

# **Port of Portland**

Application for exemption  
from Parts 3 - 6 of the Port  
Terminal Access (Bulk  
Wheat) Code of Conduct

3 September 2021

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Portland  
VIC 3305

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# 1 Summary

Port of Portland Limited (**POPL**) is seeking exemption for its ad hoc shiploading arrangements at the Port of Portland (**Port**) from Parts 3 – 6 of the Port Terminal Access (Bulk Wheat) Code of Conduct 2014 (the **Wheat Code** or **Code**).

POPL seeks exemption on the basis that:

- (a) **exemption is in POPL's legitimate business interests:** exemption will reduce the significant regulatory cost of compliance in circumstances where POPL's bulk wheat shiploading services are small-scale and ad hoc, will give POPL greater operational flexibility and enable it to provide a more competitive port terminal service while ensuring commercial viability;
- (b) **exemption is in the interests of exporters** who may use POPL's facilities and benefit from the option of another provider of bulk wheat shiploading services at the Port (aside from GrainCorp and Riordan Grain Services (**RGS**));
- (c) **exemption will promote operational efficiency, and efficient investment:** POPL's current bulk wheat shiploading services are scalable and POPL would consider further investment to meet customer demand, but it would only be operationally and commercially efficient to do so if it had an exemption to reduce to the costs of the operation;
- (d) **exemption will promote and will not be to the detriment of competition**, including upstream and downstream: the volume of bulk wheat loaded by POPL is small on any view of the market, other port terminal service providers (**PTSPs**, including GrainCorp and the threat of RGS) offer competitive constraint at Port. There are also the potential alternatives of other ports in Victoria and South Australia, and the use of containerised export. Further, with excess capacity at Port and across the region, there is less need for regulatory oversight to ensure access as shiploaders try to maximise throughput;
- (e) **POPL is not vertically integrated** and therefore has no ability or incentive to favour its operations upstream or its own export operations;
- (f) **exemption is in the public interest**, including the public interest in competitive markets: reducing the regulatory burden encourages efficient operation of the bulk grain export supply chain, which will enable Victorian grain to compete more effectively in global markets;
- (g) **exporters have fair and transparent access** because POPL is incentivised to provide access to exporters to maximise throughput and efficiency, particularly in circumstances where there is excess capacity, and exporters therefore have a level of bargaining power; and
- (h) **RGS is already an exempt service provider within the Portland grain catchment area:** an exemption will provide equity with RGS which is a similarly smaller-scale operator and with export container packers that are not regulated.

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## 2 Port of Portland Limited

### 2.1 About POPL

The Port of Portland is Victoria's only naturally deep-water port, located on the southwest coast between Melbourne and Adelaide, with connectivity to national road and rail networks. POPL is the owner and manager of the Port of Portland.

Specialising in the export of bulk commodity products, Port of Portland services the agriculture, forestry and mining industries across the Wimmera-Mallee, Green Triangle and Murray Basin regions which extend from northern and western Victoria to south-east South Australia. The Port currently handles commodities such as forestry products, livestock, grains, mineral sands, fertiliser, smelter products and wind turbine components.

The Port comprises six berths, employs approximately 80 staff, and sees approximately 5m tonnes of exports and imports annually. Its services and facilities include shipping services (pilotage, towage, mooring and stevedoring), crew services, berthing, port storage (general, open and undercover, sheds and grain storage bins). The grain storage silos are owned and operated by GrainCorp and have 60,000 tonnes of capacity.

POPL is a PTSP to which the Wheat Code applies. POPL is not an exporter or an associated entity of an exporter.

Port of Portland pricing, and further background information about its operations, is available at <https://www.portofportland.com.au>

### 2.2 POPL's port terminal facility

POPL's port terminal facility for shiploading and its storage facilities are indicated on the map below, alongside GrainCorp's loading and storage facilities, and RGS's facility which (if it were operated at the Port) would operate at Berth #5.

**Figure 1 Port terminal facilities at Port of Portland**

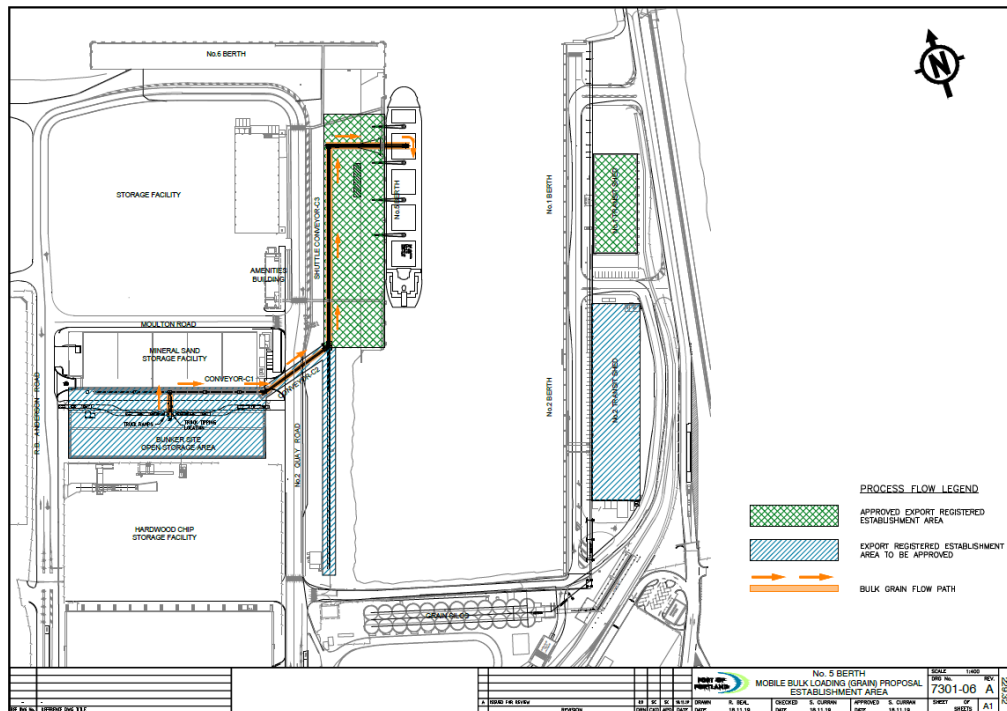


The Port also owns and leases out storage facilities. Grain customers can lease the storage facilities and truck grain to the mobile unloading equipment to load vessels on Berth 5.

Transit Shed 1 and Transit Shed 2 are within POPL's Export Registered establishment for grain exports and have a combined approximate capacity of

18,000 tonnes of grain (6,000 tonnes for Shed 1, and 12,000 tonnes for Shed 2). See Figure 2 below for a more detailed schematic.

**Figure 2: POPL Berth 5 mobile bulk (grain) loading facilities and storage**



### 2.3 POPL’s ad hoc shiploading services

POPL currently owns and operates a mixed-use shiploading system which is linked to a mineral sands storage facility (60,000 tonnes capacity). This system comprises fixed and mobile equipment to load vessels on Berth 5.

POPL’s shiploader has a nominal capacity of 600,000 tonnes per annum of bulk grain. The facility is able to load approximately 200 tonnes per hour (TPH) and service vessels of up to 50,000 Deadweight Tonnage (DWT). POPL operates a road-based delivery system whereby grain is received into its storage facilities prior to a vessel arriving, or directly to a truck unloading conveyor linked to the Berth 5 shiploader which can be loaded at an average rate of 200 TPH.

In the past ~18 months, in response to customer requests, POPL has adapted its infrastructure to enable customers to use the shiploading services for export grain, on an ad-hoc basis. It has exported one bulk grain shipment from this facility in FY20 (equating to 21,000 mt), and nine bulk grain shipments in FY21 (equating to 276,000 mt).

POPL has managed these arrangements by entering into a commercial arrangement with exporter customers, whereby POPL:

- (a) provides the exporter with a licence to use the shiploading equipment to load grain and related storage facilities (if required); and
- (b) supplies the exporter with POPL personnel (under labour services arrangements) relating to the operation of the equipment licensed by the exporter.

## 3 Port of Portland and Victorian grain supply

### 3.1 Key participants

The largest participant in grain supply in Victoria and the east coast is GrainCorp ([www.graincorp.com.au](http://www.graincorp.com.au)) with a storage and handling network of 187 sites that can handle up to 20 million metric tonnes (mmt) of product spread across the east coast of Australia. Other commercial operators include Grainflow (owned by Cargill) and Emerald ([www.emeraldgrain.com](http://www.emeraldgrain.com)), owned by Sumitomo), Riordan Grain Services (<https://riordangrains.com.au/>), as well as many private storage operators. In addition, on the east coast there is a significant and growing grower on-farm storage network.

GrainCorp's port terminal facility at Portland is a fixed loader capable of loading grain at a rate of greater than 1,400 TPH. GrainCorp's port terminal facility services vessels up to 60,000 DWT through one ship loader. GrainCorp is vertically integrated, operating as a PTSP and also operating a related trading arm that carries out exports of various bulk grains including wheat.

RGS's port terminal facility at Portland is a mobile ship loader that is able to load 200 TPH and service vessels of up to 50,000 DWT. RGS transports the mobile ship loader by road between Portland and Geelong in order to carry out shipments at each port. RGS is exempt from the Code in relation to its port terminal facility at both Portland and Geelong. RGS currently uses both facilities to carry out its own shipments of bulk barley and third party exports of various bulk grains including wheat.<sup>1</sup>

Table 1 below provides an overview of the features of the PTSP's respective port terminal facilities at Portland.

**Table 1: Overview of port terminal facilities at Portland**

Port terminal facility	GrainCorp's Portland facility	RGS's Portland facility	POPL's Portland facility
<b>Rail receipt</b>	Standard gauge 1,000 tonnes per hour 1 hopper	Currently does not utilise rail receipt	Currently does not utilise rail receipt
<b>Road receipt</b>	250 tonnes per hour 1 hopper	200 tonnes per hour	200 tonnes per hour
<b>Loader rates</b>	1,400 tonnes per hour (fixed)	200 tonnes per hour (mobile)	200 tonnes per hour (fixed and mobile)
<b>Storage capacity</b>	60,000 tonnes (at port)	20,000 tonnes (near port)	18,000 (on Port)
<b>Nominal annual capacity</b>	720,000 tonnes	150,000 tonnes	600,000 tonnes

Sources: ACCC RGS Portland determination, p.12; information from POPL.

### 3.2 Portland Grain Catchment

Total grain production in the Portland catchment is estimated to be approximately 15 mmt of wheat, barley, canola and other broadacre cropping commodities.

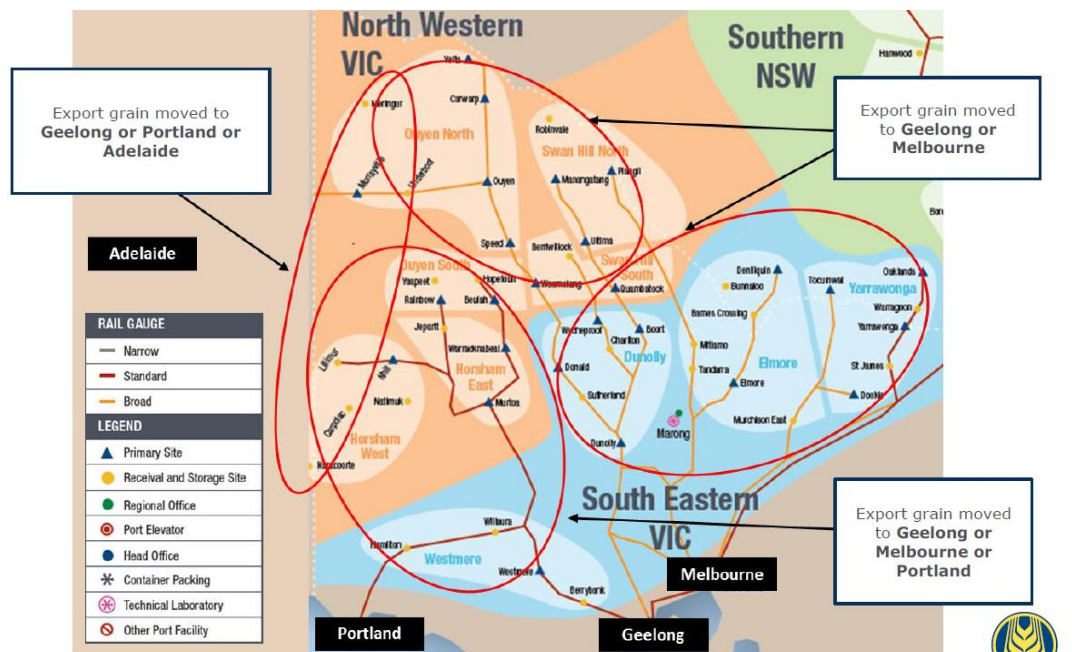
<sup>1</sup> ACCC Final Determination – Riordan Grain Services – Port of Portland, 30 March 2020, p.11

As previously identified to the ACCC by RGS, domestic consumption in this region is approximately 6mmt so in any given year there is around 9mmt of potential exportable surplus from the ports of Port Kembla (NSW), Melbourne (Emerald), Geelong and Portland (both GrainCorp ports). However, this exportable surplus can vary depending on seasonal variation, crop quality, global market conditions and Australian competitiveness, and domestic factors such as local demand.

Grain for the Portland port catchment is typically grown in Victoria's western district. Geographically in relation to Victoria's grain producing areas, grain harvested on farmland located to the west of Horsham is more likely to be shipped into the Port of Portland, while grain sourced east of Horsham is more likely to be loaded for export at either the Port of Geelong or the Port of Melbourne. Movement of grain to ports outside of this rough zone varies depending on domestic requirements, rail logistics and demand at ports for grain. The Port of Geelong, for example, offers more efficient rail access and greater storage (whereas the Portland-Maroona rail line is speed and load restricted). With grain on trucks there is no physical impediment to moving within zones, however pricing points at different zones will ultimately determine end destinations for grain. The Ports of Geelong and Portland require similar road freight costs, depending on the grain site location. As a result, ports such as Geelong, Melbourne and Adelaide do offer an alternate destination to Portland, however typically over the longer term the best result for the grower in the Portland catchment zone would be for grain destined to Portland port.

This is illustrated in the map below.

**Figure 3: Victorian grain growing regions and typical routes to export**



Source: GrainCorp submission in support of exemption for its Geelong and Portland ports, 5 Dec 2014.

Accordingly, alternate bulk loading capacity at Portland via alternate bulk loading solutions will lead to overall better competition for grain in the Portland zone.



In its determination in relation to RGS, the ACCC concluded that:

*“while the Portland facilities’ grain catchment area may have some overlap with Geelong and Melbourne or Adelaide ports, there is a lack of a clear alternative port which would facilitate competition for grain (including bulk wheat) and provide a significant competitive constraint on facilities at Portland. In particular, for the storage facilities in Western Victoria not located on the rail line and which utilise road to move grain to port, the ACCC considers viable alternative port options may be limited. Further, as Portland is the only deep-water port in Victoria capable of fully loading Panamax vessels, this may limit the interchangeability of Portland with other ports for certain loading requirements.”*

POPL therefore submits that the Portland catchment area includes GrainCorp at Port of Geelong and Emerald at Port of Melbourne (both exempt service providers) and potentially Viterra in Adelaide.

### 3.3 Capacity utilisation

#### (a) Recent historical utilisation

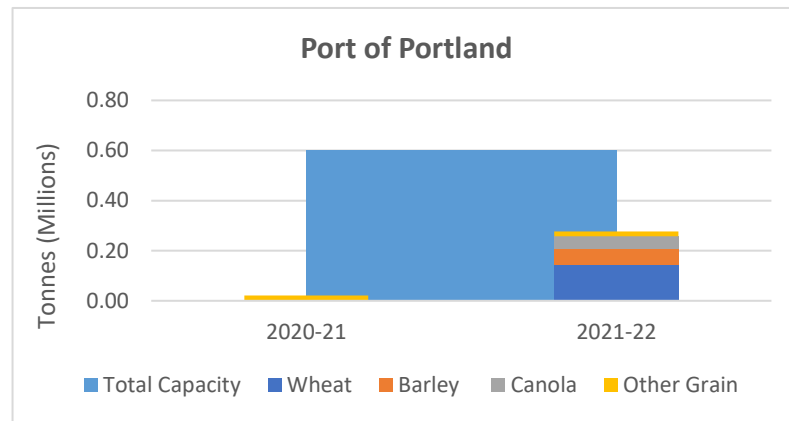
Table 2 and Figure 4 below set out the volumes of wheat and other bulk grains loaded through POPL’s facilities since it began offering ad hoc shiploading services. In FY20 POPL did not load any bulk wheat and in FY21 it loaded approximately 144,500 tonnes of bulk wheat (being 35% of total bulk wheat volumes through the Port), with the remainder a mix of barley (20%), canola (26%) and other grains (69%).

**Table 2: POPL – grain loaded through POPL and all Port facilities in FY20 and FY 21**

Grain	FY20			FY21		
	Total (t)	POPL (t)	POPL %	Total (t)	POPL (t)	POPL %
Wheat	90,106		0%	415,448	144,483	35%
Barley	51,853		0%	313,806	61677.4	20%
Canola	92,603		0%	193,300	51,042	26%
Other Grain	20,859	20,859	100%	27,882	19,162	69%
<b>Grain total</b>	<b>255,421</b>	<b>20,859</b>	<b>8%</b>	<b>950,437</b>	<b>276,365</b>	<b>29%</b>



**Figure 4: POPL capacity utilisation at its Port of Portland facility, FY20-21**



In the most recent season (FY21):

- POPL loaded 29% of all bulk grain volumes at the Port;
- POPL loaded 144,483 tonnes of bulk wheat (3 vessels);
- 415,448 tonnes of bulk wheat were loaded across all facilities at Port (including GrainCorp, RGS, and POPL); and
- No containerised grain was exported

POPL's share of bulk wheat loading accounted for:

- 3% of all throughput (all export and import commodities) at the Port; and
- 15% of all bulk grain (950,437 tonnes) loaded at the Port.

In the past three years, total bulk grain throughput at the Port of Portland (including GrainCorp, RGS and POPL) has comprised:

- 1.2 million tonnes in FY21 & FY20. (FY19- Zero grain through Port).

In the past three years, total bulk commodities through the POPL loading facility have comprised of:

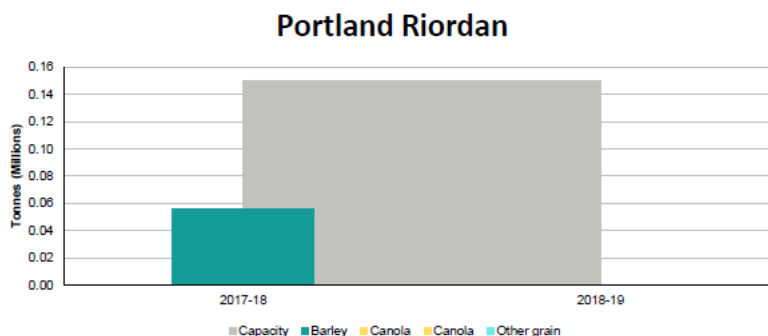
- 402,000 tonnes of bulk grain in FY21 & FY20. (FY19- Zero grain through Port)
- 280,459 tonnes mineral sands (FY21, FY20, FY19).

In relation to other PTSPs at Portland, RGS has previously submitted an annual capacity of 150,000 tonnes will be available at its Portland facility. RGS anticipates loading a maximum of 300,000 tonnes per year across both Geelong and Portland, being approximately 10 vessels, at 30,000 tonnes each.<sup>2</sup> The tonnage would be split in half between Geelong and Portland. GrainCorp's published available capacity for 2020-21 is 720,000 tonnes at Portland. GrainCorp's annual capacity significantly exceeds that of POPL (and RGS).

Exports have been significantly below published capacity for POPL, RGS and GrainCorp in the previous three shipping years, as indicated below. There is currently spare capacity at each of POPL's, RGS's and GrainCorp's port terminal facilities at Portland, and this capacity is not expected to be fully utilised even with the forecasted large wheat harvest.

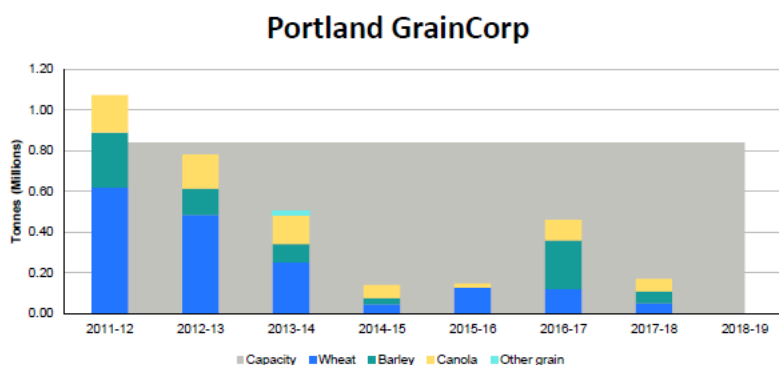
<sup>2</sup> Id, p.14

Figure 3: Capacity utilisation at Riordan's Portland facility, 2017-18 to 2018-19



Source: Loading statement data provided under section 7 of the Port Terminal Access (Bulk Wheat) Code of Conduct

Figure 4: Capacity utilisation at GrainCorp's Portland facility, 2014-15 to 2018-19



Source: Loading statement data provided under section 7 of the Port Terminal Access (Bulk Wheat) Code of Conduct

(b) Forecast demand

POPL submits an annual capacity of 600,000 tonnes will be available for bulk grain at its Portland facility. POPL anticipates loading a maximum of 600,000 tonnes per year at Portland, being approximately 24 vessels, at 25,000 tonnes each.

POPL is expecting another high grain year for the upcoming season, and estimates approximately 300,000 tonnes or 50% of its bulk grain capacity, will be for bulk wheat. This equates to approximately 12 bulk wheat vessels, of a total of 24 bulk grain vessels.

The annual maximum capacity at POPL's facility, by shipping window is set out in Table 3 below.

**Table 3: estimated capacity at POPL bulk grain facility, high year**

Bulk Grain	FH	LH	Volume (t)
Jul-21	25,000	25,000	50,000
Aug-21	25,000	25,000	50,000
Sep-21	25,000	25,000	50,000
Oct-21	25,000	25,000	50,000
Nov-21	25,000	25,000	50,000
Dec-21	25,000	25,000	50,000
Jan-22	25,000	25,000	50,000
Feb-22	25,000	25,000	50,000
Mar-22	25,000	25,000	50,000
Apr-22	25,000	25,000	50,000
May-22	25,000	25,000	50,000
Jun-22	25,000	25,000	50,000
<b>Total bulk grain</b>			<b>600000</b>

Source: POPL internal estimate

Achieving this estimated capacity through the POPL loading facility depends largely on:

- Seasonal growing conditions and supply in Portland catchment zone and domestic consumption.
- Capacity demand for use of the POPL shiploader by mineral sands exporters;
- Overall Port capacity, particularly the high demand for use of Berth 5 which is POPL's highest utilised common user berth for all break bulk commodities.
- POPL's ability to provide shiploading services is constrained by limited storage (maximum 18,000 tonnes across two sheds).
- Efficient loading: as bulk grain cargoes are not comingled between customers, all cargo must be cleared from storage facilities following each shipment, and the next customer is unable to load until cargo is accumulated (typically 1 to 2 weeks)

If exporters can utilise alternative local storage, or direct load, or both, they can be allocated a shipping slot, however they must achieve the minimum loading rate of 5,000 TPD in order to maximise efficiency at the facility.

## 4 The Wheat Code

### 4.1 Application of the Code

Following its introduction in 2014, the Wheat Code applies to all *port terminal service providers* that provide a *port terminal service* by means of a *port terminal facility* (as those terms are defined under Clause 3 of the Wheat Code). The principal purpose of the Wheat Code is to ensure exporters of bulk wheat have '*fair and transparent*' access to port terminal services.<sup>3</sup>

A port terminal facility is broadly defined, and covers any ship loader at a port that is capable of handling "bulk wheat", which in turn is defined as any wheat loaded to a ship for export *unless* it is to be exported in a bag or container that has a total capacity of 50 tonnes of wheat or less. A port terminal service is any service that is provided via the port terminal facility.

<sup>3</sup> In addition, the Wheat Code was also developed specifically to enable the repeal of the *Wheat Export Marketing Act 2008* (Cth)

The obligations under the Wheat Code are imposed directly on the PTSP, being the person that is *either* the owner or operator of the port terminal facility that is used, or is to be used, to provide a port terminal service.

As POPL's storage facility and shiploading system have been adapted and are now capable of loading bulk wheat onto vessels at Berth 5, the Wheat Code is likely to apply to those facilities as a port terminal facility, and to POPL as a PTSP.

#### **4.2 Parts 3 – 6 of the Wheat Code**

Parts 3 – 6 of the Wheat Code specify a range of more specific obligations on a PTSP that require it to: implement an access regime with requirements for non-discrimination, dispute resolution for negotiations with access seekers regarding the terms of access and ACCC approval of capacity allocation systems (or port loading protocols); publish specific information in respect of wheat export operations via the port terminal facility; and ensure the PTSP retains specific records for a minimum of 6 years. These obligations are onerous, and are difficult to comply with unless the relevant PTSP has sophisticated infrastructure and well-developed commercial processes and protocols in place in relation to the ship loading services it offers.

However, the ACCC can exempt certain types of PTSPs from the operation of Parts 3 – 6 of the Code. If granted, the PTSP is not required to comply with the obligations for the specified port terminal facility that is exempted.

POPL notes that, following the withdrawal of its exemption application, GrainCorp is currently subject to Parts 3 – 6 of the Code in respect of the terminal it operates at Berth 1 of the Port. Further, RGS was granted exemption from Parts 3 – 6 of the Wheat Code by the ACCC in relation to Portland in March 2020.

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## **5 Reasons in support of exemption**

In making a determination that a PTSP is exempt, the ACCC must have regard to matters listed in subclause 5(3) of the Code. POPL has provided its submissions and supporting information on these factors in this section.

### **5.1 Exemption is in Port of Portland's legitimate business interests**

Parts 3 – 6 of the Code are onerous, and compliance with their obligations would add significant cost and complexity to POPL's operation which involves only a single port terminal facility and one that is primarily focused on a range of other export commodities, not on bulk wheat. The ACCC has indicated it regards the compliance costs of the Wheat Code as more burdensome on smaller businesses only operating a single port terminal facility given that compliance costs will be proportionately higher compared to overall costs and revenue, than listed entities operating multiple sites (such as GrainCorp), and that removal of unnecessary regulatory obligations is in a PTSP's legitimate business interests.<sup>4</sup>

While POPL operates the Port, its shiploading service comprises a small single port terminal facility which does not warrant, and could not support, the more burdensome compliance costs of Parts 3 – 6 of the Code. To illustrate, the volume of bulk wheat that POPL shifts through its ad hoc shiploading is approximately 144,500 tonnes (FY21), which equates to approximately:

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<sup>4</sup> ACCC Final Determination – Riordan Grain Services – Port of Portland, 30 March 2020, p.26

- (a) 15% of all bulk grain loaded at the Port;
- (b) 3% of all throughput at the Port; and
- (c) far less than 1% of all bulk grain shipped out of Port of Portland, Geelong and Melbourne Ports combined.

Given this small proportion (on any view), the costs of compliance in monetary, administrative and efficiency terms are disproportionate, and would compromise the ongoing commercial viability of POPL's ad hoc shiploading services.

This is particularly the case where it is not necessary for the PTSP to be subject to all of the Code's obligations. For example, the ACCC has acknowledged that the obligations in the Code intended to prevent a PTSP from exercising market power may not be necessary where competition already provides sufficient constraint on a PTSP's ability to exercise market power.<sup>5</sup> POPL is competitively constrained by GrainCorp as the largest, and non-exempt, PTSP at Port, and (the threat of) RGS. In these circumstances the ACCC has acknowledged that removing unnecessary regulation obligations is in a PTSP's legitimate business interests.

The ACCC has also previously acknowledged that it is in a PTSP's legitimate business interests to promote the ongoing commercial viability of its business, and this may involve efforts to reduce its regulatory compliance costs (or to not incur additional costs). The ACCC has also considered that exemption will enable further operational flexibility which is likely to always be in the business interests of a PTSP.<sup>6</sup>

The likely impact of having to comply with Parts 3 – 6 of the Code may result in POPL:

- (a) being hindered in its ability to compete in the provision of port terminal services at the Port, particularly when RGS is an operator of similar scale and has the benefit of exemption from the same compliance burdens;
- (b) ceasing to provide ad hoc shipping services altogether;
- (c) deciding not to invest in further shiploading infrastructure or innovations; and
- (d) incurring significant compliance costs, and lost opportunity costs (for example by diverting resources to compliance which could have been invested elsewhere such as innovating for export customers, or improving efficiencies).

For these reasons, exemption is in POPL's legitimate business interests in order to reduce regulatory costs, and enable it to provide more competitive port terminal services.

## **5.2 Exemption is in the interests of exporters who may use Port of Portland's facilities**

POPL is providing an additional and alternative shiploading service to GrainCorp (and RGS) at the Port for exporters to access export markets, and thereby increasing competition for bulk loading of grain out of the Portland

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<sup>5</sup> Id, p.27

<sup>6</sup> Id, p.27

region. Prior to RGS's exemption granted in March 2020, GrainCorp was the only PTSP at the Port.

Viable alternatives are particularly important when exporters are trying to gain sufficient access to capacity during periods of peak demand. Once domestic demand and contracted, containerised demand have been met it will be important for exporters to be able to ship excess bulk grain to export markets and avoid unnecessary storage costs. POPL can flexibly meet this anticipated demand from the large harvest with its ad hoc shiploading services (and provision of storage facilities), but its ability to do so, and service export customers for a reasonable cost relies on exemption (otherwise it becomes uneconomical).

POPL offers short term licencing of its storage facilities for pre-accumulation of bulk grain, and services to receive and stockpile deliveries, which are required by most customers seeking to use its shiploading services.

POPL offers a trucking service (tramping) to transport bulk grain from on-port storage to shiploader, in addition to shiploading labour services and the shiploading infrastructure to load vessels.

Three main customers may use these services for the upcoming season:

- ADM Trading – uses POPL storage, tramping, shiploading. ADM pre-accumulate in POPL sheds, and RGS' Portland storage sheds, as well as the direct-to-shiploader transport service from up country storage;
- RGS - uses POPL shiploading services and infrastructure, up country and Portland (off Port) storage sheds, and direct to POPL shiploader. RGS may use POPL's shiploading services, or bring their own shiploader using their own facilities, and use POPL's storage sheds if required; and
- CHS Broadbent - uses POPL shiploading services and infrastructure. They pre-accumulate in POPL storage sheds, or use up country storage and deliver direct to shiploader.

Granting an exemption will not adversely affect exporters. On the contrary it is in their interests as exemption helps ensure POPL can offer a viable alternative to the incumbent GrainCorp, and compete with the exempt RGS on an equal footing, should RGS choose to offer its services to meet peak season demand.

### **5.3 Exemption will promote efficiency, and efficient investment**

POPL's current shiploading infrastructure is mixed use and its bulk wheat shiploading services are scalable. POPL would consider further investment in these operations, in response to customer demand, however it would only be operationally and commercially efficient to do so if an exemption were in place to reduce the costs of the operation.

If POPL were subject to the full regulation and Parts 3 – 6 of the Code, the compliance and reporting costs would have to be passed on to exporter customers, increasing the costs of the services provided, and reducing the competitiveness of Victorian (and any South Australian) grain exported via the Port.

A reduction in the level of regulation will enable POPL to respond to its customers' needs more adeptly, innovate with its customers and open up competition to provide an additional efficient export pathway for customers.

POPL faces a substantial level of competition from GrainCorp at Portland and (as acknowledged by the ACCC in relation to RGS) this level is sufficient to drive efficient operation of its port terminal facility.<sup>7</sup> The competition posed by GrainCorp will be sufficient to encourage POPL to make efficient investments in its facility. Granting POPL an exemption will lower its compliance related operating costs and promote the efficient operation of its facility. This is balanced against the potential for POPL to discontinue its shiploading services given its limited sunk costs and the mixed use / temporary nature of its mobile operations.

In terms of efficient investment, the ACCC has considered that avoiding the application of unnecessary regulation will promote efficient investment in port terminal facilities more broadly.<sup>8</sup> As with RGS, exempting POPL may provide an incentive to other exporters or industry participants to invest in similar technology when it is economically efficient to do so.

Exemption would enable POPL to better facilitate shipping slot trades as well as additions and changes to its services at short notice. This greater flexibility would enable POPL to meet the different needs of its customers and therefore drive higher utilisation, and throughput. This would facilitate the efficient allocation and use of port terminal infrastructure and the competitiveness of Victorian (and any South Australian) grain in global markets.

In circumstances where stricter regulation is unnecessary, such as where there is sufficient competition from GrainCorp (and given the relatively small scale of POPL's shiploading services, and its non-integrated nature), it is appropriate and efficient to reduce those costs and the related restrictions on operational flexibility.

#### **5.4 Exemption will promote competition, including in upstream and downstream markets, and is in the public interest in having competitive markets**

There are currently two shiploaders operating at the Port: GrainCorp and POPL, with RGS able to move its mobile bulk loading infrastructure from the Port of Geelong to the Port if there is sufficient demand and incentive. Given the amount of bulk grain currently exported with two operators, there is sufficient grain-loading capacity at Port, if not excess capacity, even with increased forecasts for the upcoming season. Therefore, there are no capacity constraints which might give rise to competition concerns.

The ACCC has concluded that GrainCorp currently has market power as the incumbent PTSP at the Port, mainly due to the absence of a permanent alternative bulk terminal facility which can provide a sufficient level of direct competition. While POPL's ad hoc services do not fully address this concern, they offer an alternative for exporters and therefore assist in alleviating this concern to some extent. The ACCC has also noted that while GrainCorp is subject to a degree of competition from other port terminals in Victoria and South Australia, there is not "a sufficient degree of competitive constraint" given the distances, and transportation requirements. Consequently, any additional competition to GrainCorp offered by POPL in this regard should be welcomed as a benefit to exporters, and the Victorian supply chain more generally in terms of global competitiveness.

Given the strong competition at the Port from GrainCorp's facility (which is subject to full regulation under the Wheat Code), there is even greater

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<sup>7</sup> Id, p.30

<sup>8</sup> Id, p.30



constraint on any attempt by POPL to engage in anti-competitive conduct in relation to the ad hoc shiploading services.

- (a) **POPL operates in a competitive environment, and there is currently, and in future will be, excess capacity.** In addition to competition from GrainCorp and potentially RGS, there is excess capacity at the Port. While there is a large zone of grain collection sites in Victoria that have Portland as the most viable choice of destination port, the ACCC has indicated that it regards there to be “spare capacity” at the Port, given the size of GrainCorp’s existing facilities. This means that POPL is incentivised to fully utilise that capacity and maximise throughput by offering an efficient and competitive service.
- (b) **There are low barriers to entry for the supply of port terminal services,** and in particular for the supply of shiploading services for grain. As noted by RGS in its application: “*The mobile bulk loading model being employed by RGS can be replicated by others in the grain industry. The same bulk loader will be utilised by RGS at both ports (Corio Quay North and Portland) as it is road based and is able to be moved between ports*”.<sup>9</sup> We note the concerns expressed by the ACCC in its recent Viterra determination that mobile loaders were not an effective competitor to conventional or larger facilities because they lack permanence, and the level of constraint is less consistent/may fluctuate with market conditions. However, the ability of a mobile shiploader to be transported where it is most needed, and to provide flexibility and additional capacity in response to fluctuations in market conditions is competition at work, and precisely the constraint that ensures competition particularly where there is a surge in demand. The lack of permanence is an advantage to the operator who can then pivot and re-deploy the infrastructure elsewhere once the demand is met, increasing efficiency.
- (c) **There have been a number of new entrants across Australia:** this illustrates that new operators can and do enter the market when there is sufficient demand. For example, LINX at Port Adelaide; Semaphore at Port Adelaide; RGS at Geelong, Portland and Albany; Queensland Bulk Terminals at Brisbane; Agri Terminal at Newcastle, WAPRES at Bunbury; Quattro at Port Kembla and T-Ports at Lucky Bay, and three new multi-user port terminals have been proposed in South Australia.
- (d) **Competition from containerised exports:** while not a perfect substitute in all circumstances (as noted by the ACCC), containerised exports provide a viable alternative export path for some growing regions. If POPL were to offer bulk shiploading services on unreasonable or uncommercial terms, exporters could readily seek to export surplus grain as containerised exports via GrainCorp. In the context of the GrainCorp application, the ACCC noted that containerised grain exports from Victoria are significant, as shown by its growth and its consistent presence as a viable alternative export path for grain over the past 10 years. Accordingly, the ACCC considered that containerised exports provide a level of constraint on the bulk export programme at Portland.

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<sup>9</sup> Riordan Grain Services ‘Exemption Application’ submitted 4 October 2018, p.2

- (e) **Domestic demand typically takes priority over bulk grain export:** Domestic demand has the potential to affect the amount of grain that is available for export and typically domestic demand has 'first call' on grain, with the remaining amount the 'exportable surplus'.
- (f) **On-farm storage and road transport provide an alternative:** the ACCC has considered (in the context of the GrainCorp application) that on-farm storage and road transport from farm to port provides some alternative, but not necessarily in all circumstances.
- (g) **Victoria is a price-taker in international grain markets** and POPL operates in a global market which is subject to significant competition from other Australian and global grain producing regions. POPL therefore has to compete with port terminal and shiploading providers in Victoria, South Australia and globally.
- (h) **POPL has no vertically integrated businesses** upstream or downstream of the Port. POPL is not a trader or exporter, and does not have any up country storage facilities. Therefore, it has no ability or incentive to favour any owned trading arm, up country storage facilities (the largest grain storage at Port is owned and operated by GrainCorp), or to foreclose competitors' bulk wheat export customers from accessing its ad hoc shiploading services. As the ACCC acknowledged in relation to RGS, as the smaller PTSP operating at Portland, POPL is less likely to favour itself as an exporter compared to a vertically integrated PTSP (such as GrainCorp) with significant market share in the provision of port terminal facilities. As a new entrant, POPL must seek throughput and build customer support for its services.<sup>10</sup> Further, even if ad hoc shiploading services were expanded, they are unlikely to become POPL's main business and so there is little ability or incentive for POPL to somehow prioritise bulk wheat shipments over other exports when it comes to managing berthing slots, capacity, towage and pilotage services etc. To do so would be to the detriment of POPL's main commercial operations and revenue streams.

The ACCC recently acknowledged the competitive benefits and public interest benefits when granting RGS exemption in March 2020:

*“granting an exemption will allow RGS as a new entrant to more easily compete for potential customers. RGS as the new entrant at Portland has little market power in the provision of port terminal services and is constrained by the presence of GrainCorp Portland. The ACCC’s view is that exempting RGS at Portland is in the public interest and will promote competition in the market for port terminal services as well as along the supply chain.”<sup>11</sup>*

The same competitive benefits and public interest benefits apply here, given that it is a similarly small-scale, partly mobile operator, providing an alternative service to GrainCorp, particularly for smaller exporters.

Exemption will enable POPL to better compete as a viable alternative and this may encourage exporter investment in up country storage and/or onsite storage at Port. This increased demand for capacity, would in turn support POPL investing in additional storage, rail and port infrastructure to facilitate the growing demand for all grain exporters. Such investments would allow

<sup>10</sup> ACCC Final Determination – Riordan Grain Services – Port of Portland, 30 March 2020, p.31

<sup>11</sup> Id, p.29

new entrants (in both storage and grain export) to compete more easily. This is in the public interest as it supports the grain industry more broadly by promoting competition and encouraging efficiency along the supply chain while reducing the regulatory burden.

The gross value of Victoria's broadacre grain production is estimated to be in excess of \$1.1 billion.<sup>12</sup> As such, the ACCC has considered the efficient operation of the bulk grain export supply chain, including the ability of exporters to obtain fair and transparent access to bulk grain export services, to be in the public interest.<sup>13</sup> This, in turn will enable Victorian grain to better compete in global markets.

## 5.5 Exporters will have fair and transparent access

As a relatively new entrant in shiploading services, POPL is incentivised to provide access to exporters to attract customers to its facility over GrainCorp's and RGS's, and to maximise throughput and efficiency. POPL has, and will continue to provide fair and transparent access by offering to enter into commercial arrangements with each exporter to meet their needs and reasonable commercial terms. To increase utilisation and service exporters, POPL has:

- (a) invested capital into existing infrastructure to efficiently load grain vessels, such as adapting a truck unloading conveyor, to enable transfer grain onto an existing mineral sands conveyor system;
- (b) modified fixed and mobile equipment to provide grain handling and meet export requirements;
- (c) provided storage facilities to facilitate the efficient transfer of bulk export grain to vessels on Berth 5;
- (d) adopted fair and transparent port productivity and berthing protocols across all berths to accommodate increased demand for port capacity during a high grain year and promote efficient loading of vessels to maximise berth capacity across all berths (and all bulk grain berths of Berth 1,5 & 6); and
- (e) adopted a usage-based fee structure: for example – storage by the day, labour by the hour, shiploading infrastructure by the tonne. So, the quicker the customer can deliver bulk grain, the cheaper its service fees.

The same incentives, noted by the ACCC in relation to RGS,<sup>14</sup> apply to POPL in providing fair and transparent access:

- (a) as a new PTSP entrant into the market, it is reasonable to expect that POPL will need to seek throughput and attract customers and it is therefore unlikely to have incentives to discriminate or hinder access to third party exporters;
- (b) offer access to exporters on favourable terms in order to attract them to use its facility rather than GrainCorp's, and thereby maximise throughput and the profitability of POPL's facility; and

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<sup>12</sup> Department of Economic Development, Jobs, Transport and Resources: *Victoria: Invest in agriculture and food processing* (August 2018)

<sup>13</sup> For example, see ACCC Final Determination – Viterra – Port Adelaide Inner Harbour, Port Adelaide Outer Harbor, Wallaroo, and Port Giles, 27 April 2021, p. 169

<sup>14</sup> Id, p.30

- (c) the competitive constraint provided by GrainCorp's facility provides incentive for POPL to provide exporters with fair and transparent access to services.

In addition, customers have a level of bargaining power and alternatives to ensure they receive quality services at reasonable prices:

- customers can utilise their own trucks for tramming or utilise POPL's services;
- customers can utilise their own labour and infrastructure for stockpiling in the sheds; and
- customers can utilise on port storage, or direct deliver to shiploader or utilise their own local storage, or a combination of these options.

With these incentives, excess capacity, and the level of customer bargaining power, the full level of regulation under the Code is not necessary to ensure fair and transparent access for exporters to its port terminal services.

## **5.6 There is already an exempt service provider within the Portland grain catchment area (RGS)**

The ACCC generally considers that, where there is already an exempt service provider within a grain catchment area, or where the Code does not otherwise apply to a service provider in a catchment area, this may support an exemption (although each matter is considered on a base-by-case basis).<sup>15</sup>

The ACCC granted RGS an exemption at Port for the port terminal facility which it can (but does not currently) operate via its mobile ship loader. The ACCC did not raise any material concerns in respect of this facility and noted the potential for some competitive constraint and choice for exporters for the Port that it offers.

In its determination to exempt RGS, the ACCC considered that:

*“RGS's Portland port terminal facility is competitively constrained by a currently non-exempt port terminal facility at Portland, being GrainCorp's port terminal facility.”*

The same competitive constraint from GrainCorp applies to POPL, in addition to the constraint offered by RGS's exempt status, and the threat of its ability to move its mobile loader to the Port. This would prevent POPL from exercising market power (to the extent that it could be perceived, at some point in the future, to have any).

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## **6 Conclusion**

Having regard to the matters listed at subclause 5(3) of the Code and for the reasons set out above:

- POPL's Portland port terminal facility faces significant competition from GrainCorp's Portland facility, and from RGS's mobile facility if / when it is moved to Portland to meet demand;
- exemption would promote competition in the port terminal services market and grain acquisition market, and may promote competition in the up country storage market; and

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<sup>15</sup> Id, p.31

- after exemption is granted, exporters at POPL's Portland port terminal facility will have fair and transparent access.

POPL therefore requests that the ACCC make a determination that POPL should be an exempt PTSP for the services provided by means of its port terminal facility located at Port of Portland.

**Port of Portland**

**3 September 2021**