



# Port of Townsville Limited Berthing Regulations

Approved

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## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In these Regulations, the following terms have the meanings specified below:

**"Agents"** means a company or individual acting as a designated Shipping Agent responsible for handling shipments and cargo through the port of Townsville.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in Townsville.

**"Code of Practice for the Safe Loading and Unloading of Bulk Carriers"** means the Code of Practice for the Safe Loading and Unloading of Bulk Carriers promulgated by the International Maritime Organisation pursuant to IMO Resolution A.862(2), as amended or replaced from time to time.

**"POTL"** means Port of Townsville Limited (ACN 130 077 673).

**"Financial Year"** means each period of 12 months beginning on 1 July and ending on the next 30 June.

**"Good Operating and Maintenance Practice"** means, with respect to the operation and maintenance of the POTL facilities, adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Port of Townsville.

**"Material Change"** means a change which in reference to a vessel ETA or ETD is ~+/- 12 hours or is likely to impact other port users.

**"Port Limits"** means the limits of the port of Townsville or Pilot Boarding Ground for the purposes of a vessel's arrival time as determined by the Regional Harbor Master.

**"Regulations"** means these Berth Regulations, as amended from time to time.

**"Turn of Arrival"** means:

- (a) the vessel has reached the "port limits" as identified by the Regional Harbour Master,
- (b) the vessel is ready to be towed, berthed, de-ballasted and loaded without delay;

**"Vessel"** means a ship or other craft capable of transporting produce including but not limited to livestock, fuels, chemicals, bitumen, dry bulk, break bulk, containerised, project, scrap or vehicles by sea.

### 1.2 Interpretation

In the interpretation of these Regulations, where the context permits:

- (a) singular includes plural and vice versa;
- (b) reference to any gender includes all genders;
- (c) reference to a person includes a body corporate, association of persons, government or governmental authority; and
- (d) reference to "writing" include printing, typing, facsimile and other means of reproducing words in a visible and tangible form; it also includes electronic communication to and from POTL.

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### 1.3 Notices and Other Communications

- (a) Wherever any notice or information required to be provided to or by the Operator can be given by way of input into the POTL Information System, that notice or information must be given in that way.
- (b) Any notice or information which cannot practically be given by way of a relevant entry in the POTL Information System must be in writing and must be given by facsimile or email transmission as follows:

**Port of Townsville**

Address: duty@townsville-port.com.au

Attention: Duty Officer Marine Services

Fax: 07 4771 4493

- (c) All notices or communications given in accordance with Regulation 1.3(b) will be deemed to have been duly given or made:
  - (i) on the date on which the notice or communication would, in the ordinary course of the post, have been delivered to the address to which it was posted;
  - (ii) when delivered; or
  - (iii) if sent by facsimile transmission email, at the conclusion of an apparently successful transmission,but, if the delivery or facsimile is effected on a day which is not a business day or after 5:00pm in the place of receipt on a business day, it will be taken to have been given or made on the next business day.
- (d) Where the customer/agent initiates a communication by email, then an email response from POTL to the address of the customer will be taken to be an acknowledgment to the customer of receipt of the email.

## 2. BERTH BOOKING – APPLICATION PROCESS

### 2.1 Agents to Provide Berth Booking Details

For every vessel utilising a berth within the Port of Townsville Shipping Agents must submit a berth application to POTL Marine Services.

- (a) The Berth Application must detail in writing the following information:
  - (i) Vessel name and International Maritime Organisation Reference Number.
  - (ii) Berth requested.
  - (iii) Cargo details.
  - (iv) Estimated date & time of arrival at Townsville Port (Pilot station, anchorage position).
  - (v) Estimated date & time of departure Townsville Port (Pilot Station, anchorage position).
  - (vi) Estimated date & time of arrival at the preferred berth.
  - (vii) Estimated date & time of departure from the preferred berth.
  - (viii) Special operational requirements eg. vessel layup period.
  - (ix) Agents name and contact details.
- (b) Where the corresponding information on the Berth Application is incomplete the application will be deemed invalid and stakeholders advised accordingly.
- (c) With regards to Berth Applications the following guidelines will apply:
  - (i) Only one Berth Application is able to be lodged at a time for each performing vessel. Where duplication is discovered POTL may deem all associated Berth Applications to be invalid and advise stakeholders accordingly.

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- (ii) The estimated vessel time alongside/length of time berth booked in the Berth Application shall be estimated as per normal port shipping operations practice. If it is deemed by POTL to be excessive and/or unusual based on previous port history or other factors, and has a potential impact on port efficiencies/other users, POTL has the discretion to advise stakeholders that the booking is invalid.
- (iii) The vessel name on a berth application is able to be changed (by substituted vessel) without penalty if no other details materially change (E.g. Berth details or date.)
- (d) Where information on a berth application is deemed to be inaccurate or materially changing, POTL may deem the application invalid and advise stakeholders accordingly.

## **2.2 Berth Application Lodged Less Than 48 Hours Prior**

Where a Berth Application is lodged less than 48 hours prior to the arrival of the vessel, it is at the express discretion of POTL to approve the Berth Application dependent on the expected impact on port operations and other port users.

## **2.3 Agents to Keep POTL Informed of any Material Changes to Vessel ETA**

It is accepted the estimated arrival time of vessels may vary. To this extent the estimated times nominated in a berth application for the arrival of a vessel may materially vary. Where a Material Change to a vessel berth eta (either delay or prior arrival) is expected, the responsible vessels agent is to communicate with the Port of Townsville ASAP providing advice of the scope of the eta change.

## **2.4 Reassignment of Berth if Vessel Delayed**

Where the vessel delay is such that it is likely to materially affect the berthing of subsequent vessels and reduces berth efficiency, utilisation or occupancy, the delay may result in the berth allocation being re-assigned.

Reassignment of the berth allocation may not be required where there is no vessel allocated to the berth immediately after the delayed vessel, permitting it to arrive late and be worked causing no delay to other vessels. Where a delay may impact on following vessels allocated to the berth, an agreement in writing between affected stakeholders/agents of the following vessels which allow the delayed vessel to be worked first will also be considered.

## **3. BERTH BOOKING APPLICATION REVIEW**

Once a Berth Application has been lodged with the Duty Officer, Marine Services, POTL will undertake the following:

- (i) The Application will be reviewed by POTL and considered on the following basis:
  - a) All information required is included on Berth Application and is sanity checked against historical operations / schedule.
  - b) Previous Berth Bookings and Berth Schedule including maintenance & availability are reviewed.
  - c) The Berth Period requested is less than 42 days from date of application.
  - d) Any other operational and commercial factors are included in this review.
- (ii) POTL will advise the lodging party where the Berth Application is not completed and lodged in accordance with this Regulation or to the satisfaction of POTL.
- (iv) Where the preferred berth is not available at the time of scheduling or there is another viable option, POTL will notify the relevant stakeholders of available options.
- (v) POTL will advise status of the Application (confirmation or otherwise) within 48 business hours of receiving a Berth Application.

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A vessel is only able to be confirmed by POTL:

- i. if it lies in the 42 day window prior to Vessel ETA at Anchorage;
- ii. if it complies with all other aspects of this protocol; and,
- iii. if no other port user has shown a written interest in the berth at this particular time (using the Berth Application process).

Where there is more than one interested party for a berth, POTL will review and allocate berths according to user and operational requirements and berth/port efficiencies advising port users as appropriate.

#### 4. BERTHING PROTOCOL

Subject to existing Priority Berthing Contracts (detailed in Table 1), in general the principle of first berth application received applies bearing in mind the 42 day prior window of berth confirmations. Where a berth application is received for a ship which arrives on schedule it has priority access to the berth applied for providing:

- i. The berth selected is vacant and ready to receive the vessel.
- ii. The vessel/agent has provided a declaration of readiness to work the nominated cargo.
- iii. Sufficient cargo is available to be worked.
- iv. The vessel/agent has adequate labour and equipment booked to work the cargo immediately and to complete cargo within the scheduled timeframe.

This principle may not apply where:

- i. The agents/principals reach agreement amongst themselves or with the terminal operator (where applicable) to change the order – any agreement is to be provided to the Port of Townsville in writing.
- ii. Where changing the order of vessels will maximise port/berth efficiencies and infrastructure utilisation.
- iii. The vessel arriving first is not scheduled to work cargo.
- iv. Where special consideration is required to be given to vessels restricted to working at a particular berth or whose cargoes are subject to time based quarantine/customs clearance (Refer Table 2).
- v. Local council/statutory restrictions prevent vessels from working cargo 24 hours/day. Vessels affected by this and working cargo two shifts a day will have the same right to a berth as a competing vessel scheduled to work cargo 24 hours/day eg scrap metal.
- vi. A berth application has not been received as outlined in section 2.
- vii. An alternative berth is vacant, POTL will refer to Table 2 to determine priority use for that berth and where appropriate make that berth available.
- viii. Where owing to unusual circumstances disruption to the existing schedule occurs (e.g. labour strikes, equipment failure etc.) POTL Marine and Logistics will take reasonable action, including but not limited to modifying the schedule to minimise the overall impact to **ALL** port users.
- ix. Where agents or other stakeholders provide insufficient, untimely, inaccurate or incomplete information to POTL.

In reference to paragraph (i) above, Shipping Agents are to be aware that should an agreement be made to change the order of vessels on a berth & the change occurs, or if re-allocation to another berth occurs this may potentially result in the loss of claim for allocation for the original berth however this will be discussed with stakeholders.

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## 5. OPERATING DELAY

Where the cargo operations on a vessel are suspended for any reason other than natural causes (e.g. tide and weather), or which Australian regulatory authorities detain, it may remain alongside at the discretion of the Port of Townsville following consultation with the vessel agent.

Where a vessel delay causes arriving ships to proceed to anchorage POTL in consultation with affected agents/principals will determine the amended vessel line-up. The determination will be based on all relevant facts including the operational footprint of the parties concerned and the ramifications thereof.

Where another vessel is competing for that berth, POTL may, at its discretion, require the removal of the vessel from the berth subject to prevailing circumstances unless the agents/principals reach agreement amongst themselves or with the terminal operator (where applicable) to change the order.

Where the cargo operations on a vessel delay the departure of that vessel past its projected ETD to the extent that the following vessel misses its allocated time slot

All costs associated with moving a vessel from a berth as well as associated vessel delays will be to the account of the owner, principal or agent of the vessel.

## 6. ADVERSE DEPARTURE

Upon completion of cargo work a vessel must depart from the berth at the first opportunity unless there are special circumstances preventing it from doing so or where an agreement has been reached with POTL for an extension of time alongside.

Where a vessel alongside is scheduled to move to another berth for further loading/unloading departure from the first berth is not to be delayed due to the second berth being occupied unless there are no vessels scheduled for the first berth during the period of the delay. Where another vessel is scheduled for the first berth the unloaded vessel will depart the first berth for anchorage.

An exception to this will occur when an agreement has been reached between respective agents and/or with POTL for an extension of time alongside. Where an agreement cannot be reached between respective agents POTL may at its absolute discretion adjudicate in the matter by directing the vessel to depart the berth and all costs associated with moving a vessel from the first berth will be to the account of the owner, principal or agent of the vessel.

## 7. ADVERSE WEATHER

Berthing and de-berthing of vessels during adverse weather conditions will occur at the discretion of the Regional Harbour Master, Townsville in consultation with POTL. Once a decision to cease vessel movements has been made, POTL will advise all interested parties. It should be noted that under certain climatic conditions it may be possible to berth/de-berth one type of vessel and not another. Such decisions are made at the sole discretion of the Regional Harbour Master, Townsville and POTL.

Where due to periods of excessive rainfall the loading or unloading of a vessel has been delayed and the Bureau of Meteorology indicates consistent heavy falls will continue a consultative process will be initiated to determine the implication of a vessel which is unable to work remaining at the berth against being moved to anchorage to permit other vessels whose activities are unaffected by the rain to occupy that berth. All costs associated with moving a vessel from the berth will be to the account of the owner, principal or agent of the vessel. POTL will monitor weather forecasts at all times with a view to minimising projected disruptions to all parties.

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## 8. MISSED ALLOCATION

Where a vessel misses its allocated berthing window, POTL may at its absolute discretion revise the shipping schedule to accommodate the vessel, having regard to the following criteria:

- I. Berth availability;
- II. Priority berthing contracts;
- III. Turn of arrival;
- IV. Efficiency of port operations; and
- V. Port safety and security.

All costs associated with any revision to accommodate the vessel will be to the account of the owner, principal, or agent of the vessel.

## 9. GENERAL

POTL reserves the right to amend these regulations or any related documents at any time. Any changes to the above will be made following due consultation with agents, owners, shipping customers and stevedores, but POTL's decision in relation to any changes will be final.

The above do not limit the terms and conditions for berthing, facilities and services attached to the berth application.

As has been normal practice with all stakeholders, any direction from the POTL Marine Services Manager will be provided via the updated shipping schedule and communications with agents (or principles if the principle is the agent). Directions from the POTL Marine Services Manager is not required to be and will not be provided in writing to individual parties.

## 10. FINAL DECISION

Any decision regards to allocation of berths made by POTL Manager Marine Services in these circumstances is to be considered final.

## 11. POTL DISCRETION AND STATUTORY OBLIGATIONS

At all times, berth allocation will be at the discretion of POTL subject to Priority Berthing Contracts. POTL always reserves the right to vary the berthing rotation or order the removal of a vessel from a berth.

Notwithstanding anything contained in this document, POTL's actions in relation to marine operations will at all times be governed by the *Transport Infrastructure Act 1994* (Qld) and subject to any directions of the Regional Harbour Master, Townsville, Maritime Safety Queensland pursuant to the *Transport Operations (Marine Safety) Act 1994* (Qld).

Nothing in these regulations affects the ability of an Authorised Officer of POTL to issue a direction pursuant to the *Transport Infrastructure Act 1994* (Qld) or the operation of POTL's Port Notices.

These regulations are also subject to the powers of the Regional Harbour Master under the *Transport Operations (Marine Safety) Act 1994* (Qld).

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Berth	Priority Arrangements - Contracts
1	<b>Nil</b>
2	<b>Xstrata Leased Berth, Queensland Nickel Licence</b> QN to determine the order of berthing and priority of use for QN vessels, the unloading of nickel ore (and other commodities with the consent of POTL) for use at or in connection with the Yabulu Nickel Plant or the loading of QN product.
3	<b>Glencore Leased Berth, Sub-Leased to NSS</b> NSS to determine the order of berthing of vessels subject to the approval of the POTL Manager Marine Services.
4	<b>Nil</b>
7	<b>Glencore Licence</b> Glencore is to provide all cargo services required by vessels and is to determine the order of berthing.
8	<b>Glencore Licence</b> Wharf is to operate as a multi-user facility. Wharf may be used by POTL or Third Party Users at times when it is not required for use by Glencore, provided such use does not interfere or adversely affect the use of the wharf or the facilities by Glencore. Glencore has priority of berthing for the Permitted Use at the wharf (receipt, storage, handling and/or loading of mill sugar and related purposes to such a use or other uses that are approved by POTL). In the event of emergencies the POTL Manager Marine Services, acting reasonably, may need to take action which temporarily affects the priority berthing rights. Glencore will ensure that POTL receives the shipping schedule on a regular basis. Both parties recognise that shipping overlaps occur from time to time and agree to negotiate in good faith to resolve such issues. Both parties must use best endeavours to expedite ship turnaround time. Both parties acknowledge that a ship may need to remain at berth past a scheduled time to complete loading or discharge activities in
9	<b>Queensland Sugar Limited Licence</b> Wharf is to operate as a multi-user facility. Wharf may be used by POTL or Third Party Users at times when it is not required for use by QSL, provided such use does not interfere or adversely affect the use of the wharf or the facilities by QSL. QSL has priority of berthing for the Permitted Use at the wharf (receipt, storage, handling and/or loading of mill sugar and related purposes to such a use or other uses that are approved by POTL). In the event of emergencies the POTL Manager Marine Services, acting reasonably, may need to take action which temporarily affects the priority berthing rights. QSL will ensure that POTL receives the shipping schedule on a regular basis. Both parties recognise that shipping overlaps occur from time to time and agree to negotiate in good faith to resolve such issues. Both parties must use best endeavours to expedite ship turnaround time. Both parties acknowledge that a ship may need to remain at berth past a scheduled time to complete loading or discharge activities in the event of unforeseen circumstances. In the event of an extended delay (equal to or greater than 12 hours) it is agreed that the ship will be required to de-berth to make way for an incoming ship.
10	Under Deed of Licence giving priority use to Cruise, Australian Defence Force and Major Foreign Defence Vessels. At other times the wharf is to operate as a multi-user facility. The wharf may be used by POTL or Third Party Users at times when it is not required for use by priority use parties.
11	<b>BHP Billiton Licence</b> Wharf is intended to operate as a multi-user facility. Wharf may be used by POTL Third Party Users at times when it is not required for use by BHPB or BHPB Third Party Users, provided such use does not interfere to a material extent with the operation and maintenance of BHPB's improvements. POTL Third Party Users cannot use any of BHPB's equipment except by agreement with BHPB. BHPB may charge for the use of its equipment. BHPB has priority berthing rights for vessels requiring the use of BHPB Equipment (i.e. BHPB or BHPB Third Party Users). As between vessels requiring the use of BHP Equipment the berthing rights are to be granted to the vessel which arrives first at the fairway marker which marks the entrance to the shipping channel. BHPB's priority berthing rights are subject to the directions of POTL's Manager Marine Services in cases of emergency and in respect to safety issues. <i>"Priority of berthing rights" includes, without limitation, the following:</i> (i) <i>A BHP Third Party User ship shall have priority use of the Wharf over a POTL Third Party User ship if they arrive at the Port at approximately the same time;</i> (ii) <i>If a POTL Third Party User ship is berthed at the Wharf (whether or not loading or unloading) when a BHP Third Party User ship arrives at the Port, the POTL Third Party User ship shall vacate the Wharf in favour of the BHP Third Party User ship as soon as possible but not later than 24 hours after notification to move has been given by the Traffic Officer.</i> <i>The Licensor shall ensure that the Traffic Officer acts in accordance with the intent of this Clause.</i>

### Example 1

*A scrap metal vessel arrives to berth alongside Berth 9 with an estimated cargo transfer time of 2-3 days. A car vessel arrives shortly thereafter with an estimated cargo transfer time of 5-6 hours. No other berths are available for either vessel except Berth 9.*

#### **Action:**

The car vessel should be accommodated first as this outcome will maximise utilisation of infrastructure and efficiency in cargo operations subject to agreement between all parties.

*A sugar vessel subsequently arrives to berth alongside Berth 9 shortly after commencement of unloading operations on the car vessel.*

#### **Action:**

As sugar has priority berthing entitlements on Berth 9, the sugar vessel is to be accommodated before the scrap metal vessel once the car vessel departs. This is unless the ships' agents agree otherwise amongst themselves.

### Example 2

*A sugar vessel arrives to berth alongside Berth 9 with an estimated cargo transfer time of 2-3 days. A car vessel arrives shortly thereafter with an estimated cargo transfer time of 5-6 hours. No other berths are available for either vessel except Berth 9.*

#### **Action:**

The car vessel should be accommodated first as this outcome will maximise utilisation of infrastructure and efficiency in cargo operations subject to agreement between all parties.

*A molasses vessel subsequently arrives to berth alongside Berth 9 whilst the unloading of the car vessel is underway.*

#### **Action:**

As sugar has priority berthing entitlements on Berth 9, the sugar vessel is to be accommodated before the molasses vessel unless the ships' agents agree otherwise amongst themselves. It is likely, given the products (sugar/molasses), that an arrangement can be reached between the product owners as to which vessel is to be accommodated first.

### Example 3

*A car vessel arrives to berth alongside Berth 4 however this berth is not expected to be available for at least another 24 hours. Berth 3 is not in use for the next 24 hours.*

#### **Action:**

Seek agreement from NSS for the car vessel to berth alongside Berth 3. If agreement cannot be reached, the car vessel will need to sit at anchor until Berth 4 or another berth becomes available.

### Example 4

*A vessel is alongside Berth 9 however the unloading/loading is delayed for unforeseen circumstances which will delay the berthing of a QSL vessel.*

#### **Action:**

The berthed vessel is to be directed to move from the berth where such loading/unloading is not expected to be completed within 12 hours beyond its original scheduled departure time.

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