

1. Abbreviations and Acronyms

In this document the following definitions/abbreviations apply unless the context requires otherwise.

“access” means access to the Network or part of the Network, to operate freight services or passenger services

“Access Provider” means Metro Trains Melbourne Pty Ltd ABN 43 136 429 948

“Accreditation” means accreditation obtained in accordance with the requirements of the Rail Safety Act 2006 (Vic), including any guideline, regulation or ordinance made pursuant to that Division

“Act” means the *Rail Management Act 1996 (Vic)*

“Additional Capacity” means increased practical capacity for the Network to accommodate Train Paths

“Additional Capacity Works Protocol” means this protocol, as amended from time to time

“Business Day” means a week day on which trading banks are open in Melbourne

“Detailed Design and Costing” means the design and costing in relation to Additional Capacity enhancements described in paragraph 6

“Director” means the Director of Public Transport under the *Transport Integration Act 2010 (Vic)*

“ESC” means the Essential Services Commission or its successor

“Feasibility Advice” means the advice in relation to Additional Capacity enhancements described in paragraph 5

“Governmental Agency” means any government or any governmental, semi-governmental or judicial entity or authority, including any self regulatory organisation or any stock exchange

“Guidelines” means the guidelines made by the ESC under the Act

“Information Handling Protocol” means the protocol made by the Access Provider pursuant to section 38ZZZB of the Act

“Infrastructure Lease” means the lease titled "Infrastructure Lease - Train" between the Director, VRT and the Access Provider dated 31 August 2009, as amended

“Law” means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation

“Negotiation Guidelines” means the Guidelines made by the ESC under section 38V of the Act

“**Network**” means the land and infrastructure leased by the Access Provider under the Infrastructure Lease from time to time, including railway track, associated track structures and works (such as cuttings, tunnels, bridges, sidings, excavations, landfill, track support earthworks and drainage works), pedestrian crossings, over-track structures, under-track structures, service roads, signalling, notices and signs and overhead electrical power supply systems, but excluding:

- (a) buildings (including stations, platforms, sheds and shelters);
- (b) carparks;
- (c) terminals, storage and receival facilities;
- (d) workshops, depots, yards and fuel points; and
- (e) private sidings that are not leased to the Access Provider,

but includes any infrastructure leased to the Access Provider which passes through, or is immediately adjacent to, any of the infrastructure or facilities referred to in paragraphs (a) to (e) above

“**Operator**” means the person seeking access to the Network, including an assessment of works required to provide additional Capacity

“**Pre-Feasibility Advice**” means the advice in relation to Additional Capacity enhancements described in paragraph 5

“**Related Body Corporate**” has the meaning given in the *Corporations Act 2001* (Cth)

“**Rolling Stock**” means any vehicle that operates on or uses a railway track including a locomotive, light rail vehicle, light inspection vehicle, road/rail vehicle, trolley, carriage, diesel multiple unit and wagon (but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track)

“**Train**” means Rolling Stock coupled together to operate as a single unit

“**Train Path**” means the particular time interval, including an entry time and day and an exit time and day, through which Rolling Stock may travel over a section of the Network from an origin to a destination (including stopping points)

“**VRT**” means Victorian Rail Track

2. Background

2.1 This protocol has been developed by the Access Provider in relation to access to the Network in accordance with the requirements of the *Rail Management Act 1996* (Vic) (“**Act**”) and Guidelines made under the Act as at 1 January 2006, in particular under section 4.4 of the Negotiation Guidelines

2.2 The Access Provider reserves the right to amend this protocol in the event that the Act or the Guidelines are amended after 1 January 2006

2.3 Any Operator who seeks access to the Network will be bound by this protocol.

3. Introduction

Section 4.4 of the Negotiation Guidelines require that an Access Provider must prepare and maintain protocols with respect to undertaking an assessment of works required to provide Additional Capacity to meet an Operator's request for access. These protocols must provide for the following matters, without limitation:

- i. procedures for assessing the nature of the work required to undertake a detailed assessment of any works required to provide Additional Capacity to meet the Operator's request for access and notifying the Operator of such work;

- ii. procedures for carrying out or procuring the carrying out of any detailed assessment of works required to provide Additional Capacity to meet the Operator's request for access;
- iii. procedures for allowing the Operator to have input into any detailed assessment of any works required to provide Additional Capacity to meet the Operator's request for access;
- iv. timeframes for:
 - a) carrying out the work referred to in sub-paragraph (i); and
 - b) providing a detailed assessment of any works required to provide Additional Capacity to meet an Operator's request for access;
- v. procedures for varying any timeframe referred to in sub-paragraph (iv) with the consent of the Operator;
- vi. the basis upon which the Access Provider proposes to allocate any costs incurred in providing a detailed assessment of such works, which must be fair and reasonable having regard to the nature of the request for access, the work undertaken and the benefits to the Access Provider and the Operator of any detailed assessment in relation to works required to provide Additional Capacity to meet the Operator's request for access; and
- vii. procedures for resolving any dispute that may arise in connection with any matter referred to in the protocols.

4. Further Background

The Access Provider leases the Melbourne metropolitan rail infrastructure and currently has the franchise to operate metropolitan passenger rail services. The infrastructure that makes up the rail system is owned by the State of Victoria (through VRT) and leased to the Access Provider by the Director for the duration of the franchise period. The Access Provider is an access provider with regard to other rail operators who use this metropolitan infrastructure.

Under the terms of the Infrastructure Lease, the Access Provider has the role of maintaining and renewing these infrastructure assets. Capital enhancements (or asset improvement) can be identified by the Access Provider, but the approval and funding responsibility for them rests with the Director of Public Transport.

All of the main line track infrastructure that is leased to the Access Provider is used for passenger operations, and some is also used for freight operations. Most of this main line infrastructure is electrified, the main exceptions being the Frankston to Stony Point Line.

The capacity requirements for this main line infrastructure are generally set by the passenger operations. The nature of the passenger business is that it is very peaked. Passenger priority dictates that freight operations are not granted pathways when and where there is a capacity limitation, but there is scope for freight operations to be accommodated in off-peak periods.

Capacity enhancements to main line infrastructure will be required from time to time and the justification and timing of these enhancements will be generally driven by the passenger operations, not freight operations.

This protocol is therefore primarily designed to cater for the scenario that an Operator is a freight operator and that the capacity enhancement sought relates to non-electrified track which is not used by the metropolitan passenger operation. However, it may also be used for electrified track if so requested by an Operator.

Additional Capacity enhancements can vary in scope and complexity. The timing of feasibility, design and construction of such enhancements will vary substantially from project to project.

5. Pre-Feasibility Advice

5.1 An Operator can, at any time, submit a written request to the Access Provider to provide Pre-Feasibility Advice with regard to potential Additional Capacity. This request should outline:

- a) a conceptual operating plan, including detail of the physical characteristics of the Trains and Rolling Stock, Network sections to be accessed, proposed schedules and regularity, desired commencement date, commodities involved and other relevant matters; and
- b) alternative options for the conceptual operating plan.

5.2 The Operator must provide a non-refundable fee of \$5,000 to the Access Provider at the same time as the written request for the Pre-Feasibility Advice.

5.3 The Access Provider will respond to the Operator's request within 20 Business Days providing advice regarding:

- a) the potential cost and timing of a Feasibility Assessment;
- b) the issues that the Feasibility Assessment would need to consider; and
- c) the stakeholders that will need to be consulted as part of the Feasibility Assessment.

5.4 Unless otherwise agreed, the Feasibility Assessment is to include, amongst other things:

- a) conceptual design for all practical Additional Capacity enhancements that potentially accommodate the conceptual operating plan;
- b) conceptual costing for these Additional Capacity enhancements;
- c) conceptual timeframe for implementation of the Additional Capacity enhancements;
- d) consultation and approval requirements;
- e) physical and financial risks;
- f) identification of environmental issues;
- g) potential users of the Additional Capacity enhancements; and
- h) a cost estimate for the Detailed Design and Costing of each option; and
- i) a cost sharing proposal for Detailed Design and Costing of each option, based upon the proportion of gross tonne kilometres potentially used by the various operators who could make use of the Additional Capacity enhancements.

5.5 In the circumstance that there are no other identified potential users of the Additional Capacity enhancements (such as for a dedicated siding, for example) the Operator will need to fund 100% of the design and costing work related to those capacity enhancements, as well as the implementation costs.

6. Feasibility Assessment

6.1 Upon receiving the Pre-Feasibility Advice, the Operator can determine whether to request that a Feasibility Assessment be undertaken. If the Operator wishes to proceed, it should advise the Access Provider in writing of the following:

- a) the request for a Feasibility Assessment;
- b) agreement to provide the full funding for the Feasibility Assessment; and
- c) any special requirements.

6.2 The Access Provider will commence the Feasibility Assessment no later than 40 Business Days after receiving the Operator's request complying with paragraph 6.1.

- 6.3 The Access Provider will use reasonable endeavours to undertake the Feasibility Assessment, in line with the Pre-Feasibility Advice.
- 6.4 The Access Provider may utilise external consultants to carry out the Feasibility Assessment.
- 6.5 The Feasibility Assessment will include consultation with the Operator.
- 6.6 The Access Provider will provide a copy of the Feasibility Assessment to the Operator, other funding parties and the Director when the Feasibility Assessment is completed.
- 6.7 The Operator will provide half of the full funding of the cost of the Feasibility Assessment to the Access Provider within 20 Business Days of its written request for the Feasibility Assessment under paragraph 6.1, and the remaining half of the full funding of that cost within 20 Business Days of its receipt of the Feasibility Assessment under paragraph 5.6. This funding is non refundable to the Operator.

7. Detailed Design and Costing

- 7.1 Upon, receiving a Feasibility Assessment, the Operator can determine whether to request that a Detailed Design and Costing be undertaken. If the Operator wishes to proceed, it must advise the Access Provider in writing of the following:
- a) the preferred option for the Detailed Design and Costing; and
 - b) agreement to provide its share of the funding for the cost of the Detailed Design and Costing; and
 - c) any special requirements.
- 7.2 The Access Provider will commence the Detailed Design and Costing no later than 40 Business Days after the date being:
- a) the date that the Access Provider receives the Operator's request complying with paragraph 7.1; or
 - b) (if relevant) the date that the Access Provider receives an unequivocal undertaking from each relevant party (other than the Operator) to provide its share of the funding for the cost of the Detailed Design and Costing (whichever last occurs).
- 7.3 The Access Provider will use reasonable endeavours to undertake the Detailed Design and Costing, in line with the Feasibility Assessment.
- 7.4 The Access Provider may utilise external consultants to carry out the Detailed Design and Costing.
- 7.5 The Access Provider will provide a copy of the Detailed Design and Costing to the Operator, other funding parties and the Director when the Detailed Design and Costing is completed. In addition, the Access Provider will propose a funding allocation for the implementation of the Capacity enhancements, using potential gross tonne kilometres as a guide, and proposed access charges.
- 7.6 The Operator will provide half of its share of the funding of the cost of the Detailed Design and Costing to the Access Provider within 20 Business Days of its written request for the Detailed Design and Costing under paragraph 7.1, and the remaining half of its share of the funding of the cost within 20 Business Days of its receipt of the Detailed Design and Costing under paragraph 7.5. This funding is non refundable to the Operator.

8. Implementation

Implementation of any Additional Capacity enhancements under this protocol will be subject to agreement of the funding contribution from the all relevant funding organisations and the approval of the Director of Public Transport and VRT.

9. Confidentiality

9.1 Confidential Information

The terms and conditions of all information provided by the Access Provider or the Operator to each other under or in connection with this protocol (the **Confidential Information**) are confidential.

9.2 Prohibition of disclosure of Confidential Information

Each of the Access Provider and the Operator undertakes to the other that it, its officers, employees, agents and subcontractors will not, without the consent (which consent will not unreasonably be withheld or delayed) of the other party, disclose Confidential Information to any person, unless the disclosure:

- a) is of Confidential Information already within the public domain other than as a result of a breach of this Process and Protocol;
- b) is of Confidential Information already known to that person (as evidenced by the person's written records) at the date of disclosure;
- c) is to be made to the professional advisers (including legal and financial) of the disclosing party, provided that the disclosee agrees to keep the Confidential Information confidential;
- d) is to be made to a Related Body Corporate of the disclosing party, provided that the disclosee agrees to keep the Confidential Information confidential;
- e) is required by Law (including the Act or the Guidelines), or any Governmental Agency acting or purporting to act within its powers and functions, or by the requirements of Accreditation;
- f) is reasonably necessary for the purposes of any mediation, expert determination, arbitration or legal proceeding involving the Access Provider or the Operator;
- g) relates to information consisting of aggregate freight or aggregate passenger volume data for all operators or other aggregate usage statistics provided by the Operator to the Access Provider (but this does not permit the disclosure by the Access Provider of information relating to costs, payments, receipts or profits of the Operator);
- h) is to the ACCC for the purposes of Part IIIA of the *Trade Practices Act 1974* (Cth) or to the ESC for the purposes of the Act or the Guidelines; or
- i) is by the Access Provider to the manager of the Victorian country rail network for the purposes of managing the interface between the Network and the Victorian country rail network, provided that the disclosee agrees to keep the Confidential Information confidential.

9.3 Disclosure for purposes of this Process and Protocol

The Access Provider and the Operator must take all steps reasonably necessary to ensure that Confidential Information is disclosed only to such of its or its Related Body Corporate's officers, employees, agents or subcontractors (including consultants and advisers (including legal and financial)) who require that knowledge in order to carry out their duties in relation to this Process and Protocol. The Access Provider will comply with its Information Handling Protocol.

9.4 Disclosure to State

Nothing in this paragraph 8 prevents the disclosure of Confidential Information to the Director or any minister, officer, employee, agent, adviser or consultant of the State of Victoria or a Governmental Agency of that State.

9.5 Confidentiality continues

The obligation of confidentiality under this paragraph is a continuing obligation and remains in force from the date upon which the Operator makes a request under paragraph 5 and afterwards for a period of years.