

# Port of Melbourne



7 July 2021

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

By email: [john.hamill@esc.gov.vic.au](mailto:john.hamill@esc.gov.vic.au)

Dear John

## **Pricing Order compliance review – commencement of inquiry and section 56 notice**

I refer to the Essential Services Commission's (ESC's) 10 June 2021 Notice of Inquiry into Port of Melbourne's (PoM's) compliance with the Pricing Order (the inquiry) and the notice to provide documents under section 56 of the Port Management Act 1995 (PMA).

I am writing to you to share our views and seek clarification on the scope and process for the ESC's inquiry.

PoM welcomes the inquiry and we look forward to engaging constructively with the ESC and its advisors during the inquiry.

We will be pleased to provide the ESC with the information requested in the section 56 notice, and will do so within the timeframes set out by the section 56 notice. In line with our commitment to engage proactively with our stakeholders on all material elements of how we operate the port, we look forward to a program of comprehensive engagement with the ESC to ensure a balanced understanding of the information provided in response to the section 56 notice.

PoM and its shareholders take the stewardship obligations of the port to ensure operational efficiency, capacity and amenity very seriously. We have invested some \$370 million in infrastructure upgrades over the past five years and our ongoing commitment to improving facilities is delivering a more productive and efficient port for port users, Victorian consumers and the wider economy. Examples of major initiatives we have undertaken during the review period include:

- Consulting with the industry to firstly develop, and commence delivering, major capital plans under the Port Development Strategy, Rail Access Strategy and Port Rail Transformation project;
- Upgrading Swanson Dock East (complete) and Swanson Dock West (commenced) to extend the lives of the wharves, in advance of the State's plans at the time of the Port Lease;

- Completing works at Swanson Dock East and Swanson Dock West to enable access for larger vessels, benefiting port uses and reducing costs for Victorian consumers;
- Developing an on dock open access rail terminal at Swanson Dock East; and
- Developing and implementing our Integrated Management System, which encompasses certification to International Standards Organisation (ISO) standards for Asset Management (ISO 55001), Environment Management (ISO 14001), Occupational Health and Safety (ISO 45001) and Quality Management Systems (ISO 9001).

These initiatives demonstrate that as the new Port Manager we are committed to investing proactively and fairly to manage, operate and maintain the port in accordance with good operating practice.

### **Guidance on information requirements for compliance demonstration**

The regulatory regime that came into effect on 1 July 2016 was new, and over the first five year period the interpretation and understanding of the regime has evolved.

We recognise the ESC's work during this period to articulate its interpretation of the regime in its Statements of Regulatory Approach (December 2017 and April 2020), and in its preliminary views in the interim commentaries on our Tariff Compliance Statement (TCS) submissions.

The ESC has stated that the TCS submissions will be the main source of information for the inquiry.<sup>1</sup> Our TCS submissions have been informed by our interpretation of the Pricing Order requirements and the guidance available from the ESC at the time of their preparation, in particular in the Statements of Regulatory Approach and the preliminary views in the interim commentaries. The information requests in the section 56 notice provide more detailed guidance on the ESC's information requirements for future TCS submissions.

Noting the evolution of interpretation of the regulatory framework and guidance on requirements for compliance demonstration, we consider that it would be inappropriate to judge the adequacy of compliance demonstration in earlier years against guidance and standards developed afterwards.

Building on the guidance in the section 56 notice, we would welcome further engagement with, and guidance from, the ESC on the information that should be included in future TCS submissions. For example, this might include:

- Updates to the Statement of Regulatory Approach, reflecting the ESC's latest views on the information required for compliance demonstration (such as the information requested in the section 56 notice);
- Guidance materials on the required contents of the TCS, similar to the guidance material provided to Melbourne Water on the required contents of its November 2020 price submission in the ESC's November 2019 Guidance paper<sup>2</sup>; and
- Guidelines on the preparation and maintenance of financial and business records, as contemplated by section 56(2) of the PMA.

The establishment of guidance on these matters will better facilitate demonstration of compliance in future periods, and may also lead to improvement opportunities in addition to those already developed by PoM (for example, in response to the preliminary views in the interim commentaries).

<sup>1</sup> Essential Services Commission 2020, Statement of Regulatory Approach – version 2.0, April. p.7

<sup>2</sup> Essential Services Commission 2019, Melbourne Water's 2021 water price review: Guidance paper, 13 November

## Scope of the inquiry

In relation to the scope of the inquiry, we note that the section 56 information notice does not request further details on the information contained in the 2021-22 TCS submission.

As discussed in the meeting between PoM and ESC staff on 4 June 2021, we consider it essential to the integrity of the inquiry that in assessing PoM's compliance with the Pricing Order during the review period, the ESC should consider the 2021-22 Prescribed Services Tariffs determined and published by PoM on 31 May 2021, and the contents of PoM's 2021-22 TCS submitted on 31 May 2021.

This is because those tariffs are required to comply with the Pricing Order and be set by PoM, published in the Reference Tariff Schedule and explained to the ESC (in the 2021-22 TCS), during the first review period (i.e. by 31 May 2021).

## Timing and process for draft report

The inquiry materials developed by the ESC to-date do not mention the draft report on the inquiry or the process the ESC intends to follow for its draft report.

PoM considers it essential to the integrity and accuracy of the process that we be given a reasonable opportunity to make a written submission to the ESC on its draft report, and that there is comprehensive consultation between PoM and the ESC on all material elements of the draft report, before the ESC prepares its final report. The ESC's Stakeholder Engagement Framework – Charter of Consultation and Regulatory practice provides an indicative timeframe of four to six weeks.<sup>3</sup>

We look forward to the ESC providing further information on the scope and process of its inquiry and in particular, the draft report, to support factual accuracy, transparency and predictability.

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 me.

Yours sincerely



**Brendan Bourke**  
Chief Executive Officer

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<sup>3</sup> Essential Services Commission 2018, Stakeholder Engagement Framework: Charter of Consultation and Regulatory Practice, 27 June, p.13