



Victoria Government Gazette

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Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016 (Vic.)

LEAST COST CAPACITY EXPANSION PRINCIPLES ORDER

The Governor in Council, under section 72 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016 (Vic.)**, makes the following Order:

1. COMMENCEMENT AND PURPOSE

- 1.1.1 This Order takes effect on the date it is published in the Government Gazette.
- 1.1.2 In accordance with section 69(2) of the Act, in deciding whether to certify a Capacity Expansion Proposal the subject of an Application (**Relevant Proposal**), the Commission must apply the principles specified in this Order.

2. CERTIFICATION OF A CAPACITY EXPANSION PROPOSAL: THRESHOLD ELIGIBILITY

2.1 Eligibility Criteria

- 2.1.1 The Commission must not certify a Relevant Proposal that does not satisfy each of the following criteria (**Eligibility Criteria**):
 - (a) the Relevant Proposal is consistent with the Port Development Implementation Plan as at the date of the Application;
 - (b) the expected date of commencement of operational capacity of the Expanded Infrastructure the subject of the Relevant Expansion is within ten years from the date of the Application; and
 - (c) the Relevant Expansion is a material Capacity Expansion.

2.2 Application of this Order

- 2.2.1 Clauses 3 to 10 of this Order do not apply where the Relevant Proposal fails to satisfy the Eligibility Criteria.

3. CERTIFICATION OF A CAPACITY EXPANSION PROPOSAL: OVERARCHING RULE

3.1 Overarching rule

- 3.1.1 The Commission must certify the Relevant Proposal only if the Commission is satisfied that the Relevant Proposal is the least cost means of a Capacity Expansion in Port Phillip Bay or Western Port Bay.

3.2 Absence of Alternative Proposals

- 3.2.1 If there are no Alternative Proposals, the Relevant Proposal is to be taken by the Commission to be the least cost means of a Capacity Expansion in Port Phillip Bay or Western Port for the purposes of 3.1.1.

4. CERTIFICATION OF A CAPACITY EXPANSION PROPOSAL: GENERAL METHODOLOGY

4.1 Comparison of Relevant Proposal and Alternative Proposals

- 4.1.1 For the purposes of clause 3.1.1, the Relevant Proposal is to be compared against each Alternative Proposal.
- 4.1.2 For the purposes of clause 4.1.1, the Commission must determine and compare (in equivalent monetary terms):
 - (a) the NPV Cost per Weighted Average TEU for the Relevant Expansion; and
 - (b) the NPV Cost per Weighted Average TEU for each Alternative Expansion.

SPECIAL

4.2 Adoption of Private Cost Comparison Methodology

4.2.1 In applying clause 4.1.2, the Commission must adopt a Private Cost Comparison Methodology and not a Social Cost Comparison Methodology.

4.3 Disregard certain principles under the Pricing Order

4.3.1 In applying clause 3.1.1, the Commission must not have regard to whether the Relevant Expansion would represent a prudent act, or whether the Capital Cost (or any part of it) of completing the Relevant Expansion would constitute efficient capital or operating expenditure, for the purposes of the Pricing Order.

5. NPV COST PER WEIGHTED AVERAGE TEU**5.1 Calculation**

5.1.1 The NPV Cost per Weighted Average TEU for a Capacity Expansion is calculated as follows:

$$NPV \text{ Cost per Weighted Average TEU} = \frac{NPV \text{ of Costs}}{\text{Average Capacity (time weighted)}}$$

where:

$$NPV \text{ of Costs} = \sum_{n=0}^l \frac{(C_n + O_n + A_n)}{(1 + w)^n}$$

$$\text{Average Capacity (time weighted)} = \sum_{n=0}^l \left(\frac{CAP_n}{(1 + w)^n} \right)$$

- n = year
 l = economic Life of Expanded Infrastructure
 w = reasonable WACC for a regulated Australian port landlord
 C_n = forecasted Capital Costs of the Capacity Expansion in year n
 O_n = forecasted operating and maintenance costs of the Capacity Expansion in year n
 A_n = forecasted administration, corporate and overhead costs directly or reasonably attributable to the Capacity Expansion in year n
 CAP_n = forecasted incremental Capacity that will be provided by the Expanded Infrastructure in year n

5.2 Consistency of assumptions

5.2.1 In calculating the figures under clause 4.1.2, the Commission must use, to the extent possible, consistent assumptions and methodologies with respect to inflation, discount rates, capital and operating cost contingencies and any other factors utilised to determine the NPV Cost per Weighted Average TEU in respect of the Relevant Expansion and each Alternative Expansion.

5.3 Consideration of certain costs

5.3.1 In calculating the figures under clause 4.1.2, the Commission must only take into account direct capital and operating costs of Port Channels and assets located on Port Land of the kind that would be taken into account in the determination of prices for Prescribed Services in the Pricing Order and, for the avoidance of doubt, must not take into account indirect or additional supply chain costs.

6. ALTERNATIVE PROPOSALS

6.1 Definition of Alternative Proposal

6.1.1 An **Alternative Proposal** is a proposal for a Capacity Expansion in Port Phillip Bay or Western Port Bay, other than the Relevant Proposal, that satisfies clauses 6.2.1 and 6.3.1.

6.2 Comparability

6.2.1 A proposal for a Capacity Expansion in Port Phillip Bay or Western Port Bay satisfies this clause 6.2.1 if:

- (a) the expected date of commencement of operational capacity of the Expanded Infrastructure the subject of the proposal is within four years of the expected date of commencement of operational capacity of the Expanded Infrastructure the subject of the Relevant Expansion; and
- (b) the expected incremental Capacity that will be provided by the Expanded Infrastructure the subject of the proposal is between 50% and 200% of the expected incremental Capacity that will be provided by the Expanded Infrastructure comprising the Relevant Proposal.

6.3 Certainty

6.3.1 A proposal for a Capacity Expansion in Port Phillip Bay or Western Port Bay satisfies this clause 6.3.1 if the Commission is satisfied that:

- (a) the proposal is more likely than not to proceed; and
- (b) there is likely to be sufficient Co-investment in Capacity at the port to enable the expected incremental Capacity.

6.3.2 For the purposes of clause 6.3.1(a), the Commission should have regard to, without limitation:

- (a) whether or to what extent required planning, environmental and other necessary regulatory approvals have been applied for or obtained in respect of the Alternative Expansion;
- (b) the extent to which necessary engineering and procurement activities have been undertaken, including whether design, engineering, procurement and/or construction contracts have been entered into or such activities have commenced in respect of the Alternative Expansion;
- (c) the level and extent of committed equity and debt funding and government financial support, including whether a financial investment decision has been made by the proponent of the Alternative Proposal; and
- (d) the expected time frame for completion of the Alternative Expansion.

7. CONTENT OF APPLICATION

7.1 Identification and description of Relevant Proposal

7.1.1 When making an Application, the Applicant must identify and describe the Relevant Proposal in detail, including providing the following information:

- (a) the location, nature, scope and timing of the Relevant Expansion;
- (b) the location, nature, scope and timing of any expected or agreed Co-Investment in Capacity required in order for the Relevant Expansion to occur;
- (c) the existing Capacity at the Port of Melbourne prior to completion of the Expanded Infrastructure;
- (d) the expected incremental Capacity that will be provided by the Expanded Infrastructure;

- (e) the total expected Capacity of the Port of Melbourne once the Relevant Expansion is completed;
- (f) the Applicant's estimate of the NPV Cost per Weighted Average TEU of the Relevant Expansion;
- (g) the Applicant's estimate of each component of NPV Cost per Weighted Average TEU (as set out in clause 5.1.1) in respect of the Relevant Expansion, including, where relevant to calculate the NPV Cost per Weighted Average TEU, that component for each year of the Economic Life of the Economic Infrastructure;
- (h) a copy of the Capacity Expansion Proposal submitted to the Ports Minister under section 66 of the Act in respect of the Relevant Expansion, including any supporting documents and any correspondence received from the Ports Minister in relation to that Capacity Expansion Proposal;
- (i) all information on which the Applicant wishes to rely in seeking to satisfy the Commission that the Relevant Proposal is the least cost means of a Capacity Expansion in Port Phillip Bay or Western Port Bay; and
- (j) any information required in any guidelines issued by the Commission, or otherwise determined by the Commission, as published on the Commission's website.

7.2 Identification and description of Alternative Proposals

7.2.1 When making an Application, the Applicant must identify and describe in detail each Alternative Proposal of which it is aware at the time of its Application.

7.3 Confidentiality

7.3.1 Subsections 38(1A) to (5) of the ESC Act apply to information or a document provided to the Commission under this Order if, at the time the information or document is given to the Commission, the person giving it states that it is of a confidential or commercially-sensitive nature.

8. INFORMATION REQUIREMENTS

8.1 Basis on which financial information is to be provided

8.1.1 Any financial information provided in an Application must specify whether it is denominated in constant or current price terms.

8.2 Forecasts and estimates

8.2.1 Any information provided in an Application in the nature of a forecast or estimate must:

- (a) be supported by a statement of the basis of the forecast or estimate;
- (b) be arrived at on a reasonable basis; and
- (c) represent the best forecast or estimate possible in the circumstances.

8.3 Inferred or derivative information

8.3.1 Any information provided in an Application in the nature of an extrapolation or inference must be supported by the primary information on which the extrapolation or inference is based.

9. COMMISSION MAY DETERMINE FORM AND CONTENT OF SUPPORTING DOCUMENTATION

9.1.1 The Commission may, from time to time, determine what further information must be provided in an Application for the purposes of clause 7.1.1(j).

9.1.2 A determination under clause 9.1.1 may specify the form and content of the further information to be provided.

9.1.3 A determination under clause 9.1.1 must be published on the Commission's website.

10. COMMISSION MAY DETERMINE INDICES TO BE USED

10.1.1 If any index or other externally published statistic or set of statistics referred to in this Order ceases to be published, changes in title or is otherwise amended in a material respect, the Commission may determine the appropriate replacement to be used.

11. DEFINITIONS

In this Order:

Act means the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** (Vic.).

Alternative Expansion means the Capacity Expansion the subject of an Alternative Proposal.

Alternative Proposal has the meaning set out in clause 6.1.1.

Applicant means the applicant under an Application.

Application means an application made under section 68(1) of the Act.

Capacity, in relation to a port, means the aggregate, expressed in TEUs per annum, of:

- (a) the number of international Containers that are capable of being loaded from Vessels at Port Container Facilities at that port in accordance with good industry practice; and
- (b) the number of international Containers that are capable of being unloaded from Vessels at Port Container Facilities at that port in accordance with good industry practice,

in each case assuming that there are no limitations in the availability of Port Container Facilities.

Capacity Expansion means an expansion in the capacity of infrastructure, or development of new infrastructure, to Handle international Containers at a port.

Capacity Expansion Proposal has the same meaning as ‘capacity expansion proposal’ in section 60 of the Act.

Capital Cost, in respect of a Capacity Expansion, means the expected capital cost of completing the Expanded Infrastructure, excluding any infrastructure brought into service as a result of Co-Investment in Capacity, over the Economic Life of the Expanded Infrastructure.

Co-Investment in Capacity, in respect of a Capacity Expansion, means an investment in infrastructure used to Handle international Containers by a Container stevedore, or another third party, that is:

- (a) agreed or expected in connection with the Capacity Expansion; and
- (b) necessary for the expected incremental Capacity to be provided by the Expanded Infrastructure.

Commission means the Essential Services Commission established under Part 2 of the ESC Act.

Container means a 20x8 or 40x8 foot standard shipping container and any other moveable container with utility similar to a 20x8 foot or 40x8 foot standard shipping container which is designed for repeated use in loading and unloading cargoes on and from Vessels and which is recognised as a standard container by international stevedoring standards.

Economic Life, in respect of Expanded Infrastructure, means the expected economic life of the Expanded Infrastructure.

Eligibility Criteria has the meaning given by clause 2.1.1.

ESC Act means the **Essential Services Commission Act 2001** (Vic.).

Expanded Infrastructure, in respect of a Capacity Expansion, means:

- (a) in the case of an expansion of existing infrastructure, the completed incremental infrastructure the subject of the Capacity Expansion; or
- (b) in the case of the development of new infrastructure, the completed new infrastructure the subject of the Capacity Expansion.

Handle means loading, unloading, transport or storage and **Handling** has the corresponding meaning.

NPV Cost per Weighted Average TEU has the meaning given by clause 5.1.1.

PMA means the **Port Management Act 1995** (Vic.).

PoM Container Precinct means:

- (a) the Webb Dock East area, the Webb Dock North area, the Swanson Dock area and the Appleton Dock area at the Port of Melbourne; and
- (b) any other area on Port of Melbourne Land on which equipment or facilities for Handling of international Containers is located.

Port Channels:

- (a) in relation to the Port of Melbourne, has the same meaning as ‘Dedicated Channels’ and the ‘Shared Channels’ in Part 3 of the PMA; and
- (b) in relation to any other port, means the shipping channels that Vessels carrying international Containers must navigate in order to berth at the Port Container Facilities at that port.

Port Concession Deed means the document of that name being a ‘transaction arrangement’ for the purposes of the Act.

Port Container Facilities means Container terminals and associated equipment located:

- (a) in the case of the Port of Melbourne, in the PoM Container Precinct; and
 - (b) in the case of any other port, at that port,
- capable of loading or unloading a Container on or from a Vessel.

Port Development Implementation Plan has the same meaning as ‘PDIP’ in the Port Concession Deed.

Port Land has the same meaning as ‘port land’ in the PMA.

Port of Melbourne has the same meaning as ‘port of Melbourne’ in the PMA.

Port of Melbourne Land has the same meaning as ‘port of Melbourne land’ in the PMA.

Ports Minister means the Minister administering Part 6B of the PMA.

Prescribed Services has the same meaning as in the Pricing Order.

Pricing Order has the same meaning as in section 45 of the PMA.

Private Cost, in relation to an action, means the costs of that action incurred by the person who chose to take that action.

Private Cost Comparison Methodology, for the purposes of comparing the Relevant Expansion and an Alternative Expansion, means a methodology of comparing the Private Cost of the Relevant Expansion against the Private Cost of the Alternative Expansion.

Relevant Expansion means the Capacity Expansion the subject of the Relevant Proposal.

Relevant Proposal has the meaning set out in clause 1.1.2.

Social Cost, in relation to an action, means the total costs of that action to society (including Private Costs and any externalities in respect of that action).

Social Cost Comparison Methodology, for the purposes of comparing the Relevant Expansion and an Alternative Expansion, means a methodology of comparing the Social Cost of the Relevant Expansion against the Social Cost of the Alternative Expansion.

TEU means a twenty foot equivalent unit Container.

Vessels has the same meaning as ‘vessels’ in the PMA.

Dated 30 August 2016

Responsible Minister:
TIM PALLAS MP
Treasurer

ANDREW ROBINSON
Clerk of the Executive Council

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