



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON FINANCE  
AND PUBLIC ADMINISTRATION

INQUIRY INTO:

# PORT PHILLIP BAY: CHANNEL DEEPENING

FIRST INTERIM REPORT

JUNE 2008





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# **STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION**

## **Committee Members**

**Mr Gordon Rich-Phillips – Chairman**

Member for South Eastern Metropolitan Region

**Mr Matthew Viney – Deputy Chairman**

Member for Eastern Victoria Region

**Mr Greg Barber**

Member for Northern Metropolitan Region

**Ms Candy Broad**

Member for Northern Victoria Region

**Mr Matthew Guy**

Member for Northern Metropolitan Region

**Mr Peter Hall**

Member for Eastern Victoria Region

**Mr Peter Kavanagh**

Member for Western Victoria Region

## **Substituted Members**

From 2 – 10 June 2008, Mr Brian Tee substituted for Ms Candy Broad.

## **Committee Staff**

**Mr Richard Willis – Secretary to the Committee**

**Mr Anthony Walsh – Research Assistant**

Address all correspondence to –

Council Committee Office  
Department of the Legislative Council  
Parliament of Victoria  
Spring Street  
EAST MELBOURNE VIC 3002

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## **ESTABLISHMENT OF THE STANDING COMMITTEE**

On 21 November 2007, the Legislative Council resolved to appoint a Standing Committee on Finance and Public Administration with a Membership of seven Members. The Council's resolution came into operation on 1 April 2008 and the Committee's inaugural meeting was convened on 7 April 2008.

In accordance with the establishing resolution, the following Members were appointed to the Committee:

- Mr Greg Barber - Australian Greens,
- Ms Candy Broad - Australian Labor Party,
- Mr Peter Hall – Nationals,
- Mr Matthew Guy - Liberal Party,
- Mr Peter Kavanagh - Democratic Labor Party,
- Mr Gordon Rich-Phillips - Liberal Party, and
- Mr Matthew Viney - Australian Labor Party.

At its inaugural meeting the Committee elected Mr Rich-Phillips as Chairman and Mr Viney as Deputy Chairman.

The establishing resolution provides the Committee with a wide range of powers. Some key features of the Standing Committee include:

- The Standing Committee exists until the Parliament is either prorogued or dissolved.
- Members of the Committee may be substituted by another Member from the same political party.
- The Committee has the power to inquire into any matter or thing relevant to its functions, which is either referred to it by resolution of the Council, or determined by the Committee.
- The power to appoint sub-committees to inquire into matters.





## **1. TERMS OF REFERENCE**

1. On 27 February 2008, the Legislative Council resolved to require the Standing Committee on Finance and Public Administration to:

Examine the business case for the Port Phillip Bay channel deepening project as presented by the Port of Melbourne Corporation (PoMC) and the Victorian government and the legal and financial arrangements between the PoMC and Boskalis Australia Pty Ltd and/or its parent company, Royal Boskalis Westminster NV, and report its findings by 30 June 2008.

## **2. INQUIRY PROCESS**

2. The Committee's Inquiry process involved three steps:
  - Call for written submissions;
  - Request for contract documents from Port of Melbourne Corporation and Boskalis Australia; and
  - Conduct of public hearings.

### **2.1 Written Submissions**

3. On 7 April 2008, the Committee resolved to advertise its terms of reference and seek public submissions. Advertisements were placed in *The Age* and *Herald-Sun* newspapers and eight major regional newspapers.
4. Submissions closed on 28 April 2008 with extensions granted upon request, until 8 May 2008. A total of 37 written submissions were received (see Appendix I). Several submitters requested an opportunity to appear at a public hearing to give further evidence.

5. In addition to the 37 substantive submissions, a further 210 pro-forma submissions (no. 15) were also received.

## **2.2 Request for Channel Deepening Alliance Contract Documents**

6. On 28 April 2008, the Committee resolved to write to the Port of Melbourne Corporation (PoMC) and Boskalis Australia requesting copies of all contracts and appendices between the Port of Melbourne Corporation and Boskalis Australia Pty Ltd and/or Royal Boskalis Westminster NV relating to the Port Phillip Bay Channel Deepening Project.
7. In response, Boskalis, on behalf of the Alliance between it and the PoMC, provided the following documents:
  - Channel Deepening Project Alliance Agreement dated 5 July 2004;
  - Deed of Guarantee and Indemnity dated 5 July 2004; and
  - Deed of Variation and Amendment dated 22 March 2005.
8. The Alliance did not provide the following information on the grounds that its public disclosure has the likelihood of causing substantial damage to Boskalis' interests:
  - terms which reflect commercially negotiated positions between the PoMC and Boskalis as to the allocation of cost and risk;
  - financial information regarding revenue, costs and profit in relation to the project: and,
  - proprietary information of an intellectual property nature.
9. A copy of the correspondence received from Boskalis is attached Appendix II.

10. Following a request from the PoMC and Boskalis for confidentiality, the Committee subsequently resolved not to publicly release the Alliance Agreement documents.

### **2.3 Public Hearings**

11. Following receipt of written submissions and documents from Boskalis and the PoMC, the Committee proceeded to take evidence in public hearings on 5 and 6 June 2008. The hearings were designed to compliment and expand on written submissions and to provide a balance of views and evidence relevant to the Committee's terms of reference.

12. The Committee took evidence from the following witnesses:

- Australian Conservation Foundation;
- Australian Horticultural Exporters Association;
- Blue Wedges Coalition;
- Boskalis Australia;
- Department of Transport;
- Dive Victoria Group;
- Economists@Large and Associates;
- Meyrick & Associates;
- Mr Richard McEncroe, consultant economist;
- Port of Melbourne Corporation;
- Victorian Employers' Chamber of Commerce and Industry;
- Victorian Farmers Federation; and,
- Victorian Freight and Logistics Council.

### **3. REPORTING**

13. Due to the unavailability of Hansard Services, the Committee was unable to commence its hearings until the first week of June.
14. Following hearings, the Committee has continued to receive evidence on notice from witnesses.
15. The Committee now seeks an extension of its reporting date to 11 September 2008 to complete the writing of its report.

The Committee Room  
23 June 2008

## **APPENDIX I**

### **LIST OF WRITTEN SUBMISSIONS RECEIVED**

1. Dr Robert Gunter
2. Mr Bill Chalkley & Mr Bill Dowling
3. Mr Colin Smith
4. Australian Peak Shippers Association Inc
5. Mr Peter Goad
6. Ms Jenny Rankin
7. Dr Jennifer McCracken
8. Mr Gary J Howard
9. Captain Frank Hart
10. Ms Catherine George-Sheahan
11. Ms Lynette Keleher
12. Port Phillip Conservation Council
13. Mr Jim Walker
14. Shipping Australia Limited
15. Blue Wedges Coalition Supporters
16. Ms Jennifer Streaton
17. Ms Rosemary Baille
18. Blue Wedges Coalition
19. Alliance of Councils for Rail Freight Development
20. Ms Susannah Bell
21. Mr Wal Grahame
22. Frankston Beach Association
23. Ms Patsy Crotty

24. Victorian Farmers Federation
25. Australian Horticultural Exporters Association
26. The Dive Victoria Group
27. Mr Barry Robinson
28. Mr Terry Croft
29. Mr Robert Parry
30. Captain Fredrich Niemann
31. Victorian Freight and Logistics Council
32. Property Council of Australia
33. Victorian Employers' Chamber of Commerce and Industry
34. Economists@Large and Associates
35. Australian Conservation Foundation
36. Infrastructure Partnerships Australia

## APPENDIX II CORRESPONDENCE RECEIVED FROM BOSKALIS AUSTRALIA PTY LTD

Boskalis Australia Pty Limited



P.O. Box 341  
Chatswood, NSW, 2057  
Level 8, Tower A, Zenith Centre  
821 Pacific Highway  
Chatswood, NSW, 2067

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E-mail boskalis@boskalis.com.au  
Internet www.boskalis.com

Legislative Council Standing Committee  
on Finance and Public Administration  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Attn. Mr Richard Willis  
Secretary, Council Committees

Your reference      Our reference      Date  
-      -      13 May 2008

**Subject: Parliamentary Inquiry into the Port Phillip Bay Channel Deepening Project**

Dear Mr Willis,

I refer to your letter of 5 May 2008.

As I understand the Committee will be aware, Boskalis has been working cooperatively with the Port of Melbourne Corporation (PoMC) in all matters relating to our alliance agreement. We have reviewed the Channel Deepening Project Alliance Agreement, the Deed of Variation and Amendment, and the Deed of Guarantee and Indemnity in anticipation of the Committee's request for the production of those documents.

That review has been carried out to identify the limited parts of those agreements which:

- reflect the outcome of commercial negotiation between PoMC and Boskalis as to the allocation of cost and risk;
- contain sensitive financial information as to revenue, costs and profit in relation to the Channel Deepening Project (**Project**); and
- contain details of proprietary information such as Boskalis' intellectual property or trade secrets, for example information which discloses matters such as the production rates which Boskalis is able to achieve with its equipment.

That information, if put into the public domain has a real likelihood of causing substantial damage to Boskalis' interests both in Australia and in the context of its worldwide operations. The information we have identified has significant value to Boskalis' competitors and also to those with whom Boskalis may be invited to contract in future.

Royal



A.C.N. 099 738 333, A.B.N. 63 099 738 333

**STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION**  
**INQUIRY INTO PORT PHILLIP BAY: CHANNEL DEEPENING - APPENDICES**

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Boskalis Australia Pty Limited  
Reference : -  
Date : 13 May 2008



As the Committee is aware, the Project is being conducted as an alliance between the PoMC and Boskalis. Alliancing results in the sharing of risks and responsibilities for delivery of a successful outcome, and provides better value for money and improved project outcomes through a more integrated approach between the public and private sectors working together towards project delivery. The alliance model brings all of the stakeholders together with each having an incentive to complete the project as quickly, cheaply and successfully as possible.

As is clear from the Department of Treasury and Finance's Guide to Alliancing, project alliances have the potential to produce many positive outcomes for the State including greater certainty over project costs, opportunities for innovation and improved performance in delivery of projects.

However, in order to achieve those beneficial outcomes for the State, companies such as Boskalis who contract in an alliance are required to disclose more commercially sensitive information relevant to the method by which the project is to be concluded than would be the case if a standard contracting approach were to be adopted.

The disclosure of that information would result in significant damage to Boskalis' interests, and is likely to discourage the use of alliancing for future projects.

In those circumstances, I enclose copies of:

1. the Channel Deepening Project Alliance Agreement dated 5 July 2004;
2. the Deed of Guarantee and Indemnity dated 5 July 2004; and
3. the Deed of Variation and Amendment dated 22 March 2005,

with limited redactions so as not to expose Boskalis unreasonably to disadvantage.

Boskalis understands that:

- in general terms when having regard to the disclosure of commercial contracts, the State is guided by criteria established by Parliament and set out in the Victorian *Freedom of Information Act* 1982, and the matters set out in the policy statement issued by the then Premier entitled "Ensuring openness and probity in Victorian Government Contracts" dated 11 October 2000;
- the concepts expressed in the *Freedom of Information Act* and in that policy reflect the State's understanding of the need to balance the interests of open government with the commercial interests of those with whom the State contracts, on the basis that if those real and significant interests are overlooked, the State may be prejudiced in future in its ability to contract with third parties on the best possible terms.

Consistently with those principles, we have not sought to exclude information which is already available to our competitors or information which could be disclosed without causing Boskalis' competitive position substantial harm.



**STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION**  
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Boskalis Australia Pty Limited  
Reference : -  
Date : 13 May 2008



Our request to keep the redacted parts of those documents confidential is not made lightly and reflects the culmination of detailed analysis of the documents with a view to ensuring that disclosure is as broad as possible without being so broad as to damage Boskalis' commercial interests.

Please contact me if you require any additional information about the documents.

Yours sincerely,



Mattijs Siebinga  
Director  
Boskalis Australia Pty Ltd

