

15 October 2007

Helen Stehbens  
Executive Director (Rail, Ports and Freight) and  
Chair Ports Competition and Regulatory Review Committee  
Queensland Transport  
GPO Box 1549  
BRISBANE QLD 4001

Dear Helen,

**Review of Current Port Competition and Regulation in Queensland**  
**Reference: CM/57/000/00004**

I refer to your letter of 11 September 2007.

As you would be aware, PCQ responded in some detail on this topic at the end of August 2006, including an extensive report prepared by Synergies Economic Consulting.

PCQ reaffirms the August response. This response is focussed on the issues and specifically the questions raised in the Discussion Paper which are relevant to PCQ. The substance of the August response is only repeated so far as PCQ considers it material to those questions.

Attached as an appendix is a list of questions considered relevant to PCQ and a related response.

I trust this is useful in your review. Please advise if you require any further information or clarification or if PCQ can otherwise assist with the review.

Yours sincerely

Brad Fish  
**Chief Executive Officer**

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## APPENDIX

### Review of Current Port Competition and Regulation in Queensland – Discussion Paper

#### Ports Corporation of Queensland (Limited) PCQ Response

**Port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services (COAG agreement 4.2a). Does the strategic port land model as used in Queensland assist in achieving that aim?**

The strategic port land model as used in Queensland assists in facilitating the entry of new suppliers of port and related infrastructure services by:

- Allowing land suitable for port uses to be identified according to the criteria in the *Transport Infrastructure Act 1994*;
- Protecting future port uses by excluding port land from the local government planning scheme (local government's may not take into account the broader strategic value of port uses in their planning decisions); and
- Vesting ownership of the land in the port authority.

The strategic port land model therefore serves to facilitate competitive outcomes by creating a structure where entry of new suppliers of port and related infrastructure services is facilitated by ready access to suitable land, available from an independent party, and by periodic tendering of provision of certain port services.

Outside of strategic port land, PCQ has concerns as to whether existing planning processes sufficiently identify, protect and preserve infrastructure corridors (eg road and rail) required to service the ports in the future. PCQ also has concerns about whether land use planning regulation for areas adjoining strategic port land takes sufficient account of the impacts of activities on land proximate to Ports on the efficient operation and growth of the port. A mechanism such as a State Planning Policy for Ports could be appropriate for this purpose.

**Please identify any areas where there is scope to streamline the current planning process including reducing regulatory requirements and ensuring consistency in the administration of strategic port land.**

The current planning process as it applies to port authorities presents the same challenges for “streamlining” as do other “non-port” planning processes in Queensland. Port specific issues are typically addressed in the ongoing reviews of wider planning processes. PCQ considers that there are currently no issues in this area that are of significance to the Review.

**Are there aspects of port operations in Queensland which need to be addressed to ensure equitable third party access to infrastructure and services?**

In relation to PCQ ports, PCQ's view is that, as its best interests are served by providing equitable third party access wherever possible, that there are therefore no “aspects of (PCQ's) port operations which need to be addressed” in this regard. PCQ is committed to multi-user access as well as utilisation of other mechanisms in appropriate circumstances (including those outlined in the discussion paper) to foster competition within and between ports. The multi user access model significantly reduces barriers to entry for existing and new users by providing port services without the need to duplicate facilities.

The multi-user arrangements at Abbot Point have recently seen the terminal handle coal from competitor coal miners.

PCQ supports the multi-user model being adopted for the port infrastructure needs to allow mineral deposits in the cape to be exploited (e.g. Chalco and other neighbouring bauxite deposits).

**Where applicable, provide examples of any issues arising in the significant ports in Queensland where access has not been or was perceived not to be, provided in a competitively neutral manner.**

PCQ believes the original development of the Dalrymple Bay Coal Terminal as a multi-user facility was a result of restricted access to the Hay Point Services Terminal to parties other than the joint venture partners and their related entities.

Although PCQ owns many facilities in the port of Weipa, historic lease arrangements have made it difficult to lease to third parties without the support of the incumbent port user (the lessee).

**Is there potential for increasing competition in the provision of port and related infrastructure facility services?**

**Assuming there is the potential to increase competition, will this be sufficient to ensure port authorities earn commercial returns that are consistent with those that would apply in a competitive market? Please provide examples where this could be achieved.**

**Do you consider there would be benefit to introducing price monitoring for port authorities as a first step where price regulation may be required?**

**Does the threat of regulation act to constrain any market power?**

**Are the pricing principles utilised by the significant ports covered by this review sufficient to ensure that port authorities pricing mechanisms do not result in price discrimination, cross subsidisation or any other anti-competitive results? Can you provide examples where the pricing principles:**

- **Achieve the desired outcome; or**
- **Do not achieve the desired outcome.**

**Would guidance in the commercial charters for port authorities be sufficient to ensure they earn a commercial rate of return while not exploiting any monopoly powers?**

The Discussion Paper on page 3 outlines some of the functions of a port authority as set out in the *Transport infrastructure Act 1994*. PCQ is also subject to the *Government Owned Corporations Act 1993* (GOC Act) and has a Constitution as a company that require it to act in a commercial manner. The GOC Act requires PCQ to agree annually with its shareholding Ministers (the Treasurer and the Minister for Transport) a Statement of Corporate Intent, which sets key commercial parameters and measures of financial performance, including (for example) Total Return on Assets.

Since the provision of major port infrastructure is capital intensive, PCQ believes providing multi-user access to port infrastructure delivers efficiencies from economies of scale over dedicated user-owned facilities. PCQ's current model where it provides and owns the infrastructure with clear contractual arrangements for its operation and maintenance provides the most efficient outcome. The efficiency of capital utilisation can be bench marked and assessed. There are mechanisms to ensure that operation and maintenance costs can be delivered on a competitive basis.

While any attempt to simulate real world "commercial" behaviour for PCQ as a government owned corporation port authority will by definition be imperfect, PCQ considers that the current system has sufficient checks and balances to ensure that the interests of the stakeholders in PCQ are appropriately considered along with the interests of port users. Significant PCQ investments are also reviewed and approved by shareholding Departments. As part of this governance framework, PCQ regularly reports information to shareholding Departments with respect to its financial returns. It should be recognised that PCQ's shareholders do not seek to maximise profits and that regional economic development is an important objective.

Consistent with this framework, PCQ nevertheless seeks to earn a commercial return on its assets and constantly monitors financial returns in all its ports. In achieving this, prices must be set so as to achieve a return of capital over the estimated useful economic life of the assets and a return on capital consistent with asset risk and recovery of all other expenses.

PCQ's pricing principles are relatively straightforward. In essence PCQ will earn a commercial rate of return on all assets employed at the relevant ports. This return will incorporate an appropriate profit component for PCQ. The actual return will depend on a range of factors including asset life, risk allocation, usage and ongoing costs of operation. In addition, PCQ seeks to obtain a return of all operating costs not incorporated in the asset returns. PCQ does not seek to earn a profit component within these costs. As such, PCQ's prices are set to achieve recovery of the efficient costs of service provision, including a rate of return consistent with its WACC and commensurate with the level of risk. PCQ has an express policy of no cross-subsidisation between its ports.

PCQ considers that the threat of regulation provides an effective incentive to provide access to port facilities on an efficient and equitable basis. The history of the development and operation of PCQ ports supports the view that the potential for imposed regulation has provided a sufficient discipline. This is addressed in the report provided by PCQ in August 2006.

Moreover, it is important to take into account other relevant factors that mitigate against any exercise of market power, such as the countervailing negotiating power which is held by users of these ports. In addition, PCQ's assets are sunk, leaving it exposed to opportunistic behaviour. This environment is not conducive to the exercise of market power. Therefore, any further regulation is unlikely to deliver benefits and will involve potentially significant additional cost. PCQ does not consider that introduction of price monitoring is necessary.

Further, Queensland is unique in regard to port regulation as it has an established third party access framework in place at DBCT which serves as a precedent. This precedent can facilitate third party access by providing guidance to other parties on what is considered a reasonable set of terms and conditions of access.

**Do you have concerns regarding potential conflicts of interest in relation to vertically integrated structures or port authorities exercising their regulatory powers, which should be addressed on a case by case basis with a view to facilitating competition? Are you able to provide examples?**

**Is it necessary to promote/improve competition in upstream and/or downtown markets for any of the significant ports in Queensland which are covered by this review?**

PCQ considers that there are no issues for PCQ in this regard as it is not active in any upstream or downstream markets in competition with its customers.

**Briefly outline any other specific issues relating to the role of Queensland's port authorities which are aligned with the scope of this review but not addressed elsewhere in this paper.**

PCQ has no other issues to raise.

**Do the current arrangements in Weipa provide for the equitable treatment of existing and future port users and stakeholders?**

PCQ feels constrained by legislative environment in the port compared to other ports it operates in.