2022 Industry Consultation Paper

March 2022

Port of Melbourne

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1 Overview of the 2022 Industry Consultation

1.1 Purpose of this paper

This consultation paper is intended to assist stakeholders to effectively engage with PoM on issues of importance to them for the 2022-23 Tariff Compliance Statement (TCS).

The purpose of the consultation paper is to provide stakeholders with appropriate information about issues PoM is considering in the lead up to submission of the 2022-23 TCS and the consequences of those issues, so that stakeholders can be consulted effectively.[1]

We have set out details of our plans and proposals so interested stakeholders have the opportunity to engage with the material and be well informed to ensure effective engagement through a range of channels. By providing this information we aim to support our stakeholders to provide PoM with informed feedback. All feedback and input will be considered by PoM as we finalise our 2022-23 TCS ahead of submitting it to the ESC and releasing it publicly.

Throughout this paper, we have set out a number of questions to assist stakeholders in providing feedback on the topics we are consulting on. A summary of consultation questions is provided at Appendix A.

1.2 Content of engagement

Port of Melbourne regularly engages with port users and stakeholders. The 2022 Industry Consultation is another opportunity for stakeholders to hear about and provide feedback on matters that are important to them.

This paper includes questions on key topics that PoM would like stakeholders to provide feedback on, to help us understand stakeholder views and priorities to shape the design and content of the 2022-23 TCS.

The topics covered in this paper are informed by what PoM has heard from stakeholders in previous engagement on what issues are most important to them[2], our own identification of issues that could have a significant influence on service and/or prices for prescribed services, and feedback from Essential Services Commission (ESC).

Topics covered in this paper are designed to assist us to:

- Inform stakeholders about PoM's regulatory and investment obligations, and provide an update on the ESC's recently concluded 5-year inquiry into Pricing Order compliance
- Consult stakeholders on our approach to engagement on port development
- Consult stakeholders on our plans for publishing port performance data and metrics
- Inform stakeholders about prices for the next financial year and consult them about preferences for tariff reform
- Consult stakeholders on depreciation and the length of the regulatory period.

The 2022 Industry Consultation is intended to complement PoM's engagement activities on longer term capital planning (such as the Port Development Strategy (PDS)), engagement on specific projects and programs, and day-to-day engagement on project delivery and other operational issues.

[1] Under clause 7.1.2(d) of the Pricing Order, in the TCS PoM is required to set out the process by which it has effectively consulted and have regard to comments provided by Port Users

[2] For example, in our 2021 Industry Consultation and targeted engagement with stakeholders from across the supply chain in late 2021 and early 2022 to inform topics for engagement in the 2022 Industry Consultation

1.3 Consultation timeframes

The table below provides timeframes for the 2022 Industry Consultation.

Table 1 Consultation timeline

Activity	Timing
Targeted engagement to inform topics for engagement in the 2022 Industry Consultation	October 2021 to January 2022
Release of 2022 Industry Consultation Paper	10 March 2022
Period for one-on-one stakeholder engagement meetings	11 March 2022 to 8 April 2022
Online engagement forum 1	22 March 2022
Online engagement forum 2	25 March 2022
Due date for written submissions	8 April 2022
2022-23 TCS submitted to the ESC	31 May 2022
Publication of the Reference Tariff Schedule (RTS) for 2022-23, setting out tariffs for prescribed services to apply from 1 July 2022	1 June 2022
Commencement date for the 2022-23 RTS	1 July 2022

1.4 How you can participate and provide feedback

Based on feedback from our 2021 Industry Consultation (available on our website, here), stakeholders indicated they would like a range of options for engaging with the port, including briefings and face-to-face engagement.

Stakeholders can participate in the 2022 Industry Consultation through a range of channels, including:

- Making a written submission
- Attending an online engagement forum
- Requesting a one-on-one meeting with the PoM team.

In the 2022-23 TCS, we will provide a summary of:

- The issues raised and feedback provided by port users
- How we have taken into account the views of port users.

Written submissions

We encourage stakeholders to make written submissions. You can make a written submission via:

Email at: rts@portofmelbourne.com

Written submissions are due by **8 April 2022**.

PoM will not publish any written submissions that it receives, but may seek to quote or refer to feedback provided by stakeholders in our public reporting. Please advise us if you would like all, or any part of, your written submission to be treated confidentially.

Online engagement forums

We will conduct two online engagement forums, which any stakeholder is able to attend:

Online engagement forum 1:
10:00am – 11:30am, Tuesday 22 March 2022
Microsoft Teams

Online engagement forum 2:
10:00am – 11:30am, Friday 25 March 2022
Microsoft Teams

The content of each online engagement forum will be the same so please choose the session that suits you best.

You can register your interest for an online engagement forum by sending an email to rts@portofmelbourne.com with your contact details and identifying the forum you would like to attend.

For more information on the online engagement forums please visit our website here.

One-on-one meetings

Alternatively we are pleased to accommodate any stakeholders who would prefer a one-on-one meeting with us to provide feedback.

We will be scheduling meetings between 11 March 2022 and 8 April 2022, meetings will be held either online or face-to-face.

Please contact us at rts@portofmelbourne.com if you would like to arrange a one-on-one meeting.

1.5 Questions for stakeholders

The following questions seek feedback on the approach to the 2022 Industry Consultation program. Feedback provided by stakeholders to these questions will be used by PoM to inform our approach to the 2022 Industry Consultation and future consultation activities.

Questions on 2022 Industry Consultation program
1. Do you have any feedback on approach to the 2022 Industry Consultation program? For example: a. Timing and opportunity to participate? b. Level of information provided? c. Forms of engagement PoM should use? 2. Is this consultation paper useful? Why/why not? 3. Are there issues covered in this consultation paper that you would like more detail on, or other issues would you like to see PoM consult on more broadly, or as part of the TCS consultation in future?

2 Regulatory context

Purpose and content of this chapter

The purpose of this chapter is to inform stakeholders about PoM's regulatory obligations under the Pricing Order and investment obligations under the Port Lease. We also provide an update on the ESC's five year inquiry into Pricing Order compliance.

It is important for stakeholders to have an understanding of our regulatory framework and investment obligations, as they dictate how we set prices and make investments in services, and provide the basis for assessing whether our investments are prudent and efficient.

2.1 Our regulatory framework and investment obligations

PoM's regulatory framework and investment obligations are primarily contained in:

- The stewardship and development obligations in the Port Lease;
- The regulatory and pricing controls in the Pricing Order.

A brief summary of our stewardship obligations under the Port Lease and regulatory controls under the Pricing Order is provided below. More detailed information on our regulatory framework and investment obligations is included in Attachment B of this paper.

Stewardship obligations

PoM's **stewardship obligations** under the Port Lease require PoM to:

- Manage, operate and maintain the Port in accordance with Good Operating Practice[3];
- Ensure the Port is capable of providing access to shipping, including being able to reasonably accommodate changing vessel sizes;[4]
- Develop the Port land and infrastructure to:
  - Cater for actual and reasonably anticipated growth;
  - Provide quality and efficiency standards expected of a major port;
  - Maintain the Port's leading position among major Australian ports in terms of its quality, efficiency and effectiveness.[5]

Pricing Order

The **Pricing Order** is a regulatory instrument issued by the Governor in Council under section 49A of the Port Management Act 1995 (PMA) to regulate the setting of tariffs for prescribed services.[6]

The Pricing Order came into effect on 1 July 2016 and regulates the setting of tariffs for prescribed services, which relate to the provision of services by investing in wharves, berths and channels for shipping. The Pricing Order was amended in May 2020 to adjust prices to fund the Port Rail Transformation Project.

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[3] Where 'Good Operating Practice' means: adherence to a standard of practice which includes the exercise of that degree of skill, diligence, due care, prudence and foresight which would reasonably be expected of a reasonably experienced, competent, prudent and qualified operator of the Port; and provision of appropriate services and facilities for the ease of access to, expeditious and safe movement in and efficient use of the concession area and port infrastructure by vessels, vehicles and other users of the Port.

[4] Port Lease, clause 8.2 and 8.4

[5] Port Lease

[6] The Port Management Act, Pricing Order and May 2020 amendment to the Pricing Order are available on our website here Regulatory Quick Links | Port of Melbourne

The Pricing Order defines a 'Pricing Order transition period' which runs until 2032, or latest 2037.[7] During the Pricing Order transition period a price smoothing mechanism limits the tariffs to the lesser of two binding constraints:

- The Tariffs Adjustment Limit (**TAL**), which limits weighted annual tariff increases to inflation (CPI)[8]; or
- To recover no more than PoM's prudent and efficient costs, determined by application of an accrual building block methodology.[9]

The Pricing Order also requires that any operating and capital costs we incur and recover from port users through prices are prudent and efficient.[10]

2.2 ESC Pricing Order compliance inquiry

On 28 January 2022, the ESC published its final report on its first inquiry into PoM's compliance with the Pricing Order for the five-year period from 1 July 2016 to 30 June 2021 (the review period).[11]

The key findings of the ESC were as follows:

- The ESC made a finding of significant and sustained non-compliance in relation to the rate of return (and therefore aggregate revenue requirement), and with respect to consultation with port users. The ESC found that these non-compliances did not have any impact on prices paid by port users.
- The ESC found sustained non-compliance in relation to PoM's operating expenditure forecasts, cost allocation, tariffs, and the content of Tariff Compliance Statements. The ESC found that the impacts of these non-compliances were immaterial (not significant) and had no impact on prices paid by port users.
- The ESC found PoM was compliant in relation to its capital expenditure, depreciation (including the deferral of depreciation) and demand forecasting.

PoM has great respect for the regulatory framework that the Government put in place at the time of the port lease in 2016, and we strongly believe it is working as intended. The intent of the framework was to provide price certainty for users of the port while also creating certainty and facilitating investment that is critical to the Victorian economy. This is being achieved.

As recognised by the ESC, there were no price impacts on port users during the review period as a result of the findings of non-compliance. We are working with the Government on the response to the ESC's findings, with the intent to remedy and prevent non-compliance.

[7] Pricing Order clause 3.4
[8] Pricing Order clause 3.1
[9] Pricing Order clause 2.11
[10] Pricing Order clause 4.1.1 and 4.2.1
[11] The ESC's final report is available on its website, here Inquiry into Port of Melbourne compliance with the pricing order 2021 | Essential Services Commission

3 Engagement on port development

Purpose and content of this chapter

The purpose of this chapter is to consult stakeholders about our approach to engagement on port development. The topics raised in this chapter are drawn from previous engagement with stakeholders, and include, among other things:

- Matters we should give priority to when engaging on port development, such as forecasts of demand and capacity
- Information that we should provide to stakeholders on port development plans, such as detail on timeframes of coming projects
- How we should balance requests for greater transparency on investment drivers with claims of confidentiality and commercial sensitivity.

We are consulting with port users on their preferences for how we engage on our capital planning and port development and will actively take their feedback into account when designing our approach to engagement on port development, which we plan to review and refresh this year.

3.1 Background to port development planning and engagement

Our port planning framework is designed to deliver on our obligations as outlined in section 2.1 of this paper. Figure 1 illustrates the engagement approaches currently employed across the investment planning horizons.

Key components of our engagement on port development and capital planning are as follows:

- Long-term plans are primarily consulted on via the Port Development Strategy (PDS). The PDS is prepared in accordance with Ministerial Guidelines[12] issued under the Port Management Act 1995 (PMA), which include:
  - The PDS must be prepared at five-yearly intervals[13]
  - PoM must develop and implement a consultation process that ensures an appropriate level of engagement with stakeholders.[14]

  The PDS was shaped by extensive industry, government and community consultation, which is summarised in the PDS Consultation Summary Report available on our website.[15]
- Feedback from port stakeholders and the ESC during engagement on the 2020 Tariff Rebalancing Application indicated that stakeholders wanted more information about delivery of the projects under the PDS. In response, we developed the PDS Delivery Program,[16] which outlines the indicative timing and sequencing of each of the major projects outlined in the 2050 PDS over the next 15 years. The PDS Delivery Program is available on our website.[17]
- Consultation on major projects is done on a case-by-case basis as they progress through the stages in the planning horizon.

We are seeking feedback on our approach to engagement on our port development planning.

[12] Transport for Victoria, Port Development Strategy Ministerial Guidelines, July 2017, available here Port development strategies | Department of Transport
[13] Port Management Act, section 91K(1)
[14] Part 2 of the Ministerial Guidelines sets out the requirements for stakeholder consultation
[15] The PDS Consultation Summary is available on our website here https://www.portofmelbourne.com/wp-content/uploads/POM-PDS-Stakeholder-Engagement-Report-Final-for-Publication.pdf
[16] The public PDS Delivery Program is supported by a confidential Port Development Implementation Plan (PDIP) that PoM is required to provide to the State.
[17] The PDS Delivery Program is available on our website here https://www.portofmelbourne.com/wp-content/uploads/2050-PDS-Delivery-Program-13-April-2021.pdf

Feedback received will be used by PoM to inform the design of the consultation program for the next update of the PDS and in engagement on the planning and delivery of major projects under the PDS.

Figure 1: Planning horizons and stakeholder engagement

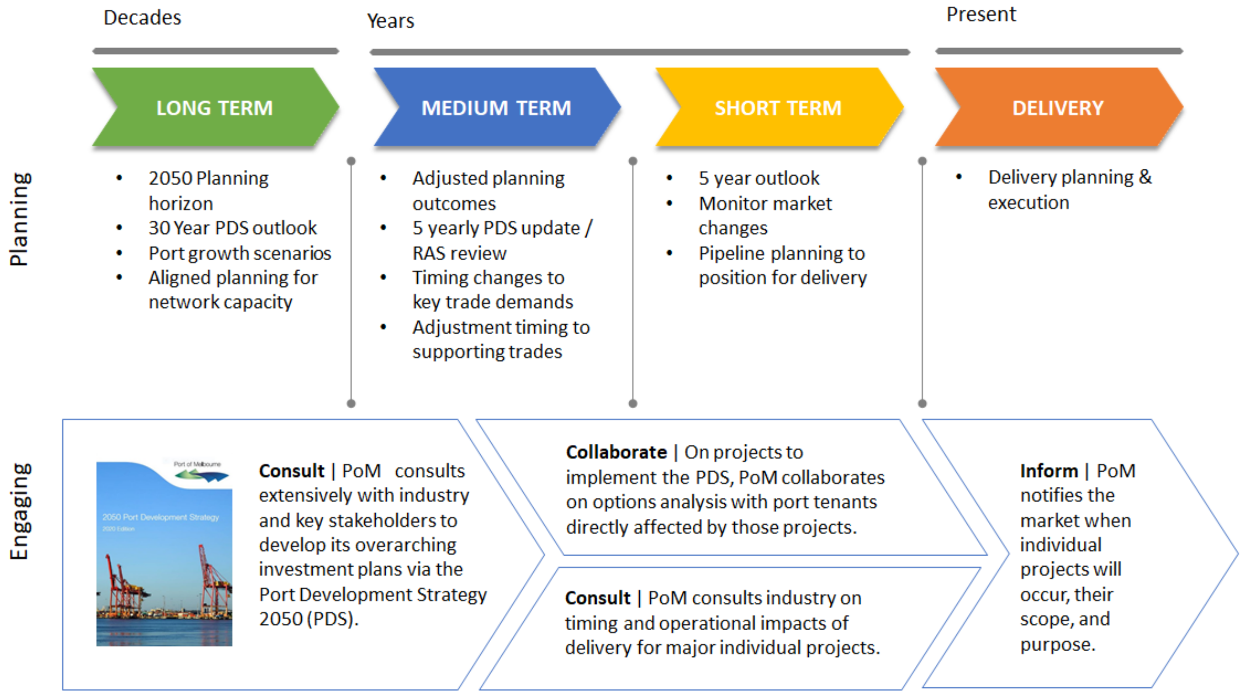
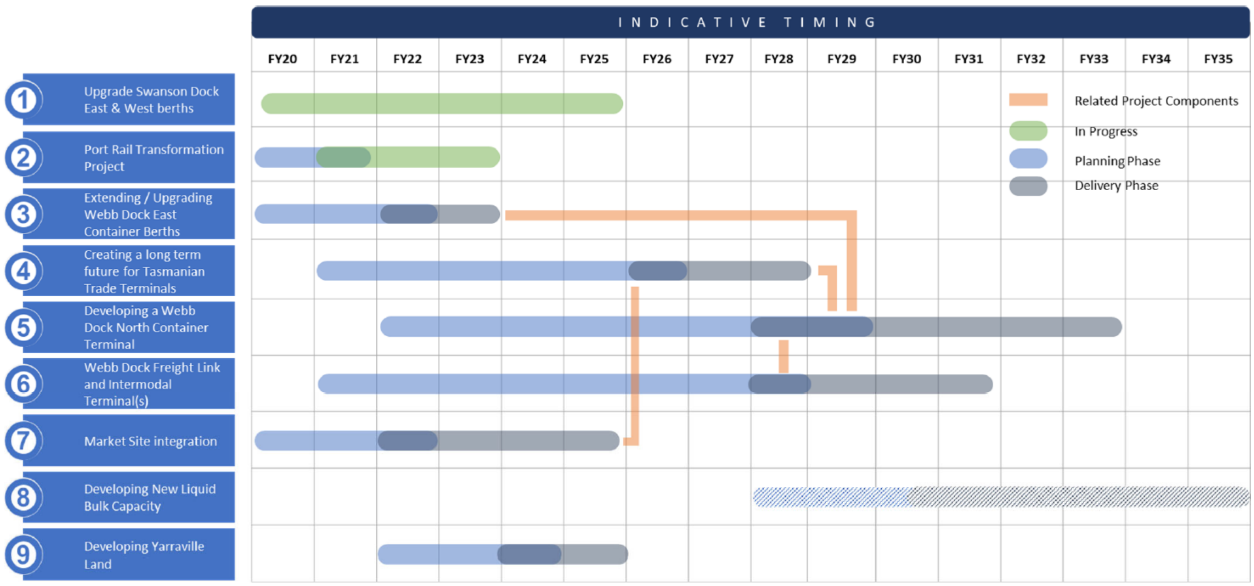


Figure 2 shows the investment pipeline from the PDS at the date of the PDS Delivery Program document.[18]

Figure 2: 2050 PDS Projects to be delivered between 2020 – 2035



Source: PDS Delivery Program.

Note: Timing of developing new liquid bulk capacity is being reassessed in the context of the announcement of the Altona closure.

[18] The PDS Delivery Program is available on our website here https://www.portofmelbourne.com/wp-content/uploads/2050-PDS-Delivery-Program-13-April-2021.pdf

3.2 What we've heard so far

In late 2021 and early 2022, we undertook targeted engagement with stakeholders from across the supply chain to inform the topics and approach to engagement in the 2022 Industry Consultation. In these discussions we described PoM's approaches to consulting on capital planning and investment and sought feedback from stakeholders on these approaches.

Feedback provided by stakeholders included:

- Suggestions on improvements to the PDS development process. Port users:
  - Noted that the PDS development process is time consuming and that they were frustrated with the delays in investment
  - Raised concerns about the impact of deviations from the PDS
  - Suggested PoM provide information on the engagement process and timetable for the next update to the PDS
- Views on planning inputs. Port users:
  - Noted that there were differences in views about capacity and vessel sizes
  - Noted that they would like to better understand how PoM assesses prudency and efficiency of its investments
  - Encouraged PoM to factor port users' development plans into its capital planning process
- Suggestions on improvements in information provision, such as:
  - Noting that the PDS Delivery Program is more useful than the PDS, which was considered too high-level
  - Suggested greater transparency around forecasts and estimates, so the industry can see what is driving investments
  - Queried whether there is a pipeline of investments so port users can understand investment priorities
  - Suggested it would be good to get more detail on indicative timeframes of coming projects.

3.3 We are seeking stakeholder feedback on our preliminary positions

Timing of the next PDS

The next PDS is planned for completion by December 2025. Our preliminary view is that to achieve this timeframe we would commence internal planning in late 2023 and consultation on key inputs to the PDS (e.g. forecasts of demand, vessel fleet and port capacity) in early 2024.

However, as shown in the investment pipeline in Figure 2 above, we are entering the planning phase for the next major increment in capacity for international containers (comprising a number of inter-related projects identified in the PDS).

In this context, we consider that it would be beneficial to commence engagement on planning for this investment this year. A more detailed timeframe for engagement on the next PDS will be prepared subsequently and will be publicly communicated to port users and all stakeholders.

We are seeking feedback as an input into our engagement planning

We are seeking feedback on the approach to engagement on port development to meet growth in demand and accommodate changing vessel size.

This section sets out some preliminary views and areas for stakeholder feedback. We welcome feedback on these topics and any other matters of priority for stakeholders.

We will use feedback from stakeholders to design our engagement strategy and approach for port development in the coming months, with the expectation that we will commence engagement with port users and other stakeholders in mid-late 2022.

What should we engage on?

Key inputs that inform the timing of when capacity is required and consideration of the solution include, among other things:

- Demand — PoM is required to cater for actual and reasonably anticipated growth
- Vessel fleet — future vessel sizes must be able to be reasonably accommodated
- Port capacity — port capacity needs to be considered in terms of both the ability to cater for growth in container volumes and the capability to reasonably accommodate changing vessel size, and to do so in a way that maintains the Port's leading position among Australian Ports in terms of its quality, efficiency and effectiveness.[19]

Our preliminary view is that these factors would form a significant component of our engagement, and that this would be aligned to initial feedback from stakeholders outlined above concerning greater transparency round forecasts and estimate, and differences in views about capacity and vessel sizes.

We are seeking stakeholder feedback on their preferences and priorities in relation to our engagement on these matters.

Initial feedback from stakeholders outlined above also suggested we should also consider port users' development plans.

Noting that this would require port users to share their development plans with us and other port users, we are seeking stakeholder views on how we should include port users' development plans in our engagement.

How should we manage issues of confidentiality?

Our work on port capacity to-date has included managing a range of data from stevedores on terminal capacity that they have required us to maintain confidentiality over.

Further, in our initial discussions with port users, the stevedores have objected to us publishing terminal-specific data on matters that impact terminal capacity and therefore overall port capacity (see section 4.2, below).

However, we also note that port users (including the stevedores themselves) have called for greater transparency on matters that drive investment.

We are seeking feedback from stakeholders on how we should manage, or balance, claims of commercial sensitivity from the stevedores in the context of calls from port users for greater transparency.

Information provision on project pipeline

Initial feedback from stakeholders outlined above requested that we provide a pipeline of investments and more detail on the indicative timing of coming projects.

The PDS Delivery Program outlines the indicative timing and sequencing of each of the major projects outlined in the 2050 PDS over the next 15 years, and is available on our website.[20]

We are seeking feedback from stakeholders on the suitability and utility of the information provided in the PDS Delivery Program, and what other information stakeholders would like to see on timeframes of coming projects.

[19] Port Lease
[20] The PDS Delivery Program is available on our website here https://www.portofmelbourne.com/wp-content/uploads/2050-PDS-Delivery-Program-13-April-2021.pdf

3.4 Questions for stakeholders

The feedback received as part of this consultation paper will assist PoM in designing its approach to engagement on port development. We expect to undertake engagement on key inputs to our port development planning later in 2022.

Questions on port development
4. What matters should PoM give priority to when engaging on port development?
5. How should we include port users' development plans in our engagement?
6. How should we manage claims of commercial sensitivity from stevedores in the context of calls from port users for greater transparency on matters that drive investment?
7. Does the PDS Delivery Program provide sufficient detail on PoM's investment pipeline? Are there any other details would you like to see?

4 Performance data and metrics

Purpose and content of this chapter

The purpose of this chapter is to consult stakeholders about our plans for publishing port performance data and metrics.

The performance metrics and data covered in this chapter are based on matters that stakeholders have identified are important to them in previous engagement. In this chapter we:

- Provide out initial views on the relevance of reporting publicly on performance data and metrics to our obligations under the Port Lease (and the services we provide in line with these obligations)
- Summarise feedback we have heard to-date from stakeholders on their preferences
- Identify and describe a number of performance data and metrics that we consider are aligned with our obligations
- Seek feedback from port users and other stakeholders on:
  - The performance data and metrics they value
  - If we should report data and metrics publicly, and if so, the manner, timing and frequency of reporting.

We will use feedback from port users to decide what performance metrics and data to publish, how we publish the data, and the frequency of reporting. We will also use feedback to consider whether to adopt benchmarks, and if so, what they should be. As this is a new initiative for the Port, we expect our approach to reporting performance data and metrics to evolve over time.

4.1 Why report performance data and metrics?

In our prior engagement with industry, port users (shipping lines in particular) have emphasised the importance of data to their businesses.

Recent developments in global supply have highlighted how disruptive port congestion can be to the global economy. In this context, there has been an increasing focus on data transparency across the supply chain to improve performance:

- In its Container Port Performance Index 2020, the World Bank Group and IHS Markit highlighted the "lack of reliable measures to compare operational performance across different ports" as a major challenge to stimulate port performance improvements.[21]
- In December 2021, the Productivity Commission commenced an inquiry into Australia's Maritime Logistics System looking to develop "a framework of performance measures to determine port performance and benchmarking Australian ports internationally" as part of its scope.[22]
- Submissions to the Productivity Commission inquiry have called for more data on port performance, with Shipping Australia, for example, calling for a range of performance data to be made available. Shipping Australia identified over fifteen different data requirements they considered should be reported "at a minimum".[23]

We consider that there may be benefit in developing and reporting on key performance data and metrics that provide information about the delivery of PoM's key obligations under the Port Lease (as described in section 2.1 above). We are consulting to obtain stakeholders' views on which aspects of port performance

[21] World Bank, Container Port Performance Index 2020, 2021, p.30
[22] Productivity Commission, Australia's maritime logistic system inquiry – call for submissions, December 2021, p.4. Available here Call for submissions - Australia's Maritime Logistics System Productivity Commission (pc.gov.au)
[23] Shipping Australia, Submission to the inquiry into Australia's Maritime Logistics System, February 2022, pp.91-92

they value most, and what performance data and metrics PoM should publish to provide information to stakeholders about performance.

4.2 What we've heard so far

PoM has undertaken a range consultation work on this topic in the past, and the content in this chapter is the culmination of several years of engagement.

Outcomes of some of our past engagement with stakeholders on this topic include:

- In the 2021 Industry Consultation, port users emphasised the importance of data to their businesses.
- Following the release of the World Bank Container Port Performance Index, we met with Shipping Australia who emphasised the importance of getting a true picture of overall port performance and encouraged PoM to publish performance data.

Building on this information about port users' preferences, in late 2021 and early 2022, we undertook targeted engagement with stakeholders from across the supply chain to inform the topics and approach to engagement in the 2022 Industry Consultation. In these discussions we noted that we were seeking to understand stakeholder priorities for port performance and possible performance metrics for publication. We shared our early thinking on preparing metrics covering productivity, capacity, and ship sizes at the international container terminals.

We sought views from stakeholders on the value of reporting on performance data and metrics at a whole-of-port and/or terminal-specific level.

Stakeholders provided the following feedback:

- Shipping lines, cargo owners and land-side transport operators re-iterated their earlier views on the value of PoM publishing performance data and metrics, and supported PoM publishing these data at the terminal-specific level, on the basis that it would:
  - Provide a deeper understanding of port efficiency
  - Potentially generate more competition
  - Assist the industry to be more efficient and ensure investments to address capacity constraints are efficient.
- The stevedores raised a number of concerns about PoM publishing these data, including:
  - Querying the benefit as the shipping lines would already have access to it
  - Concerns about publishing data without context, which might include factors outside the control of stevedores
  - Noting that the proposed metrics seemed to be more about infrastructure investment than productivity or performance
  - That they did not support PoM publishing terminal-specific data.

4.3 We are seeking stakeholder feedback on our preliminary positions

Based on our discussions with stakeholders the feedback received to-date, we have developed a range of performance data and metrics related to our services, and are seeking feedback on:

- Whether these performance data and metrics are valued by stakeholders
- If we should report these publicly, and if so, the manner, timing and frequency of reporting.

We are also seeking views from stakeholders on any other data that they would like to see published.

PoM recognises there are a large number of factors affecting measures of port performance, many of which are outside PoM's control (or the control of other supply chain participants) and so any one measure is not necessarily a definitive indicator of performance.

Performance data and metrics for capacity, quay line productivity and terminal productivity

As set out above in section 2.1, under the Port Lease, PoM is required to:

- Manage, operate and maintain the Port in accordance with Good Operating Practice[24]
- Cater for actual and reasonably anticipated growth
- Provide quality and efficiency standards expected of a major port.

We have identified the following performance data and metrics for these service outcomes:

- **Berth utilisation** – shown in Figure 3. Average berth utilisation per month is calculated by dividing total monthly occupied hours by total monthly available hours.
- **Quay line productivity** – measured as 'TEU per annum / meter of quay line', shown in Figure 4. This metric is calculated by dividing the total TEU exchanged per annum by the total berth length.
- **Terminal productivity –** Lifts per hour, measured as 'lifts per month / ship hour', shown in Figure 5. Lifts per hour is a function of gross crane rate and crane intensity plus ship time pre- and post-crane deployment (e.g. lashing/unlashing, mooring, etc.).

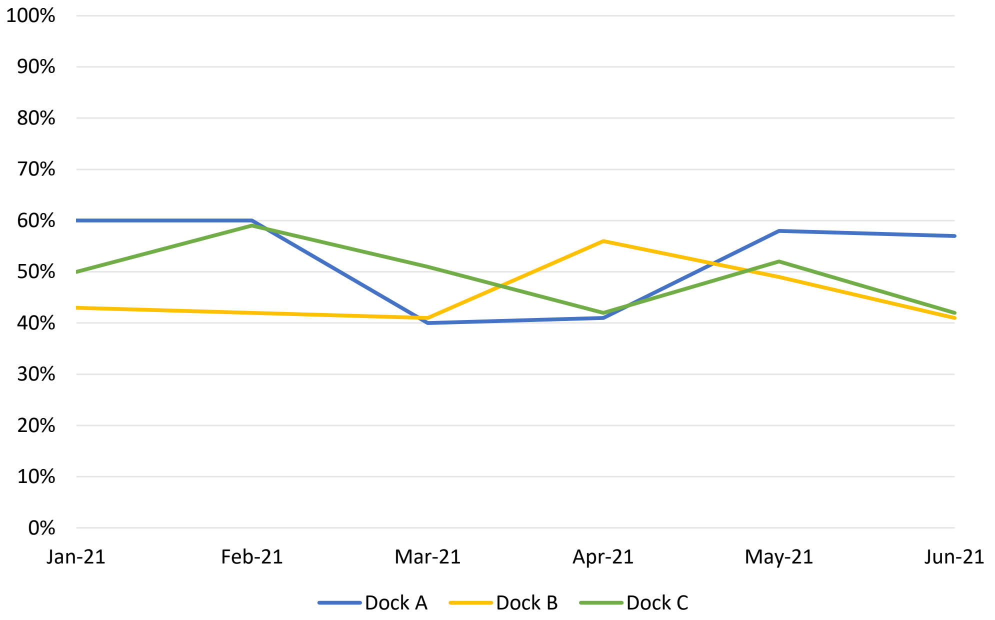
Since these performance data can provide useful information about investment needs, our preliminary view is that there may be value in reporting these data on a terminal-specific basis.

For example, we expect that stakeholders may have views about whether:

- Comparing berth utilisation to efficient benchmarks for comparable operations could provide useful information about the need to invest in additional capacity;
- Quay line productivity could be informative in considering whether capacity issues would be best resolved through enhancements in port infrastructure (such as investing in additional quay line), or through enhancements in terminal productivity (which might be able to be addressed by investments by the stevedores, rather than PoM); and/or
- Lifts per hour could provide useful informative in considering whether port infrastructure or terminal productivity should be targeted.

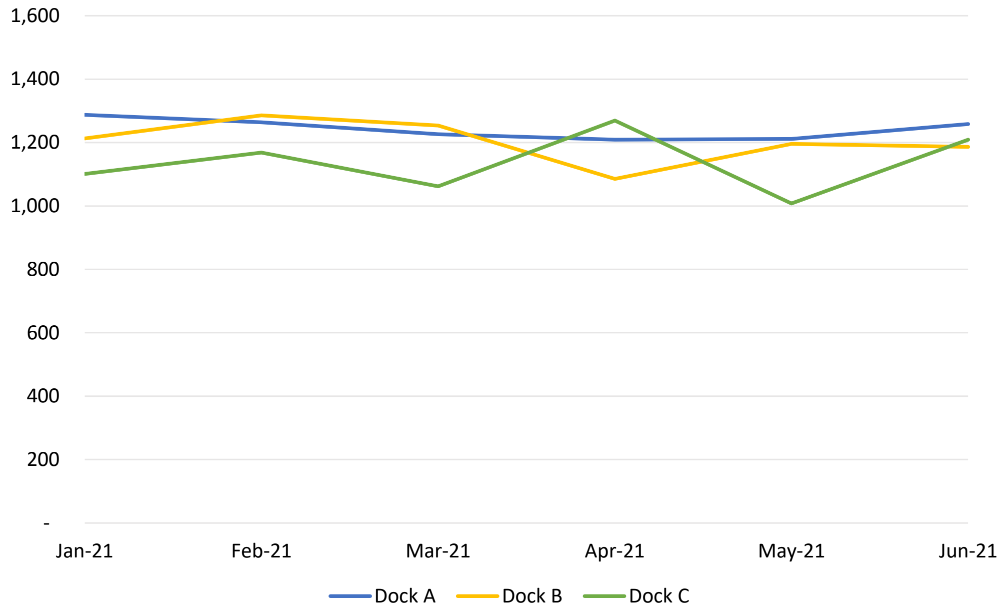
[24] Where 'Good Operating Practice' means: adherence to a standard of practice which includes the exercise of that degree of skill, diligence, due care, prudence and foresight which would reasonably be expected of a reasonably experienced, competent, prudent and qualified operator of the Port; and provision of appropriate services and facilities for the ease of access to, expeditious and safe movement in and efficient use of the concession area and port infrastructure by vessels, vehicles and other users of the Port.

Figure 3: Berth Utilisation – dummy data for illustration purposes



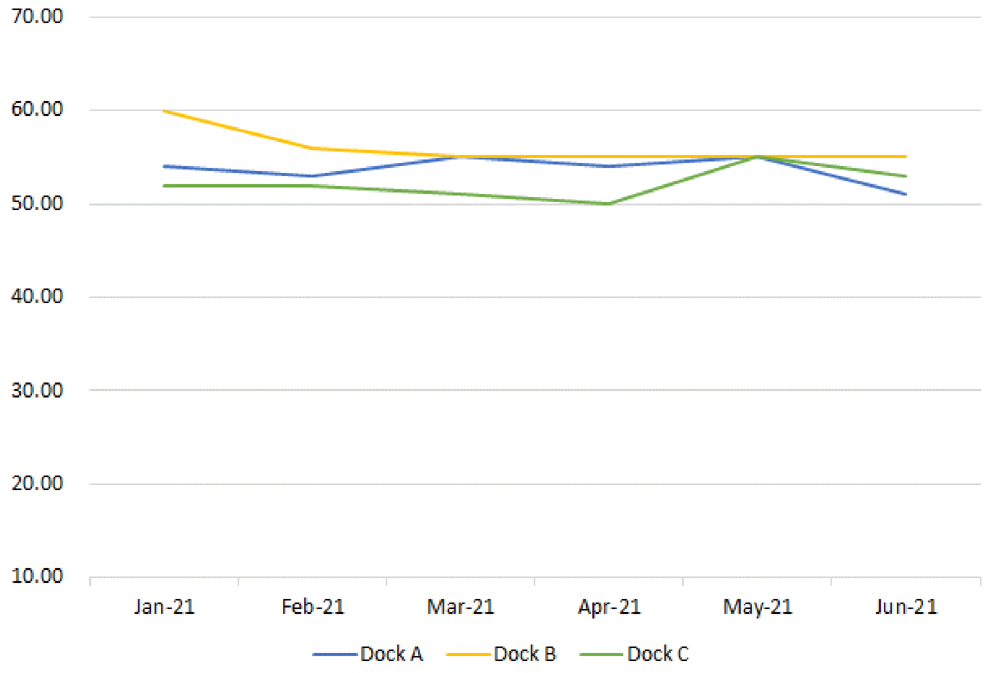
Source: PoM

Figure 4: TEU per annum / total quay length (metres) – dummy data for illustration purposes



Source: PoM

Figure 5: Lifts per month / Ship hour (lifts/hr) – dummy data for illustration purposes



Source: PoM

Benchmarks for capacity, quay line productivity and terminal productivity

In reporting performance data and metrics relating to capacity and quay line productivity, we consider there may be value in comparing outcomes to relevant benchmarks. We are seeking stakeholder's views on appropriate benchmarks for the performance metrics we have identified above, or any other performance metrics that stakeholders value.

Berth utilisation

With respect to **berth utilisation**, maritime research consultancy Drewry has noted that once 65% berth utilisation is exceeded, ship queuing increases significantly and service quality drops. After this point, vessel queuing increases exponentially. Drewry noted that dedicated terminals with tightly scheduled arrivals will be able to achieve higher levels of berth utilisation than common user terminals, which have lower berth utilisation due to a more mixed pattern of vessel arrivals.[25] Additionally, seasonality of trade will impact berth utilisation, in that during the peak trade period, utilisation could be materially higher than the annual average.

Based on these factors, our preliminary view is to apply a general benchmark of somewhere in the range of 55% to 65% for berth utilisation. We are seeking stakeholder's views on an appropriate benchmark for berth utilisation.

Quay line productivity

With respect to **quay line productivity**, we note that Drewry applies benchmarks ranging from:

- 1,200 TEU p.a. / metre of quay line for 'medium' common user terminals (i.e. those with 500 metres to 1,000 metres of continuous quay line), servicing mainly gateway, rather than transhipment demand
- 1,600 TEU p.a. / metre of quay line for 'medium' terminals with tightly controlled schedules, servicing mainly transhipment demand with limited within port competition.[26]

[25] Drewry, Container Terminal Capacity and Performance Benchmarks, October 2014 p.11
[26] Drewry, Container Terminal Capacity and Performance Benchmarks, October 2014 p.15

Our understanding is that the Melbourne terminals have historically not been able to maintain quay line productivity of 1,400 TEU p.a. / metre of quay line without experiencing congestion.

Current actual performance in terms of TEU / metre of quay line at Melbourne is consistent with the global average (1,157 TEU / m of quay line), and below current world best performance of around 1,500 TEU / m of quay line with berth utilisation of 60-65%. However, these productivity levels are only achieved at the world's largest transhipment ports.[27]

Based on the above, our preliminary view is that 1,400 TEU p.a. / meter of quay line might be an appropriate benchmark for quay line productivity. We are seeking stakeholder's views on an appropriate benchmark for quay line productivity.

Terminal productivity

With respect to **lifts per hour**, Drewry notes that:

- For terminal operators, the number of moves per hour per crane is significant as it shows the performance of individual assets and teams.
- For shipping lines, what is of greater interest is the speed of handling averaged across the ship, taking into account all cranes deployed on each vessel call – Drewry described this metric as 'Berth moves per hour (BMPH)', which measures the total number of containers handled per vessel call against the total time the vessel is on the berth. This is equivalent to our lifts per hour metric.[28]

Similarly to shipping lines, our preliminary view is that we should be less concerned about the performance of individual assets and teams (as that is a matter for the stevedores), but what is important is the ultimate performance in terms of containers handled while the berth is utilised.

As lifts per hour is for the most part a commercial issue between stevedores and shipping lines, in the first instance it is not clear if PoM should set or report against a benchmark. We are seeking stakeholder's views on whether we should consider a benchmark for lifts per hour, and if so, what that benchmark should be.

Providing context for performance data and metrics

As noted above, the stevedores raised concerns about publishing performance data without context for factors outside of their control.

We note that a range of factors can influence metrics such as berth utilisation and quay line productivity. For example, quay line productivity might be impacted by weather, port restrictions, maintenance, industrial relations issues, vessel arrivals/scheduling, market share and the nature of trade (e.g. higher proportions of transhipment trade are associated with higher productivity).

By way of example:

- Our understanding is that a large proportion of vessels have been arriving off window in the current operating environment, which would be expected to result in congestion occurring at lower levels of berth utilisation.
- A terminal with a low market share would show low berth utilisation and 'TEU p.a. / metre of quay line', although this might not be reflective of low productivity. Reporting total port berth utilisation and 'TEU p.a. / metre of quay line' in addition to terminal specific metrics could provide insights into this scenario by reflecting overall infrastructure productivity at the port, independent of market shares.

We agree that it is important to provide context when publishing performance metrics and data. Our preliminary view is that one way this could be achieved would be by sharing the performance data with key port users (such as the stevedores and major shipping lines, or their representatives), to allow them to

[27] Drewry, Global Container Terminal Operators – Annual Review and Forecast Annual Report 2021-22, 2021 pp.60-62
[28] Drewry, Container Terminal Capacity and Performance Benchmarks, October 2014 p.15

provide any contextual information that they consider relevant, which would be included with the published data.

We are seeking stakeholder's views on how we can ensure that contextual factors are taken into account when publishing performance data and metrics.

Performance data and metrics for vessel size

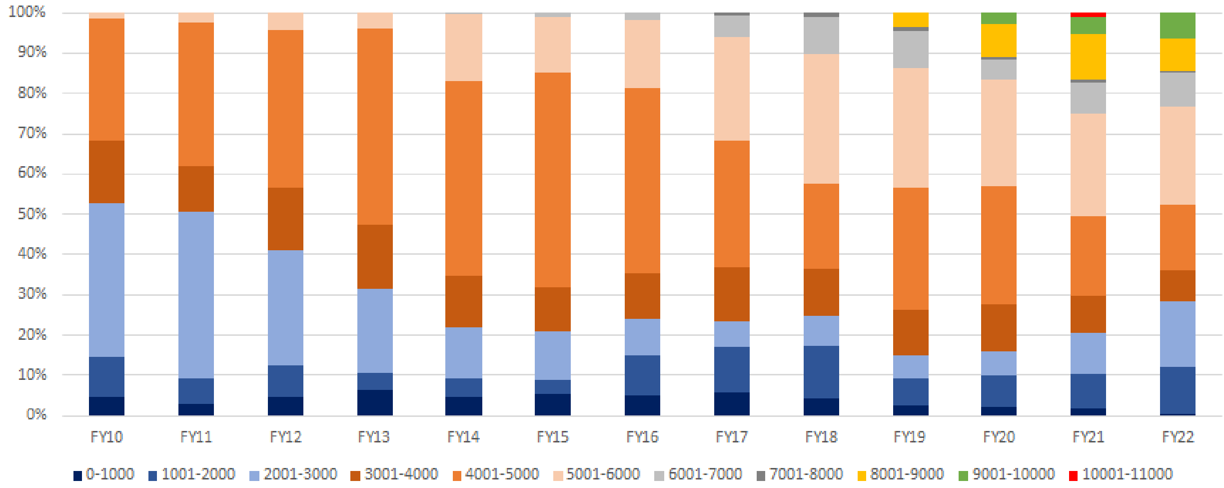
Under the Port Lease, PoM is required to ensure the Port is capable of providing access to shipping, including being able to reasonably accommodate changing vessel size.

We have identified the following performance data and metrics relevant to this service outcome:

- Composition of vessel visits (nominal TEU capacity), shown in Figure 6
- Composition of vessel visits (LOA), shown in Figure 7.

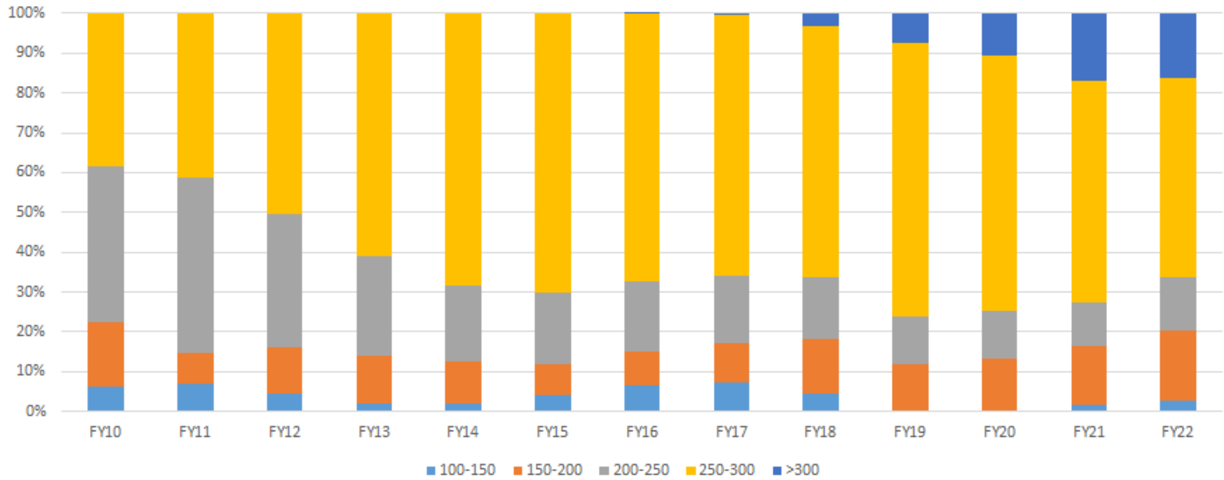
At this stage, we are not proposing to report this data on a terminal-specific basis, however we would welcome feedback on this preliminary position.

Figure 6: Composition of PoM vessel visits (nominal TEU capacity) – all berths



Source: PoM
Note: FY22 is based on 6 months of data

Figure 7: Ship size breakdown (LOA) as % of all vessels visiting the port



Source: PoM
Note: FY22 is based on 6 months of data

Other measures of performance

We are seeking stakeholder feedback on whether there are other aspects of PoM's services or measures of performance and productivity that we should report on publicly.

For example, we note that a range of other port productivity metrics are reported by other parties, such as:

- Crane intensity, which measures the distance between cranes, or number of cranes per mere of quay line
- Crane rate (gross or net), which measures the number of moves per hour per crane, or number of TEU per hour
- Truck turn-around time

Shipping Australia's submission to the Productivity Commission Inquiry identified a range of data that it considers should be published, including:

- Ship time to berth, time at berth and total turn-around time
- Idle time at berth, worked time at berth and total time at berth, by terminal and port
- Container moves per hour per crane, by terminal and port
- Berth utilisation, by terminal and port.

We will consider these and any other data identified by stakeholders in coming to a position on what, if any, data we should publish.

4.4 Questions for stakeholders

The feedback received as part of this consultation paper will assist PoM in developing appropriate port performance metrics, and the format for their publication. This will be submitted to the ESC as part of the 2022-23 TCS, and then potentially form part of our ongoing reporting.

When coming to a decision on publishing data, in addition to considering stakeholder preferences about the services and data they most value, other factors that we will take into account include:

- Whether the data measures a service that PoM has control over
- The availability and cost of collecting and publishing the data
- Whether PoM has access to the data, or would need to rely on third parties.

Questions on performance data and metrics
8. Is there value in PoM publishing the proposed (or other) performance data and metrics set out in this paper?
9. Do you have a preference for reporting at a whole-of-port level, terminal-specific level, or both/neither?
10. What is your view on benchmarks for capacity (i.e. berth utilisation %), quay line productivity (i.e. TEU per annum per metre of quay line) and/or lifts per hour?
11. How should PoM provide appropriate context when publishing performance data and metrics?
12. How frequently should PoM publish performance data and metrics?

5 Tariffs

Purpose and content of this chapter

The purpose of this chapter is to.

- Inform stakeholders about changes in tariffs for 2022-23.
- Consult stakeholders on their preferences for tariff structures to apply in the future.

In accordance with the Pricing Order provisions for tariffs for prescribed services, our tariffs will increase in line with CPI for the 2022-23 year.

We are considering making a tariff rebalancing application in December 2022, for tariffs to apply from 1 July 2023, and will consult broadly with industry before making a submission.

We are seeking feedback from stakeholders on their preferences for tariff reforms, and how we should engage on a future rebalancing application.

We will use feedback from port users to design our approach to consulting on a possible future tariff rebalancing application.

5.1 Tariffs for 2022-23 and future tariff structures

All tariffs will increase by CPI on 1 July 2022

The Pricing Order provisions for tariffs for prescribed services are summaries out in section 2.1, above, with additional detail included in Appendix B.

PoM's tariffs will increase in line with CPI for the 2022-23 year, and will likely to continue to increase at CPI until at least 30 June 2032 (if certain conditions are met), but more likely 30 June 2037.

The CPI figure used is the percentage change (March quarter to March quarter) in the Consumer Price Index: All Groups Index Number, weighted average of eight capital cities published by the Australian Bureau of Statistics.[29] The Australian Bureau of Statistics will publish the March CPI figures on 27 April 2022.

PoM is seeking feedback from stakeholders on preferences for tariff structures

During the TAL period, PoM can make an application to the ESC to rebalance its tariffs by an amount that differs from CPI, so long as the weighted average annual increase in tariffs does not excess the increase in CPI.[30]

PoM is seeking input from stakeholders on opportunities to improve the structure of tariffs including introducing new tariffs or removing tariffs, consistent with the criteria set out in the Pricing Order.

PoM is considering making a tariff rebalancing application in December 2022

PoM's 2020 tariff rebalancing proposal (which was withdrawn to enable further consultation with stakeholders) was designed to send an incremental price signal to larger vessels, signalling the additional cost impost on the port of providing services, via:

- A new wharfage tariff for full import containers $10/TEU higher than the current rate, applying to vessels that exceed either 300m LOA or 40m beam; and
- Reductions in the wharfage fee for full – outward containers (approx. $4/TEU) to support export trade growth.[31]

[29] Pricing Order clause 14
[30] Pricing Order clause 3.2
[31] PoM's 2020 rebalancing application is available on the ESC's website, here Port of Melbourne tariff rebalancing application review 2021 | Essential Services Commission along with public submissions to the ESC's consultation process

We are considering consulting again in mid-to-late 2022 on a possible tariff rebalancing application, which, if submitted, would be for prices to apply from 1 July 2023. We will consult broadly with the industry in accordance with the requirements of the Pricing Order.

The following provides a high-level overview of the timeframes for rebalancing if we decide to progress consulting on rebalancing tariffs to apply from next year:

- Consultation with port users – second half of calendar year 2022
- Submission of rebalancing application to the ESC if deemed appropriate – December 2022
- ESC industry engagement – Early 2023
- Interim decision by the ESC – by 1 March 2023
- Implementation of rebalancing if approved – 1 July 2023.

5.2 What we've heard so far

Feedback from port users on the (withdrawn) tariff rebalancing application submitted in December 2020 included:

- Support for the need to invest to provide services to larger vessels from most stakeholders, other than the Swanson Dock stevedores who queried these investments
- General support for PoM to adopt user pays principles and making tariffs more cost reflective
- Larger shipping lines did not support paying for investments that are not yet in action
- Smaller shipping lines supported larger vessels paying for investments to accommodate larger vessels.[32]

In late 2021 and early 2022, we undertook targeted engagement with key stakeholders from across the supply chain to inform topics for engagement in the 2022 Industry Consultation.

In these discussions we indicated that we intend to reconsider making a rebalancing application in mid-late 2022 and sought views from stakeholders as to whether there any tariff reforms that they would like to see PoM consult on / implement. We received the following feedback:

- Queries as to whether the capital plans behind the tariff rebalancing remain the same
- Stakeholders would like early discussion ahead of implementation of tariff reforms
- Preference for larger vessels to receive lower charges as they provide economies of scale.

In its inquiry into compliance with the Pricing Order, the ESC found that:

- PoM did not effectively consult port users on the prudency and efficiency of future investments for its Big Ship Strategy which formed part of the tariff rebalancing application.[33]
- PoM did not provide sufficient information to explain the future tariff impacts for port users.[34]

5.3 We are seeking stakeholder feedback on our preliminary positions

Based on our analysis and the feedback received to-date, our preliminary positions concerning a possible future tariff rebalancing application are:

- The vessel data set out in section 3 validates the view that larger vessels are a growing issue for the port and there is a need for PoM to invest to provide services to larger vessels (as required by the Port Lease)

[32] PoM, 2021 – 2022 Tariff Rebalancing Application, December 2020, pp.27-35 available on the ESC website here Port of Melbourne tariff rebalancing application review 2021 | Essential Services Commission

[33] Inquiry into the Port of Melbourne compliance with the pricing order – final report, p. 120-121 available on the ESC website here https://www.esc.vic.gov.au/transport/port-melbourne/port-melbourne-compliance-pricing-regulations/inquiry-port-melbourne-compliance-pricing-order-2021. Under clause 3.25 of the Pricing Order, before submitting a rebalancing application, PoM must consult port users about its proposal and provide a reasonable opportunity for them to express their views.

[34] Inquiry into the Port of Melbourne compliance with the pricing order – final report, p. 123

- The principles outlined in the last re-balancing application concerning fairness and cost reflectivity remain relevant. That is, there is a basis for PoM to rebalance its tariffs to:
  - Better align its tariff signals with marginal investment costs for larger vessels that some Port Users are increasingly driving; and
  - Support improved port utilisation by Port Users who are not driving these marginal investment costs, through complementary tariff rebalancing measures to lower the price for containerised exports by reducing tariffs, and keep tariffs for smaller vessels constant (in real terms).

Based on the above, we are considering consulting on possible approaches to rebalancing tariffs in the latter part of 2022, which if progressed and subsequently approved by the ESC, would apply from 1 July 2023 onwards for implementation in the 2023-24 TCS.

We also note that we will ensure that port users are effectively consulted on the prudency and efficiency of any investments that form part of the tariff rebalancing application.

5.4 Questions for stakeholders

The feedback received as part of this consultation paper will assist PoM in designing its approach to consulting on a possible future tariff rebalancing in the latter part of 2022. Tariff rebalancing will not form part of the 2022-23 TCS.

Questions on tariff rebalancing
13. Do you have any views on tariff reforms that PoM should consider?
14. Do you have any views on principles for tariff setting and reform that PoM should have regard to when considering whether to seek to rebalance tariffs?
15. With respect to future consultation on tariff reforms:
a. What matters or information would you like PoM to include in any future consultation?
b. What information about price impacts would you like to see?

6 Treatment of deferred depreciation

Purpose and content of this chapter

The purpose of this chapter is to:

- Provide stakeholders with appropriate information about the implications of the treatment of deferred depreciation, including illustrative modelling on future price impacts. This is intended to ensure that stakeholders have appropriate information to be able to consult effectively on deferred deprecation, and respond to:
  - Comments from stakeholders, including in their submissions to the ESC's 5 year Pricing Order compliance inquiry; and
  - The findings of the ESC in its 5 year Pricing Order compliance inquiry.
- Consult stakeholders to obtain their views on our proposed approach to deferred depreciation
- Consult with stakeholders and to invite them to identify any further information that they would like on our approach to deferred deprecation.

We recognise that the depreciation provisions in the Pricing Order are complex, and encourage any stakeholders with further questions to contact us to allow us to address your questions.

6.1 Regulatory framework – building block model and prices

Over the first six years of the Port Lease the operation of the TAL has meant that PoM's tariff revenue from prescribed services has fallen well short of the efficient costs incurred to provide those services.[35] We expect these revenue shortfalls to persist for much of the remainder of the TAL period. Refer to Box 1 for an explanation of how PoM's efficient costs are calculated (i.e. the Aggregate Revenue Requirement) and tariffs are set.

The Pricing Order partly addresses the potential for revenue shortfalls during the Pricing Order transition period (i.e. the TAL period) via a mechanism to change the timing of the recovery of depreciation costs. If the operation of the TAL means that straight-line depreciation costs cannot be recovered in any year, PoM may use an 'alternative depreciation methodology' to change the profile of the recovery of depreciation costs.[36] In each of the first six years of the Port Lease, PoM adopted an alternative depreciation methodology which sets depreciation to zero and therefore fully defers the recovery of depreciation costs to future years. This way, some of the revenue shortfall incurred by PoM can be recovered through future tariff revenue.

For example, in 2021-22, PoM's Aggregate Revenue Requirement (inclusive of straight line depreciation in that year) totalled $658.0m, while forecast tariff revenue was limited to $410.4m due to the TAL (Figure 8). By fully deferring the recovery of straight-line depreciation of $157.5m from that year, PoM reduced the revenue shortfall from $247.5m to $90.0m. The remaining shortfall is unrecoverable.

[35] Under clause 2.1.1(a) of the Pricing Order, the efficient costs of providing prescribed services are determined by the application of an accrual building block methodology, which is described in clause 4 (Aggregate Revenue Requirement).
[36] Pricing Order clause 4.4.2

Box 1 — How does PoM set tariffs?

There are two key mechanisms under the Pricing Order which determine the tariffs that PoM may set for prescribed services (such as wharfage fees, channel fees and berth hire fees):

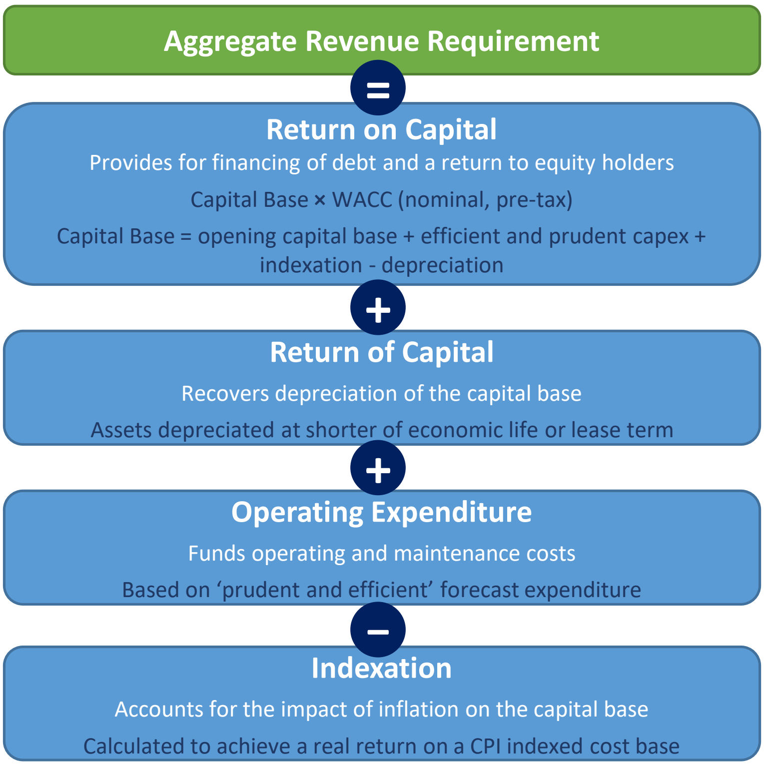
- The Tariffs Adjustment Limit
- The Aggregate Revenue Requirement

The Tariffs Adjustment Limit

The Tariffs Adjustment Limit (TAL) requires that the weighted average tariff increase for prescribed services tariffs must be no greater than the annual percentage change in the March-on-March Australian Consumer Price Index (CPI) in the preceding year. [37] In other words, prices cannot rise faster than inflation.

The Aggregate Revenue Requirement

The Aggregate Revenue Requirement (ARR) places a limit on the maximum amount of forecast revenue PoM may recover through tariffs over a regulatory period (currently set at one year). The ARR must be set so as to allow PoM a "reasonable opportunity to recover the efficient cost of providing all Prescribed Services".[38] As set out in the Pricing Order, the ARR must be calculated as the sum of four 'building blocks' as illustrated in the figure below.[39] Implied tariffs can then be calculated by dividing the ARR over the regulatory period by forecast demand for prescribed services over that period.

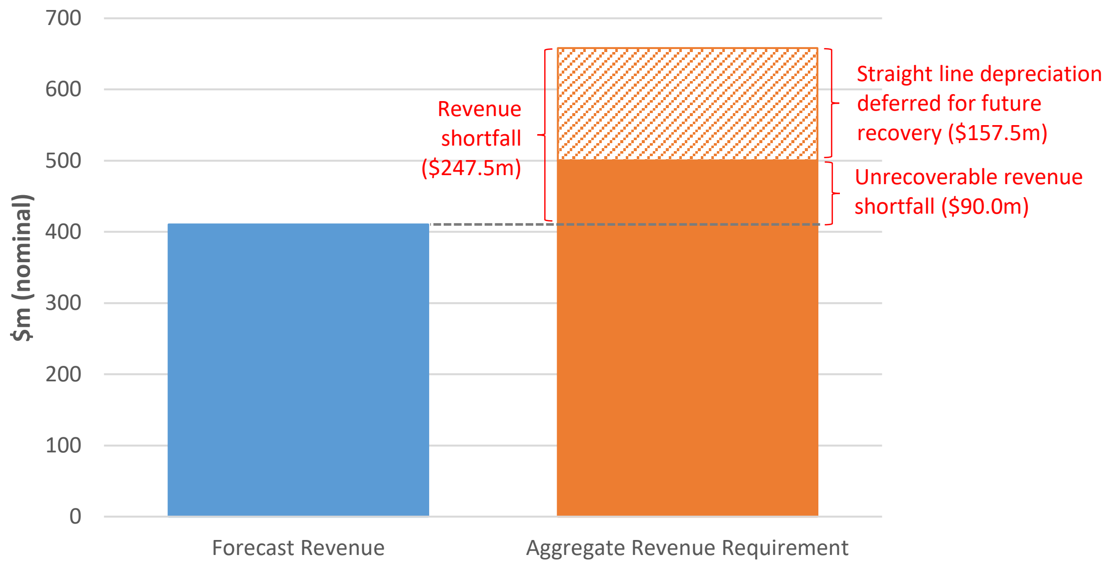


Tariff setting during and after the 'Pricing Order transition period'

The TAL only applies during the 'Pricing Order transition period' which runs from the commencement of the Pricing Order in 2016 until 2032 at the earliest, or 2037 at the latest.[40] During this period, both the ARR and TAL mechanisms apply concurrently and tariffs are set according to whichever mechanism results in lower forecast tariff revenue. After this period, only the ARR applies. In practice, the TAL has been the binding constraint, meaning PoM has not been able to fully recover its efficient costs.

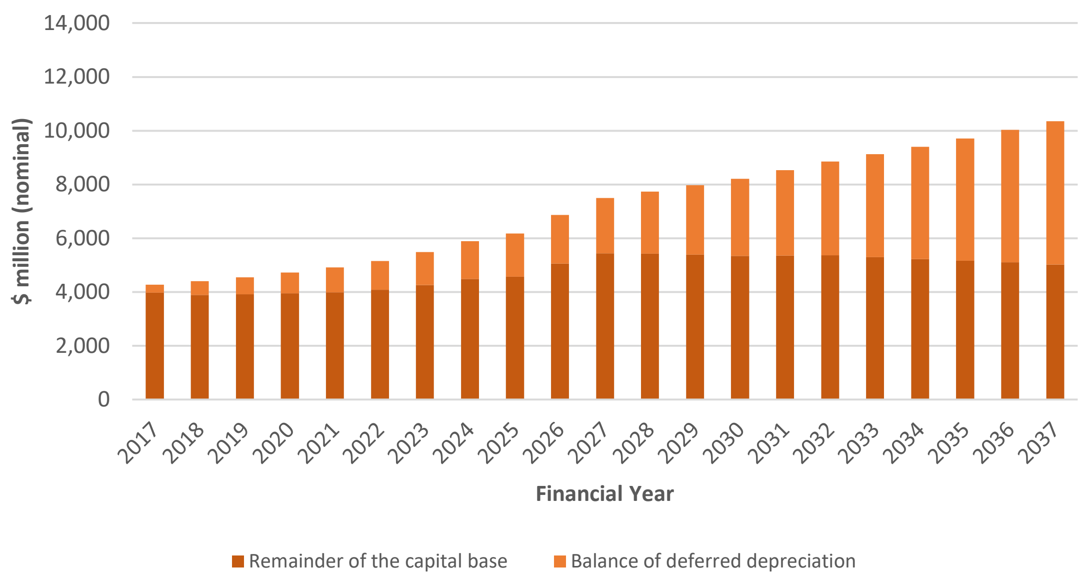
[37] Pricing Order clause 14
[38] Pricing Order clause 2.1.1(a)
[39] Pricing Order clause 4
[40] Pricing Order clause 3.4

Figure 8: PoM's tariff revenue and aggregate revenue requirement in 2021-22



While some depreciation costs may be recovered during the TAL period if forecast revenues are high enough, PoM anticipates that most depreciation will be deferred, and there will be a substantial deferred depreciation balance to be recovered through tariffs after the end of the TAL period. By the end of the TAL period in 2037, our current projections (discussed further in section 6.3) suggest that PoM's deferred depreciation balance could be in the order of $5 billion and constitute roughly half of PoM's total capital base at that time (Figure 9).[41] The timing and approach of PoM's recovery of deferred depreciation in the post TAL period will therefore significantly impact the tariff profile after the TAL comes to an end.

Figure 9: Indicative projection of PoM's capital base to the end of the TAL period



[41] Under clause 4.2.1 of the Pricing Order, there are two key drivers of growth in the capital base: prudent and efficient capital expenditure, and indexation (inflation). In addition to PoM's investment gateway processes for developing and executing capital expenditure plans, actual capital expenditure is subject to periodic, ex-post review by the ESC to ensure that PoM's capital base complies with the Pricing Order, particularly in relation to additions of prudent and efficient capital expenditure. Hence these while these projections are based on our current expectations of expenditure requirements over the course of the Port Lease, they are high-level and indicative only, and not reflective of any commitments to invest or investment decisions to be made in the future.

PoM is keenly aware of the need to adopt an approach to the recovery of these costs that takes into account the views of stakeholders and reduces price volatility when the TAL period ends. As required under the Pricing Order, once the transition period ends, PoM can only adopt an alternative methodology to straight line depreciation if it is "reasonably likely to reduce the variance in the expected annual percentage changes in the level of Prescribed Services Tariffs through to the end of the Port Lease" (relative to the straight line approach).[42]

In the 2021-22 TCS, PoM proposed an approach to the recovery of deferred depreciation in the post-TAL period informed by the view of stakeholders and the advice of an independent regulatory expert, Incenta Economic Consulting (Incenta).[43]

As this approach was newly adopted in the 2021-22 TCS, in order to meet stakeholder expectations on effective engagement, in this 2022 Industry Consultation, we are providing additional details about the proposed approach (which we have developed further) and its potential price impacts, and we are seeking further feedback from stakeholders on these matters.

6.2 What we've heard so far

In the 2021 Industry Consultation, we sought feedback from Port Users and other stakeholders on the approach to recovering deferred depreciation. In these consultations, we:

- Explained to Port Users and other stakeholders how the treatment of deferred deprecation would affect them – specifically, that recovery of deferred depreciation would have an impact on prices for prescribed services from the end of the TAL period (earliest 2032, likely 2037) until the end of the Port Lease;
- Described alternative approaches to depreciation recovery and provided illustrative depreciation profiles and price paths to demonstrate how Port Users and other stakeholders would be affected;
- Described our proposed approach to recovering depreciation during the TAL (when forecast revenue is sufficient to do so) and after the end of the TAL period (in a manner that minimises price shocks and achieves price stability); and
- Sought feedback from customers on the importance of post 2037 prices on their businesses, their views on our proposed objectives and approach to recovering deferred depreciation. This topic was covered both in discussions in the 1:1 meetings and industry workshops, and through the consultation questions provided to Port Users and other stakeholders in a follow-up questionnaire.[44]

Feedback on future prices (via depreciation methodologies) was provided by Port Users and other stakeholders via our 1:1 meetings, stakeholder workshops, polling during the workshops and in follow-up questionnaires sent to all meeting and workshop participants. Feedback received from Port Users and other stakeholders indicated a clear preference for our proposed approach to minimise price shocks (pursue price stability) in recovering deferred depreciation.[45]

Feedback from Port Users and other stakeholders on the topic of depreciation indicated some interest in generally being informed and also how pricing might impact the competitiveness of the Port.[46]

[42] Pricing Order clause 4.4.2(b)
[43] See 2021-22 TCS General Statement, for a summary of the consultation that we undertook on depreciation and the advice we received from Incenta p.47, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/ . Incenta's report, "Appendix R: Options for structuring the return of capital for PoM (Incenta)" is available on the ESC's website, here Port of Melbourne compliance with pricing regulations | Essential Services Commission
[44] See 2021-22 TCS General Statement, p.47, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/
[45] See 2021-22 TCS General Statement, p.47, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/
[46] See 2021-22 TCS General Statement, p.48, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/

Stakeholders also provided additional commentary on deferred depreciation in submissions to the ESC's 5-year inquiry into pricing order compliance.

In its submission to the ESC's 5-year Inquiry process:

- Shipping Australia stated that its members are keen to know the timing and methodology for recovering deferred depreciation and how it would impact them, and that they wish to avoid shocks and surprises[47]
- Another stakeholder stated 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"[48]

In the final report of its 5-year Inquiry into compliance with the Pricing Order, the ESC found that:

- PoM's approach to applying depreciation in the review period was compliant with the Pricing Order[49] PoM did not effectively engage on this issue during the review period. The ESC found that "port users have not been able to meaningfully participate in PoM's consultation over the review period, because PoM did not provide appropriate content to inform them – that is, over which period deferred depreciation would be recouped from port users through tariffs".[50]

6.3 We are seeking stakeholder feedback on our preliminary positions

The approach to the recovery of deferred depreciation in the post TAL period will have a significant impact on tariffs after the TAL. We are eager to ensure that stakeholders are well informed about the proposed approach and its potential impacts. In this section we provide further detail about PoM's proposed approach and the potential impacts on tariffs so interested stakeholders can provide informed feedback.

PoM's proposed approach to depreciation recovery

For the purpose of our 2021-22 TCS, we engaged independent experts Incenta to provide advice on alternative depreciation methodologies (i.e. alternatives to straight-line depreciation) that are reasonably likely to reduce the variance in the expected annual percentage changes in the level of tariffs through to the end of the Port Lease. Incenta's report was submitted to the ESC as part of our 2021-22 TCS and is publicly available on the ESC's website.[51]

Incenta considered a range of alternative depreciation methodologies and found that applying straight-line depreciation with an unrecovered depreciation account during the TAL period, and a tilted annuity approach (Box 2) post the TAL period, would "result in a preferable trajectory in prices than the application of the standard straight line depreciation"[52], in so far as the objective of reducing the variance in annual price changes is concerned.[53]

Based on feedback from port users and drawing on the work by Incenta and guidance from the ESC, in our 2021-22 TCS we adopted the following depreciation methodology:

- For the next (now current) regulatory period, we apply straight-line depreciation with an unrecovered depreciation account, with uncharged depreciation recorded as a separate asset with a life equal to the remaining lease term. We intend to maintain this approach for the remainder of the TAL period.
- After the TAL period ends, a tilted annuity depreciation method will be applied, with the tilt factor designed to minimise the variance in the expected annual percentage change in the level of tariffs until the end of the Port Lease.

[47] Shipping Australia, SAL Submission - Essential Services Inquiry into Port of Melbourne's Compliance with the 2021 pricing order, 26 August 2021, p.2
[48] Quantem, submission to ESC Inquiry into Pricing Order compliance, 8 September 2021, p.1
[49] Inquiry into the Port of Melbourne compliance with the pricing order – final report, p. v
[50] Inquiry into the Port of Melbourne compliance with the pricing order – final report, p. 99
[51] See Port of Melbourne compliance with pricing regulations | Essential Services Commission
[52] Incenta, *Options for structuring the return of capital for the Port of Melbourne*, May 2021, p.16
[53] Pricing Order clause 4.4.2

Under this approach, any straight-line depreciation that cannot be recovered – and, therefore, is added to the 'deferred depreciation' balance – is recovered when forecast revenues are high enough within the TAL or the TAL no longer applies. This means that there may be some recovery of depreciation during the TAL period if the prices calculated under the TAL are sufficient to recover some deprecation costs.

Box 2 — What is tilted annuity depreciation?

The tilted annuity method calculates the depreciation of an asset over its useful life such that the 'total capital charge' (the sum of the return on, and return of, capital) grows at a selected 'tilt rate'. By contrast, under the usual straight line method, an asset is depreciated by an equal amount each year over its useful life.

For example, consider an asset of $100 with a useful life of 10 years, with a 10% rate of return on capital.

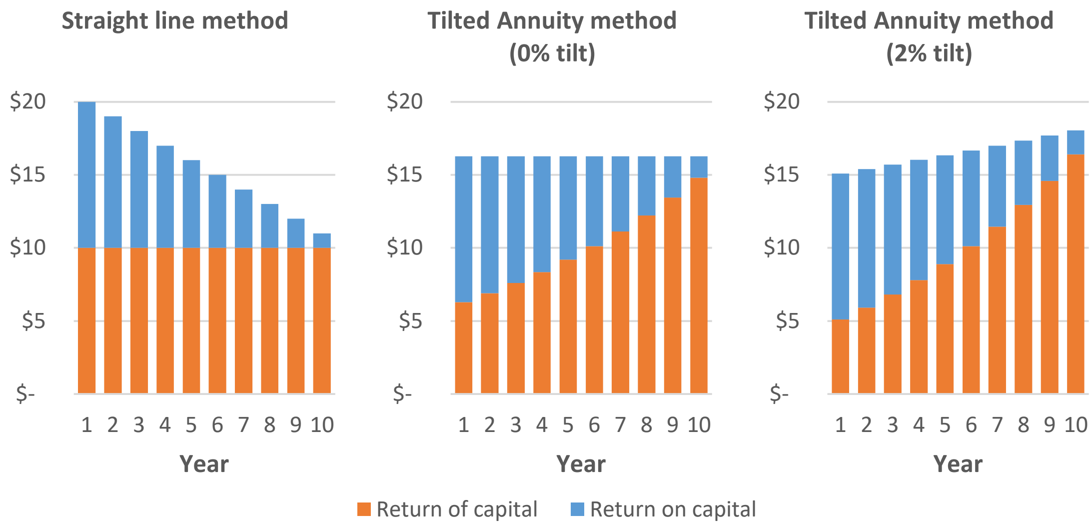
Under the **straight line method**, the return of capital is the same in each year. The total capital charge decreases over time as the capital base is quickly depreciated and the return on capital declines.

Under the **tilted annuity method with a 0% tilt rate**, the return of capital is set so that the total capital charge is constant over the life of the asset. As the return of capital increases over time, the return on capital decreases. This is analogous to a typical 'principal plus interest' loan repayment where the total repayment (the 'total capital charge') is constant over time, because the principal component (the 'return of capital') of the repayment increases while the interest component (the 'return on capital') declines.

Under the **tilted annuity method with a 2% tilt rate**, depreciation is set such that the total capital charge increases at 2% each year. Compared to the 0% tilt rate, the return of capital is smaller in early years and the return on capital larger, but the return of capital grows more quickly resulting in a growing total capital charge.

In each case, the net present value of the depreciated capital is the same (i.e. the same amount of capital is recovered and the total payments are equal in NPV terms), but the profile of recovery is different.

The advantage of a tilted annuity with a positive tilt rate is that the rate can be set such that the growth in the total capital charge aligns with growth in demand, and depreciation recovery can therefore be spread over time in a manner that reduces price volatility.



Potential impacts of the proposed approach in the post TAL period

This section contrasts the potential impacts of the proposed approach to deferred depreciation recovery with the potential impacts of straight-line depreciation recovery in the post TAL period.

Calculating these impacts requires projecting a number of uncertain variables to the end of the Port Lease period (2066). Among the many uncertain variables are inflation, the cost of capital (and interest rates), capital and operating expenditure, and trade volumes. In order that the illustration of potential future impacts of alternative depreciation recovery profiles is as meaningful as possible, we have sought to adopt realistic assumptions that we consider reflect a feasible future state. However, given the number of variables involved and long time horizons, there are a myriad of possible future outcomes, and these projections represent just one of many possible future states. These projections should be considered illustrative only and not be relied upon for any other purpose.

Recovery of depreciation

An indicative projection of how PoM's capital base could be recovered under alternative depreciation methodologies in the post TAL period is presented in Figure 10, below.

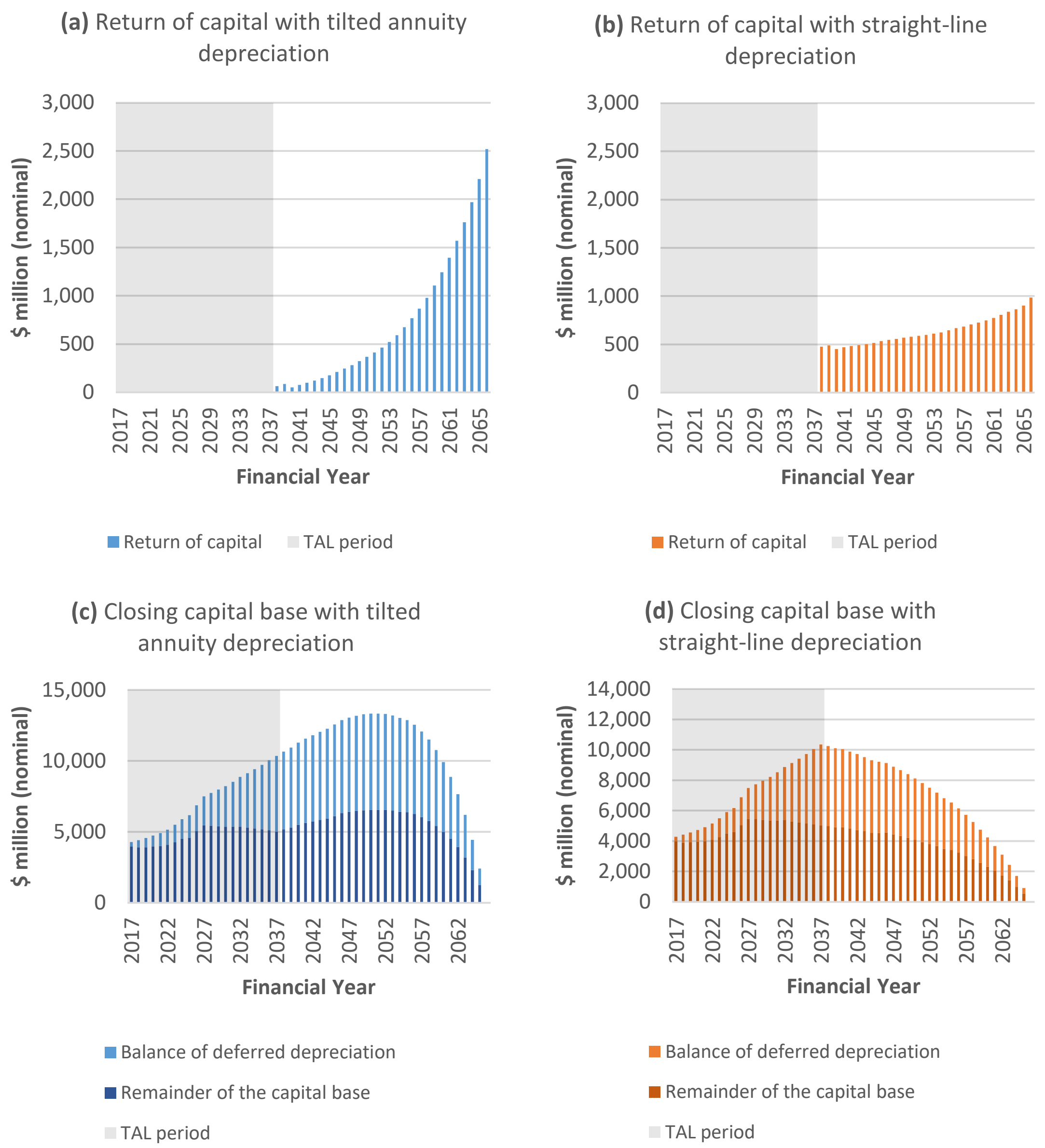
At the conclusion of the TAL period (2037), the balance of deferred straight-line depreciation is projected to account for a significant proportion of the capital base (and Figure 10d). That is, for a capital base of around $10 billion, nearly half would be reflected as deferred depreciation.

- The effect of applying a **tilted annuity depreciation method** in the post TAL period (the proposed approach) is that the return of capital component of PoM's annual revenue requirement is highest in the later years of the Port Lease (Figure 10a), since the capital base is gradually recovered over the remaining 30 years of the Port Lease (Figure 10c).
- By contrast, if PoM were to apply a **straight line method** to recover depreciation in the post TAL period, the return of capital component of PoM's annual revenue requirement would rise less sharply across the period (Figure 10b), which results in deferred depreciation (and the asset base overall) being recovered more rapidly through prices.

Under the tilted annuity depreciation method, the capital base continues to grow in nominal terms until around 2050 as capital additions and indexation outpace the return of capital. After about 2050, the capital base sharply declines as the return of capital sharply increases. By contrast, if straight line depreciation were applied in the post TAL period, PoM's capital base is projected to peak in 2037 and decline sharply for the remainder of the Port Lease.

Importantly, when expressed in net present value terms, the PoM's total return of capital and return on capital is the same under either depreciation methodology. The depreciation methodology does not impact the total amount paid by port users (in aggregate, NPV terms), only the timing and profile of cost recovery.

Figure 10: PoM's projected return on capital and return of capital with alternative depreciation methods



Potential impacts on tariffs

An indicative projection of tariff impacts under alternative depreciation methodologies in the post TAL period is presented below (Figure 11).

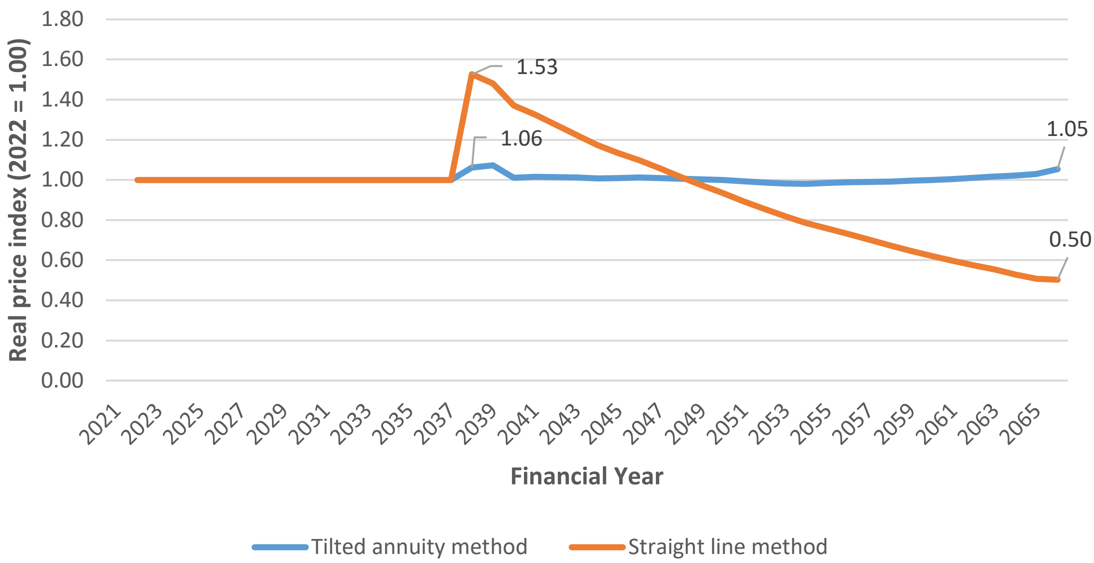
The figure shows the pathway of the inflation-adjusted value of tariffs in terms of an index, where 2021-22 tariff levels are equal to 1. As shown in the figure:

- Tariffs are projected to remain constant in real terms (i.e. increase at the rate of inflation) for the remainder of the TAL period
- In the post TAL period, the proposed tilted annuity approach is projected to result in a relative flat tariff profile in inflation-adjusted terms and only a minor 'price shock' at the conclusion of the TAL period
- By contrast, if straight-line depreciation were applied in the post TAL period, inflation-adjusted tariffs would increase sharply post TAL, before steadily declining over the post TAL period.

Deferring depreciation recovery to later in the Port Lease generally provides tariff control because costs can be spread across higher trade volumes, reducing the price impact on individual customers.

The tilted annuity method results in a relatively flat tariff profile because the growth in the 'tilt rate' (which determines the rate of growth in the sum of the return on capital and the return of capital) can be set to broadly match the growth in demand. That is, rather than a step up (and then decline) in the revenue requirement as would occur post TAL under straight-line deprecation, the growth in the revenue requirement under the tiled annuity approach is similar to the growth in throughput, which works to minimise the variance in annual percentage tariff changes over the post TAL period.

Figure 11: Real tariff index under alternative depreciation methodologies



The proposed approach of adopting a tilted annuity method in the post-TAL period is designed to minimise price volatility. However, it does not rule out the possibility of a (positive or negative) step change in prices post TAL period (likely 2038). As noted above, these price paths are based on a range of forecast assumptions, and different outcomes in these assumptions could affect the results.

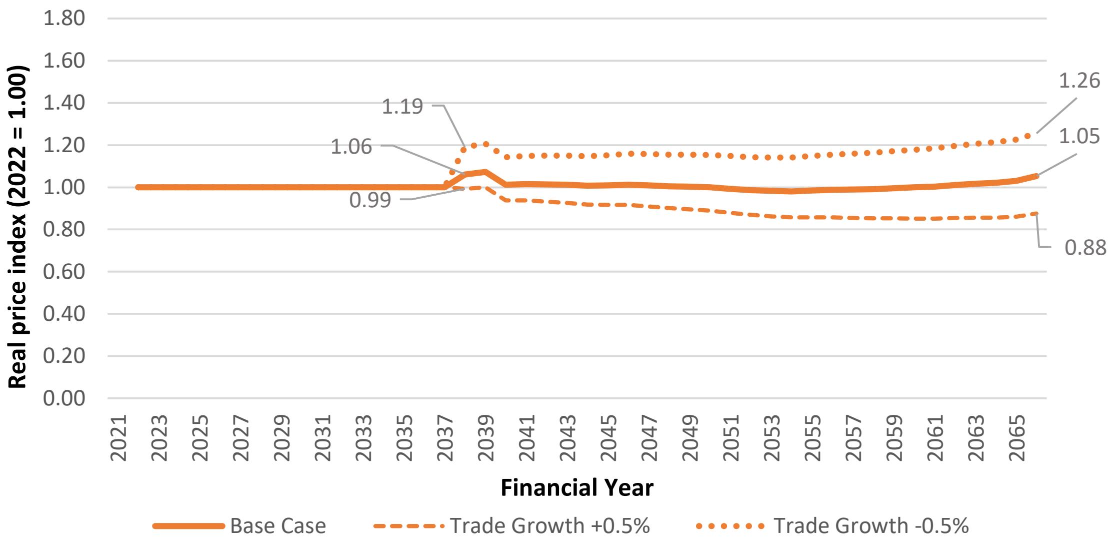
To consider the implications of forecasting uncertainty, we have undertaken a range of sensitivity tests to identify key factors that could result in different outcomes. We found that:

- The two **most important factors** are the level of demand (and demand growth) and the cost of capital (WACC). For example, if demand growth were 0.5 percentage points lower each year than the in the projections underlying the above analysis, the real price could increase by around 19 per cent in 2038 before stabilising.[54] If demand growth were 0.5 percentage points higher each year than in the projections above, the real price could decrease by 1 per cent in 2038 and decline further across the review period (Figure 12)
- The forecasts are **relatively insensitive** to the timing of capital expenditure during the TAL period (i.e. out to 2038) – for example, shifting the next tranche of major growth capex back 5 years, had an almost imperceptible impact on prices. This is expected, given the deferral of depreciation is about the timing of cost recovery, not the aggregate amount.

To ensure stakeholders are well informed about any potential changes at the end of the TAL period, PoM will continue to report on the projected tariff impacts in future regulatory submissions.

[54] Note that in the event of such a scenario, subject to the views and preferences of port users, we would anticipate being able to spread any step change in prices over several years (for example, by adopting different tilt rates in some years), to minimise the impact in any single year.

Figure 12: Real tariff index under different demand projections



PoM's preliminary position

Our preliminary position is to maintain the approach to the recovery of depreciation adopted in the 2021-22 TCS (as described above) for the 2022-23 TCS.

We are seeking stakeholders' views on this approach and the sufficiency of information available to port users with regard to deferred depreciation to allow them to make informed contributions.

6.4 Questions for stakeholders

PoM expects that it will continue to defer depreciation for the 2022-23 regulatory period, on the basis that the TAL makes depreciation un-recoverable. In addition, PoM expects to continue to under-recover its return on capital on 2022-23, and notes that this under-recovery of costs is not able to be deferred or recovered in the future.

The feedback received as part of this consultation paper will assist PoM in designing its approach to the recovery of deferred depreciation, and continuing to ensure that port users have appropriate information on the topic.

Questions on the treatment of deferred depreciation
16. Do you have any feedback on PoM's proposed approach to recovering deferred depreciation?
17. Is there any further information that you would like on PoM's approach to deferring depreciation and the recovery of deferred depreciation?

7 Regulatory period

Purpose and content of this chapter

The purpose of this chapter is to:

- Inform port users and other stakeholders that we will be adopting a 1-year regulatory period for the 2022-23 year, and that we aim to transition to a longer regulatory for the regulatory year beginning 1 July 2023.
- Consult stakeholders on their preferences for PoM's regulatory period length and the timing of the transition, including how they would like to be consulted on implementation issues.

7.1 Pricing Order requirements and approach for 2022-23

Under the Pricing Order, PoM is able to determine the length of the regulatory period, which is the period of time over which to apply the Pricing Principles and Cost Allocation Principles. The Pricing Order also confirms that PoM may adopt regulatory periods of different lengths over the term of the Port Lease.[55]

Over the past five years, PoM has chosen to adopt a one year regulatory period because:

- key longer term plans (such as the Port Development Strategy) were yet to be finalised
- the operation of the TAL means the typical benefits of longer regulatory periods (price stability and incentives for efficient investment) are already present
- a one-year regulatory period for 2021-22 and while the ESC is undertaking its first 5-yearly compliance review allows us to participate in the ESC's inquiry and respond to its findings. PoM's view is that adopting a longer regulatory period would require longer lead times for consultation, which would have overlapped with the ESC's inquiry if we were to adopt a longer regulatory period from 2022-23.

In the 2021-22 TCS, we noted that we intend to adopt a longer regulatory period in the future, and identified a number of transition issues that we are seeking to resolve in this process. [56]

The ESC's Statement of Regulatory Approach[57] sets out guidance on factors the ESC expects us to consider in choosing its regulatory period length.

In this 2022 Industry Consultation, we are consulting with stakeholders to seek their views on our proposed transition to a longer regulatory period. As we transition to a longer regulatory period, we will undertake more detailed consultation with customers on implementation issues around regulatory period length, such as those outlined in our 2021-22 TCS.[58]

7.2 What we've heard so far

In the 2021 Industry Consultation, we consulted with stakeholders on a range of issues related to the length of regulatory period, including:

- Whether the length of the regulatory period was an important issue for stakeholders?
- Whether PoM should consider adopting a longer regulatory period?
- What principles PoM should consider in choosing the length of future regulatory periods?

[55] Pricing Order Clause 13

[56] See 2021-22 TCS General Statement, pp.21-22, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/

[57] ESC, *Statement of Regulatory Approach – version 2.0*, April 2020, p.28

[58] See 2021-22 TCS General Statement, pp.25-26, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/

- How stakeholders would like to be consulted on PoM's decisions around regulatory period length?[59]

In their feedback, stakeholders indicated that we should consider principles of stability, transparency and consistency in choosing the length of future regulatory periods. Feedback received during our workshops was relatively balanced between a preference for a longer period, a preference for a one-year regulatory period, and "don't know".[60]

In its interim commentary on the 2020-21 TCS, the ESC expressed its preference for PoM to consider adopting a longer regulatory period.[61]

In the final report of its 5-year Inquiry into compliance with the Pricing Order, the ESC encouraged PoM to consider adopting a longer regulatory period, as it would promote stability and predictability of prescribed service tariffs for port users within the applicable tariff limit.[62] The ESC also considered a longer regulatory period, such as a five-year period will be in the best interest of port users and Victorian consumers compared to a one-year period.[63]

7.3 We are seeking stakeholder feedback on our preliminary positions

PoM supports moving to a longer regulatory period, but there are a number of implementation issues that need to be resolved before we can commit to a specific timetable.

PoM intends to put forward an implementation proposal later in 2022 and seek feedback from the ESC and stakeholders at that time.

PoM's preliminary positions are:

- We will be adopting a 1-year regulatory period for the 2022-23 year, and we aim to transition to a longer regulatory for the regulatory year beginning 1 July 2023
- We consider that post the TAL period, a longer regulatory period would have the benefit of providing certainty on price outcomes and incentives to outperform expenditure and demand forecasts. There may also be some benefit in reduced administrative costs, although the extent of these is not clear given the Pricing Order requires us to submit TCSs annually for the entire term of the Port Lease regardless of regulatory period length.
- In transitioning to a longer regulatory period, in addition to the issues identified by the ESC in its Statement of Regulatory Approach, matters that we will need to consider in further detail and cover in subsequent engagement with stakeholders could include:
  - How a longer regulatory period would impact annual TCS submission requirements, including:
    - Approaches to, and requirements for, annual updates to building block inputs such as expenditure, demand, and cost of capital inputs;
    - Impacts on annual consultation and submission requirements and therefore benefits in terms of reducing the regulatory burden on us, the ESC and customers of one year regulatory period;
  - The use of risk sharing mechanisms and/or within-period adjustments to the building block components to account for unforeseen events. These mechanisms are a normal part of regulatory frameworks where longer regulatory periods are in place, however the Pricing Order is silent on them;
  - Alignment to the ESC's five-yearly compliance reviews, including whether we should 'stagger' a five-year regulatory period to commence one year after the start of the five-year review period

[59] See 2021-22 TCS, Appendix J_2021 Industry Consultation presentation, pp.23-24
[60] See 2021-22 TCS General Statement, pp.22-23, available on the PoM website: https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/
[61] Interim commentary – Port of Melbourne tariff compliance Statement 2020-21, p. 25
[62] Inquiry into the Port of Melbourne compliance with the pricing order – final report, p. 34
[63] Inquiry into the Port of Melbourne compliance with the pricing order – final report, p. 35

to enable PoM to fully consider and engage on the ESC's findings well in advance of the next regulatory period; and

- Expectations (and ability) to re-open / amend prices or other regulatory settings following the ESC's five-year reviews.

Further details on the implications of these and other considerations around adopting a longer regulatory period are set out in Appendix D.

7.4 Questions for stakeholders

PoM will adopt a one-year regulatory period for the 2022-23 TCS.

The feedback received as part of this consultation paper will assist PoM in designing its approach to consulting on its planned transition to a longer regulatory period in the latter part of 2022.

Questions on transitioning to a longer regulatory period

18. Do you have any views on PoM's proposal to transition to a longer regulatory period in the future?
19. What is your view on the timing of when PoM should (or if PoM should) transition to a longer regulatory period?
20. How would you like to be consulted on PoM's implementation of a longer regulatory period?
21. Are there any other issues we should consider in transitioning to a longer regulatory period?

Appendix A – List of consultation topics and questions

The table below provides a summary of consultation topics and questions outlined in this paper.

This list is not intended to be exhaustive and stakeholders are encouraged to provide feedback on other issues that PoM should consider in relation to these and other topics.

Table 2 List of consultation questions

Topic	Questions
2022 Industry Consultation program	1. Do you have any feedback on approach to the 2022 Industry Consultation program? For example: a. Timing and opportunity to participate? b. Level of information provided? c. Forms of engagement PoM should use? 2. Is this consultation paper useful? Why/why not? 3. Are there issues covered in this consultation paper that you would like more detail on, or other issues would you like to see PoM consult on more broadly, or as part of the TCS consultation in future?
Port development	4. What matters should PoM give priority to when engaging on port development? 5. How should we include port users' development plans in our engagement? 6. How should we manage claims of commercial sensitivity from stevedores in the context of calls from port users for greater transparency on matters that drive investment? 7. Does the PDS Delivery Program provide sufficient detail on PoM's investment pipeline? Are there any other details would you like to see?
Performance data and metrics	8. Is there value in PoM publishing the proposed (or other) performance data and metrics set out in this paper? 9. Do you have a preference for reporting at a whole of port level, terminal-specific level, or both/neither? 10. What is your view on benchmarks for capacity (i.e. berth utilisation %), quay line productivity (i.e. TEU per annum per metre of quay line) and/or lifts per hour? 11. How should PoM provide appropriate context when publishing performance data and metrics? 12. How frequently should PoM publish performance data and metrics?
Tariffs	13. Do you have any views on tariff reforms that PoM should consider? 14. Do you have any views on principles for tariff setting and reform that PoM should have regard to when considering whether to seek to rebalance tariffs? 15. With respect to future consultation on tariff reforms: a. What matters or information would you like PoM to include in any future consultation? b. What information about price impacts would you like to see?

Treatment of deferred depreciation	16. Do you have any feedback on PoM's proposed approach to recovering deferred depreciation? 17. Is there any further information that you would like on PoM's approach to deferring depreciation and the recovery of deferred depreciation?
Length of regulatory period	18. Do you have any views on PoM's proposal to transition to a longer regulatory period in the future? 19. What is your view on the timing of when PoM should (or if PoM should) transition to a longer regulatory period? 20. How would you like to be consulted on PoM's implementation of a longer regulatory period? 21. Are there any other issues we should consider in transitioning to a longer regulatory period?

Appendix B – Stewardship obligations and regulatory framework

Stewardship obligations

The Port Lease establishes PoM's overarching stewardship obligations to manage, maintain, operate and develop the Port consistent with Port Lessor's Port Objective for the Port to be a major seaborne trade gateway to the benefit of the economy of the State (**Port Objective**). The stewardship obligations of the Port Lease are of significant importance and guide PoM's planning and investment

Under these stewardship obligations, PoM must:

- Manage, operate and maintain the Port in accordance with Good Operating Practice[64];
- Ensure the Port is capable of providing access to shipping including able to reasonably accommodate changing vessel size;
- Ensure port infrastructure is no less capable of access for road and rail than as at the commencement of the Port Lease; and
- Use reasonable endeavours to maintain amenity, manage environment impacts and maintain public open space areas.

The Port Lease also includes a general obligation for PoM to develop the leased area (**Development Obligations**), under which PoM must develop the Port land and infrastructure to:

- Cater for actual and reasonably anticipated growth;
- Provide quality and efficiency standards expected of a major port;
- Maintain the Port's leading position among major Australian ports in terms of its quality, efficiency and effectiveness;
- Comply with good operating practice and applicable laws; and
- Achieve the Port Objective.

Regulatory framework and Pricing Order

The regulatory framework under the PMA and Pricing Order came into effect on 1 July 2016. It covers:

- Prescribed Services – these include channel services, berthing services, the provision of short-term storage and cargo marshalling facilities and the provision of access to, or use of, certain places or infrastructure (including wharves, slipways, gangways, roads and rail infrastructure);[65]
- Non-Prescribed Services – includes leasing of space and facilities on port land (e.g. rental agreements for space and facilities on port land); and
- Functions related to any second container port, should one be developed in the future.

The Pricing Order is a regulatory instrument issued by the Governor in Council under section 49A of the PMA to regulate and limit the setting of tariffs for prescribed services.

[64] Where 'Good Operating Practice' means: adherence to a standard of practice which includes the exercise of that degree of skill, diligence, due care, prudence and foresight which would reasonably be expected of a reasonably experienced, competent, prudent and qualified operator of the Port; and provision of appropriate services and facilities for the ease of access to, expeditious and safe movement in and efficient use of the concession area and port infrastructure by vessels, vehicles and other users of the Port.

[65] Prescribed Services are defined in section 49(1)(c) of the PMA.

Pricing Principles – Pricing Order transition period

The Pricing Order defines a 'Pricing Order transition period' which runs until 2032, or latest 2037.[66] During the Pricing Order transition period a price smoothing mechanism applies to limit the tariffs that PoM can charge Port Users to the lesser of two binding constraints:

- The Tariff Adjustment Limit (**TAL**), which limits weighted annual prescribed services tariff increases to annual inflation (CPI)[67]; or
- To recover no more than PoM's prudent and efficient costs, determined by application of an accrual building block methodology.[68]

After the Pricing Order transition period, the tariffs PoM can charge to Port Users must be set to recover no more than its prudent and efficient costs determined using the accrual building block methodology.

While PoM's prices will be set by the TAL until at least 2032, and likely 2037, investment that is undertaken by PoM during the Pricing Order transition period is added to the Regulatory Asset Base (RAB). The Pricing Order specifies that the value of the RAB will ultimately be recovered from port users via prices for prescribed services over a period which is no greater than the duration of the Port Lease, which runs until 2066.[69]

Pricing Principles – Requirement for prudent and efficient capital expenditure

The Pricing Order requires that actual or forecast capital expenditure (capex) that is added to the capital base (the RAB) be efficient and reflects prudent actions in the provision of Prescribed Services.[70]

The Pricing Order deems that undertaking capital works to comply with a term of the Port Lease or any other obligation arising under a Transaction Arrangement are prudent acts for the purposes of adding capex to the RAB.[71]

PoM's key obligations under the Port Lease are described in section 2.1 above, and include catering for actual and reasonably anticipated growth, and being able to reasonably accommodate changing vessel size. The Port Concession Deed imposes a range of obligations on PoM including in relation to dredging, asset management, and the maintenance and repair of assets.

In addition, the Pricing Order deems the following specific projects to be prudent:

- The Port Capacity Project [72]
- The Port Rail Transformation Project (PRTP).[73]

While the above are deemed prudent by the Pricing Order, this does not preclude an assessment as to whether the capex has been incurred efficiently.[74]

Detail on PoM's approaches to ensure capex is prudent and efficient can be found in the General Statements of our annual TCS submissions, available on our website[75] and the ESC's website,[76] and include:

- Long-term, port-wide planning of the necessary scale, scope and sequencing of capex, which includes fit for purpose engagement with stakeholders. This planning is reflected in our Port Development Strategy (PDS) and PDS Delivery Strategy

[66] Pricing Order clause 3.4
[67] Pricing Order clause 3.1
[68] Pricing Order clause 2.11
[69] Pricing Order clause 4.4.1
[70] Pricing Order clause 4.2.1
[71] Pricing Order clause 4.2.4.
[72] Pricing Order clause 4.2.4
[73] Pricing Order clause 4.2.7
[74] Pricing Order clause 4.2.5 and 4.2.8
[75] See https://www.portofmelbourne.com/regulatory-information/regulatory-quick-links/
[76] See Port of Melbourne compliance with pricing regulations | Essential Services Commission

- Internal governance and project management frameworks
- Asset management systems that have been independently audited for ISO55001 certification
- Competitive procurement under our Procurement and Contract Management Policy.

Tariff Compliance Statements – Requirement for effective consultation

Under the Pricing Order, PoM is required to provide an annual Tariff Compliance Statement which sets out, among other things, the process by which it has effectively consulted and had regard to comments provided by Port Users.[77]

We are seeking feedback from stakeholders on our approach to engaging on long-term capital planning, in section 3.

[77] Pricing Order clause 7.1.2(d)

Appendix C – Current reporting

Current trade and industry data

PoM currently publishes a range of trade and industry data on a regular basis.

We received positive feedback on the publication of this data during our 2021 Industry Consultation, and therefore propose to continue to do so. Some stakeholders have suggested earlier release of interim data would be valuable. Noting that the timing of the trade reports is limited by our ability to validate the data and the time to prepare the reports, we will investigate opportunities to provide earlier release of certain trade data.

Existing PoM data publication

Trade Reports

Under the Port Lease, PoM is required to periodically release port trade reports that provide data to the broader industry on trades associated with all vessels departing the port during the reporting period. PoM publishes both quarterly trade reports and monthly trade reports on its website.

In previous consultation, stakeholders have generally provided positive feedback on these trade reports, with.

Annual Trade Performance

Similar to the trade reports, PoM also provides annual trade performance on its website, which allows stakeholders to better understand the port's performance over the past financial year and provides a breakdown of each cargo type transported through the port.

Performance standards in the 2021-22 TCS

The table below set out the performance standards adopted in our 2020-21 TCS and retained in our 2021-22 TCS (these standards were based on a refined set of standards developed from the draft standards presented and consulted on for the 2019-20 TCS).

To-date, PoM has not received any direct feedback on these standards, so is considering discontinuing reporting against these standards in the future, and focussing on:

- The mandatory obligations and standards in the Port Lease and Port Concession Deed
- The performance data and metrics set out in section 4.2 of this consultation paper.

Table 3 Performance standards in the 2020-21 TCS and 2021-22 TCS

Category	Performance standard
Safety and Environment	**1.** Prepare a safety management plan and environment management plan in accordance with s.91C(1) of the PMA. **2.** Prepare and maintain a Sustainability Report to determine and monitor Environmental, Social and Governance (ESG) actions and targets.
Reliability / Availability / Capacity	**3.** Maintain International Organisation for Standardisation (ISO) 55001 certification achieved for asset management, to ensure infrastructure is maintained at current levels in accordance with Good Operating Practice. **4.** Maintain channel depths through maintenance dredging program. Vessel access to shipping channels 100% of the time in accordance with the declared depths as detailed in the Port Information Guide. Our channel and wharf

	infrastructure is based on a design container vessel of 300 metres length overall x 40 metres beam with a maximum draught of 14 metres.
Infrastructure planning and strategies	Develop medium- to long-term investment plans and strategies for the Victorian Government: **5.** Port Development Strategy (PDS) will set out our long-term (30 year) vision for the growth and development of the Port. **6.** Rail Access Strategy (RAS), will set out cost effective and sustainable on-dock rail terminal infrastructure options.
Customer and community engagement	**7.** Port Users and other stakeholders' consulted on and considered in the development of the TCS. **8.** Port Users and other stakeholders' consulted on and considered in the development of long-term plans (e.g. PDS, RAS).
Major project delivery	**9.** Major projects under the RAS to be delivered in the short-term (i.e. within the next 5 years) and reported on in subsequent TCSs include: ▪ Port Rail Transformation Project ▪ Former Melbourne Wholesale Market Site ▪ Container origin and destination study.

Appendix D – Length of the regulatory period

The regulatory period is an important part of the regulatory framework that governs the setting of tariffs for Prescribed Services. It is the period of time over which the Pricing Principles and Cost Allocation Principles in the Pricing Order apply – which is a shorthand way of saying that it is the period that we forecast revenue, expenditure, demand and prices for those services.

The regulatory period for other regulated infrastructure, such as electricity networks, gas pipelines and water assets in Australia is typically five years. However, the regulatory frameworks applying to that infrastructure differs from that applying to PoM, especially given the role of the TAL.

As outlined in Section 7.3, PoM's preliminary position is to adopt a 1-year regulatory period for the 2022-23 year, and to transition to a longer regulatory for the regulatory year beginning 1 July 2023.

In deciding how and when to transition to a longer regulatory period, there are a number of issues about how the regulatory framework would operate. Unlike the regulatory frameworks for other regulated infrastructure noted above, neither the Pricing Order nor the ESC's Statement of Regulatory Approach provide any guidance on how these matters are to be dealt with. We will seek to engage with the ESC and port users on achieving certainty on these matters.

Table 4: Considerations for transitioning to a longer regulatory period

Consideration	Discussion
Certainty over future price outcomes	Regardless of the length of the regulatory period, Port Users have certainty that weighted prescribed prices will not increase by more than CPI out until 2037, due to the operation of the TAL. The regulatory period length during the TAL period cannot affect pricing stability. Further, the TAL gives Port Users, Victorian consumers and other stakeholders significant certainty that our prescribed services tariffs, on average, will not increase by more than inflation over the next 15 years. That is a much longer period than the certainty offered to customers in most other regulated industries, where customers typically get 4-5 years of price certainty under price cap regimes. After the TAL period, adopting a longer regulatory period (e.g., 5 years) will provide Port Users with certainty over the projected Aggregate Revenue Requirement and can allow prices to be smoothed over that period.
Incentives to outperform expenditure and demand forecasts	The TAL currently means our revenues are not being set by the ABBM, but by annual escalation of weighted prescribed service tariffs by CPI. Under this framework, we have strong incentives to: ▪ Continue to seek out efficiencies in opex and capex regardless of the length of the regulatory period, due to the disconnect between the ABBM revenues and the binding TAL price cap; and ▪ Continue to grow trade and port demand regardless of the length of the regulatory period because the TAL is a price cap and not a revenue cap. During the TAL period, the regulatory period length has virtually no impact on incentives for achieving efficiencies in expenditure or the incentive to grow trade. However, after the TAL period, when prices can adjust to reflect efficient costs, fixing the building block inputs for 5-year periods at a time could potentially create incentives for achieving efficiencies in expenditure and growing trade. However, the operation of these incentives is dependent on how the building block inputs are treated annually during the regulatory period – this issue is not addressed by the Pricing Order or the Statement of Regulatory Approach.
Administrative burden	Preparing TCS submissions each year imposes an administrative burden on the PoM and stakeholders that we engage with. For instance, PoM needs to prepare and consult on a wide range of documents and models related to the Aggregate Revenue Requirement and Cost Allocation Principles. This burden is affected by the length of the regulatory period because it affects what information needs to be included with each submission. Longer regulatory periods may reduce this burden if it means that information requirements reduce in years within a regulatory period,

Consideration	Discussion
	and peak for TCS submissions leading up to such a period (e.g., every 5 years). On the other hand, a longer regulatory period may increase administrative burden if the same annual information requirements are in place to meet the ESC's guidance on their requirements for compliance demonstration. Therefore, the extent of any reduction in administrative burden is not clear to us given that PoM must nevertheless submit a TCS each year of the Port Lease period regardless of the regulatory period length. We intend to engage further with stakeholders on how the period length should affect the TCS information requirements, including as to: ▪ What updates to the Aggregate Revenue Requirement inputs and calculations are needed within a regulatory period (e.g., expenditure, demand, depreciation, and cost of capital) ▪ What this means for stakeholder engagement. The ESC's Statement of Regulatory Approach is silent on the interplay between the length of the regulatory period and these other aspects of the Pricing Order. In order to have an informed engagement with Port Users and stakeholders, we will first work with the ESC to understand its interpretation of these issues.
Changes to operating environment	A short regulatory period (e.g., 1 year) means that changes to the PoM's operating environment can be readily reflected in the Aggregate Revenue Requirement. A longer period can mean that such changes only get picked up when the period is reset (e.g., every 5 years). Regulatory frameworks applying to other regulated infrastructure, such as energy and water networks, typically involve mechanisms that allow for efficient sharing of risks or update for changes in operating environments. Mechanisms include: ▪ Pass-through of unforeseen and material cost changes, where positive or negative ▪ Adjustment for contingent projects that have been triggered by a pre-specified event ▪ Automatic updates for changes in the cost of debt or other pass-through costs (such as government levies) ▪ Updates for differences between allowed and actual revenues via an 'unders and overs' account. The Pricing Order does not explicitly specify any such mechanisms. These mechanisms are commonly specified in a price control mechanism and formula. While the Pricing Order specifies the TAL formula, there is no equivalent specification of the form of price control for when the TAL is not the binding constraint on PoM's price setting. The ESC's Statement of Regulatory Approach is silent on the compliance demonstration expectations for a form of control to implement the Aggregate Revenue Requirement or variation thereto over time, including over a regulatory period of longer than 1 year. We intend to engage further with stakeholders on whether it is appropriate to include such mechanisms and, if so, how these should work. In order to have an informed engagement with Port Users and stakeholders, we will first work with the ESC to understand its interpretation of these issues.
Alignment to the ESC's five-yearly compliance reviews	The regulatory period length could be aligned to the ESC's five-year compliance reviews. For instance, the regulatory period could be staggered so that it started one year after the start of the five-year compliance review period. This would allow PoM to consider and engage on the ESC's findings from its most recent five-year review well in advance of the next regulatory period, including to re-open or amend prices and other regulatory settings. We intend to engage with stakeholders on whether there is merit in aligning the regulatory period in such a way.