

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Affidavit

File Number: ACT 2 of 2020

File Title: Re Application for authorisation AA1000473 lodged by New South Wales Minerals Council on behalf of itself, certain coal producers that export coal through the Port of Newcastle, and mining companies requiring future access through the Port, and the determination made by the ACCC on 27 August 2020

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 29/07/2021 6:50 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2020

Re: Application for authorisation AA1000473 lodged by New South Wales Minerals Council on behalf of itself, certain coal producers that export coal through the Port of Newcastle, and mining companies requiring future access through the Port, and the determination made by the ACCC on 27 August 2020

Applicant: Port of Newcastle Operations Pty Limited

AFFIDAVIT

I, Dave Poddar, of 1 O'Connell Street, Sydney, New South Wales, solicitor, affirm:

1. I am a partner at Clifford Chance, the solicitors for New South Wales Minerals Council (NSWMC) in these proceedings. I have carriage of this matter for NSWMC and am authorised to make this affidavit on NSWMC's behalf.
2. I have personal knowledge of the facts and matters referred to in this affidavit, except where indicated otherwise.
3. I make this affidavit opposing the application dated 17 September 2020 made by the Port of Newcastle Operations Pty Ltd ACN 165 332 990 (PNO) seeking a review of the determination of the Australian Competition and Consumer Commission (ACCC) dated 27 August 2020 in respect of an application for authorisation lodged by NSWMC (AA1000473).
4. I previously affirmed an affidavit in this proceeding on 25 June 2021 (**First Poddar Affidavit**). The First Poddar Affidavit provided evidence of, inter alia, PNO's intention to develop a Container Terminal at the Port of Newcastle (**Container Terminal**). Since the First Poddar Affidavit, PNO have filed evidence in respect of PNO's relationships with the Coal Terminals and made further statements confirming their intention to develop the Container Terminal.

Confirmation of PNO's intention to develop the container terminal

5. On 29 June 2021, *Australian Competition and Consumer Commission (ACCC) v NSW Ports Operations Hold Co Pty Ltd [2021] FCA 720 (NSW Ports Judgment)* was handed down. I understand that the ACCC have appealed the NSW Ports Judgment. Since the release of the NSW Ports Judgment, PNO have publicly reiterated their commitment to developing a container terminal at the Port of Newcastle.
6. On 22 July 2021, PNO released a statement in response to the NSW Ports Judgment. In the statement, PNO maintains its "real-world view that a container terminal is entirely viable – and necessary -at the Port". The statement confirmed that the NSW Ports

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Ryan Draper
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Dave Poddar
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Judgment "does not alter Port of Newcastle's desire to build a container terminal".
Annexed and marked "DP-19" is a copy of PNO's statement dated 22 July 2021.

- 7. On 24 July 2021, PNO announced a \$28.4-million investment in two Liebherr LHM 550 mobile harbour cranes. PNO stated the cranes will increase efficiency and provide an enhanced alternative for customers currently moving both oversized equipment and containerised cargoes. PNO went on to also state, "Naturally, we would also like to be announcing the next stage in our game changing \$2.4-billion Multi-purpose Deepwater Terminal Project. Although we are not presently in that position, Port of Newcastle's goals are unwavering". Annexed and marked "DP-20" is a copy of this statement from PNO dated 24 July 2021.

Affirmed by the deponent
 at Sydney
 in New South Wales
 on 29 July 2021

)
) DocuSigned by:
) *Dave Poddar*
) E32DA7715E854F1...
) Signature of deponent
)

Before me:

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Ryan Draper
 B524549E72AE40D...

Signature of witness
 Ryan Draper
 Solicitor of the Supreme Court of New South Wales

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Applicant: Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-19

This is the Annexure marked "DP-19" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 29 July 2021.

Before me:

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Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

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(https://www.portofnewcastle.com.au)



NEWS & MEDIA

Clear commitment: CEO Craig Carmody maintains that a container terminal is entirely viable – and necessary – at the Port, for the future of the region, NSW suppliers, and the economy.

JULY 22, 2021(HTTPS://WWW.PORTOFNEWCASTLE.COM.AU/2021/07/22/)



Any suggestion that Port of Newcastle wouldn't proceed to build the container terminal if the restrictions were lifted are baseless and misleading.

Port of Newcastle maintains its real-world view that a container terminal is entirely viable – and necessary – at the Port.

– Craig Carmody, CEO Port of Newcastle

On Tuesday 21 July the Federal Court made public its judgement in the Australian Competition and Consumer Commission (ACCC) case regarding a container terminal for Newcastle.

Port of Newcastle CEO Craig Carmody shares his response to the publication of the Federal court's judgement and what it means for the Port of Newcastle.

Any suggestion that Port of Newcastle wouldn't proceed to build the container terminal if the restrictions were lifted are baseless and misleading. Port of Newcastle maintains its real-world view that a container terminal is entirely viable – and necessary – at the Port.

The judgment clearly accepts that Port of Newcastle has the ability to compete in the same market as Port Botany. The only factor preventing the Port from building the container terminal is the unfair restrictions placed on container movement above a TEU cap at the Port of Newcastle.

If there's any doubt we'd build the container terminal, simply lift the penalty. Enable Port of Newcastle to maximise our commercial potential freely, and watch us build it.

We know there is appetite and support for a container terminal in Newcastle from NSW and international suppliers. Development of another container terminal in NSW, even whilst Port Botany still has capacity, would provide viable alternative and more cost-effective export routes for regional NSW suppliers, increasing their competitiveness and enabling Port of Newcastle to contribute even more to the State's economy.

This legal decision does not alter Port of Newcastle’s desire to build a container terminal, nor our confidence that a container terminal at the Port is a diversification opportunity the Port, Newcastle and the Hunter Region needs.

Port of Newcastle has the ability to compete in the same market as Port Botany, and that NSW State Government Policy is the major constraint to this.

We await with interest the decision by the ACCC whether to appeal the Court outcome, expected next week.

Port of Newcastle

Port of Newcastle is Australia’s deepwater global gateway, the largest on the nation’s East Coast. Port of Newcastle is more than a port. It exists to build Australia’s prosperity with responsible, integrated and innovative supply chain solutions. With trade worth about \$26 billion to the national economy each year, Port of Newcastle enables Australian businesses to successfully compete in international markets. The port currently handles 4,400 ship movements and 164 million tonnes of cargo annually, including dry bulk, bulk liquids, ro-ro, general and project cargoes and containers. With a deepwater shipping channel operating at 50% of its capacity, significant port land available and enviable access to national rail and road infrastructure, Port of Newcastle is positioned to further underpin the future prosperity of the Hunter, NSW and Australia. As custodians of the region’s critical asset, Port of Newcastle is diversifying its trade as it strives to create a safe, sustainable and environmentally and socially responsible future.

Media enquiries

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Port of Newcastle acknowledges the Traditional Custodians of the land and waters of Newcastle Harbour, the Awabakal and Worimi People and pays respect to all Elders past, present and emerging.

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Port of Newcastle

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(https://www.portofnewcastle.com.au)



NEWS & MEDIA

Mobile Harbour Crane Investment to Further Improve Cargo Handling Efficiency at Port of Newcastle

JULY 24, 2021(HTTPS://WWW.PORTOFNEWCASTLE.COM.AU/2021/07/24/)



Port of Newcastle's existing project cargo, general cargo and container handling capability will be further enhanced following a \$28.4-million investment in two Liebherr LHM 550 mobile harbour cranes and associated infrastructure at the Port's versatile Mayfield 4 berth.

Port of Newcastle's Executive Manager Trade & Business Development, Paul Brown, said the mobile harbour cranes will increase efficiency at the Port and provide an enhanced alternative for customers currently moving both oversized equipment and containerised cargoes through the East Coast's capital city ports.

"Our customers already benefit from Port of Newcastle's uncongested road, dedicated freight rail and berth access and this investment will enable both existing and new customers to utilise the Port's infrastructure to move their oversized equipment and containerised cargo even more efficiently through Newcastle than they currently can."

"Port of Newcastle is excited about this upgrade to our Mayfield 4 berth service offering. Our team look forward to working with customers and new trades alike to identify how the mobile harbour cranes service can benefit their supply chain, improve efficiency and further support their ability to successfully compete in international markets," Mr Brown said.

The contract to supply the cranes has been awarded to Liebherr. Built in Germany, the two brand new Liebherr LHM 550 (<https://www.liebherr.com/en/deu/products/maritime-cranes/port-equipment/mobile-harbour-crane/details/lhm550.html>) cranes will feature the latest lift assistance systems, provided to ensure improved material handling, precise control over load movement and safer lifts.

With access to rail sidings and upgraded internal roads, able to handle oversized trucks, the new cranes are capable of handling a diverse mix of project cargo, including wind turbines, mining equipment, timber, steel coils and transformers. The cranes will also have the capability to work in tandem for heavy lifts and lift two 20' or one 40' container in a single move.

Port of Newcastle CEO Craig Carmody said the investment in mobile harbour cranes was part of the Port's long-term diversification plans to better meet the demands of customers.

"As the Hunter's trade gateway to the world, the mobile harbour crane investment will enable the Port to leverage the full use of our abundant channel, rail, road and land capacity to accommodate existing and new trade and ensure the Port of Newcastle is best placed to meet the demands of customers into the future."

"Naturally, we would also like to be announcing the next stage in our game changing \$2.4-billion Multi-purpose Deepwater Terminal project. Although we are not presently in that position, Port of Newcastle's goals are unwavering," Mr Carmody said.

"We are firmly focused on seizing opportunities that will create a broad mix of trade opportunities which help to support our local industry, boost jobs in addition to the 9000 positions the Port directly and indirectly supports now, and build a prosperous local, state and national economy."

Port of Newcastle's Mobile Harbour Cranes are expected to arrive in mid-2022.

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