

Port of Melbourne



Port of Melbourne

Port Rail Capacity Allocation Protocol

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Approval history

| Version | Date | Name | Title |
|----------------|------------------|----------------|---------------------------|
| 1.0 | 24 April 2020 | Caryn Anderson | Executive General Manager |
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Capacity Allocation Protocol

1 Overview

- (a) The purpose of this CAP is to provide for the transparent and efficient allocation of Available Capacity at the Terminal in accordance with the Port Rail Access Principles.
- (b) To facilitate long-term investment, this CAP prioritises the allocation of Available Capacity to Scheduled Access Holders. However, Available Capacity may be allocated to Ad-hoc Access Holders where doing so is:
 - (1) commercially feasible; and
 - (2) complies with the Port Rail Access Principles.

2 Allocation of Available Capacity

2.1 General obligations

- (a) The procedure for the allocation of Available Capacity involves, as a priority, the provision of scheduled Windows at the Terminal.
- (b) The RTO will use best endeavours to maximise the utilisation of Capacity at the Terminal, including:
 - (1) minimising the level of Capacity within the Terminal reserved in accordance with clause 2.3(a)(4); and
 - (2) having reasonable operating hours, including lengthening operating hours as demand increases.

2.2 Preliminary Windows

- (a) To facilitate an Access Seeker obtaining appropriate on and off port Rail Paths, the RTO must:
 - (1) provide a list of all available Windows within the operating hours of the Terminal to a prospective Access Seeker;
 - (2) negotiate in good faith with an Access Seeker regarding the Access Seeker's requirements, including its preferred Windows or other Windows that might otherwise reasonably meet its requirements; and
 - (3) offer to provide the Access Seeker any Preliminary Window requested by the Access Seeker in respect of a then available Window.
- (b) A Preliminary Window:
 - (1) subject to clauses 2.2(b)(2), 2.2(b)(3) and 2.2(c) will provide the Access Seeker with any rights reasonably required to facilitate the Access Seeker securing on and off port Rail Paths;
 - (2) will expire upon the later of:
 - (A) 14 days after the date upon which the Preliminary Window was granted; or
 - (B) the Access Seeker securing or being denied Access under this CAP; and
 - (3) for the avoidance of doubt, does not grant any rights to Access.

- (c) Preliminary Windows are not exclusive and Access Seekers may be provided with Preliminary Windows that are identical to, or otherwise overlap with, an existing Preliminary Window held by another Access Seeker.

2.3 Procedure for allocation of Capacity

- (a) On receipt of an Access Request, the RTO must, acting reasonably, make an assessment as to whether there is sufficient Available Capacity at the Terminal to meet the Access Seeker's request, taking into account the following considerations:
 - (1) whether the Access Seeker's proposed Window is within the operating hours of the Terminal;
 - (2) whether the Access Seeker's proposed Window is unutilised, including in the case of a request for:
 - (A) a Scheduled Service, the proposed Window is not already allocated to an existing Scheduled Service; or
 - (B) an Ad-hoc Service, the proposed Window is not already allocated to an existing Scheduled Service or Ad-hoc Service;
 - (3) if the proposed Window is already allocated to an existing Service but a suitable Window can be made available by:
 - (A) varying the relevant Service in accordance with the terms of this CAP; or
 - (B) achieving a faster turnaround time than is required by the Access Agreement for the relevant Service;
 - (4) any requirements to reserve Capacity for the prudent and efficient operation of the Terminal in accordance with all applicable standards and good industry practice.
- (b) The RTO must provide Access to the Access Seeker in accordance with the Access Seekers proposed Window if:
 - (1) the RTO determines in accordance with clause 2.3(a) that there is sufficient Available Capacity;
 - (2) the Access Seeker confirms that it holds appropriate on and off port Rail Paths that are aligned with the proposed Window; and
 - (3) the Access Seeker has accepted, and complied with, the Access Criteria and the terms of the TAA and the TOP.
- (c) The RTO must not allocate a Window to an Access Seeker where the Access Seeker does not hold appropriate on and off port Rail Paths that are aligned with the proposed Window.
- (d) If the RTO, acting reasonably, determines that there is insufficient Available Capacity to satisfy an Access Request it must:
 - (1) make an assessment of whether part of the Access Request can be satisfied by the Available Capacity (and if so, offer to satisfy that part of the Access Request); and
 - (2) provide a written explanation to the Access Seeker as to why the application cannot be satisfied in full (including, in the case of a request for a Scheduled Service, providing information in relation to any potential expansions that might satisfy the Access Request).

3 Rail constraints

- (a) To the extent that any Rail Path constraints impact Available Capacity, the RTO must use its best endeavours to coordinate with the Port Rail Manager to address the constraints.

- (b) For avoidance of doubt, the phrase ‘best endeavours’ in this Schedule does not require the RTO to bear any of the costs (other than as commercially agreed between the parties) relating to the resolution or relief of such constraints.

4 Mutually exclusive requests for Capacity

- (a) Where the RTO receives an Access Request and reasonably foresees that it will receive a mutually exclusive Access Request within 14 days, it may delay consideration of the initial Access Request until the later of:
 - (1) the receipt of the mutually exclusive Access Request; or
 - (2) the expiry of the 14 day period.
- (b) In circumstances where two or more Access Seekers are seeking mutually exclusive Access Rights:
 - (1) if the mutually exclusive request is between an Access Request which relates to a Constrained Path Freight Train and an Access Request which does not relate to a Constrained Path Freight Train, the RTO will work cooperatively and use reasonable endeavours to accommodate Access Requests relating to a Constrained Path Freight Train; and
 - (2) otherwise, Access must be granted to the Access Seeker which in the opinion of the RTO (acting reasonably) has the Access Request which:
 - (A) is most consistent with the principle of maximising the efficient and most valuable use of the Terminal in accordance with the Port Rail Access Principles;
 - (B) best reflects the commercial impact on the RTO’s business; and
 - (C) maximises the overall efficiency of the Port Rail Network, the Port of Melbourne and throughput at the Port Precinct.
- (c) When determining the priority of allocation of Available Capacity for mutually exclusive requests, including the commercial impact of Access on the RTO’s business, the RTO must have regard to the following considerations:
 - (1) whether either Access Request relates to a Constrained Path Freight Train;
 - (2) volume of service, including both Train size and proposed Access Agreement duration;
 - (3) operational efficiency, including system wide factors such as Rail Path availability;
 - (4) safety and security;
 - (5) promotion of throughput at the Terminal;
 - (6) the highest present value of future returns to the RTO after considering all risks associated with the Access Agreement (excluding the value of any returns earned on Access Agreements not entered into on arms-length terms); and
 - (7) the RTO's obligations under 7(c) of the CAP (if applicable).

5 Capacity becoming available

If the Capacity of the Terminal has been reached, and Capacity subsequently becomes or is made available, the RTO must simultaneously notify PoM, the Port Rail Manager and all Access Seekers who have requested Access within the past two years, of the availability.

6 Varying Capacity

- (a) The RTO must allocate Capacity to an Access Seeker on a “use it or lose it” basis and Access Seeker’s will not be permitted to bank Windows to prevent use by other Access Seekers.
- (b) The RTO may determine and adjust the scheduling of Windows to optimise the use of the Terminal including for overall operational efficiency, the RTO’s commercial viability and safety reasons related to the Terminal and the Port of Melbourne or as otherwise agreed between the RTO and impacted Access Holders, but must:
 - (1) take into account the reasonable operational and commercial requirements of any impacted Access Holders; and
 - (2) have regard to the availability of aligned Rail Paths and provide the Access Seeker with any rights reasonably required to facilitate the Access Seeker securing on and off port Rail Paths.
- (c) The RTO may temporarily vary Allocated Capacity (including cancelling Services), at any time, but must:
 - (1) where reasonably practicable take into account the reasonable operational and commercial requirements of any impacted Access Holders;
 - (2) give reasonable notice to any affected parties; and
 - (3) only vary Allocated Capacity for the following reasons:
 - (A) to repair, maintain, upgrade, extend, construct or make alterations to the Terminal;
 - (B) for reasons of safety or for the prevention of injury or damage to the Port Rail Network or the Terminal or to other persons or property;
 - (C) following a request in writing from an Access Seeker; or
 - (D) due to an Unforeseen Event.
- (d) Scheduled Access Holders may offer a Voluntary Reduction of Allocated Capacity to the RTO in accordance with the following principles:
 - (1) the RTO must attempt to reallocate the Voluntary Reduction to other Access Seekers or Access Holders;
 - (2) if any or all of the Voluntary Reduction is successfully reallocated by the RTO to other Access Seekers or Access Holders, the RTO must reduce the Scheduled Access Holder’s Allocated Capacity for the period of time for which the Capacity is reallocated; and
 - (3) the RTO may (subject to the terms of the Access Agreement with the Scheduled Access Holder) require the Scheduled Access Holder to retain and remain liable to pay for, any costs (including take or pay costs) relating to the portion of the Voluntary Reduction that is not recovered from the replacement Access Seeker for the duration of the Access Agreement.

7 Allocated Capacity withdrawals

- (a) Subject to clause 7(b) and the RTO complying with Open and Non-Discriminatory Access, and in order to encourage the optimum use of the Terminal, the RTO must withdraw Capacity allocated to an Access Holder where:
 - (1) the Access Holder does not satisfy, over any consecutive 3 month period, its Minimum Usage Requirement and the RTO is:
 - (A) satisfied (acting reasonably) that:

- (aa) the Access Holder does not have a reasonable justification for failing to meet its Minimum Usage Requirement; and
 - (ab) it is commercially feasible to re-allocate the Capacity to another Access Seeker such that the Capacity will be more highly utilised; or
 - (B) directed to withdraw that Capacity by the Port Rail Manager in accordance with clause 4 of the Key Principles;
 - (2) there are repeated breaches of safety requirements of the Access Agreement, relevant legislation, or a standard specified in the Terminal Operating Protocol by the Access Holder; or
 - (3) the Access Holder no longer holds appropriate on and off port Rail Paths that are aligned with the proposed Window. For the avoidance of doubt, the Access Holder shall remain liable to the RTO for all commercial arrangements for the duration of the Access Agreement.
- (b) Clause 7(a)(1) does not apply to an Access Agreement during the Ramp Up Period of that Access Agreement.
- (c) Where Capacity is withdrawn under clause 7(a)(3) due to a third party causing a Rail Path to be lost:
- (1) the Access Holder may request an alternative Window from the RTO; and
 - (2) if requested, the RTO must negotiate in good faith with the Access Holder under the process and terms of this CAP to identify a suitable alternative Window and must use best endeavours to allocate that Window to the Access Holder.

8 Disputes

The RTO must manage disputes with Access Seekers and Access Holders in accordance with the TAA.