



23rd May 2010

The Infrastructure Co-ordinator
Infrastructure Australia
GPO Box 594
Canberra
ACT 2601

Dear Sir

Submission on draft National Ports Strategy

This submission is made from the perspective of a Company established to become a private sector provider of *both basic port infrastructure* (ie land reclamation and berth construction) and *port services*.

James Point Pty Ltd (JPPL) is a private WA-based Company that has an Operating Agreement with the Government of Western Australia to fund, build, own and operate common-user port facilities at Kwinana in Cockburn Sound, Western Australia. Cockburn Sound is part of Fremantle's Outer Harbour.

Briefly:

- A proposed *Bulk and General Facility* will provide additional multi-user/multi-product facilities, for which there is a critical shortage at present; and
- A proposed *International Container Facility* will provide an international container terminal to cater for the significant overflow from the Inner Harbour expected in the next few years.

Further detail on JPPL's proposals is provided in the attachment.

OVERALL

- The preparation and implementation of a National Ports Strategy is a commendable and worthwhile initiative.
- While a focus is on actions required over the next 20 years is appropriate, the timeframe contemplated by the strategy itself should extend to 50 + years.

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For example, there are many things that need to happen today to protect land (from a planning perspective) to ensure that we can meet the future needs for ports and linking infrastructure (road and rail) over the next 50 + years.

- The four identified priorities are valid.
- A fifth priority should be identified: *securing the investment required from the public and private sectors*. When all the required planning has been done, it will confirm what is already apparent – ie that the public sector will not be able to fund all the future capacity that is required (even for basic port infrastructure). Therefore consideration should be given to the *process* for determining what will be funded by the Government, and what will be funded by the private sector, and on what basis (BOO, BOOT etc). At present this is a very *ad hoc* process, leading to uncertainty for the investor.
- The need to ensure “investor confidence” is fully supported. However, in most places the report takes an unnecessarily constrained view of what the private sector might actually invest in. As elaborated below, private sector investment should not be seen as being limited to investing only in equipment and leases: the private sector might also provide *basic port infrastructure* (ie berths and land).
- The need identified in various parts of the draft Strategy to develop “freight only corridors” is commendable, but focuses only on roads. The analogy for trains would be the need to provide dedicated track(s) that do not intersect passenger lines.

AREAS WHERE GREATER EMPHASIS IS REQUIRED

- There is a primary focus on container *imports* (eg pages 4, 11) for metropolitan areas, but insufficient attention is paid to container *exports* (often from regions, but also from metropolitan areas) and the road and rail linkages that connect them to the export port. This is especially important for capital city container ports where the volumes of imports and exports are almost exactly balanced (eg Fremantle and Melbourne).
- The section on National Port Freight Corridors (p 28 +), and Sections 3.4 and 7.4.1 need to be enhanced to address the following comments:
 - there is an almost total focus on road linkages and scant mention of rail linkages;
 - the benefits (and economies) of double stacking on rail are considerable; and
 - the focus is on *current* corridors – this needs to be complemented by vision and planning for the corridors will be needed well into the future.
- For many ports there is a need to secure *additional* freight corridors and associated buffers (ie that will be required in the next 50 years +) through statutory planning. Recommended Action 1.5 appears to deal only with *existing* landside access routes: it

should also deal with *future* corridors that will be required. The recommendation should therefore be broadened.

- Similarly, there is a need to identify and protect the sites for new (or expanded) intermodal “inland ports”, and appropriate buffers thereto.
- The view expressed at the foot of p 31 (paragraph 3 of Section 3.3.3) does not stand scrutiny in all cases. As intimated in paragraph 4 of Section 3.3.3 there *will* be limits to the growth of many capital city ports, and consideration needs to be given to the selection of additional sites that will be required in due course, and these sites (and the freight corridors and intermodal hubs that will serve them) need to be protected under planning schemes. For example, container throughput at the Inner Harbour in Fremantle will not be able to grow indefinitely, given the landside access constraints, and an additional facility will be required in Cockburn Sound during the current decade, and arguably as early as 2015. Sydney and Melbourne are likely to face similar constraints to growth and operational efficiency. Just as consideration is given to “second airports”, thought needs to be given to “second seaports” in some instances. Thought should be given to this now, and the land that will be required in the future should be secured today through appropriate statutory planning instruments.
- The provision of basic port infrastructure can often be delayed by Government concerns about the impact of GTE borrowings on the Government’s balance sheet and/or unavailability of capital injections by Government itself. Whatever the reason, this can act as a handbrake on economic development.

Basic port infrastructure (creation of land and common-user berths) can also be provided by the private sector.

This line of thinking seems to be absent in the first five Chapters. It only really emerges in Section 6.2.

For example, Recommendation 1.8 is deficient in that it makes no mention of the role of the private sector in the development of a port’s basic infrastructure. Similarly, recommendation 1.13 should (at the third dot point) be explicit and mention the possible role of the private sector in the provision of basic port infrastructure.

- The Strategy should make it very clear that the potential for private sector investment goes much further than investment in equipment and leases: the potential extends to the provision of basic port infrastructure itself (eg provision of common-user berths and backing land). Significant savings to the taxpayer will result; alternatively, these funds can be allocated to core Government functions.

SIGNIFICANT OMISSIONS FROM THE STRATEGY

- Competition and choice

There are real benefits to users in competition from the private sector in the provision of basic (common-user) port infrastructure and services. There is no treatment of this in the Strategy.

There will be several forms of competition:

- in the *provision of port infrastructure*
- in the *provision of port services*
- and possibly in terms of the *model of port operation* (ie the private sector is unlikely to be a traditional “landlord” model)

As a result, there will be competition in price, in service, and in innovation (both technically, and in terms of commercial arrangements). These will directly benefit port users, and the benefits should flow to importers, exporters, and the community generally

At the same time, there will be

- reduced need for regulatory intervention in port operations
- less public debt
- reduced project risk for Government

- Inherent weaknesses in current port planning processes

Wherever there is a statutory port authority, then port planning is undertaken by the *Port Authority*. To the extent that the private sector might provide competition to the Port Authority itself in the provision of either or both *infrastructure* and *services*, then the Port Authority has a clear potential conflict of interest and (through its planning processes and documents) can work to the detriment of (alternative) private sector providers.

The question therefore needs to be asked as to whether port planning can be left solely as a responsibility of a Port Authority.

State Governments should also have an overarching role that includes determining which parts of a plan will be funded by the Government, and which parts will be funded by the private sector.

Indeed, the Competition and Infrastructure Reform Agreement (CIRA) signed by the Council of Australian Governments in 2006 extended the ambit of competition principles to ports. As part of this agreement, the parties to the Agreement have indicated that planning processes should *facilitate* the entry of new suppliers of port and related infrastructure services.

The use of the term *facilitate* is significant as this means the entry of new suppliers should be made easy, or less difficult, or more easily achieved. It follows that port planning processes should do more than *not obstruct* the entry of new suppliers in order to comply with the CIRA. They should be proactive in doing so.

But this does not often happen.

By way of example, planning by Fremantle Ports has focused almost exclusively on planning for basic port infrastructure that it will own. There has been little dialogue or collaborative planning with potential new suppliers of common-user infrastructure such as JPPL. As a result Fremantle Ports proposed one option for new container facilities in the Outer Harbour (*Kwinana Quay*) which had a footprint that overlapped the already environmentally-approved James Point *Bulk and General Facility* footprint! (That particular option has recently been withdrawn.)

There is a current situation that would not have arisen if there had been appropriate planning processes. Consistent with its entitlements under its Operating Agreement with the WA Government, JPPL is continuing the planning and approvals process for an *International Container Facility* (which the Government is required to facilitate under the Operating Agreement), while in parallel the statutory port authority is undertaking the same processes for the approval of its *Kwinana Quay* container facility.

Only one of these will be required, but there has been no indication from Government as yet as to how and when a decision will be made between these competing proposals.

A related question should also be asked: does the *charter* of a Port Authority in Western Australia provide sufficient grounds to **cause** it to facilitate the entry of new suppliers through its planning activities?

The current legislative and regulatory framework for port authorities in Western Australia contains a mixture of public interest objectives (e.g. trade facilitation) and commercial objectives (e.g. profitable operations) and would seem to at least **allow** the authorities to plan on a basis which does not focus exclusively on their own assets and their commercial interests.

An example of planning on this basis is the study undertaken by Worley Pty Ltd for the Port Hedland Port Authority titled *Port Hedland Port Authority Planning Study Phase 2 Report (Report 302/00394/2 18 Aug 2003)*. This study examined the future pattern of development in the port without pre-empting the ownership of particular facilities and was intended in part to provide a guide for proposals from the private sector.

Such an approach is commendable.

By way of recommendation, JPPL contends that there should be a greater role (and as a minimum an oversight role) in port planning by other parts of Government that do not have the conflicts of interest likely to be experienced by a Port Authority. As the planning of future port development is a key role for port authorities it would not be sensible to dilute their role to the extent that they were no longer responsible for the activity. However, exercise of this responsibility should be guided by directions, approvals or input from other parts of Government with purely public interest objectives. In addition, they could ensure that there is ample opportunity for meaningful input to port planning by potential private sector providers of new infrastructure. In WA The Department of Transport would be an appropriate body.

There are other benefits to be derived from the direct involvement of other parts of Government (together with input from the private sector) in port planning. First, the transport linkages to the hinterland which lie beyond the port boundary are critical to the successful operation of a port and planning for these will not be the port authority's responsibility. Second, there are likely to be overarching planning policies and strategies that are relevant to the development of the port with which port planning needs to align. Examples include the avoidance of congestion and conflict between freight movement and people movement, by both road and rail, in the urban area.

- ... Collaboration and co-ordination in *planning* between the public and private sectors suggested above is much more likely to lead to agreements as to which sector is better placed to respond to particular areas of unmet need.

WA/FREMANTLE

- The estimates for container throughput shown on p 77 are based on a growth rate that is only half what has occurred since 1991 (ie a growth rate of 9.4% pa). As a result, the figures shown are likely to be a significant underestimate, especially given the resurgent boom in the economy.

I would be happy to elaborate further on any of the above issues to you or your support staff.

Yours sincerely



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JAMES POINT PTY LTD (JPPL)
(information as at May 2010)

Overview of James Point Proposals

JPPL was formed to respond to an expression of interest/request for proposals process initiated by the WA State Government in 1997. The process concluded in December 2000 when an Operating Agreement was executed between the State of Western Australia acting through the Minister for Lands, the Minister for Transport and JPPL. Under the Operating Agreement JPPL agreed to fund, construct, own and operate a port at James Point, near Kwinana and to provide port services at the port.

The State has a number of defined obligations under the Agreement including to “facilitate the obtaining of all required approvals”. The State is also responsible for the provision of road and rail access to the port.

The Operating Agreement envisaged an overall concept to be developed in several stages, in which:

- “Stage 1” will comprise a *Bulk and General Facility* (at a site just north of Fremantle Ports’ Kwinana Bulk Terminal); and
- “Stage 2” will comprise an *International Container Facility* (at a site a little to the south of the Fremantle Ports’ Kwinana Bulk Terminal and immediately north of the landmark known as James Point which is just to the north of the BP Refinery).

Subsequent stages were only envisaged in very general terms.

Both proposed facilities involve reclamation of the seabed.

Bulk and General Facility (“Stage 1”) Approvals and Timing

Stage 1 involves reclamation of 14 hectares of seabed, and the construction of 600 metres of common user bulk and general berths. The total cost of reclamation and berth construction will be privately funded.

The Minister for the Environment approved the implementation of the proposal in November 2004 (subject to a range of conditions) but the necessary amendment to the Metropolitan Region Scheme (MRS) originally requested in 2001 took until 2009 to be finalised. This was due in part to the potential impact of the Fremantle Ports’ proposals for *Kwinana Quay* which had the potential to either overlap or (in the case of road and rail access) to transect the JPPL Stage 1 footprint.

This illustrates the lack of overall co-ordinated planning, thereby creating critical delays in the implementation of Stage 1, which has significant potential to provide relief to the current

shortage of bulk berths in the Outer Harbour and to generate exports which otherwise could not sustain significant demurrage costs and remain internationally competitive.

International Container Facility ("Stage 2") Scope, Approvals and Timing

The *International Container Facility* would be located at the southern end of Cockburn Sound, immediately north of James Point. JPPL proposes to reclaim approximately 100 hectares of seabed (most of which is currently under only 3-4 metres of water) and to construct 1.0 km of berths (three container berths). It is probable that two container berths would be constructed in the first instance, with an annual throughput capacity of 1.2 million TEUs or greater.

The total cost of reclamation and berth construction will be privately funded.

As with the *Bulk and General Facility*, road connections and rail connections to the State and national networks (which are close by) will be the responsibility of the State under the Operating Agreement.

It is important to note that this privately-funded *International Container Facility* is a direct competitor to Fremantle Ports' publicly-funded *Kwinana Quay* proposal to build an island container facility in Cockburn Sound. As container throughput continues to grow, each of the two proposals is intended to cater for the "overflow" of container operations at the Inner Harbour when it (and/or its related road and rail linkages) reaches capacity.

Only one such new facility is required: either JPPL's significantly cheaper proposal or Fremantle Ports' *Kwinana Quay*: there has been no indication from Government as to how and when a decision will be made between these competing proposals.

JPPL is currently undertaking extensive technical and environmental studies for its proposal.

Public review has just been completed of the *Environmental Scoping Document* (which is an initial public phase in the preparation of an *Environmental Review and Management Program* required by the WA Environmental Protection Authority). In due course, an amendment to the Metropolitan Region Scheme will be required and a formal request for this process to begin was made in August 2005. These approval processes are expected to take approximately two years and it would be a further three years before the first two berths could become operational.