facility.

The Port of Vancouver's task in planning for future growth and development is further complicated by the need to deal with provincial and local governments, at times in areas where the jurisdiction may be in some doubt (as in the Roberts Bank development), and at other times in areas which have a multi-jurisdictional character (as in the municipalities and the Greater Vancouver Regional District). It seems clear that the Port of Vancouver's staff would greatly benefit from being able to deal with the local government authorities on a wide range of themes (such as access roads, citizen access to port areas, land use questions, acquisition of properties for port development) if it were able to do so directly, rather than having to act as a kind of intermediary between local authorities and central ministries and departments. (The powers which we believe could bring this about are described in outline form below, part II.)

3. REFERENCE TO OTHER JURISDICTIONS

It is significant that many of the world's largest and most successful ports - Rotterdam, Antwerp, Hamburg, Kobe, Yokohama, Seattle, etc. - are operated by local and/or regional authorities. While we are conscious of certain differences in national government structures, scale of operation and precise functions between these examples and the Canadian situation, we would suggest nonetheless that they demonstrate in general terms the advantages of local direction for modern, growth-oriented port development and administration.

More specifically, we would also point out that several of Vancouver's competitors - notably Seattle, as well as Oakland and others - are locally-operated ports, and have a considerable advantage over the Port of Vancouver inasmuch as they may respond much more quickly to evolving circumstances.

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4. SUPPORT OF THE LOCAL COMMUNITY IN VANCOUVER

As a last point, we would like to emphasise that the concept of new powers of management for the port of Vancouver has very strong support among many Vancouver organisations and individuals.

While we acknowledge that there is not likely to be unanimity among all local groups as to the desired nature of the new local port authorities to be established under any forthcoming legislation, we think it is important to outline (vide infra, part II) some general principles regarding the structure and function of port authorities, which we believe would meet the demands of modern port management.

II. SOME GENERAL PRINCIPLES RESPECTING THE STRUCTURE AND FUNCTION OF PORT AUTHORITIES

We believe that the previous legislative initiative (Bill C-6) included many provisions which would have greatly improved both the national framework for ports administration, as well as the capability of local ports for undertaking programmes for the development of their local operations.

Furthermore, the current Federal initiative, outlined in the Canadian Ports Policy (released under the authority of the Hon. Jean-Luc Pepin, Minister of Transport, and elucidated by Senator Perrault at a recent conference in Vancouver) represents significant progress over existing ports legislation in a number of important respects. That initiative contains many proposals respecting the structure and function of local port authorities which we believe are meritorious, and worthy of support, for example:

- the idea of a new national Board, '...representative of broad regional interests in port matters' (Canadian Ports Policy, TP 3055, p. 5) seems sound;
- we also support the concept of local port corporations at ports '...meeting criteria for national and regional significance, local interest, and financial viability' (Ibid.);
- we agree, too, with the notion of delegating responsibility for '...property management, contracting authority, setting of rates, and personnel matters' (Ibid.) to the local Boards;
- provision for flexibility in the classification of individual ports according to the three principal categories of national port legislation can be seen as a positive proposal (although we have some concerns that this implicitly 'gradualist' approach may not be entirely satisfactory in the specific case of the port of Vancouver) (vide infra);

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(- the suggestion to limit membership in Local Port Corporation boards to seven (Transport Canada, op. cit., p. 7) is clearly reasonable, bearing in mind the advantages of such compact boards (with respect to organisation and administration, coherence on policy matters, and so on).

As a caveat, however, it must be acknowledged that the Government has opted for a 'gradualist' approach to revising national ports policy (see Ministry of Transport National Ports Policy Discussion Paper, TC-7-81-DP), rather than undertaking more fundamental measures. The City of Vancouver (among others) may have preferred a more radical approach, given the relative antiquity of the existing national ports legislation.

More specifically, the provisions relating to matters of budgeting and finance seem a little vague. Procedures relating to the preparation, submission and (where appropriate) approval of operating and capital budgets for the new local port authorities could have been more clearly developed in the ports policy document. In our view, local control over budgets (where financial responsibility and viability can be demonstrated) is fundamental to the efficient operation of certain Canadian ports; we are convinced that such powers are necessary if the port of Vancouver is to realise its current and future potential.

In order to give additional substance to our proposals, as well as to show where our perspective may accord with - or differ from - that embodied in the MoT's recent ports policy document, we submit for consideration the general ideas or principles respecting the structure and function of port management and administration that we had developed prior to the release of the Canadian Ports Policy. They are as follows:

1. Basic division of responsibilities
 - National Harbours Board to determine overall strategies for port development in Canada. Local Boards to formulate policies and undertake programmes for local port development (vide infra.).
2. Principal local responsibilities
 - The local port authorities should assume significant new powers with regard to operation, the raising of capital (including decisions as to investments which, in the view of the local Board, offer the best prospects for a favourable return), etc.

Generally, we suggest that local ports:

- i. be responsible for formulating operating budgets and programmes (relating to, e.g., the recruitment of staff, setting salary levels, etc.), which would be submitted to Ottawa for information only.

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- ii. be also responsible for formulating capital expenditure budgets, which would be submitted to Ottawa for examination, not approval (N.B.: where mismanagement or malfeasance on the part of local Board members is determined, the Minister, on the advice of the NHB, may remove such members; this should serve to safeguard both national policy objectives as well as local interests).

3. Financial Aspects :

Currently, port authorities must apply to the Treasury Board for capital expenditures of \$50,000 or more. In an era when one container crane (and its necessary infra.) can cost about \$5,000,000, there is a clear need for a more meaningful threshold. We propose that local Boards be empowered to borrow monies for expenditures from the Government and/or private lending institutions. In cases where expenditures require either loans from the Government, or guarantees from the Government to secure loans, then the budgets should be subject to the examination and approval of the Government (via the NHB and Treasury Board).

We also suggest that local Boards be empowered to undertake investments on the basis of what they deem to offer the best returns, rather than the central agencies retaining this power. With the best will in the world we submit that due to the 'distance decay' factor, central agencies in Ottawa cannot be expected to make optimum investment decisions for port authorities which may be situated some thousands of miles away.

4. Interaction with Local Government

At present, local port authorities are seriously constrained in their dealings with local government authorities. It has become increasingly evident that local ports must be able to act as partners with local government authorities, rather than principally as intermediaries, on such matters as land acquisition, urban planning, access, and so on.

5. Structure of the Local Boards

There is obviously considerable scope for flexibility as to the exact structure of the local Boards which would assume responsibility for port management. Having said this, we suggest that the following

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might represent desirable attributes of local port Boards, with specific reference to the Port of Vancouver:

- i. the local Boards should be relatively small, comprised of 7-10 members;
- ii. local Board members should be residents of the region in which the port is situated;
- iii. no local Board member should be an elected or appointed official of any government;
- iv. there should be members possessing a wide range of business and professional expertise on the local Boards;
- v. the Chairman of each local Board should also sit on the national Board;
- vi. the tenure of local Board members should be staggered so as to provide continuity (in terms of the perception of problems and opportunities, and the formulation of policy);
- vii. the appointment of staff for ports should be the responsibility of the local Boards;
- viii. the local Boards should be allowed to retain their surplus funds, and should be given the authority to invest them so as to increase the capital available for port development;
- ix. local Boards should provide the national Board with data and information required for the latter to monitor and review the performance of these local Boards.

6. Desirability of Commencing with a "Clean Slate"

So that local Boards may commence operation on as favourable a basis as possible, current assets should be considered free of debt (with respect to monies owed to the Federal Government, in each case).

7. Relationship with Private Sector

Whenever possible the local Board should encourage active participation by the private sector in port development and operations.

III. A REACTION TO THE RECENTLY ANNOUNCED CANADIAN PORTS POLICY

The proposed Canadian Ports Policy appears to be in accord with all but three of the principles outlined above. These exceptions are as follows:

- (1) in the Canadian Ports Policy and in the associated Discussion Paper (TC-7-81-DP) it is implied that the local port's budget must be approved by the parent corporation. That would not be in accord with our principles 2 i, 2 ii or 3;
- (2) under the new ports policy the parent body will gain the right to take some or all of a local port's surplus. That would conflict with our principle 5 viii; and
- (3) the Government ports policy paper suggests that chairmen of local Boards should have ex officio status on the national Board. We agree that local Board chairmen should sit on the national Board, but believe that they should hold full voting powers.

These exceptions, and how they are handled, define the level of local autonomy. The arguments made in the Discussion Paper concerning a financially self-sufficient Canada Ports Corporation militate against complete local autonomy even for ports that are financially self-sufficient in terms of both their operating budget and their capital budget. Furthermore, there is a possibility that over the years the centripetal pull of national headquarters will erode whatever degree of local autonomy is achieved in the initial years of the new ports policy. Therefore we believe it is important that the intent of the new act, to confer a high degree of autonomy upon financially self-sufficient ports, should be clearly stated in the pertinent legislation. Furthermore, we are of the opinion that the legislation should provide local port corporations with a six-month period (during which they may appeal to the minister) should the Canada Ports Corporation wish to take all or part of a port's surplus.

In addition we believe that it will take several years to establish the new Canada Ports Corporation, to formulate policies, to develop the criteria for determining whether or not a port should become a local port corporation, and to assess those ports that apply for local port corporation status. In the meantime the opportunities associated with Canada's major west coast port will be slipping away. We believe it appropriate to indicate in the legislation that Vancouver shall become a local port corporation within 6 months (and certainly no more than 18 months) of the passage of legislation.

We believe it is also important that the CPC's by-laws be developed prior to passage of the legislation so that potential local port corporations can more accurately assess the degree of autonomy proposed.

It is essential for the by-laws to indicate that nominees for a local port's board of directors must have expertise and knowledge useful in port administration, management, planning and development.

In addition, it would be appropriate to differentiate between an occasional conflict of interest (which can be accommodated by the board member concerned retiring from the meeting for an appropriate period), and a conflict of interest that persists, or is likely to persist, for the major portion of the individual's term on the board.

IV. THE CANADA PORTS CORPORATION'S DEBT LOAD

The Discussion Paper indicates that the debt owed to the government by NHB ports amounts to \$318 million plus \$157 million in accrued interest. At present those debts are related to individual ports - they are not system-wide. However, if the CPC assumes that debt it will automatically become a charge against each and every port in the corporation. The more profitable ports can therefore be expected to provide the revenues to retire the debts of the less profitable ports. This could result in the redistribution of individual port profits in a manner that would be inimical to the optimum development of the profitable port. Such a drain of funds away from a port like Vancouver would soon undermine the energy and enthusiasm of a local board of directors and staff. Therefore, it is necessary to develop a financial arrangement which ensures that the current and future debt of the financially-dependent ports does not interfere with the growth of other ports. We believe that the Government of Canada should consider the current debt of the NHB ports as a contribution to the shareholders' equity of the new Canada Ports Corporation. Subsequent funds provided by the Government to the CPC (on account of the financially-dependent ports) may be 'written off', or again considered as 'contributed shareholders' equity', although some provision for cost-recovery over the longer term may be appropriate (i.e., at such time as these ports generate revenue surpluses.

V. SUMMARY

The signatories to this brief support the Canadian Ports Policy with the following conditions:

1. That Vancouver be designated as a local port corporation in the legislation, within 6 months (and certainly no more than 18 months) of enactment.
2. That the intention to provide a high degree of autonomy to local port corporations be clearly stated in the legislation.
3. That this autonomy include the power to independently formulate and implement operational and capital budget programmes, where local boards demonstrate the ability to finance such programmes without Government funding or financial guarantees.
4. That the legislation provide the local port corporation with a 6-month period of appeal (which would be addressed to the Minister of Transport) in regard to a decision by the Canada Ports Corporation to take all or part of a local port's surplus.
5. That the CPC by-laws dealing with local port corporations (and the financial, personnel and other matters that define the level of autonomy to be delegated to them) be drafted prior to the enactment of the legislation.

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6. That the by-laws referred to in 5 above:
 - a) indicate that nominees for local port corporation board membership should possess a wide range of business and professional expertise;
 - b) differentiate between occasional and recurrent conflicts of interest (the latter would obviously preclude appointment to the board of the local port corporation); and
 - c) enable a local port corporation to enter into contractual agreements without the necessity of seeking approval from the national headquarters for every contract.

7. That the board of directors of the local port corporation should be relatively small, (i.e. 7 - 10 members).

8. That the local port board members should be residents of the region in which the port is situated.

9. That no local port board member should be an elected or appointed official of any government.

10. That the debt owed by individual ports to the federal government should be cancelled and considered as 'contributions to shareholders' equity'.

11. That future federal government financial support to the financially-dependent ports be considered contributed equity rather than debt.