



Aim

1. The aim of the Port Botany Rail Optimisation Group (PBROG) is to provide advice to Transport for NSW (TfNSW) on strategies and actions to optimise the movement of containers by rail to and from the container terminals at Port Botany.

Objectives

2. Objectives of the PBROG are to:
 - a. Advise on operating methods, protocols and service levels that can be implemented by participants in the container movement chain to improve the efficiency of:
 - i. container terminal receipt and delivery,
 - ii. container terminal sorting and stacking, and
 - iii. rail freight services to and from Port Botany.
 - b. Advise on performance standards and methods of measure for:
 - i. booking of rail services at the stevedoring terminals and container depots with rail sidings,
 - ii. advice of train Consist details,
 - iii. train on time arrival to the Port Botany Yard,
 - iv. train placement into the container terminal siding time,
 - v. train capacity utilisation, and
 - vi. train turn around times.
 - c. Advise on data exchange, sharing and visibility protocols and communications procedures.
 - d. Identify policy and regulatory impediments that impact on the efficient movement of containers by rail to and from Port Botany including the NSW rail access regime.
 - e. Identify railway and terminal infrastructure enhancement projects, operating methods and procedures that will increase capacity and improve the efficiency of the movement of containers by rail to and from the container terminals at Port Botany.
 - f. Provide advice to Transport for NSW on recommended enhancements to infrastructure, policy, operating methods and procedures and where possible quantify the benefits of recommended enhancements or changes.

Sponsor

3. The sponsor of the PBROG is the Executive Director Freight Industry, Transport for NSW (TfNSW). The Freight Industry Branch forms part of the Freight, Strategy and Planning (FSP) Division of TfNSW.
4. The Sponsor is responsible for the provision of TfNSW resources for the PBROG, oversight of the PBROG and the development of TfNSW support to the output of the PBROG.
5. The Sponsor represents TfNSW in relation to the Deliverables of the PBROG. The Sponsor will provide the Deliverables to the Deputy Secretary Freight, Strategy and Planning.

Limits of PBROG's authority and discussions

6. The PBROG has no executive decision making authority.
7. The PBROG is an advisory body to Transport for NSW by providing advice on all rail freight transport operational issues in the Port Botany precinct.
8. The PBROG has no policy determination or operational executive functions.
9. The PBROG must not engage in any discussion relating to rail services pricing or stevedore services pricing.

Term

10. The PBROG will be constituted for an initial term of 1 year from the date of commencement (Term).
11. The date of commencement is Thursday 03 December 2015.
12. The Sponsor of the PBROG may extend the Term for further periods each of 1 year in the event that there is progress towards meeting the Aim and Objectives that warrants additional time to achieve the Aim and Objectives of the PBROG.
13. The Sponsor of the PBROG may dissolve the PBROG at any time after the first six months if the Sponsor forms the view, acting reasonably, that the PBROG is not meeting, and is unlikely to meet, the Aim and Objectives within the Term.

Deliverables

14. The PBROG will endeavour to:
 - a. Develop and agree on a work plan that focuses priorities for the PBROG, sets out the PBROG's proposed agenda for the Term and activities for achieving the PBROG Aim and Objectives.
 - b. Provide expert knowledge and specialist stakeholder views to TfNSW about industry and community interests for efficiency of rail freight services to and from Port Botany.
 - c. Share knowledge between Members and with TfNSW related to innovative practices within the rail freight transport and logistics industry within Australia and internationally.
 - d. Identify research opportunities that would enhance the TfNSW understanding of industry needs to support improving rail mode share at Port Botany; and
 - e. Prepare case studies, based on operational experience that will facilitate the development of strategies to overcome constraints in rail modal share at Port Botany.

Chairperson

15. The Sponsor will appoint a person as the independent Chairperson of the PBROG. The Sponsor will seek approval from the Deputy Secretary Freight, Strategy and Planning of TfNSW for the appointment.
16. The Sponsor may appoint a different Chairperson from time to time.
17. The Chairperson is to possess one or more of the following:
 - a. Experience at a senior level in the private or public sector,
 - b. Detailed knowledge of the interests of the broad range of rail and stevedoring industry stakeholders, and
 - c. Expert knowledge and experience in freight transport networks and logistics systems

Membership

Appointment of members

18. The initial members of the PBROG are set out at Schedule 1 to these Terms of Reference.
19. The Chairperson, on behalf of the Sponsor, is responsible for any further or replacement appointments to the PBROG.
20. The Chairperson will appoint persons as Members who meet the Membership Criteria set out in Paragraph 24, and must appoint the following numbers and Stakeholder Group members:
 - a. One CEO-level (or CEO delegate) representative from each of the three Port Botany Container Terminal Stevedores;
 - b. One CEO-level (or CEO delegate) representative from each of the current seven Rail Operators that operate trains to and from Port Botany;
 - c. One CEO-level (or CEO delegate) representative from each of the Port Infrastructure Participants; and
21. Membership is voluntary.
22. A Member may resign their membership at any time by giving notice in writing addressed to the Chairperson on behalf of the Sponsor.
23. The Chairperson, with the assistance of the Secretariat, will keep a Register of Members.

Membership criteria

24. To be eligible to be a Member, a person must have:
 - a. Experience at a senior executive level in the private or public sector; and
 - b. Authority to express views on behalf of, and to vote on behalf of their respective member organisation.
25. The Chairperson will appoint Members to the PBROG which, collectively, have:
 - a. Knowledge of the interests of the broad range of industry stakeholders; and

- b. Expert knowledge and experience in one or more fields of container terminal stevedoring, freight rail operations, port management, transport networks and logistics systems.

Alternate membership

26. Each appointed Member may nominate one Alternate Member who may attend and vote at meetings in the place of the appointed Member in the case that the appointed Member is unable to attend a meeting.
27. The Alternate Member may be any person who meets the membership criteria specified in Paragraph 24, and may be a person who is already a Member in their own right.
28. Appointed Members may nominate their Alternate Member by submitting the name and contact details of their nominated Alternate Member in writing to the Chairperson at least two working days prior to the scheduled meeting.

Obligations of members

29. Members are required to personally attend, or arrange for their Alternate Member to attend, a minimum of 75% of meetings each year.
30. Members must comply with these Terms of Reference.
31. Members must further the Aim of the PBROG and support the achievement of the Objectives and Deliverables of the PBROG.
32. Operate in accordance with these Terms of Reference to provide the Deliverables set out in Paragraph 14.

Removal of members

33. The Chairperson may remove a Member from the PBROG if the Chairperson is satisfied that the Member has:
 - a. not met the requirements of Paragraph 24;
 - b. breached these Terms of Reference, including any breach of confidentiality;
 - c. an unresolved disagreement with the Aim, Objectives or Deliverables of the PBROG that impairs the functioning of the PBROG.

Term of appointment

34. An appointed Member shall hold office for the Initial Term and any subsequent Terms, as long as the Member is eligible (if otherwise qualified) for re-appointment

Task Groups of the PBROG

35. The PBROG may establish Task Groups from time to time to assist it in carrying out its role and reporting back at each PBROG meeting regarding the Deliverables.
36. A member of a Task Group is not required to be a member of the PBROG.
37. Any member of a Task Group is required to comply with the relevant terms of the TOR including those Paragraphs 61, 62 and 63 regarding confidentiality and information sharing.

38. The procedure for calling meetings of a Task Group and for the conduct of those meetings is to be determined by the PBROG or by the Task Group.
39. The PBROG or the Chairperson may dis-establish a Task Group if:
 - a. its operation is no longer consistent with the Objective; or
 - b. its purpose has been fulfilled.

Secretariat

40. The Cargo Movement Coordination Centre will provide the Secretariat support for the PBROG. The Secretary will be the Manager Cargo Performance.
41. The Secretariat will provide secretariat support services to the PBROG and coordinate the resources and services required for the PBROG to carry out its work effort.
42. The Secretariat will:
 - a. Coordinate the meeting dates and development of the meeting agenda;
 - b. Coordinate the preparation of meeting papers and circulate the agenda and meeting papers to members in the week prior to a meeting;
 - c. Record Minutes of the PBROG and Task Force meetings;
 - d. Forward draft minutes of each meeting to members within two weeks after each meeting for endorsement;
 - e. Record the actions arising from a meeting once they have been approved and signed by the Chairperson;
 - f. Monitor actions arising from PBROG meetings and report on their progress at following meetings; and
 - g. Coordinate preparation of reports from the PBROG to the Sponsor.

Meetings

Frequency and form of meetings

43. There will be at least four PBROG meetings during the Term. The Chairperson of the PBROG will convene each such meeting.
44. The Chairperson of the PBROG may convene such other meetings as the Chairperson, in his or her absolute discretion, considers reasonably necessary or desirable to achieve the Aim and Objectives of the PBROG and the Deliverables.
45. A Member may request that the Chairperson convene a meeting of the PBROG to consider any specific question, motion or decision proposed by that Member, but the Chairperson will only be required to convene a meeting pursuant to that request if the Chairperson, in his or her absolute discretion considers it reasonably necessary or desirable to achieve the PBROG's Aim and Objectives and the Deliverables.
46. Meetings may be held in person, by telephone or by video conference (subject to facilities).
47. The Chairperson must, at least five Business Days (or such reasonable shorter period if urgent) before each PBROG meeting, send to each of the Members in writing:
 - a. notice of such meeting;

- b. an agenda of the business to be transacted at such meeting (together with all papers to be circulated or presented to the meeting); and
- c. a copy of the draft minutes for the previous meeting for adoption by the meeting and signing by the Chairperson.

48. At a PBROG meeting a question, motion or decision may only be decided if the relevant question, motion or decision is specifically referred to in the agenda issued for the meeting, except if all Members present at the meeting agree otherwise.

Decision making at meetings

49. Other than as provided in Paragraph 50, any questions, motions or decisions arising at a meeting of the PBROG are to be decided by:
- a. at least 75% of the votes cast by Members present at the meeting and entitled to vote on the matter; and
 - b. at least one vote from a Member of each Stakeholder Group who is present at the meeting and entitled to vote on the matter.

Deadlock prevention

50. In the event that the same (or, in the view of the Chairperson, substantially the same) question, motion or decision (including a question, motion or decision with minor amendments) has been put to a vote resulting in the question not being resolved, the motion not being passed or no decision being made (as applicable) at two consecutive meetings, the following procedure applies: The question, motion or decision must be put to a vote at the next convened meeting, with such vote to be passed by:
- a. at least 50% of the votes cast by Members present at the meeting and entitled to vote on the matter; and
 - b. at least one vote from a Member of each Stakeholder Group who is present at the meeting and entitled to vote on the matter.

Allocation of votes

51. Each Stakeholder Group will have the following number of votes:
- a. Stevedores – 4 votes
 - b. Rail Operators – 4 votes
 - c. Port Landside Infrastructure Participants – 3 votes
52. In respect of each question, motion or decision to be decided by a vote at a meeting, the Members of each Stakeholder Group must allocate the votes of that Stakeholder Group between themselves in a manner agreed by them, and a representative of the relevant Stakeholder Group must notify the Chairperson of that allocation in writing before the commencement of the relevant meeting at which a vote is proposed.
53. If a Stakeholder Group fails to notify its allocation of votes for a particular question, motion or decision to be decided by a vote at a meeting, the votes in respect of that question, motion or decision will be allocated amongst the Members of that Stakeholder Group equally.

54. At any time, including where a new Member is admitted to the PBROG, Stakeholder Groups may reallocate their votes between themselves and notify the Chair of that reallocation.

Quorum

55. No business may be carried out or actions decided at any meeting of the PBROG, except the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.

56. A quorum consists of at least:

- a. two rail PBROG members;
- b. two container terminal stevedoring representative PBROG members; and
- c. the Chairperson.

57. If the quorum is not present within 30 minutes after the time appointed for the meeting of the PBROG, the meeting will be adjourned to the same time and place two Business Days later.

58. At the reconvened meeting, the quorum is one representative of each Stakeholder Group and the Chairperson.

59. If the quorum is not present within 30 minutes after the time appointed for the reconvened meeting of the PBROG, the reconvened meeting stands to be adjourned to the same time and place two Business Days later.

60. At the second reconvened meeting, a quorum is two Members (regardless of which Stakeholder Group they are from) and the Chairperson.

Communications and information sharing

Confidentiality

61. No Member shall make public statements purporting to represent the views of the PBROG or the views of any other individual Member of the group.

62. Members must not disclose official information or documents acquired as a consequence of membership of the PBROG other than is required by law or when the member has been given proper authority to do so.

63. Protocols for information sharing

64. Members must comply with the information sharing protocol at Schedule 2.

Definitions

- Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in NSW, Australia.
- Chairperson means the chairperson appointed in accordance Paragraph 15.
- CCA means the Competition and Consumer Act 2010 (Cth).
- CMCC means the NSW Cargo Movement Coordination Centre.
- CONSIST means the details of the train number (either place of origin or departing from Port Botany) the rail wagon and slot numbers and container numbers (including 20 foot or 40 foot containers).
- Deliverables means the deliverables set out in Paragraph 14.
- Executive Director Freight Industry means the Executive Director Freight Industry within the Freight, Strategy and Planning Division of Transport for NSW.
- Member(s) means a member (or members) of the PBROG from time to time.
- Objective means the objective for which the PBROG is established as set out in Paragraph 2, as amended from time to time in accordance with this agreement.
- PBROG means the Port Botany Rail Optimisation Group.
- Port Landside Infrastructure Participants means NSW Ports, Transport for NSW and railway network managers.
- Protocol means the Information sharing protocol set out in Schedule 2.
- Rail Operator means an operator of rail haulage services for the haulage of containerised freight to and from the Port Botany Rail Precinct. The initial Members who are Rail Operators are identified in Schedule 1.
- Stakeholder Group means each of:
 - Port Botany Container Terminal Stevedores;
 - Rail Operators; and
 - the Port Infrastructure Participants.
- Stevedore means an operator of container terminal stevedoring facilities at Port Botany.
- Task Group means a group established in accordance with Paragraph 35.
- Term has the meaning in Paragraph 10.
- Terms of Reference means this document.

Schedule 1 – Chairperson and initial members

Chairperson: Rachel Johnson

Member category	Name (name of Alternate)	Position (position of Alternate)	Organisation
Container Terminal Stevedores	Paul Scurrah (Mark Hulme)	CEO (Chief Safety, Innovation & Integration Officer)	DP World
	Murray Vitlich (Andrew Adam)	Director - Asciano (General Manager National Intermodal)	Patrick Terminals
	Mark Jack (John Willy)	Executive Director (General Manager - Commercial & Operations)	Sydney International Container Terminal
Rail Operators	Andrew Adam (Murray Vitlich)	General Manager National Intermodal (Director - Asciano)	Pacific National Rail
	John McArthur (Nalin Weerakoon)	CEO (Finance Director)	Freightliner Australia
	Maurice James (Ross Nacey)	CEO (Director - Rail)	Qube Logistics
	Paul Stapleton (Matt Stapleton)	CEO (Operations Manager)	Sydney Rail Services
	Milton Bromwich (Chris Jones)	CEO (Executive General Manager)	Southern Shorthaul Railroad
	Jamie Fisher (Josh Beveridge)	Operations Manager (Compliance Manager)	ESPEE
	Lance Hockridge (James Moutafis)	CEO (VP Commercial and Marketing)	Aurizon

Member category	Name (name of Alternate)	Position (position of Alternate)	Organisation
Port Landside Infrastructure Participants	Marika Calfas (Peter Engelen)	CEO (General Manager Infrastructure)	NSW Ports
	Jonathan Goode (Steve Gunn)	Cargo Movement Coordinator (General Manager Operations)	Transport for NSW
	Tony Gausden (Nicholas Angelos)	Director Rail Freight Optimisation (Principal Manager, Freight Network Improvement)	Transport for NSW
	John Fullerton (Richard Galbraith)	CEO (General Manager Commercial and Customer Service)	ARTC
	Reserved	Reserved	Sydney Trains
	Reserved	Reserved	JHR/CRN
Probity Adviser	Rory O'Connor (Philip Poon)	Managing Director (Principal)	O'Connor Marsden
Secretariat	Jennifer Attard (Morgan Noon)	Manager Cargo Performance (Senior Manager, Rail)	TfNSW

As amended 3 May 2016

Schedule 2 – Information sharing protocol

Role of the PBROG

The intention of all PBROG Members is to act clearly within the requirements of the Terms of Reference and all relevant laws, including the Competition and Consumer Act 2010 (Cth) (CCA).

Competition law acknowledgement

A number of Members of the PBROG are competitors in the supply of services at the Port of Botany Bay.

Members acknowledge that the CCA prohibits competitors from colluding to:

- a. fix prices (including discounts, rebates or credits) for products or services supplied or acquired in competition with each other;
- b. prevent, restrict or limit the supply of services or the capacity of any of the parties to supply services to any person or class of persons;
- c. share markets or rig bids (eg by territory or deciding who will sell to which customers, or who will sell what products);
- d. collectively boycott suppliers or customers (eg by not dealing with particular suppliers or customers, or dealing with them only under certain terms or conditions); or
- e. enter into anti-competitive agreements that have the purpose, effect or likely effect of substantially lessening competition in a market.

Collusion between competitors does not need to be in writing or explicit. It can be an arrangement or understanding made in informal circumstances. All that is required is a 'meeting of the minds'. This may arise through exchange of information and a hint or a more subtle set of inferences (a 'nod and a wink') during a discussion.

Illegal collusion occurs where competitors communicate in such a way that each forms an expectation of how the other will act (for example, set prices or terms of supply).

Purposes of discussions

All discussions at PBROG meetings are for the purposes set out in the Terms of Reference, will take place according to this Protocol, and will be minuted as set out in paragraph 42 of the Terms of Reference.

Nothing has or will be agreed, arranged or understood between PBROG and its members, or between individual PBROG members, beyond the scope of the Terms of Reference.

The PBROG members understand that ACCC authorisation may be required for certain measures that they recommend to the Sponsor to be implemented in practice.

Information sharing

In the course of working towards meeting the Aim and Objectives of the PBROG, including identifying, developing and assessing the suitability of options, PBROG members may share the following information and/or discuss:

- industry wide issues such as those raised in the Terms of Reference;

- information that is in the public domain;
- general industry trends or statistics that are aggregated and anonymous (eg common policy terms);
- potential service standards and KPIs to apply, including for container and train processing times and rail operator pathing/window adherence;
- technical, logistical or other limitations, including proposals for rail scheduling at certain times where this is required for the efficient operation of the Port Botany Precinct; and
- forward estimates of demand, and assessments of throughput capacity of the rail logistics chain.

Prohibited conduct

Communications between PBROG members are not of themselves prohibited under the CCA. However, Members agree to avoid some topics of discussion to avoid any risk of engaging in cartel conduct or establishing an inference of such conduct.

PBROG members will not discuss commercially sensitive information including any specific PBROG member's current or future pricing intentions, service levels, or other features or terms, remuneration, costs or strategic planning that are not in the public domain.

Given the serious repercussions that engaging in cartel conduct (and indeed the appearance of engaging in that conduct) may have, Members will bear in mind these limitations when attending meetings of the PBROG.

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