

Port of Melbourne



Our Ref: 20211014 – Letter to ESC Re Submissions from Stakeholders

14 October 2021

Mr John Hamill
Chief Executive Officer
Essential Services Commission
Level 8/570 Bourke St
MELBOURNE VIC 3000

By email: [REDACTED]

Dear John

Response to stakeholder submissions

In September 2021, the Essential Services Commission (ESC) published submissions it received from port users and other stakeholders through its consultation on the first inquiry into the Port of Melbourne's (PoM's) compliance with the Pricing Order for the review period 1 July 2016 to 30 June 2021.

In case it assists the ESC, Attachment A to this letter provides further information concerning matters raised in a number of stakeholder submissions where we believe this information may assist the ESC in conducting its inquiry.

In several instances, the ESC has identified the number of submissions that comment on a particular issue. However, PoM has not been able to reconcile the ESC's number with the submissions on the ESC's website. For example, the ESC has indicated that five submissions outlined matters relating to deferred depreciation, but we have only been able to identify two such submissions. In these circumstances, we would appreciate guidance from the ESC on which submissions these issues are contained in, or, if the submissions are confidential, the substance of the issues, so that we can properly respond and appropriately assist the ESC with its inquiry.

We would welcome an opportunity to meet with the ESC to address any queries it has regarding either the matters raised in the submissions or the information we have provided.

If you have any questions in relation to this letter, or any additional requests for information to assist the ESC in undertaking the inquiry, please do not hesitate to contact [REDACTED]

Yours sincerely

Brendan Bourke
Chief Executive Officer

Attachment A – Clarification of matters raised in stakeholder submissions

Topic	Matters raised in submission	PoM notes
<p>Engagement</p>	<p>The ESC stated that three submissions were supportive of, and six submissions raised concerns about, PoM’s approach to stakeholder engagement.</p>	<ul style="list-style-type: none"> ▪ PoM has only been able to identify four submissions that appear to raise concerns about the approach to engagement (Patrick, the Maritime Union of Australia (MUA), Shipping Australia Limited (SAL) and Quantem). We would appreciate any guidance from the ESC on issues raised by any other submissions.
	<p>Patrick stated: “PoM has completely failed to engage in genuine consultation with stakeholders in relation to the significantly accelerated WDE Expansion Project” (Patrick, 3 Sept 2021, p.3). Patrick also stated: “We reiterate our willingness to consider any requests to make confidential information available to PoM or Government on request where this would enhance the outcome of the ESC’s review” (Patrick, 3 Sept 2021, p.5)</p>	<ul style="list-style-type: none"> ▪ First, PoM rejects any contention that the Webb Dock East extension project has been “significantly accelerated” (and factual matters relating to the timing of the Webb Dock East extension project are the subject of a Federal Court proceeding commenced by Patrick against PoM). ▪ Further, consultation with Patrick on PoM’s plans for the Webb Dock East extension project has been ongoing since 2018, including through the Port Development Strategy (PDS) and Port Rail Transformation Project (PRTTP) (Dec 2018), Tariff Rebalancing (Sept 2020), Port Capacity Modelling (Feb 2021) and Industry Engagement (April 2021). In the 2021 Industry Engagement, further information was provided, and feedback sought, on the need, timing and funding of the investment. ▪ Patrick has prepared submissions that it considers relevant to the Webb Dock East extension project since as early as 4 November 2020, but has not provided these submissions to PoM: <ul style="list-style-type: none"> – In its 4 November 2020 submission to PoM’s Rebalancing Application, Patrick indicated: “We have provided detailed submissions to the ESC and Freight Victoria on a confidential basis.” – A Joint Opinion dated 25 May 2021 issued by Patrick (Joint Opinion) referred to “factual and economic material relevant to a consideration of the WDE Extension Project” contained in a submission to the Department of Treasury and Finance (DTF) by Patrick titled “Impact of Capacity Acceleration at the Port of Melbourne on the Long-Term Interests of Port Users and Victorian Consumers”. ▪ Patrick did not respond to a number of direct requests from PoM to provide information, on 19 March 2021, 13 April 2021 and 5 May 2021. ▪ We also note that the Joint Opinion is dated 25 May 2021 (i.e. the Joint Opinion was dated the day prior to the cut-off date that PoM gave Patrick to provide information to inform the decision on the 2021 Industry Engagement), but was not provided to PoM until 15 July 2021.
	<p>The MUA stated “PoM has not consulted the MUA or the majority of the workforce at the port about its 2050 Port Development Strategy (PDS); about its PDS Delivery Program; nor in preparation of its annual Tariff Compliance</p>	<ul style="list-style-type: none"> ▪ Consultation on the PDS was an extensive, public process. The MUA had a reasonable opportunity to participate during this process, or at any time. ▪ The MUA participated in PoM’s 2021 Industry Engagement by attending one of the workshops held in April. In this engagement, extensive information was

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	<p>Statements, contrary to its detailed submissions to the ESC about the quality, depth and breadth of its consultation processes.” (MUA, 3 Sept 2021, p.3)</p>	<p>provided and feedback sought on the need, timing and funding of the Webb Dock East extension. The MUA did not provide any direct feedback during this engagement process. Subsequently, PoM’s Chair and CEO met with MUA representatives in early July and further senior meetings have been arranged. We will of course ensure that the MUA has the opportunity to participate in future PDS consultation processes.</p>
	<p>SAL stated “input should not just be received; it should be addressed appropriately” (SAL, 26 Aug 2021, p.1). SAL also stated that it would like to be involved in future discussions on length of regulatory period. (SAL, 26 Aug 2021, p.2)</p>	<ul style="list-style-type: none"> ▪ Most issues raised in SAL’s submission were addressed in consultation on the Rebalancing Application and the 2021 Industry Engagement. How PoM addressed these issues was written up in the public (draft and final) Rebalancing Application and the 2021-22 TCS. The only issues not addressed in these public documents were those that had not been raised previously (e.g. World Bank performance standards, channel fees). ▪ For the avoidance of doubt, SAL did not raise any issues or comment on depreciation, the length of the regulatory period, or services standards during the 2021 Industry Engagement. ▪ PoM met with SAL on 2 September 2021 to discuss these issues further. At this meeting SAL advised that it had not read the 2021-22 TCS, which sets out how PoM has addressed input provided by stakeholders. PoM has also established a monthly meeting with SAL to ensure it will continue to be involved in discussions. PoM notes that this engagement occurred after the review period, but would be pleased to provide any further supporting information to the ESC.
	<p>Quantem stated that it had not been party to stakeholder engagement and that reviewing and consulting on the depreciation methodology towards the end of the TAL period “does not appear to be sufficiently early to feed into strategic decision-making processes” (Quantem, 8 Sept 2021, p.1)</p>	<ul style="list-style-type: none"> ▪ Quantem was invited to the tenant workshop on 23 April 2021 but did not attend. This invite identified the topics for discussion (which included deferred depreciation), requested input on topics to be covered, and sought feedback on engagement. Quantem has a dedicated property manager at PoM it can contact at any time to discuss issues or concerns. There have been numerous meetings between PoM and Quantem in 2021, and in previous years. Deferred depreciation and prices post 2037 were not raised by Quantem in any of these meetings. ▪ Quantem was also invited to the engagement on the 2020-21 TCS, where depreciation was discussed, but did not attend.
Tariffs	<p>Freight & Trade Alliance (FTA) raised concerns about the Port Rail Transformation (PRTP) adjustment, with imports cross-subsidising exports, road users cross-subsidising rail, and recommended that a differential tariff apply for imports via VICT because there is no rail at Webb Dock (FTA, 3 Sept 2021, pp.1-2)</p>	<ul style="list-style-type: none"> ▪ PoM notes that the adopted tariff structure was deemed to be the most appropriate way of achieving the objectives of the PRTP. ▪ We will continue to engage with FTA on its preferences for tariff structures.
	<p>Patrick claimed that “The timing of investment by PoM has a direct impact on</p>	<ul style="list-style-type: none"> ▪ PoM’s assessment demonstrates that the Webb Dock East extension project will reduce supply chain costs.

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	the potential for, and degree of, future price shocks once the limit on tariff adjustments by PoM ends” (3 Sept, p.4)	<ul style="list-style-type: none"> ▪ Notwithstanding this, in any event, the operation of the Tariffs Adjustment Limit (TAL) means that the timing of when the Webb Dock East extension is undertaken will not impact prices now or in the future (after the TAL period).
Deferred depreciation	The ESC stated five submissions outlined concerns on the Port’s deferred depreciation approach and its potential for price shock.	PoM has only been able to identify two submissions (SAL and Quantem) that raise issues about the deferred depreciation approach. We would appreciate any guidance from the ESC on issues raised by other submissions. Clarification on our engagement with SAL and Quantem on this issue is provided above.
WACC	The ESC stated that two submissions outlined concerns with the Port’s approach to estimating its Weighted Average Cost of Capital (WACC). There was one supportive submission.	PoM does not have access to any submissions that outline concerns with the approach to estimating the WACC, and would appreciate any guidance from the ESC on issues raised by other submissions.
Prudency and efficiency of capex	The ESC stated that a number of submissions were concerned with the prudency and efficiency of capital expenditure on the Webb Dock East Expansion project.	The ESC has stated that prudency and efficiency of Webb Dock East extension is not in scope, so we have not directly addressed these submissions. However, we would welcome the opportunity to discuss any queries the ESC may have about the issues raised.
Demand	ESC stated a number of submissions considered the long term demand forecasted by the Port was overstated.	PoM has only been able to identify one submission (MUA) that commented on long-term demand, and would appreciate any guidance from the ESC on issues raised by other submissions.
	<p>MUA submitted (MUA, 3 Sept 2021, pp.7-8):</p> <ul style="list-style-type: none"> ▪ PoM has not revealed its methodology for translating trade forecasts into container growth. ▪ A linear projection based on historical trade data would show container volumes increasing to around 4.2 million in 2029, 5.2 million in 2039 and 6.2 million in 2049, not the nearly 9 million projected by PoM in its 2050 PDS. ▪ Infrastructure Victoria’s Infrastructure strategy 2021–2051, (19 August 2021) stated “We anticipate demand of 4.2m to 5.5m TEU by 2031, and 6.2m to 8.8m TEU by 2051.” These projections are considerably lower than PoM’s. 	<ul style="list-style-type: none"> ▪ PoM’s methodology for trade and container forecasting is set out annually in the TCS. ▪ PoM does not consider that a linear demand projection based on historical data would be an appropriate methodology. ▪ The Infrastructure Victoria forecast of 8.8m TEU by 2051 is not "considerably lower" than the PDS forecast of 8.9m TEU by 2050. ▪ We also note that the MUA did not raise any concerns about demand forecasts during the 2021 Industry Consultation.