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

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REGISTRAR

Dated: 21/07/2021 12:19 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.

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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).

PNO's intention to develop the Port over the short to medium term

4. PNO has broadly publicised its well-advanced plans to develop a range of new terminals at the **Port** of Newcastle. This is demonstrated across a range of PNO's key documents as set out in the following paragraphs.

5. On 27 August 2018, PNO published an article entitled "Port of Newcastle on track to build container terminal". The article states "the Port had received a number of unsolicited bids to develop and operate a container terminal in Newcastle". Annexed and marked "**DP-1**" is a copy of the PNO article dated 27 August 2018.

6. On 20 December 2018, PNO published the Port of Newcastle **Port Master Plan** 2040. This document outlines the "key strategic development opportunities for the Port", including the "Newcastle Container Terminal" (also known as a Multi-purpose Deepwater Terminal) (**MDT**)). Annexed and marked "**DP-2**" is a copy of the Port Master Plan.

7. The Port Master Plan:

(a) identified at page 29 that the "capacity of the channel is determined by the number and type of vessels that can be safely navigated between the port entrance and a designated berth". That is, it appears the capacity of the channel is subject to vessel size, associated berth and tides in the Port.

(b) identified at page 30 that while the Port is said to be currently operating at less than 50% capacity, "rapid growth in the size of vessels" has caused the Port to carry out a "Physical Channel constraint analysis" and to consider ways the "fully utilise the capacity of the Port".

(c) In relation to future channel improvements, the Port stated at page 31 that "terminal berthing, Channel widening, navigation aid upgrades and navigation resources (i.e. marine pilots, tugs, lines service) will need to be considered as part of any development scenario analysis)".

(d) In addition to the existing berths, PNO stated at page 32 that it "holds a planning approval for the capital dredging of additional berth pockets within the South Arm of the Hunter River. Approved berth pockets proposed alongside the Mayfield Site would support the potential development of over 1500 metres of continuous quayline for the development of container terminals". Further, that "[f]our berths are proposed on the South Arm to increase berthing capacity at Walsh Point" and "[o]ne berth is proposed in Carrington which could be developed as a standby berth to assist with vessel movements, if required".

(e) With respect to containers, the Port Master Plan states at page 56 that "forecast growth over the next 20 years is expected to see total container volumes in New South Wales increase from 2.5 million TEU p.a. in 2017 to over 5 million TEU p.a. In this period, container volumes in the Port's catchment area will increase from 500,000 TEU p.a. to 11 million TEU p.a". PNO then outlines the rationale for the development of the Newcastle Container Terminal at pages 61-62.

(f) At pages 79-80, PNO states that:

> Facilitating the establishment of new trades and supply chains will address capacity constraints and respond to change. Port of Newcastle will:
>
> - Establish the **Newcastle Container Terminal** to service containerised exports from the catchment and containerised imports for the Sydney and NSW market; and
> - Attract and develop a specialised **Automotive and Ro-Ro Hub** to meet the needs of a changing market.

(g) It is stated at page 80 that PNO will, in the "next five years", complete the first stage of the Newcastle Container Terminal and commence operations.

8. On 11 January 2019, PNO provided a submission to the Legislative Council **Public Works Committee** in respect of the **inquiry** into the impact of the Port sale arrangements on public works expenditure in NSW. In its submission PNO stated at page 8 that "The Port of Newcastle Container Terminal will be privately-funded (with some input from Government)". Annexed and marked "**DP-3**" is a copy of PNO's submission.

9. On 12 February 2019, PNO provided the Public Works Committee with supplementary submissions directed to specific questions raised during the inquiry. In its submissions, PNO confirmed at page 10 that the proposed cost of the container terminal was $1.8 billion which would be met by "private equity". PNO also confirmed that without the container terminal, coal would remain the major source of revenue for the Port. Annexed and marked "**DP-4**" is a copy of PNO's supplementary submissions dated 12 February 2019.

10. On 24 February 2020, an article was published by Tom Rabe of the Sydney Morning Herald (**SMH**) in respect of PNO's proposal to construct the Container Terminal at the Port. In the article, Mr Rabe directly quotes Mr Craig Carmody, the CEO of PNO who stated that if the Port were unable to diversify "the Port of Newcastle's best option is to just sweat the coal terminals until 2064" and that the Port had "about 15 years to transition away from [coal]". Annexed and marked "**DP-5**" is a copy of the SMH article dated 24 February 2020.

11. On 13 June 2020, PNO published an article entitled "Port unveils its vision for a multi-purpose deepwater terminal". The article contains a link to the website www.thefutureuncontained.com.au. Annexed and marked "**DP-6**" is a copy of the PNO article dated 13 June 2020.

12. On 24 June 2021, I caused a solicitor in my team to access the website www.futureuncontained.com.au. A screenshot of that webpage is annexed and marked "**DP-7**". The web-page states:

> The MDT is a $1.8 billion project that will help drive the diversification of the Hunter economy as well as create and sustain jobs for generations to come.

13. On 10 February 2021, S&P Global Market Intelligence published an article indicating that ANZ had withdrawn as a major lender to PNO and a PNO spokesman stated PNO was working with responsible lenders in order to diversify the Port. Annexed and marked "**DP-8**" is a copy of the S&P Global Market Intelligence report dated 10 February 2021.

14. On 5 March 2021, PNO published an article entitled "PM 'thumbs up' on Port of Newcastle diversification plans". The article states that the MDT project was anticipated to cost $2.4 billion. Annexed and marked "**DP-9**" is a copy of the PNO article dated 5 March 2021.

15. On 24 June 2021, I caused a solicitor in my team to access the website www.portofnewcastle.com.au/newcastle-container-terminal. A screenshot of that webpage is annexed and marked "**DP-10**". The webpage contains the following quote from Craig Carmody, Chief Executive officer of PNO:

> The Newcastle Multi-Purpose Deepwater Terminal is an estimated $1.8 billion development to be entirely funded by private investors…

16. On that same date I also caused a solicitor in my team to access the website www.portofnewcastle.com.au/wp-content/uploads/2019/10/Newcastle-Container-Terminal-brochure-low-res.pdf, which is an undated document entitled "Newcastle Multi-Purpose Deepwater Terminal: Newcastle Container Terminal", annexed and marked "**DP-11**".

Coal Export Data

17. In April 2019, PNO stated it had handled 156.8 million tonnes of coal with a value of approximately $23.6 billion during 2018. Annexed and marked "**DP-12**" is copy of "Port of Newcastle 2018 Trade Report" dated April 2019.

18. On 24 June 2020, the NSW Government released its "Strategic Statement on Coal Exploration and Mining in NSW" which indicates that the NSW mining industry employs more than 22,000 people in direct jobs and 89,000 people in indirect jobs. Further, royalties from coal brought in approximately $2 billion in 2018-2019, used to fund public services and infrastructures. Some 85% of coal mined in NSW is exported. Annexed and marked "**DP-13**" is a copy of the Strategic Statement dated 24 June 2020.

19. In February 2020, Lawrence Consulting prepared a report for NSWMC titled "NSW Mining Industry Expenditure Impact Survey 2018/19". That report evidenced that, in 2018/19, the Hunter mining sector directly supported 3,282 businesses; directly employed 13,347 people; paid $1.4 billion in wages and salaries; directly spent $4.0 billion on goods and services; paid $55.0 million to local government; and provided $4.0 million to 397 community groups. In total, about 19.1% of the Hunter Region's workforce was supported by mining. Mining made up 22.8% of Gross Regional Product, a total of $11.5 billion. Annexed and marked "**DP-14**" is a copy of the Lawrence Consulting reported dated February 2020.

20. In August 2020, the Australian Department of Foreign Affairs and Trade updated the "State by Country and SITC Pivot Table 2009 to 2019" spreadsheet, available at www.dfat.gov.au/sites/default/files/state_by_country_and_sitc_pivot_table_2009_to_2019.xlsx. The spreadsheet indicates that coal accounted for $18 billion (77%) of NSW's merchandise export earnings in 2019. An extract of this spreadsheet is annexed and marked "**DP-15**".

21. The Australian Government Department of Foreign Affairs and Trade produced the "Trade and Investment at a Glance 2020" Report which states that, in 2018-19, coal was Australia's second most valuable export after iron ore and accounted for approximately 15% of Australian exports by value. Annexed and marked "**DP-16**" is a copy of the undated "Trade and Investment at a Glance 2020" Report.

Public Benefits associated with Collective Bargaining

22. On 17 June 2021 the ACCC issued its determination on the authorisation lodged by Dalrymple Bay Coal Terminal Access Holders and Access Seekers. That determination is an example of the public benefits of collective bargaining that arise when industry participants seek to negotiate with an infrastructure service provider in relation to access terms and conditions. Annexed and marked "**DP-17**" is a copy of the ACCC determination. Similar issues arise in this matter as to efficiencies arising for coal exporters in negotiating with PNO and in particular to future expenditures by PNO or its shareholders in relation to the Port.

23. I am familiar with coal mining operations in the Hunter Valley, having acted for Port Waratah Coal Services (**PWCS**). As part of an application by PWCS, Newcastle Coal Infrastructure Group and the Newcastle Port Corporation for the Capacity Framework Arrangements at the Port of Newcastle that were subject to ACCC Authorisations A91147-A91149 and A91168-A91169 in respect of which final determination was made by the

ACCC on 9 December 2009. Annexed and marked **"DP-18"** is a copy of the ACCC determination. An important element of the public benefits was commercial certainty created by long term contractual alignments – see para 5.122 of that determination.

24. In this matter affidavits have been filed by various coal producers on behalf of NSWMC evidencing the issues that they each had with PNO's Producer Pro Forma Long-Term Pricing Deeds and in particular as to the commercial uncertainty arising under those proposed deeds.

Affirmed by the deponent)
at Sydney)
in New South Wales)
on 25 June 2021)
Before me:)

Signature of witness

Ryan Draper
Solicitor of the Supreme Court of New South Wales

Signature of deponent

COMMONWEALTH OF AUSTRALIA

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Applicant:	Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-1

This is the Annexure marked "DP-1" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

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Mon - Fri : 8:30 - 17:00(https://www.portofnewcastle.com.au/contact-us/)

NEWS & MEDIA

Port of Newcastle on track to build container terminal

AUGUST 27, 2018(HTTPS://WWW.PORTOFNEWCASTLE.COM.AU/2018/08/27/)

Port of Newcastle on track to build container terminal

Craig Carmody, CEO of the Port of Newcastle, announced today that in the past three weeks, the Port had received a number of unsolicited bids to develop and operate a container terminal in Newcastle.

“I can confirm that the Port of Newcastle has been approached by a number of globally significant container port operators who are eager to take advantage of our proximity to exporters and importers, the availability of large tracts of low cost land around the port and our access to dedicated freight transport infrastructure.”

Mr Carmody said, “Whilst we cannot go into details yet, these bids clearly demonstrate that there is no doubt in the minds of private investors that a container terminal in the Port of Newcastle is economically viable. It’s really a matter of when, not if, we will see preparatory work commencing on the container port in Newcastle.

“It should be noted that, these bids are contingent on the removal of the current artificial constraint imposed on NSW port competition and other regulatory issues.

“Given the speed with which we have received these bids, I invite interested parties to contact Port of Newcastle. Mr Carmody indicated that bids need to be based on developing a 2 million plus container terminal on the Mayfield site within five years of the artificial NSW Government constraint being removed.

“The development of a modern integrated container port and freight handling facility all on the one site means there would be no double handling of containers before being unpacked at distant locations, far less demand placed on already congested NSW roads and co-mingled passenger rail

lines and, of course, significant cost savings for consumers and exporters alike.

“In the next 20 years, the number of containers moving through ports in NSW is likely to double. Evidence from Deloitte Access Economics and other studies suggests that the development of a highly automated, state-of-the-art container port in Newcastle has the capacity to help ease congestion in Sydney while boosting the competitiveness of the NSW and national economies.

“While there is much planning and consultation in front of us, it is exciting for both the Port and the region that there is such interest and enthusiasm for investing in the future diversification and growth of the Newcastle and Hunter economy,” concluded Mr Carmody.

Background

- The Port of Newcastle is the world’s largest coal export port and the largest port on the east coast of Australia.
- The Port of Newcastle is situated in the Hunter region which is Australia’s largest regional economy and largest economic contributor to NSW gross domestic product.
- The ACCC is currently investigating an artificial constraint on the Port of Newcastle by the NSW government restricting the development of a viable and competitive container terminal.

The benefits of a Port of Newcastle container terminal include:

- reduced freight costs;
- reduced port congestion;
- increased freight efficiency;
- reduced infrastructure cost; and
- catalyst for regional growth.

Contact

For media enquiries please contact
Phone: +61 2 4908 8214 **Email:** media@portofnewcastle.com.au
(mailto:media@portofnewcastle.com.au)

(https://www.youtube.com/channel/UCTGhjtFloAPlbLy4_yrkoWg?view_as=subscriber)

(https://www.linkedin.com/company/portofnewcastle/?viewAsMember=true)

FOLLOW US

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.

GENERAL ENQUIRIES

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Applicant:	Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-2

This is the Annexure marked "DP-2" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

PORT OF NEWCASTLE
Port Master Plan 2040

Our Strategic Development Opportunities to 2040

Port of Newcastle

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Ackowledgement

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

FOREWORD

The Port of Newcastle is a proud working port with a strong history.

The purpose of this long-term Port Master Plan is to communicate our broad and strategic approach by outlining both our current and future development and trade opportunities to 2040.

As a global gateway for New South Wales, the Port of Newcastle (PON) enjoys a significant competitive advantage, with a major seaport and connectivity to a world-class national rail and heavy vehicle road system. With the shipping channel currently only operating at 50% capacity, vacant portside land and market interest, the opportunities are immense.

The Port plays a significant role as an economic driver and a catalyst for growth throughout our region, state and nation. In the Lower Hunter alone, activity within the Port of Newcastle contributes $1.6 billion and 9,000 jobs per annum. This does not include the significant contribution of associated industries such as mining and agriculture, which contribute many billions more.

The Port of Newcastle's vision is to maintain Newcastle's position as one of the leading and most efficient global-scale ports, and to facilitate continued growth and development of existing and new trades in a sustainable manner. We recognise the responsibility that comes with stewarding an iconic asset for the next 95 years. We are committed to driving collaboration with Government, communities and other stakeholders to agree on the future and deliver the benefits of trade growth.

The Port of Newcastle has embarked on an ambitious diversification strategy. Whilst coal exports provide a stable foundation for our growth, we are driven by the need to grow and diversify our trade base to meet the demands of our customers and the containerisation of some trades.

This Port Master Plan outlines the key strategic development opportunities for the Port and the broader region, including:

- The **Newcastle Container Terminal**;
- The **Newcastle Bulk Terminal**;
- An **Automotive and Ro-Ro Hub**;
- The **Maritime Precinct**;
- The **Newcastle Cruise Terminal**; and
- The continuation and growth of major bulk trades including coal, fuel, fertiliser, wheat and mineral concentrates.

Our success depends on our ability to be an efficient global trade gateway, working in partnership with those who rely on our services, those who regulate our activities, and those who are our neighbours.

We are dedicated to operating a safe, sustainable, environmentally and socially responsible business in partnership with our tenants, port users, community and Government agencies. The Port Master Plan 2040 is reflective of these values, and I commend it to our stakeholders and partners.

Professor Roy Green
Port of Newcastle
Chairman

Craig Carmody
Port of Newcastle
Chief Executive Officer

EXECUTIVE SUMMARY

Australia's ports facilitate the movement of $1.2 billion worth of trade every day.[1]

The Port of Newcastle is the global gateway for the Hunter Region and New South Wales. It is the largest port on the East Coast, and Australia's third largest port by trade volume. It is well-placed to support the predicted doubling of Australian freight over the next 20 years and beyond.

By 2040, the City of Newcastle will be home to 200,000 people, with the population of the Hunter growing to 870,000 and New South Wales to over 10 million people.[2] The Port, through coal export trade, will continue to provide a stable foundation for our region and state's economy, and our business. Trade volumes of fuels, and dry bulk such as wheat, grains and fertiliser, will continue to grow.

Our trademark for the next twenty years, however, will be our diversification. The Port of Newcastle has abundant capacity to grow trade volumes and establish new, efficient and cost-effective supply chains for buyers and producers. A key driver of diversification and growth of business opportunities for Newcastle and the Hunter will be the development of the Newcastle Container Terminal. We are the port ready to host the latest technologies, industry innovation and a step change in the way freight is moved in, out and through New South Wales and Australia.

Many Australian ports, including the Port of Newcastle, now operate in a commercial environment, in which port owners and managers are focused on utilising the full capacity of their assets to deliver greater efficiency and shareholder value.

This Port Master Plan provides a broad and strategic approach, identifying future developments and opportunities to 2040. The following goals underpin this approach:

- Promote the capacity of the Port and the supply chain to support the economy.
- Utilise the existing road and rail transport assets to improve freight efficiency.
- Facilitate new trades and supply chains.
- Support the development of new facilities and enabling infrastructure.
- Protect the Port and transport corridors from urban encroachment.

1 Ports Australia website 2018
2 NSW People and Places Dashboard, NSW Planning and Environment website 2017

Our vision is for the Port of Newcastle to become Australia's first-choice East Coast port, able to accommodate, attract and grow a diverse trade base in an efficient, sustainable, profitable and innovative manner. To achieve this vision, the Port of Newcastle has identified the following goals:

PROMOTE THE CAPACITY OF THE PORT AND THE SUPPLY CHAIN TO SUPPORT THE ECONOMY

The Port of Newcastle, with its central geographic location on the eastern seaboard, existing capacity and supply chain infrastructure, is well-placed to support the New South Wales and Australian economies.

For every dollar spent in the Port of Newcastle, there is a flow-on benefit for the local, state and national economies of between $0.84 and $1.32. For every million dollars of output generated by the Port of Newcastle, 5.2 jobs are created.[3]

The Port handled over 167 million tonnes of trade and 4,700 ship movements in 2017. Modelling of the shipping channel has shown that over 10,000 ship movements per year can be accommodated. This, together with planning approval for additional berths, investment in new port infrastructure, and a significant quantity of available, serviced and zoned port land, provides for future growth.

[3] Port of Newcastle Economic Impact Report 2016/17 Econsearch

UTILISE EXISTING ROAD AND RAIL TRANSPORT ASSETS TO IMPROVE FREIGHT EFFICIENCY

Freight in Greater Sydney is expected to double over the next 40 years and increase by 25% in Regional NSW over the same period.[4] Ports outside of capital cities, together with their road and rail supply chains offer significant capacity to reduce congestion. Ensuring that existing road and rail transport infrastructure are being utilised and optimised to their full capacity is critical to supporting and improving the efficiency of the New South Wales freight task.

Ensuring that existing road and rail transport infrastructure are being utilised and optimised to their full capacity is critical to supporting and improving the efficiency of the New South Wales freight task.

The Port of Newcastle has excellent access and connectivity to the national highway and rail networks that link to capital cities, and the catchment. Both the immediate road network and the broader highway system has capacity to accommodate the current and forecast vehicle growth without the need for major infrastructure upgrades. Similarly, the rail network have capacity to accommodate the contracted coal volume, as well as latent capacity to move non-coal trade, including bulk grain and containers, from regional New South Wales to Newcastle.

[4] Future Transport 2056 TfNSW 2018

FACILITATE NEW TRADES AND SUPPLY CHAINS

Growing, attracting and facilitating new trade and new supply chains is a key focus for the Port of Newcastle. The introduction of new import and export trades and new supply chains will be what drives innovation, efficiency and value for the Port, its shareholders and the community.

Facilitating infrastructure to support new trades and supply chains can address infrastructure bottlenecks and capacity constraints in capital city ports, and respond to changing technology such as automation, modal shifts and bulk containerisation.

The Port Master Plan 2040 outlines the rationale for the development of a Newcastle Container Terminal, as well as identifying other opportunities such as the establishment of a specialist Automotive and Ro-Ro Hub within the next twenty years.

SUPPORT THE DEVELOPMENT OF NEW FACILITIES AND ENABLING INFRASTRUCTURE

The Port Master Plan 2040 supports the development of new transport infrastructure and logistics facilities such as upcountry intermodals. These facilities can leverage on the proximity to existing and proposed transport corridors.

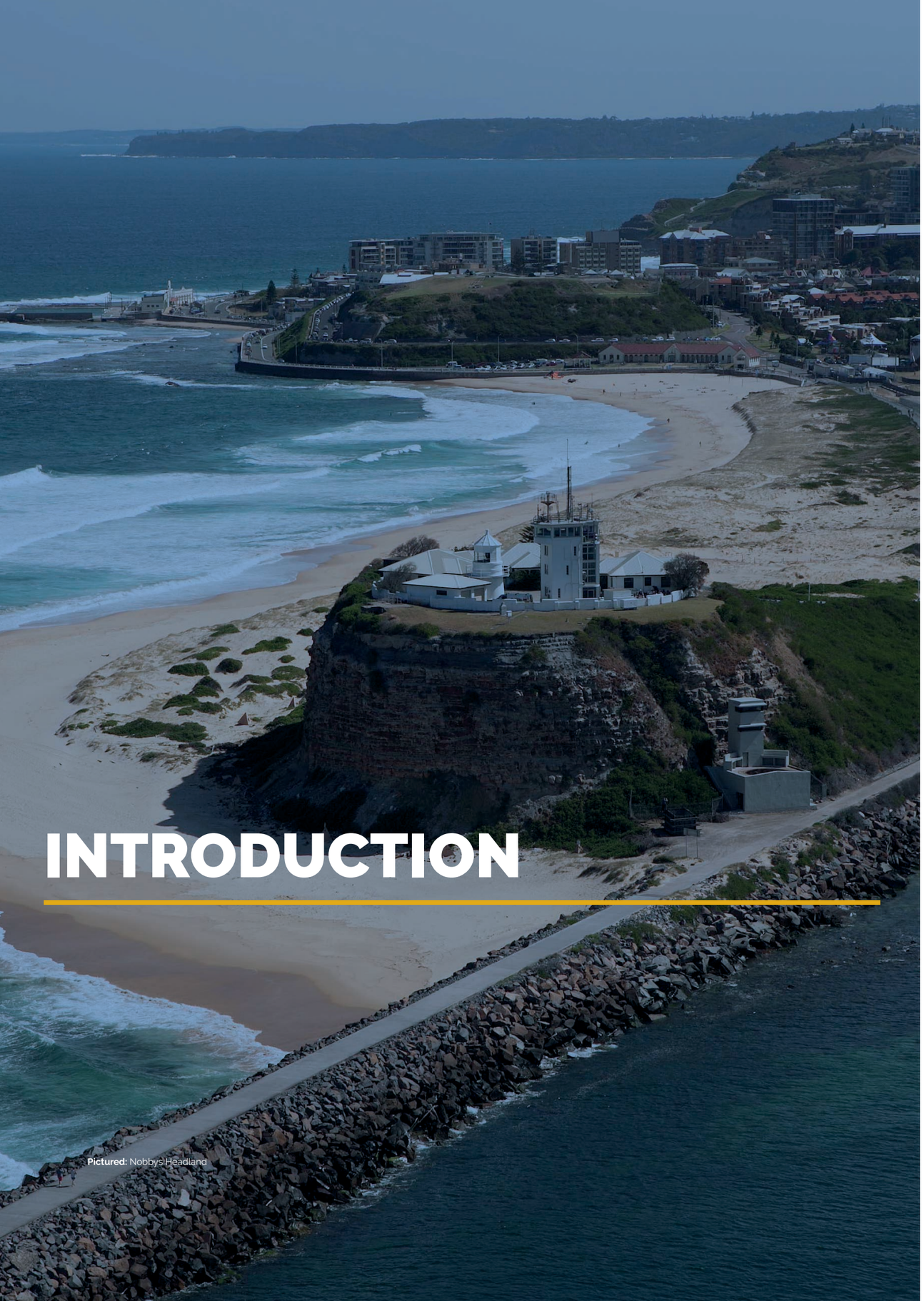
This includes smaller enabling projects that can utilise, improve and enhance the existing road and rail networks for greater efficiency, productivity and consequence.

Major projects, such as the Inland Rail, will further enhance Newcastle's connectivity, consolidating rail access to an extended area of New South Wales and potentially Southern Queensland and Northern Victoria. This modal shift will provide greater benefit to growers and producers and more efficient use of the transport network, as well as ensuring that the economic benefits are retained in New South Wales.

PROTECT THE PORT AND TRANSPORT CORRIDORS FROM URBAN ENCROACHMENT

Urban encroachment is the potential conflict that can arise between adjoining land uses and freight operations at the Port or along transport corridors. These operations are required to operate on a 24/7 basis to ensure that freight is able to be moved economically, efficiently and sustainably. These activities may, however, have a range of amenity impacts on sensitive land uses and residents.

Protecting the Port and its transport corridors from urban encroachment to safeguard continuous and sustainable port operations, as well as ensure appropriate amenity for nearby communities, is a key goal of this Port Master Plan. Managing the Port's interface with its surrounds focuses on both economic and environmental sustainability and forward planning for the benefit of the Port and community. As both the Port and the Greater Newcastle metropolitan areas grow, the identification and protection of future transport corridors will become increasingly important.



INTRODUCTION

Pictured: Nobbys Headland

The *Port of Newcastle Master Plan 2040* is a statement of our belief that the Port of Newcastle will be the first choice for Australia's East Coast ports.

By 2040 the Australian population will be over 31 million, with the corresponding demand for goods driving the volume of freight to more than double within this timeframe.[5]

The Port Master Plan focuses on demonstrating the connectivity and capacity of the Port and its supporting transport networks to accommodate, attract and grow trade, and assist in addressing the freight task in an efficient, sustainable, profitable and innovative manner.

Through examination of the existing assets in the shipping channel, portside land and connecting road and rail networks, the Port Master Plan builds the case for greater utilisation, optimisation and augmentation to facilitate new trade, establish new supply chains and develop new supporting facilities.

The Port Master Plan provides a broad and strategic approach identifying future development and opportunities, including:

- The **Newcastle Container Terminal** in Mayfield;
- The **Newcastle Bulk Terminal** in Walsh Point;
- A specialised **Automotive and Ro-Ro Hub**;
- Supporting the **Maritime Precinct** in Carrington; and
- Construction of the **Newcastle Cruise Terminal** in Carrington.

Critical to our success will be effective communication and collaboration with our customers and stakeholders.

The National Ports Strategy encourages clear communication at a strategic level on how the development and operation of the Port and the freight corridors serving it will be integrated into the future development of the region or city in which the port is located.[6]

Further, the Port Master Plan will open a clear line of communication with the Government to articulate how the capacity of the Port and the supply chains can support and build both the state and national economies and help meet the needs of the future freight task.

The purpose of the Port Master Plan is to inform the New South Wales Government, Government agencies and the local community of PON's development objectives for the period to 2040.

[5] Freight Report Card, TfNSW 2017

[6] National Ports Strategy, Infrastructure Australia, 2012.

A NEW LONG-TERM PLAN

In December 2014, PON published its inaugural Port Development Plan (PDP). The purpose of the plan was to help inform the New South Wales State Government, Government agencies and the local community of PON's development objectives over the five-year period from 2015–2020.

Key developments anticipated by the PDP included the preparation of the former Forgacs site at Carrington for future development, upgrades to existing berth infrastructure to enhance operational, safety and environmental performance, and the facilitation of berth development by tenants.

In July 2017, Thales Australia, together with the NSW Government, announced major investment in a new Maritime Precinct to be developed at the 10-hectare Carrington site. The first phase will include the renewal of the Fitzroy Street shipyard to cater for vessels up to 55 metres long, creating 70 new jobs.

In 2018, Stolthaven will complete construction of a new dedicated bulk liquids berth at Mayfield (M7) to support the expanding bulk liquids precinct. The installation of new unloading infrastructure at K2 by PON will replace ageing equipment and continue to improve environmental outcomes.

The PDP also highlighted the importance of cruise shipping to the local tourism industry, citing PON's commitment to work with major stakeholders to develop a concept for a permanent cruise terminal at the Channel Berth. The commitment of State and Commonwealth funding for additional mooring facilities and the planning for a permanent terminal facility has seen this concept become reality. The Newcastle Cruise Terminal is due for completion in 2019. The terminal building will provide for day visits and home porting facilities to strengthen Newcastle's position as an international cruise destination.

In recognition of the potential limitations of a five-year outlook and transformational projects that are currently being planned by PON, the need to prepare a longer-term plan to outline the future planning and development of the Port was identified. Critical to this was the desire to address the dynamics and detail of PON's business, rapid changes in technological and operating environments, the agility of supply chains and the competitive environment in which the Port now operates.

Like the previous PDP, the Port Master Plan will articulate the Port's vision and provide a licence to grow. Central to a longer-term vision is the effort to create economic value through increased industry and investment confidence by being visible and strategic.

ACHIEVEMENTS OF THE PORT DEVELOPMENT PLAN 2015-2020

- ☑ THALES AUSTRALIA MARITIME PRECINCT *UNDER DEVELOPMENT*
- ☑ NEWCASTLE CRUISE TERMINAL *PLANNING COMMENCED*
- ☑ MAYFIELD 7 BULK LIQUIDS BERTH *NEARING COMPLETION*
- ☑ K2 BERTH SHIP UNLOADER REPLACEMENT *COMMENCED*

Conversations with our customers and stakeholders have accompanied the drafting of the Port Master Plan. We are seeking to actively contribute to the overall supply chain management by expressing integration, and to ensure the delivery of core port and transport infrastructure, articulating what is needed, where and when.

Environmental protection through the identification of environmental values, a focus on current and future interface issues, and effective communication with the local community is also key.

"If well-designed, the strategic planning process can help to engage main stakeholders, strengthen links with clients and create local goodwill."

Competitiveness of Port Cities Synthesis Report, OECD 2013

HISTORY OF THE PORT OF NEWCASTLE

Since its establishment, the City of Newcastle has been closely linked to its harbour, which provided trading opportunities, the creation of industries and employment and a place to establish a community. The first commercial export of coal left Newcastle for Bengal, India, in the barque *Hunter* in 1799.

Since the early years of the 19th century, the estuary of the Hunter River has been transformed from a series of mudflats and shallow channels to a major deepwater trading port.[7]

Encouraged initially by the area's large coal deposits and then by the establishment of BHP's iron and steelworks in 1911, the Government invested significant amounts of money in reshaping the harbour through dredging, which commenced in 1859. Rock blasting and reclamation work continued to form the extensive Port land of the Dyke at Carrington, Kooragang Island and Walsh Point.

The principle of transformation and innovation to achieve ongoing improvement is one that PON continues to strive for today.

[7] Harbour from a Creek, Melville, R. 2014.

OVERVIEW OF THE PORT OF NEWCASTLE

"Our vision is to maintain Newcastle's position as one of the leading and most efficient global scale ports and to facilitate continued growth and development of existing and new trades in a sustainable manner."

WHO WE ARE

Port of Newcastle (PON) is the commercial manager of Newcastle Port and has a 98-year lease with the NSW Government, which commenced on 30th May 2014.

A key objective of the lease is to maintain and enhance the Port as a major seaborne trade gateway for New South Wales.

Our shareholders, The Infrastructure Fund (TIF) and China Merchants Ports Holding Company Limited (CMPort), each own 50% and have a strong, global track record in managing large infrastructure assets, including ports.

The Port is recognised as a major strategic asset for the New South Wales economy, and an important trading gateway for Australia. In 2017 the Port of Newcastle handled more than 167 million tonnes with an estimated value of $24 billion.

The Port of Newcastle generated direct and flow-on benefits of $1.8 billion to the NSW economy. The estimated total impact on the Hunter economy alone was $1.6 billion. This was equivalent to approximately 0.35 per cent of New South Wales' gross state product, and nine per cent of gross regional product.[8]

As a business, our core functions include:

- Trade and Port development
- Management of Port land;
- Wharf and berth services.
- Maintenance of major Port assets;
- Vessel scheduling; and
- Dredging and survey services.

MISSION

Our mission is to promote and support the prosperity of the Hunter Region and New South Wales in a sustainable manner.

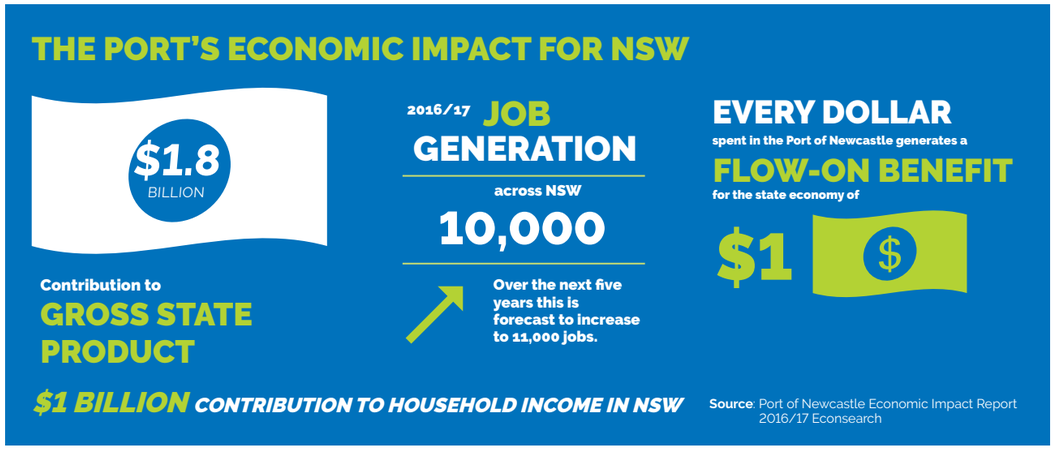
We will:

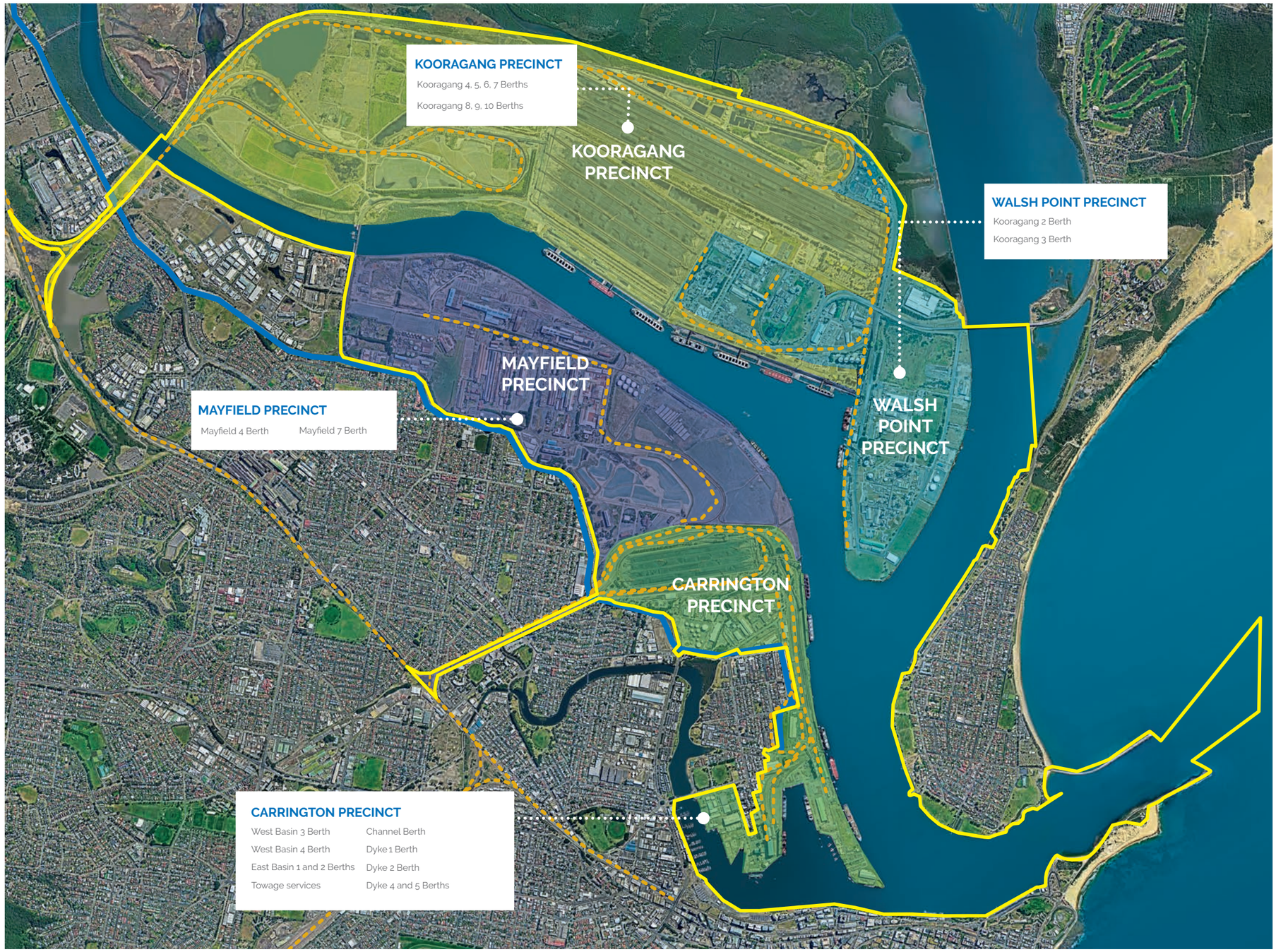
- Provide efficient port infrastructure to facilitate regional, state and national economic growth;
- Maintain a safe and rewarding workplace for all employees;
- Promote and facilitate improvements to supply chain performance;
- Collaborate with stakeholders to deliver the benefits of trade growth, including with surrounding communities;
- Manage environmental impacts of port
- operations and development;
- Deliver effective commercial outcomes for customers; and
- Undertake sustainable investment and deliver commercial returns for shareholders.

VALUES

Our values are safety, teamwork, initiative, performance, customer service and delivering on our promises.

[8] Port of Newcastle Economic Impact Report 2016/17 Econsearch





N

Port of Newcastle Boundary as per the State Environmental Planning Policy (Three Ports)

Arterial Road Access

Rail lines

THE CHANNEL

Newcastle Port is situated on the Hunter River with the entrance protected by two breakwalls, the northern and southern, extending into the ocean at Nobbys Head.

The Channel and berths are PON's primary assets. They facilitate the import and export of cargo to the world, define our core business and are a key attraction for the City of Newcastle.

The design depth of the Channel is 15.2 metres, increasing towards the Channel entrance, which assists vessel passage for ocean swell conditions. The Channel depth is maintained through a continuous maintenance dredging program and has undergone continuous expansion since dredging first commenced in 1859.

PORT LAND

Carrington Precinct

Carrington is one of the oldest parts of the Port that is still in operation and includes 100 ha, of waterfront industrial land.

The Carrington Coal Terminal (CCT) was established in 1968 at the northern end of the precinct and incorporates the coal terminal and associated loading berths Dyke 4 and Dyke 5 Berths (D4 and D5).

Newcastle's two major grain terminals are in Carrington and have a combined throughput capability of 4Mtpa. Grain terminals are supported by road and rail receival facilities and state-of-the art ship loader at Dyke 2 Berth (D2) and West Basin 3 Berth (WB3).

Mineral concentrates including zinc, lead and copper are railed to the Port, stockpiled within a closed storage facility and then loaded through D2. Fuel is imported at the Dyke 1 Berth (D1), which is then piped to a nearby Terminal facility. A range of general cargo and containers, as well as steel, aluminum and timber packs, are handled at the East Basin Distribution Centre (EBDC), using East Basin 1 and 2 Berths (EB1 and EB2).

Concentrated orange juice is imported to a refrigerated storage facility, where it is packaged and distributed by road. West Basin 4 Berth (WB4) handles rolling stock as well as a large range of other cargo.

The Channel Berth services passenger vessels such as cruise ships and is the location of the Newcastle Cruise Terminal. The Carrington Precinct also encompasses critical Port services including two Tug Bases and the Helicopter Base operated by the Port Authority of NSW.

Ship building and maintenance activities have operated at the southern end of Carrington for many years, with a new Maritime Precinct being developed in the south-west of the Precinct fronting Throsby Creek.

Carrington is well-serviced by road and rail infrastructure, including a designated B-double heavy vehicle truck route designed to reduce the potential for land use conflicts with the residential areas of Carrington. Rail access is provided via the Scholey Street Junction.

Mayfield Precinct

The Mayfield Precinct is located between the South Arm of the Hunter River and Industrial Drive, bounded by Tourle Street in the west and Selwyn Street in the east. It contains large areas of freehold land developed for heavy industry, as well as the Port's Mayfield Site.

The Mayfield Site represents the largest vacant Port land site on the eastern seaboard, with direct Channel frontage and potential for deep water berthing, providing a significant opportunity for growth within the Port. Current planning for the site includes the development of a Bulk Liquids Precinct, area dedicated to the storage and distribution for Project Cargo, known as the Mayfield Cargo Storage Facility, with the remaining allocated for the development of container handling facilities.

A dedicated Bulk Liquids Berth, Mayfield 7 Berth (M7), services the bulk liquids terminals and is designed to cater for long-range tanker vessels up to LR1 and LR2.

Stolthaven currently operates a Terminal and Distribution facility with approval for expansion of the tank farm and the import of a variety of fuels including diesel, petroleum products, ethanol and aviation fuel. Koppers Australia import and export high-temperature coal, tar and pitch products, which are piped to processing plant located two kilometres to the west. Further land is available for the development of other bulk liquids facilities.

Mayfield 4 Berth (M4) is a common user berth used as a general cargo berth. A small general cargo handling facility currently operates, providing storage for containers and general cargo.

The Mayfield Precinct is serviced by road and rail infrastructure through direct access to Industrial Drive and rail access via the Scholey Street Junction.

PORT LAND

Kooragang Precinct

The Kooragang Precinct is located on Kooragang Island on the northern side of the Port. It is the primary coal precinct containing two coal terminals and associated coal loading berths (K4–K10), which are operated by two coal export companies, Port Waratah Coal Services (PWCS) and Newcastle Coal Infrastructure Group (NCIG).

Land in the north-west of the precinct and the north bank of the South Arm has been allocated to the development of a fourth coal export terminal for the Port.

The Kooragang Precinct is supported by rail access via the Kooragang spur line, with all coal transported to the terminals via rail. Road access to Kooragang Island is provided via the Tourle Street and Stockton Bridges.

The western half of the Kooragang Precinct was formerly used as a waste disposal area for heavy industry, known as the Kooragang Island Waste Emplacement Facility (KIWEF).

KIWEF is in the process of being remediated and cannot be developed until appropriate environmental closure is complete. Adjoining the Kooragang Precinct to the north and west is the Hunter Wetlands National Park and Ramsar Wetlands.

Walsh Point Precinct

The Walsh Point Precinct is located on the eastern side of the Port with frontage to both the South and North Arms of the Hunter River. PON's land is currently used for the import, export and storage of bulk products, as well as a variety of small-scale industrial uses such as metal recycling. Kooragang 2 and Kooragang 3 Berths (K2 and K3) have the highest utilisation of all common user berths within the Port. These berths also support customer and tenant distribution infrastructure, which have been co-located within the precinct to facilitate cargo handling.

Products imported and exported across K2 and K3 include dry bulk products such as cement, fertiliser, petroleum coke, magnetite, sands, anhydrous ammonia, scrap metal, alumina, and bulk liquids including fuel, acids and vegetable oil. The Precinct incorporates significant back-up land for portside storage, particularly on the eastern side of Walsh Point, which consists of several undeveloped lots.

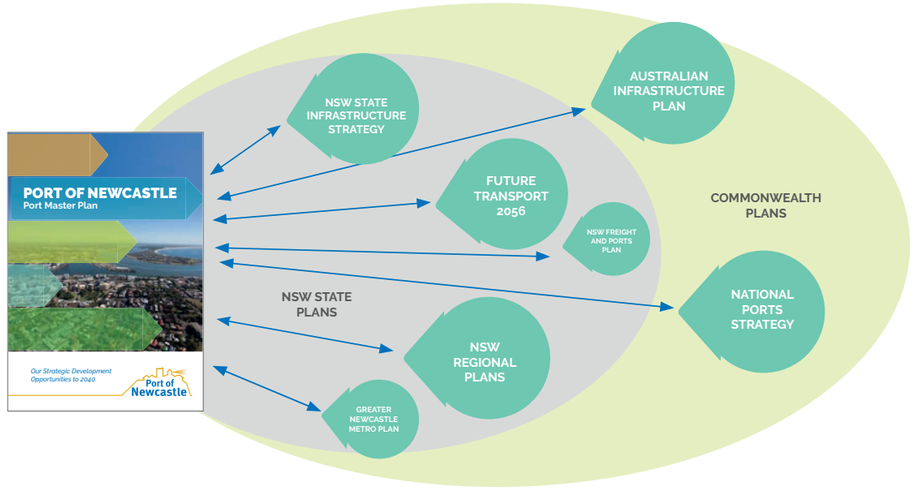
The centre of Walsh Point is occupied by heavy industry, including fertiliser manufacturer Incitec Pivot and mining industry chemical supplier Orica. These facilities are on freehold land and export products such as ammonia through the Port.

Rail access is via the Kooragang spur and a level crossing over Cormorant Road.

STRATEGIC CONTEXT

Pictured: The Basin, Carrington

There are a range of national and state strategies, policies and regulations that deliver, plan and manage infrastructure, transport and land use planning. The Port Master Plan has been prepared cognisant of these, but also reflective of the commercial environment in which the Port now operates.



Infrastructure planning, funding and delivery by Governments ensures that Australia continues to invest in infrastructure to support its economic growth and prosperity for all citizens. Infrastructure Australia independently assesses projects and initiatives for inclusion on the national Infrastructure Priority List. The Infrastructure Plan and Priority List is a prioritised list of nationally significant investments. It provides decision-makers with advice and guidance on specific infrastructure investments that will underpin Australia's continued prosperity.

Similarly, the NSW State Infrastructure Strategy facilitates and allocates resources for projects of state significance including Fixing Country Rail, Bridges for the Bush and Regional Road Freight Corridor improvements.

In the context of a growing Australia and the need for a freight system that boosts the nation's prosperity and meets community expectations for safety, security and environmental amenity, both the Commonwealth and New South Wales Governments are developing a comprehensive suite of transport, freight and port strategies. Transport for New South Wales (TfNSW) is the lead agency, preparing the Future Transport 2056 and NSW Freight and Ports Plan.

There has been a growing emphasis on regional planning across NSW to support long-term community needs. Given that the Port's catchment area extends west to Parkes and north to Moree, taking in Dubbo, Tamworth, Armidale, Narromine and Walgett, critical alignment with the Central West and Orana, New England North West and North Coast Regional Plans, as well as the Hunter Regional Plan, has been considered in the preparation of the Port Master Plan. These Regional Plans note the connectivity of the regions to the Port of Newcastle as the global gateway, and the need to leverage these connections.

The Hunter Regional Plan and the Greater Newcastle Metropolitan Plan identify the Port as a global gateway providing international freight connections and a catalyst for the growth and diversification of trade and contribution to the economy.

The Port Master Plan provides for the commencement of two-way dialogue with Government and will be an important communication tool when working with agencies tasked with delivery of long-term plans and infrastructure. It will help inform policy frameworks and establish infrastructure priorities for the benefit of New South Wales and Australia, as well as ensuring that the needs of PON, as the commercial operator of the Port, are met.

OUR STAKEHOLDERS AND ENVIRONMENT

Pictured: Collaborative tree planting day 2017

Our stakeholders include our customers, our community, our partners and our people working together within our unique Port environment.

OUR CUSTOMERS

Central to the success of our business is the success of our customers. Our customers include not only those who have a direct dealing with PON, but also the buyers and producers who interact with the entire supply chain. PON works closely with local councils, business chambers and regional development advisors that represent farmers, manufacturers and producers.

Our focus is on knowing and understanding our customers and the markets in which they operate. Strategic alignment between our vision and long-term plans, and those of our customers, will strengthen relations and ensure we are co-creating efficiencies. Ongoing customer engagement will help to grow the Port, facilitate trade and transform the economy.

Planning for a 20-year vision is a challenging exercise, especially given rapid technological change and industry innovation. PON is intentional about speaking with our customers, stakeholders and partners. Our customers have said that some of their greatest concerns are the potential impact of urban encroachment and the redevelopment of land that adjoins the Port in a way that may hinder their current or future operations.

Another area highlighted by customers was ensuring that the delivery of Port services and Port infrastructure matches the anticipated growth in trade. The utilisation and optimisation of the Port's Channel, land and transport corridors, and the corresponding increase in the number of vessels, trucks and trains that service the Port, is part of PON's ongoing dialogue with service providers.

Other customers identified the Port's rail connectivity as a future opportunity to reconfigure the current modal split for the transport of cargo, providing the impetus to investigate the greater use of rail for cargoes such as fuel.

As our trade base diversifies, we will foster new relationships with a broader range of customers, particularly those who import or export containerised freight. These include the advanced manufacturing, food and agribusiness and alternative energy industries.

Conversations with existing and future customers will shape how PON plans and develops the Port over the next twenty-year horizon, with an emphasis on being responsive, agile and customer-focused. These conversations will also inform our future advocacy and engagement with Governments and infrastructure providers.

OUR PORT COMMUNITY

The Port is an iconic part of the City of Newcastle's identity. PON recognises the importance of the Port to the Newcastle community and strives to develop and maintain strong relationships with all our stakeholders.

It is also acknowledged that there are a range of expectations and views within the community regarding the Port and its activities. Key to PON's commitment is engagement and active communication. The PON Community Liaison Group comprises representatives of the community, business, industry and Government. The Community Liaison Group is an opportunity for the community to engage with the Port, learn about its operations and provide feedback.

PON also partners with the community and industry to assist local community groups that invest in our region's future and make a measurable difference to the lives of its people. Since the Port Lease commenced in May 2014, PON has awarded more than $500,000 to community projects spanning education, the environment, youth leadership and development, and community health and well-being.

PON also contributes at least $1 million annually to the Newcastle Port Community Contribution (NPCC) Fund. The NPCC Fund supports suitable projects that enhance or maintain landside infrastructure and community amenity around the Port.

Port of Newcastle
INVESTS
more than
$1.2 million
per annum in
COMMUNITY SPONSORSHIPS & GRANTS
in support of educational, environmental, welfare, and arts and cultural projects.

OUR PARTNERS

PON works with a number of Government agencies, regulators and enterprises that manage various aspects of the freight supply chain and delivery of Port services, including the management of shipping, transport and land.

Shipping

The Port Authority of New South Wales is a state-owned corporation that manages the navigation and marine safety needs of commercial shipping. The Harbour Master is responsible for the safe navigation of the harbour. The Port of Newcastle is a compulsory pilotage port with a helicopter transfer service used to embark and disembark pilots.

The Vessel Traffic Information Centre (VTIC), operated by the Port Authority of New South Wales, provides a single point of contact for emergency reporting within the Port limits and ensures compliance with procedures and regulations. Other functions include dangerous goods regulation in the Port areas, and oil and pollution incident response management.

The Port is supported by towage and linesman services, including eight tugs provided by a private tug operator. The NSW Roads and Maritime Services (RMS) is the owner of the maritime areas of Newcastle Harbour and provides access rights for PON to use, maintain and develop maritime facilities and the shipping channel.

Transport

The Commonwealth-owned Australian Rail Track Corporation (ARTC) manages, maintains and invests in the two networks that link the Port of Newcastle: the Hunter Valley and Interstate Rail Networks. ARTC is an integral partner in the success of the Port, providing connectivity and capacity to service the rail freight task.

Transport for NSW (TfNSW) operates the Sydney Metropolitan Rail Network, including the Main North Line between Newcastle and Sydney. The focus of this network is to support growth in the passenger task, balanced with the need to move greater volumes of freight by rail within the Greater Sydney metropolitan area.

The above rail operators are also important stakeholders, as they are the purchasers of rail paths from network operators. They influence the optimisation of rail by determining the length of trains, the number of locomotives used and the introduction of new fleet with technological advancements.

RMS, the National Heavy Vehicle Regulator (NHVR) and road transport and logistics companies are important stakeholders in the delivery of road infrastructure, transport, and the safe and efficient management of traffic and congestion.

Land

Commonwealth biosecurity and border control services operate within the Port to ensure that Australia's biophysical resources and security objectives are met and protected.

Environmental regulators are responsible for regulating a wide range of activities at the Port and monitoring compliance with environmental legislation. The New

South Wales Environment Protection Authority (EPA) manages issues such as air emissions, water quality, noise, contaminated sites, transportation of dangerous goods outside of the Port area, and waste.

The Commonwealth Department for the Environment manages matters of national significance, including nationally significant threatened species and the disposal of dredged material from the Channel.

The NSW Department of Planning and Environment (DPE) is responsible for regional planning and the assessment of Port and state significant development. It is important that adequate resources and a high standard of expertise are given to the task of supporting planning for the Port.

The Port straddles the boundary between the local Government areas of Newcastle City Council and Port Stephens. In developing their local planning strategies and in assessing development proposals, Councils can assist the Port through awareness of urban encroachment issues and by preventing poor development outcomes.

The majority of PON's land holdings are leased to a range of third-party operators who own and manage their own facilities, including the coal terminals, bulk fuel terminals, Maritime Precinct and bulk storage facilities. These operators are responsible for their own logistics, construction and management of their facilities.

Port service providers are companies who access the Port for commercial purposes but do not lease land. These include stevedores, transport companies, shipping agents, provedores and marine services contractors.

OUR PEOPLE

We are a local team of diverse professionals led by an experienced executive team.

Our team tells us they work with great people who are knowledgeable and professional, and have a strong belief in the organisation's values and purpose. The scale and diversity of the Port's trade means our people enjoy stimulating and challenging work in an environment that drives innovation. We are committed to performance and improvement as demonstrated through our actions and behaviours, with safety as a core value.

Through the delivery and implementation of the Port Master Plan and the expertise of our people, PON will continue to collaborate with stakeholders to deliver the benefits of trade growth, both to Newcastle and to the surrounding communities.

Pictured: Hydraulic Engine House at Carrington Source: State Library of Victoria

OUR ENVIRONMENT

The Port of Newcastle is surrounded by important ecological and cultural heritage sites.

Bounding the Port to the north is the Hunter Wetlands National Park. The park is the largest single-estuary wetland reserve in New South Wales and contains the internationally significant Ramsar Wetlands. This site provides feeding and roosting sites for shorebirds and transient migrant birds, as well as habitat for nationally threatened species, such as the green and golden bell frog.

The Port has a multi-faceted and extraordinarily rich history. Within the Port, there are a number of heritage items that have been recognised as being of significance to both the local community and the State of New South Wales. These include buildings such as Carrington Hydraulic Engine House, shipwrecks, marine structures and relics. PON actively manages these assets to support conservation outcomes within an operational context.

PON recognises its responsibility to manage the Port in a way that minimises its impacts on the local environment and is committed to adopting sustainable practices. PON works hard to limit the impact of Port operations on surrounding areas and has identified four key themes guiding its approach:

OUR SYSTEMS AND SUPPORT

Our systems and support enable compliance, commerciality and efficiency within a culture of mutual respect.

COMMITTED STEWARDS

We are proud to be the custodian for the NSW Government and the people of NSW.

MANAGING OUR ENVIRONMENTAL FOOTPRINT

We are committed to managing our environmental impacts and developing the Port in a sustainable manner.

BEYOND OUR BOUNDARIES

We are supportors and contributors to the management of environmental initiatives beyond the Port.

PORT CAPACITY

PROMOTE THE CAPACITY OF THE PORT AND SUPPLY CHAIN TO SUPPORT ECONOMY

PORT CAPACITY

The connectivity and capacity of the Port and supporting supply chain infrastructure means that the Port of Newcastle is well-placed to support Australia's growing freight task and promote the regional and national economy.

A port is not a terminus, but part of a continuous linear supply chain where connected transport networks facilitate the efficient movement of goods.

In addition to articulating transport linkages, PON has sought to:

- Quantify the capacity of the shipping channel in terms of the spectrum of vessel types and the number of ship movements that can be accommodated.
- Understand and identify facilitating infrastructure for storage and product handling, and the supply of vacant developable land to accommodate future Port growth.

The Australian Infrastructure Audit found that without action, Australia's productivity and quality of life will be tested, with population and economic growth set to cause increasing congestion and bottlenecks. The Newcastle Container Terminal as a global gateway for the import and export of containerised freight will help meet the future logistic and freight task for NSW. The connectivity and capacity of the Port can provide a solution to potential congestion, as part of a broader integrated system of ports and transport networks.

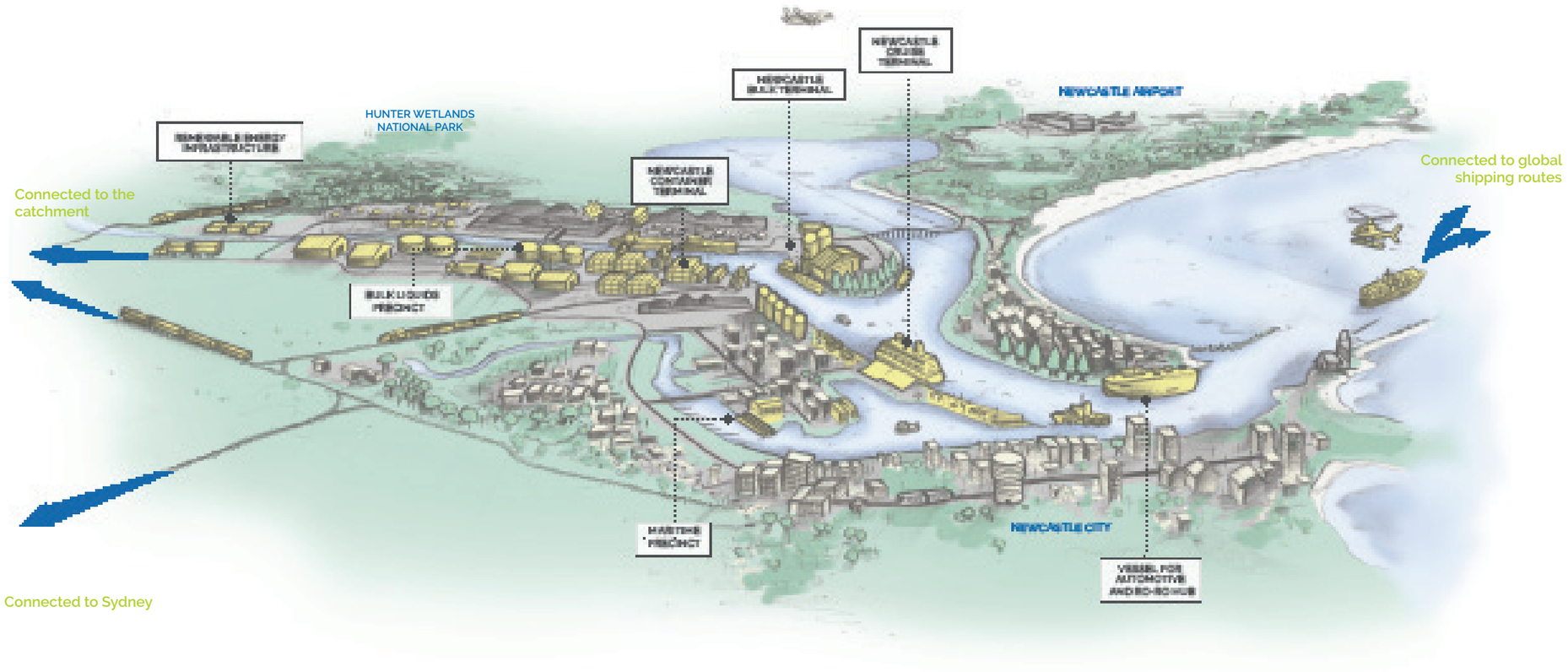
By 2056, the New South Wales government estimates that the state's population will grow to more than 11 million people, with freight volumes expected to double in the Greater Sydney area and grow by a quarter in regional New South Wales.[9] The physical corridors of road and rail infrastructure, and the transport operators that use them, serve as the Port's arteries supplying outbound freight, and in turn carry inbound freight to distribution centres for dissemination to businesses and consumers.

The connectivity and capacity of the transport assets that support the Port of Newcastle and its road and rail supply chains offer considerable value to New South Wales.

[9] Future Transport 2056, Transport for NSW 2018.

"The more efficient the transport network, the better our economy performs, allowing new businesses to reach new markets, attracting new investment and catalysing new job and training opportunities for our people."

Future Transport 2056



The Port of Newcastle is a nationally significant global gateway.

PORT CAPACITY

OUR CHANNEL AND BERTHS

The Channel is 12 kilometres in length over two sections.

The main Channel is nine kilometres from the Port entrance to the most western berth (K10) and has a depth of 15.2 metres. A secondary section of the Channel is three kilometres in length, providing access to the Basin berths. It has a design depth of 12.8 metres. Supporting the Channel is a network of 20 berths, with nine berths used exclusively for coal and 11 provided as common user berths for general and bulk cargoes.

The Port operates 24 hours a day, seven days a week and 365 days of the year. The navigation of vessels from the Channel entrance to a designated berth is undertaken by pilots from the Port Authority of New South Wales. Tug services are available in the Port for ship assist and vessel berthing. Lines services are also available for mooring activities.

Currently, the Channel can facilitate a range of vessel sizes and types, with 4,700 vessel movements undertaken in 2017. The capacity of the Channel is determined by the number and type of vessels that can be safely navigated between the Port entrance and a designated berth.

The safe handling criteria for vessel movements is set out in the Ship Handling Safety Guidelines. This guideline is published by the Port Authority of New South Wales, with the safety of vessel movements within the Port regulated by the Harbour Master.

The configuration of the Channel, combined with local environmental factors, the receiving berth, the destination port and navigational constraints, can limit the size of vessels entering and departing the Port. The types of constraints to be considered include:

- Under-keel clearance (distance between the lowest point of the ship's hull and the Channel bottom);
- Channel clearance (distance from ship's hull to Channel boundary);
- Channel geometry;
- Ship's manoeuvrability when changes in direction are required;
- Navigation aids (pilot visibility of beacons, leads or buoys from bridge of ship);
- Ship interaction (speed limitations for vessels passing berthed ships);
- Berth box (capability of berth box to accommodate vessel through environmental conditions);
- Environmental factors; and
- The compatibility of the dimensions with the Port destination.

TYPE OF VESSEL	CARGO	LOA LIMIT (M)	BEAM LIMIT (M)	
Bulk Handymax Panamax Cape Class	Bulk and General (coal, wheat, fertiliser)	300	50	
Tanker Medium-Range and Long-Range: LR1 and LR2	Bulk liquids (fuel, vegetable oil)	245	43	
Container	3,500 TEU	250	32	
Passenger	4,000 passengers	320	50	
Ro-Ro	4,000 vehicles plus machinery	265	35	

Future Channel Capacity

PON has developed a Port Traffic Simulation Model to assess development scenarios that increase or alter the number and size of vessels using the Channel. Outputs from the model that are used to assess the impact of changes to the Channel and terminal efficiency include vessel time at berth, Port time, terminal throughput, Port entry vessel queues and berth utilisation.

Other measures to be assessed with development proposals are ship interaction (forces and motions resulting from ships passing berthed vessels), Channel availability (tidal restrictions) for deep-drafted vessels, and operational resources, such as marine pilots, tugs and linespeople. The navigation aspects for development proposals are assessed by the Harbour Master.

An assessment undertaken to evaluate the capacity of the Port has demonstrated that the Channel can accommodate the safe movement of over 10,000 vessels per annum. The vessel movements in 2017 indicate that the Channel is currently operating at less than 50% of its capacity.

The nature of global shipping is changing, with rapid growth in the size of vessels. Future trade opportunities are also expected to result in an increased demand for larger loaded inbound vessels. In anticipation of accommodating future vessels, PON has undertaken investigations to evaluate the infrastructure improvements required for future container vessels.

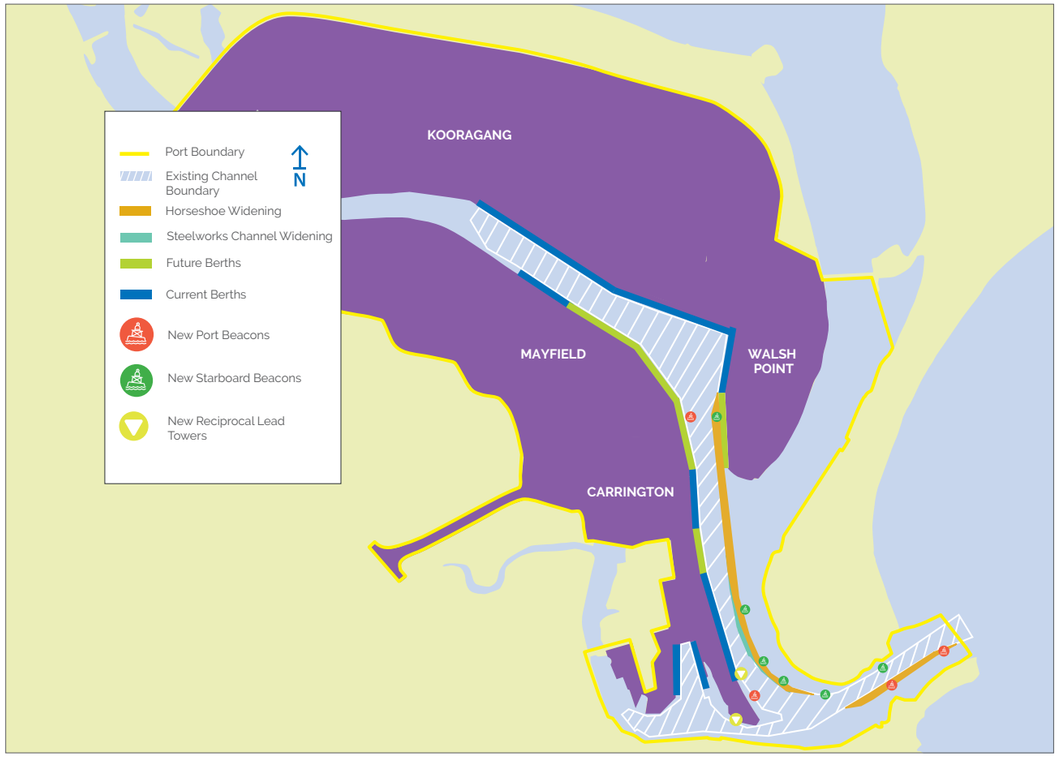
The investigations include:

- Port Traffic Simulation Modelling to assess the impact of increased vessel traffic from proposed development scenarios against existing conditions;
- Simulations to identify the navigation and manoeuvrability requirements for vessels entering the Port, transiting the Channel and passing berthed vessels;
- Ship Interaction Studies to assess the safe passing speeds for vessels passing berthed ships; and
- Physical Channel constraint analysis, to evaluate the Channel geometry and navigation infrastructure required to address the issues raised from simulations and studies.

A range of future vessel types that have potential to service the Port is shown below. This is an aspirational range to fully utilise the capacity of the Port. The simulations and studies to support the future vessels will include the investigations mentioned above. Supplementary investigations may be required by the Harbour Master.

TYPE OF VESSEL	CARGO	LOA LIMIT (M)	BEAM LIMIT (M)	
Bulk	Bulk and General (coal, wheat, fertiliser)	330	55	
Container	18,000 TEU	400	60	
Tanker	Liquefied Natural Gas	345	54	

PORT CAPACITY



Future Channel Improvements

Beyond the current available physical capacity of the Channel and berths, there is potential to undertake capital improvements to provide for a greater diversity of vessel types, sizes and level of service. These include Channel improvements, navigation aid upgrades and construction of additional berths.

Channel improvements required to improve vessel diversity include capital dredging and widening the Steelworks Channel, Horseshoe area and Channel Entrance. These improvements would allow for longer and wider vessels to safely enter and navigate the Channel.

As the number and size of vessels increases, terminal berthing, Channel widening, navigation aid upgrades and navigation resources (i.e. marine pilots, tugs, lines service) will need to be considered as part of any development scenario analysis. For example, inbound tankers and container vessels will require escort tugs to increase the operational conditions for entry to the Channel.

PON will continue to work with the Harbour Master to review the infrastructure required for the future vessel sizes. It is expected that marine pilot services and navigational resources such as tugs and lines services will keep pace with the rate of growth in vessel traffic numbers and the changing nature of the vessels as the Port diversifies.

Pictured: Impression of 18,000 TEU Container vessel entering Newcastle Harbour

Future Berths

In addition to the existing berths, PON holds a planning approval for the capital dredging of additional berth pockets within the South Arm of the Hunter River. Approved berth pockets proposed alongside the Mayfield Site would support the potential development of over 1500 metres of continuous quayline for the development of container terminals.

Four berths are proposed on the South Arm to increase berthing capacity at Walsh Point. There is adjoining land to support mooring and unloading infrastructure in this location.

One berth is proposed in Carrington which could be developed as a standby berth to assist with vessel movements, if required.

Into the future, there will be growing landside implications that challenge ports in discharging cargo, especially as vessels increase in size and greater efficiencies are demanded. Other ports around Australia are required to create additional land through land reclamation. These processes have significant economic costs and impacts on the environment. In contrast, PON has vacant portside land accessible by deepwater channel. This means greater efficiencies in land use, lower costs for consumers and lower environmental impacts can be achieved.

PORT CAPACITY

OUR LAND

The Port's land footprint includes the berths, the Port's road network and rail sidings, land for Port facilities such as terminals and storage facilities, as well as general industrial development.

PON's transport networks include the Port access roads and various rail sidings operated by PON and private rail infrastructure managers. The PON Kooragang road network is accessible by all businesses on the island, including freehold land owners.

The majority of Port land is used for Port facilities. These include coal terminals; fuel storage and distribution facilities; silos for the storage of wheat, grains, cement and alumina; storage facilities and sheds for loose bulk cargo such as mineral concentrates, fertiliser and magnetite; and open-air storage facilities for project and general cargo. Some of this land is leased for between 10 and 30 years, with the facilities owned and managed by the operator. PON also has land available for both short-term and long-term licences.

Additionally, there is land allocated to general industrial uses and the development of ancillary support services such as service stations.

There is over 100 ha. of vacant portside land that is zoned, serviced and 'shovel ready', offering substantial opportunities to support the diversification of trade.

There is no requirement for land reclamation within the Port to support future development or provide additional land for Port facilities or infrastructure.

Into the future, there will be growing landside implications that challenge ports in discharging cargo, especially as vessels increase in size and greater efficiencies are demanded. Other ports around Australia are required to create additional land through land reclamation. These processes have significant economic costs and impacts on the environment. In contrast, PON has vacant portside land accessible by deepwater channel. This means greater efficiencies in land use, lower costs for consumers and lower environmental impacts can be achieved.

Planning in the Port

The Port of Newcastle is recognised as a State Significant Precinct due to its importance to the New South Wales economy. This significance is demonstrated through a separate land use planning and approvals regime that applies to Port land and supporting transport connections. The State Environmental Planning Policy (Three Ports) 2013 (the 'Ports SEPP') ensures consistent planning controls protects the Port from incompatible land use, and stipulates zoning to accommodate a broad range of Port uses that support diversification.

There are a range of approval pathways set out in the Ports SEPP, with Port infrastructure able to access a streamlined approval process, to ensure the Port can operate efficiently. Minor development for Port infrastructure is able to be undertaken or constructed without planning approval.

Port infrastructure that complies with predetermined development standards can be assessed by private certifiers, allowing development to proceed in a timely manner. This includes large-scale port-related buildings, wharves and berthing infrastructure. PON has dedicated in-house resources to facilitate development and seek the best outcome for all stakeholders.

18 Ha. Operational Land

532 Ha. Port Facilities

48 Ha. Transport

PON is committed to setting a world-class benchmark and making a significant investment in the handling of cargo.

Ongoing renewal and replacement of Port infrastructure, as well as the repurposing of land from former industrial uses to land ready for redevelopment, will meet the needs of our customers now and into the future.

Newcastle Bulk Terminal

The Walsh Point Precinct facilitates the import, export and storage of bulk cargo through the Newcastle Bulk Terminal (K2 and K3 Berths). These berths are some of the busiest in the Port, with current demand from customers putting pressure on future growth. The current unloading equipment has also reached the end of its working life.

In response, PON are developing a new integrated bulk cargo facility that combines highly efficient cargo handling equipment with modern safety and environmental standards. The vision for the Newcastle Bulk Terminal is to operate the most efficient bulk terminal on the Australian east coast. The project involves the replacement of 50-year-old ship unloading equipment at K2 and the centralisation of management and services. Along with safety and environmental improvements, the project will deliver greater efficiency for customers, allowing them to grow their cargo volumes.

Pictured: Kooragang 3 and 2 Berths at Newcastle Bulk Terminal

PORT CAPACITY

Pictured: Construction of services, Mayfield.

Infrastructure Servicing

PON is focused on continuous environmental improvements and timely renewal of infrastructure to ensure best practice in safety, whilst driving efficiency and growth. PON also has an extensive program to service vacant land to meet the needs of future development.

Carrington is currently serviced with adequate water and electrical supply for current operations; however, as it is the oldest part of the Port, PON is undertaking forward planning for the renewal of sewer and water infrastructure in the Precinct. Investment by public utility providers, such as the new Ausgrid zone substation in Tighes Hill, will replace the 50-year-old Carrington Zone substation, and provide additional network capacity. In the future, the development of new facilities in Carrington may require the augmentation of the Ausgrid 11kV transmission infrastructure and PON's private electrical network, including ageing cables and local substations.

Since the closure of the former BHP Steelworks in 1999, the Mayfield Site has been progressively remediated and readied for development of new Port facilities, including a container terminal. The Mayfield Utilities Infrastructure Plan provides a framework for the review of anticipated utility demand requirements of the site and identifies strategies to provide utilities services. The PON Mayfield Switching Station will provide 14.75MVA and will be constructed by 2020 to augment the current power supply. This will be sufficient to supply future development opportunities, including a container terminal. PON has also implemented a reticulation strategy for the Mayfield Site to provide individual water connections for Port facility operators.

PON has also made significant investment in the Walsh Point Precinct to renew utilities infrastructure. The K2 electrical substation, constructed in 1967 to service the wharf infrastructure and unloaders, has reached the end of its serviceable life. The replacement of this existing electrical infrastructure will service the new ship unloader as part of the Newcastle Bulk Terminal.

Vacant land along Greenleaf Road is serviced with utilities, water and a 33kV electricity network. This is expected to meet future land use requirements.

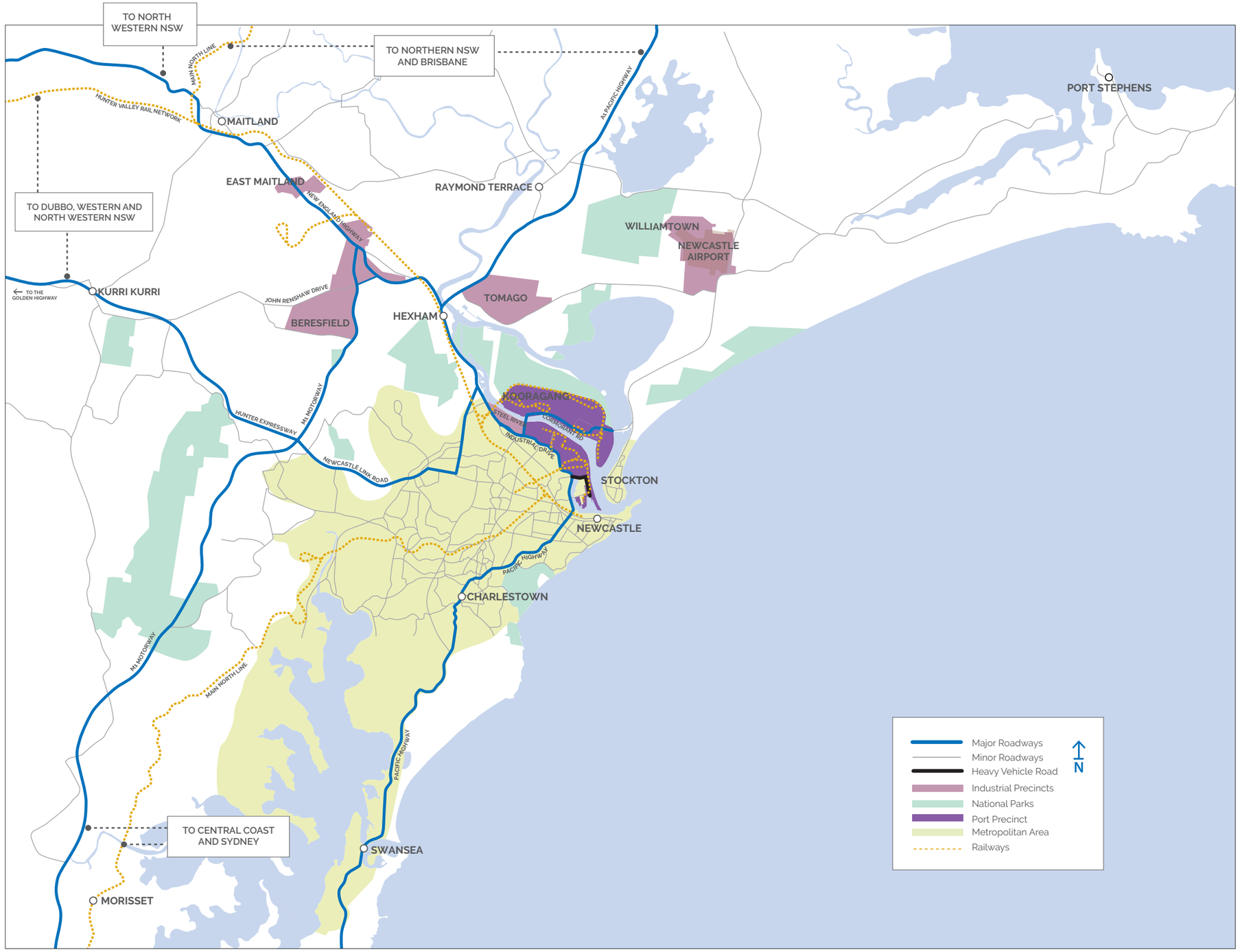
PON has developed a sewer strategy for Kooragang Island including Walsh Point, and is working with Hunter Water to progress the strategy. PON will also continue to investigate renewable energy sources such as solar to offset energy supply requirements for Port operations.

There are no current plans for the development of any Port infrastructure projects, as defined in the Ports and Maritimes Administration Act 1995 Part 5, Division 6A, for which PON will impose an infrastructure charge.

TRANSPORT CONNECTIVITY

UTILISE EXISTING ROAD AND RAIL TRANSPORT ASSETS TO IMPROVE FREIGHT EFFICIENCY

TRANSPORT CONNECTIVITY



The Port of Newcastle has excellent access and connectivity to the national highway and rail networks linking to capital cities and hinterland.

Ensuring that existing road and rail transport infrastructure are being utilised and optimised to their full capacity is critical to supporting and improving the efficiency of the New South Wales freight task. The effectiveness of the transport network can be measured by its level of direct connectivity; that is, the distance between the Port and its inland origin or destination, and the capacity, being the volume of freight, it can carry.

OUR ROAD NETWORK

The NSW Future Transport Strategy 2056 notes that the New South Wales road network is the state's largest asset and carries the majority of the state's passengers and freight.

Located on the periphery of the Newcastle metropolitan area, the Port has direct access to the national heavy vehicle road network and dangerous goods route via Industrial Drive, providing interstate connectivity and links to major regions across New South Wales. This access limits the need to interact with the Newcastle metropolitan road network and removes road-based freight from local roads.

The broader network of national highways is accessible from the M1 Pacific Motorway (M1). The Hunter Expressway between the M1 and Golden Highway provides an east-west 40-kilometre dual carriageway freeway connection to link the Central West and Orana region including Dubbo and Parkes, and the Port. The New England Highway provides access to the New England North West region including Tamworth, Narrabri and Moree. The A1 Pacific Highway to the north provides access to the North Coast and is the major highway link to Brisbane.

To the south the M1 provides road connectivity between Sydney, the Central Coast and Newcastle and existing freight distribution centre hubs that service the north and north-west Sydney and Central Coast markets. The completion of NorthConnex will further improve the connection of the Port to southern and western Sydney, by providing a comparatively signal-free motorway connection from the Port gate to the M7.

TRANSPORT CONNECTIVITY

Road Capacity

Within the Port boundary, PON operates 13 kilometres of private road network maintained to Australian Standards and approved as a 25m B-double route. This network enables customers to unload freight direct from ship to truck for transport to storage facilities located within the Port, without having to access the RMS road network.

The Carrington and Mayfield Precincts directly access Industrial Drive, with the Kooragang and Walsh Point Precincts accessing Industrial Drive via Cormorant Road and Tourle Street. Industrial Drive is a major four-lane classified road and is the principal east–west route providing connection between the Port and the M1 at Hexham, with Cabbage Tree Road/Tomago Road/Nelson Bay Road providing a secondary route for access to the Port and Newcastle

The Port of Newcastle supports the New South Wales Government's goal of creating a more efficient transport network, recognising that this improves the global competitiveness of Australian producers, including farmers. Incorporating the Port of Newcastle and its road supply chain in the planning for New South Wales future transport strategy will contribute to a more efficient State-wide supply chain.

Continuous investment in new infrastructure is not the only solution to congestion in capital cities. The growth in container movements in NSW will put increasing pressure on Sydney, which is already facing continuous congestion issues. This raises the potential for ports outside of Sydney to play a role in servicing their local market and reducing pressure on Port Botany and Sydney more broadly.[10] The extensive capacity of the road network servicing the Port of Newcastle offers considerable value to New South Wales.

Within PON's Port road network there is ample capacity to both accommodate and manage future volumes of Port traffic.

PON's precincts have direct access to the arterial road network, which does not transverse the urban area. Road access to and from the Port of Newcastle is suitable for high-productivity heavy vehicles with less need for 'staging' of containers.

The arterial road network connecting the Port and the National Highway is the most critical link in the road system. The capacity of the key intersections and link roads that service the Port are currently operating well within the acceptable levels of service. The completed Tourle Street and Cormorant Road duplication will meet short-term demand from forecast traffic growth requirements to 2040.

Newcastle's proximity to Dubbo, Narrabri and Tamworth means that trucks can run economical return legs in one shift in compliance with Fatigue and Mass Management legislation. For example, a B-Double Dubbo-to-Newcastle return is a total of 770km with a drive time of 10.5 hours. In comparison, the Dubbo-to-Sydney return B-Double journey is 750km with a drive time of 12.5 hours. This makes no additional allowance for traffic congestion in Sydney, which would further push out cycle times.

HEAVY VEHICLE ROAD REFORM

There is a need to not only improve the efficient provision and use of road services, but also to reform road investment and charging arrangements. The heavy vehicle reforms recognise the challenges of ageing road infrastructure coupled with the growing freight task. To meet demand and remain competitive, Australian Governments are currently investigating ways to turn freight transport into an economic market-driven service as a way to increase the productivity, efficiency, capability and safety of freight transport.

This would see a market established that links the needs of heavy vehicle users with the level of service they receive, the charges they pay, and the investment of those charges back into road services. Heavy vehicle road reform will provide a basis for comparing road and rail freight pricing.

The proposed reforms could further assist in attracting additional containerised cargo to the Port of Newcastle, especially where the distance to and from the container origin and destination to the Port of Newcastle is less than the distance to competing ports.

[10] NSW Container and Port Policy, Deloitte Access Economics, 2018

MAJOR NSW FREIGHT HUB	PORT OF NEWCASTLE (KM & HOURS)		PORT OF BRISBANE (KM & HOURS)		PORT BOTANY (KM & HOURS)	
Parkes	481	6.38			363	5.21
Dubbo	384	5.14			423	6.11
Bathurst	334	4.28			217	3.11
Blayney	372	5.02			255	3.44
Narrabri	411	6.04	608	7.39	546	7.25
Tamworth	280	4.05	600	8.17	415	5.26
Moree	524	7.22	519	6.33	659	8.44
Griffith	725	8.48			570	7.06
Acacia Ridge			38	0.32		
Toowoomba			155	2.02		

Table 1 B-Double Travel Time

Future Capacity

Looking forward to 2040, there will be substantial growth in vehicle traffic across the road network in and around the Port. It is important to note that much of this growth will be the result of residential development to the north of the Port, and the densification of existing urban areas to the south.

While currently there is ample capacity in the immediate supporting road network, applying a standard rate of growth over the life of the Port Master Plan, it is likely that the roads would be operating at or above capacity approaching 2040. This is particularly relevant for Industrial Drive as a key strategic corridor servicing the Carrington and Mayfield Precincts.

Key intersections onto Industrial Drive are forecast to operate within acceptable levels of service to 2024. However, the development of the Newcastle Container Terminal, together with the Freight and Logistics Precinct in Mayfield, will require the upgrade of these existing intersections. This anticipated growth in vehicle traffic and the need for corresponding intersection upgrades have been anticipated in the Mayfield Concept Plan. The preparation of a comprehensive Transport Infrastructure Strategy for the Mayfield Precinct will provide a proactive basis on which to utilise and leverage the existing road networks' connectivity and capacity.

PON will also look at broader opportunities to utilise existing intersections to create one-way entry and egress flows for the Mayfield Site, using Bull Street and Selwyn Street. Consultation with adjoining land owners to ensure cumulative assessment of potential traffic generation will also be strong aspect of the Mayfield Transport Infrastructure Strategy.

TRANSPORT CONNECTIVITY

Future Projects

Improvement programs and projects to key highways will provide efficiencies to the movement of bulk and containerised freight by road, and support access to the Port from existing and emerging customers in the Sydney Metropolitan Area, Central West and Northern New South Wales.

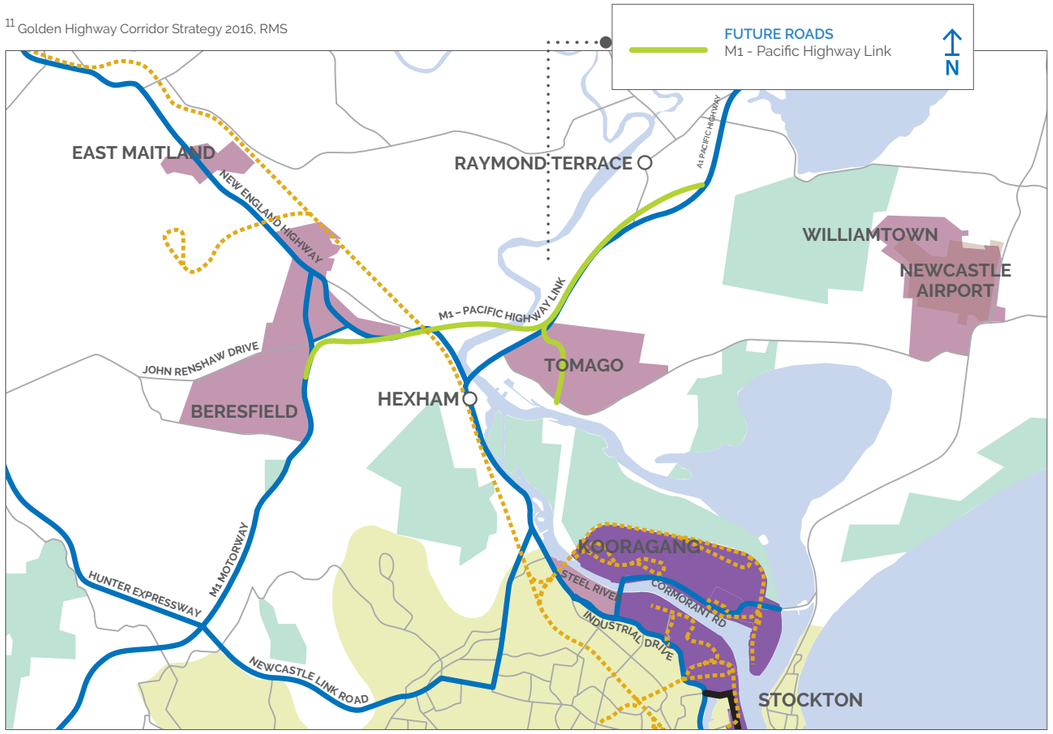
Golden Highway Corridor Strategy and Improvements
The Golden Highway operates as a critical freight route by enabling access for high-productivity vehicles across the Great Dividing Range from western New South Wales, mainly Dubbo but also Parkes, to the Port.[11] Improving the Golden Highway will allow journey times to the Port from the Central West region to be reduced and enhance the region's ability to increase cargo exports.

New England Highway Improvements
The integration of the New England and Golden Highways will improve freight movements and support high-capacity freight networks that contribute to productivity and competitiveness. Strengthening these connections will attract investment and business and support regional economic development.

M1 Pacific Motorway to Raymond Terrace Link
The M1 Pacific Motorway Extension to Raymond Terrace will connect the M1 directly to the A1 northbound, to alleviate congestion at the M1 intersection with John Renshaw Drive.

This is a key connecting point from the Port to both the Pacific Highway (north and southbound) and the New England Highway (east and westbound). By alleviating congestion travel time, the timeframes for freight vehicles travelling to or from the Port will also be reduced.

[11] Golden Highway Corridor Strategy 2016, RMS



OUR RAIL NETWORK

Rail is one of the most efficient and cost-effective forms of transport for freight, particularly over longer distances. Moving goods on rail, either as bulk cargo or in containers, generates less pollution, improves fuel efficiency and places less trucks on the roads, meaning fewer accidents.

The 2015 Australian Infrastructure Audit found that freight rail will need to play a growing role in the movement of goods between ports and inland freight terminals, and in the movement of containerised and general freight over longer distances.

The Port is serviced by the North South Rail Corridor connecting Brisbane, Sydney and Melbourne (called the Main North Line between Sydney and Newcastle) and the Hunter Valley Rail Network connecting the Port, the Hunter Valley and Western New South Wales. The Hunter Valley Rail Network is at least, double-track to Muswellbrook where it branches north and west in single tracks with passing loops. The Western Branch line through Ulan connects to the country regional network via Merrygoen, to Dubbo. From there it connects to Parkes and can act as a link to the grain networks of southern and central New South Wales. The northern branch through Werris Creek connects to Tamworth and North Star in northern New South Wales.

This network will also connect to the Inland Rail, consolidating rail access to an extended area of New South Wales and potentially Southern Queensland and Northern Victoria.

TRANSPORT CONNECTIVITY

Pictured: Kooragang Spur Line and Hunter Wetlands National Park.

Within the Port, the Carrington and Mayfield Precincts are serviced by the Port Waratah and Bullock Island lines accessed via the Scholey Street Junction and Morandoo yards. West Basin 4 Berth in the Carrington Precinct is the only berth on Australia's eastern seaboard with direct rail access at the berth face and connection to the national rail network.

The Kooragang and Walsh Point Precincts are serviced by the Kooragang spur line, one of the busiest rail networks in the world, providing rail access to the individual rail loops for the two coal terminals. The grade separated entry to the NCIG terminal allows the capacity of trains through Kooragang Junction to reach an eight-minute headway (separation distance between trains), providing for additional capacity on this line.

Within the networks servicing the Port, there is sufficient capacity to accommodate the contracted coal volume as well as non-coal trade including bulk grain and containers. The ARTC 2017-2026 Hunter Valley Corridor Capacity Strategy is a rolling 10-year strategy to demonstrate that there is sufficient capacity to meet contracted volumes based on the principles of the ARTC Hunter Valley Access Undertaking. It also identifies those projects that would be required to accommodate prospective volumes that have not yet been the subject of a contractual commitment. The current strategy states that the contracted tonnage numbers can be met by the existing infrastructure. Maintenance activities and capital projects are focused on achieving increased efficiencies through signalling improvements and improved network management systems.

The take-up of capacity in the Hunter Valley network for non-coal trade, including bulk grain, mineral concentrates and steel, has had relatively low utilisation to date.

The Main North Line between Sydney and Newcastle is one of the busiest passenger services on the Sydney Trains network, accommodating local, intercity and interstate passenger services. There are significant challenges in mixing freight and passenger services, given their different modes of operation. Passenger trains can accelerate and brake quicker but stop more frequently, requiring freight trains to keep pace with a constantly changing slot.

There are four guaranteed train paths available per peak for freight. These are generally utilised by the 1500m super freighters running between Brisbane and Sydney. Other paths are utilised by containerised freight originating within Newcastle's catchment. For example, cotton from the New England region is railed directly to Sydney, bypassing Newcastle, the closest port, and taking up valuable train paths, which adds to the congested Sydney rail network.

Planning for the separation of freight from passenger services on key shared networks to optimise performance for both services must be a key focus of the Government's transport planning activities.

"Rail access to and within the Concept Plan site shall be configured and operated to facilitate increased rail mode share to and from the site."
Mayfield Concept Plan Approval 2012

Future Capacity

Like the opportunity for improved efficiencies on the road network, there is also opportunity to utilise and optimise the existing rail network.

Newcastle is the closest port to the diverse agriculture and resource-rich areas of North Western New South Wales, with Tamworth, Narrabri and Moree all connected to the Port via the Hunter Valley network. Growth in outbound containerised freight, such as grain and meat products from the New England region, will necessitate new intermodal terminals and supporting rail infrastructure.[12] The existing connectivity and capacity of the rail networks serving Newcastle provides the logical solution for the future freight task.

Further south, while the rail connection between Dubbo and Parkes and Newcastle is a marginally longer distance than the rail connection to Port Botany, it is an attractive alternative to the Blue Mountains route. The Dubbo-to-Newcastle section of the network via Ulan has a lower ruling grade than the current Blue Mountains route, which means fewer locomotives are required and more wagons could be hauled, providing savings to exporters in terms of transport costs. Whilst this is a shorter distance to Sydney, extended transit times through the metropolitan area and longer turnaround times at Port Botany mean that any time efficiencies gained are eroded.

LOCATION	PORT OF NEWCASTLE (KM)	PORT BOTANY (KM)	PORT BRISBANE (KM)
Tamworth	293	465	825
Narrabri	410	582	655
Narromine	514	504	935
Moree	506	678	558
Dubbo	478	468	970
Parkes	623	455	1042
Goondiwindi	640	812	425

New Rail Facilities
Within the Port itself there is land available to expand rail infrastructure with new rail sidings and receival facilities to accommodate and support growth in rail freight within the Mayfield and Walsh Point Precincts.

The Mayfield Site presents a unique opportunity to design and build the most efficient rail terminal for the loading and unloading of container trains, and the management of train cycles. This is an aspiration of the approved Concept Plan for the site which is designed to support, at minimum, an 80:20 road rail modal split for containers.

The greatest efficiencies are gained by running the longest trains possible. The length of train is determined by the length of siding at the origin and destination, the maximum ruling grade and axle load limit of the network, and the length of passing loops where there is only single-track. The first phase of development of the Mayfield Site could accommodate 640 metre long sidings, providing for the trains of 1500m-long trains. This could potentially facilitate over 1 million containers per annum and support a 50:50 modal split between rail and road.

In addition to train length, one of the factors affecting capacity is the occupation time of trains at a terminal. The goal is to try and cycle trains out of the terminal as soon as they are finished working, and replace them with the next train. Timing the arrival of the next train is very hard operationally. The most effective method is to develop a series of holding roads, so that the next train has already arrived and is holding near the Terminal to access it as soon as it is clear to do so.

New holding roads within the Morandoo Yard and Scholey Street would allow trains to be stored for facilities in both Mayfield and Carrington. PON holds a concept approval for the reconfiguration of the Morandoo Yard to provide additional rail sidings to hold Port trains outside of the site.

[12] New England Regional Plan , Department of Planning and Environment 2017

TRANSPORT CONNECTIVITY

Rail connectivity within the Mayfield Precinct also provides the opportunity to investigate rail transport options for other cargoes, including bulk fuels, into the future.

Rail access to Walsh Point is via the Kooragang Island Spur. Given that the island now has an eight-minute headway there are paths available for other trades to access Walsh Point without disturbing coal exports. The Walsh Point Precinct contains several large parcels of land owned by PON and private landholders that are connected by rail, where a bulk rail terminal incorporating a rail loop and unloading/loading infrastructure could potentially be developed. Development of such facilities would support PON's investment in new bulk ship unloading infrastructure at K2.

Future Projects and Corridors

PON is supportive of projects that will improve network access and capacity for freight trains, especially between Newcastle and Sydney, and Newcastle and regional New South Wales as an alternate east-west connection to the Blue Mountains route.

Projects include:

Northern Sydney Freight Corridor (Stage 2)
The Northern Sydney Freight Corridor (NCFC) Program aims to improve freight train capacity and reliability between Strathfield and Broadmeadow (Newcastle Junction).

This project would significantly improve freight rail capacity on the Main North line, resulting in full separation of freight and passenger trains from the Hawkesbury River to Flemington Yards, which is a substantial portion of the route. This could provide an additional freight train to the timetable in each hour of service outside the peaks, which equates to approximately six services in each direction each day.

PON also supports future investment in initiatives and projects that focus on faster rail connections between Newcastle and Sydney. Whilst they may be focused on improved passenger services, improvements in rail infrastructure, such as track straightening and signalling improvements, will maximise the operational capabilities of both freight and passenger services.

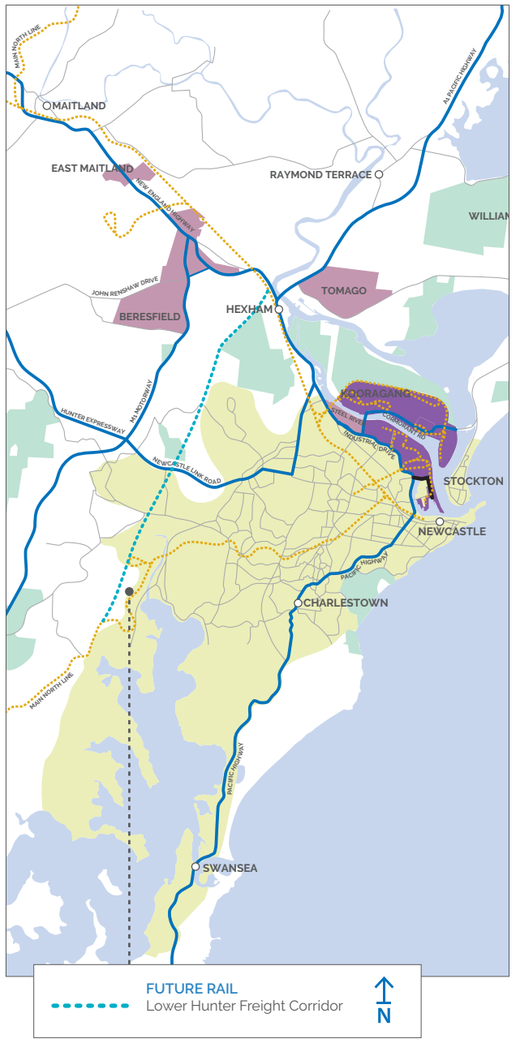
Lower Hunter Freight Corridor
The Regional NSW Services and Infrastructure Plan identifies corridor protection for the Lower Hunter Freight Corridor (LHFC) as an initiative for investigation in the 10-to 20-year period. The LHFC will link the Main North Line between Hexham and Fassifern, providing a bypass of the Newcastle metropolitan area. Importantly, it will alleviate current urban amenity issues in Newcastle and allow separation of passenger and freight trains for a small portion of the route.

It is noted that on its own this project does not create additional capacity for the Main North Line, other than potential coal paths to existing coal mines and existing power stations. Incremental improvements in capacity on parts of the network do have overall positive impacts in terms of network efficiency. Port of Newcastle supports this initiative of the New South Wales Government.

Rail Improvement Projects
ARTC has developed a range of rail infrastructure enhancement projects that will eliminate connectivity constraints on the regional rail network, and reduce the cost to market for regional businesses.

In order to fully capture the benefits of investment in the country rail network, the establishment of a new supply chain between the export catchment area and Newcastle, as the closest port, is pivotal. The development of the Newcastle Container Terminal will drive network efficiency across the New South Wales rail network and bolster cost benefits to growers and cargo owners.

PON supports ARTC's strategy to implement projects that will link the broader New South Wales rail network to Newcastle, in particular those projects that will increase axle loads from 21TAL to 23TAL or 25TAL, or extend passing loops to allow heavier, longer trains and improve whole-of-supply-chain costs.



GROWING TRADE

FACILITATE NEW TRADES AND SUPPLY CHAINS

Pictured: NCIG Coal Terminal, Kooragang
Image source: Newcastle Coal Infrastructure Group

Our core trades include bulk commodities such as coal, fuel, grains and fertiliser, as well as breakbulk and project cargo. Containers, Ro-Ro and passenger ships are a key aspects of PON's diversification strategy.

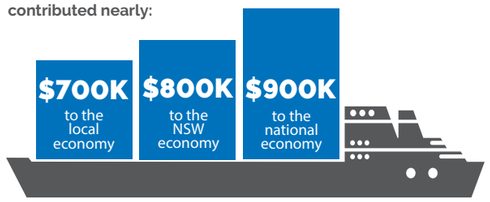
The introduction of new import and export trades and new supply chains will be what drives innovation, efficiency and value for the Port, its shareholders and the community.

Facilitating the establishment of new trades and supply chains can address infrastructure bottlenecks and capacity constraints in capital city ports, and respond to changing technology such as automation, modal shifts and bulk containerisation.

The Port Master Plan identifies trade growth scenarios and demonstrates how growth can be accommodated with existing port capacity (Channel and land) and supply chains (road and rail), without the need for substantial investment or additional infrastructure.

Port services and other support services such as towage, pilotage, provedores, Border Force and Customs, utilities and land transport, together with core Port infrastructure, will continue to be provided by the responsible agencies, private sector providers and PON. It is expected that these services will keep pace with the rate of growth of various trades.

In 2016/17 each
SHIP VISIT
contributed nearly:



Pictured: NCIG and PWCS Coal Terminals, Kooragang

Coal

Since the first coal export from the Hunter River in 1799, coal has been central to the development of the Port, the City of the Newcastle and the Hunter Valley.

In the last 10 years, coal exports from the Port have doubled, increasing from 80Mtpa to 160Mtpa. The growth in exports has been underpinned by increased demand for coal from South East Asia.

The Hunter Valley Coal Chain (HVCC) is the largest and most significant supply chain for the Port. The HVCC is one of the world's most efficient non-vertically integrated bulk commodity logistic supply chains. Each coal producer enters into:

- Take or Pay contracts for terminal capacity from the coal terminals under Capacity Framework Agreement (CFA), authorised by the Australian Competition and Consumer Commission (ACCC);
- Take or Pay contracts for track capacity under a monopoly arrangement from ARTC, underpinned by an ACCC-approved Access Undertaking; and
- Contracts for coal haulage capacity from train operators through open competition.

The Hunter Valley Coal Chain Coordinator (HVCCC) oversees the day-to-day coordination, long-term planning and capacity alignment of the Coal Chain on behalf of its coal producers and service provider members. Through these agreements, there is a clear pathway to develop additional coal terminal and below-rail track capacity, as and when required by coal producers.

Land allocated for the existing coal terminals located at Carrington (T1) and Kooragang (T2 and T3) will continue to facilitate coal export activities within the Port. The coal terminal operators have a combined terminal capacity of 211Mtpa. This is 52 million tonnes above the 2017 coal export volume of 159 million tonnes.

Each terminal operator has dedicated optimisation and expansion programs for their existing terminals to meet customers' needs. For example, new ship loaders were recently installed at the Carrington Coal Terminal D4 and D5 Berths as part of Port Waratah Coal Services' (PWCS) investment in the reliability, safety and performance of its operations.

In conjunction with Government, rail providers and coal producers, PWCS secured approval for a fourth coal terminal (T4), to ensure there is an efficient system in place to meet future coal demands. T4 has been approved with a throughput capacity of capacity of 70Mtpa. In May 2018 PWCS announced it would not be pursuing the development of T4 as it had consulted with coal producers and formed a view that the existing terminals could handle the foreseeable coal export task.[13] PON will now review its strategy for this site.

[13] http://www.pwcs.com.au/news

Pictured: Bulk liquids unloading at Mayfield

Fuel

Regional NSW consumes about 40% of the fuel used in New South Wales, with large volumes required for machinery operating in mining and agricultural industries, and the transport of exports to the Port.[14] The balance of demand in the region is from the general industry and domestic transport sectors.

The closure of fuel refineries in Sydney and Brisbane created the opportunity for a new supply chain where refined fuel can be shipped to the port closest to the customer. Fuel imports at the Port of Newcastle started in April 2009 and have grown significantly since then. Fuel imports are now the Port's second largest trade, with fuel imports totalling 2,680 ML in 2017.

Fuel imports are forecast to increase to 4,100 ML by 2040. Demand from the coal industry is expected to grow roughly in line with coal export volumes. Additional demand will also result from the increased transport distances from new mines being developed in the Gunnedah Basin and Ulan region. Growth in domestic consumption is also expected to increase, driven by population growth, but will be moderated by the improved fuel efficiency of newer vehicles.

The Port has three bulk fuel import terminals: Stolthaven, Park Fuels and ATOM (Australian Terminals Operation Management). The current tankage capacity of the Port's three fuel terminals is 266 ML, with an additional 339 ML approved for construction, to double the current fuel storage capacity.

In addition to the bulk liquids berth at Dyke 1, a second dedicated bulk liquids berth (M7) will support the Bulk Liquids Precinct at Mayfield. This berth will accommodate vessels up to LR2 capacity.

Together with diesel and petrol, the Bulk Liquids Precinct also has approved capability for other fuel imports in the future, such as aviation fuel and ethanol.

TfNSW is undertaking preliminary work to identify route options for a fuel pipeline corridor from the Port to Dubbo. The Central West is an important juncture within the state's transport network, providing North-South and East-West interstate heavy road and rail connectivity.

Currently, all fuel is transported to the region by road, which increases fuel costs and safety risks for other road users and contributes to congestion. A fuel pipeline from Newcastle would address these issues and ensure a reliable supply in significant volumes to the Central West. The Port has sufficient channel, berth and tankage capacity to supply such a pipeline.

[14] https://www.transport.nsw.gov.au/projects/current-projects/hunter-orana-fuel-pipeline

GROWING TRADE

Pictured: Grain terminals at Carrington

Grains

Northern and north-western New South Wales are key agricultural production areas. New South Wales' wheat production is typically used first to satisfy domestic demand, which is approximately 38% of production in a typical harvest, but can consume all of a harvest in a poor year.[15] Any surplus wheat is then sold to overseas markets.

Similar dynamics also exist for other grains exported through the Port, such as sorghum and barley, with domestic demand met first. For these crops, any improvement in crop yields will likely be offset by a reduction in planting area.

Due to the inherent annual variability in rainfall and resulting harvests, the size of annual harvests cannot be forecast; rather, forecasts represent the expected long-term average. The average exports per annum for grains is expected to grow from a 20-year average of 1.0Mtpa in 2017, to 1.3Mtpa in 2040.

There are two dedicated bulk grain terminals operated by Graincorp and Newcastle Agri-Terminal (NAT) each with road and rail receival facilities within the Port. The cumulative bulk storage capacity of these facilities, together with flexible storage and handling options, means that the Port has more than ample infrastructure to handle the future grain export task. No additional land is required for ancillary infrastructure or bulk storage facilities.

[15] NSW Grain Freight Review – Australian Government September 2009

Bulk Cargoes

Historically the Port has handled a range of key bulk cargoes.

These include alumina and petroleum coke imports totalling 1.3Mtpa, mineral concentrates exports and fertiliser imports (around 400-500,000 tonnes respectively), and the import of soybean meal and cement (about 200,000 tonnes respectively).

The long-term forecast for these commodities is for demand to remain steady. Demand for construction materials such as steel, cement and sand will continue as the population grows.

Pictured: Wind Turbine components at Mayfield

Project Cargo

Various industries, such as construction, energy, transport and mining, are often required to import or export large pieces of equipment or machinery known as 'project cargo'.

Project cargo is used to broadly describe large, heavy, high-value or critical (to the project they are intended for) pieces of equipment. The Port has always had a steady volume of project cargo imports, which have been consistently above 150,000Mt since 2014.

Historically, the Port's proximity to the extensive network of mines located in the Hunter Valley has made Newcastle a natural destination for the import of project cargo. With the continuing operation of the mining sector, there will be an ongoing need for the import of mining-related machinery and equipment. Future opportunities see the Port of Newcastle well-positioned to receive project cargo imports for mineral mines planned in Central Western New South Wales.

Rolling stock imports have included locomotives; passenger cars; light rail; coal and grain wagons; and flat-top, intermodal, aggregate and track-cleaning machinery. The import of rolling stock through the West Basin berth with its berthside rail connections to the national rail network has provided a steady volume of imports. Destinations as far away as Victoria and South Australia have received rolling stock imported through the Port of Newcastle.

To future-proof the state's road and transport networks, the New South Wales Government will be investing in the roll-out of an extensive pipeline of passenger rail car replacements and network expansions. This forms part of the New South Wales Government's $1.5 billion 'More Trains, More Services' program and includes fleet delivery of new suburban, intercity and regional trains.

PROJECT CARGO PORT FACILITIES

To handle this type of cargo, a port requires:

- Access to a deep water channel and berth and access to a berth with landside design capacities to manage large and heavy loads;
- Access to an open berth unconstrained by existing overhead loading or unloading infrastructure, such as ship loaders or gantry cranes;
- Nearby storage land and laydown areas with required load capacities; and
- Connection to the arterial road network to enable land transportation.

GROWING TRADE

Construction Projects

More recently, the New South Wales Government's extensive infrastructure building program and renewable energy agenda has seen increased demand for the import of project cargo such as tunnel boring machines (TBMs), bridge spans, steel and wind turbine components.

This includes numerous road and rail projects, which will require tunnelling and therefore the need for the import of TBMs.

The diameter of a TBM can range from one to 19 metres, so they are often imported in parts, trucked to the construction site and assembled. Upcoming and potential tunnelling projects include Sydney Metro and M5 South West Motorlink Stage 2 – Sydney Harbour Tunnel, Northern Beaches Link Tunnel and the Western Harbour Tunnel. Newcastle is well-placed to receive construction machinery to support these projects.

Renewable Energy Projects

The NSW Renewable Energy Action Plan has been developed to support the achievement of the national target of 20% renewable energy by 2020. There is strong interest in the development of wind energy projects in New South Wales, with wind energy projected to remain the most economical form of large-scale renewable energy over the next decade.[16]

The Port of Newcastle has been the port of choice for the import of wind farm components in New South Wales since 2016. The Sapphire Wind Farm, near Inverell, is the largest wind farm in New South Wales and Australia's tallest wind farm. With each blade measuring 63 metres in length, they are the longest to be imported and stored at the Port.

There is a pipeline of planned and approved wind farm projects located within the Port's catchment area to 2020 and beyond. The Port of Newcastle is well-positioned to receive wind turbine imports.

Newcastle, unlike capital city ports, has demonstrated the flexibility, capability, access and infrastructure for heavy lift project cargo operations to occur at West Basin, East Basin and Mayfield 4 Berths. The Mayfield Storage Facility provides hardstand for consolidating and storing cargo. Portside staging allows cargo movement at optimal times and varying frequencies.

Beyond the Port boundary, it is important that there is unencumbered access to the national road network that is free of overhead obstructions or width restrictions. Newcastle is a safe heavy vehicle drive distance to outer Sydney, Brisbane and major New South Wales rural centres. Careful planning in conjunction with the NHVR Oversize and Overmass (OSOM) permit system is an important aspect of ensuring an effective supply chain.

The Port of Newcastle has demonstrated it has both the capacity and expertise to service the needs of project cargo importers through facilitating the delivery of key infrastructure for major projects, including for Sydney. Looking forward, this capacity will continue to be offered, with Port infrastructure including suitable berths and storage land made available. The Port of Newcastle is committed to ensuring that the current supply chain advantages it has for project cargo imports continue to service New South Wales into the future.

[16] NSW Renewable Energy Action Plan NSW Trade and Investment 2013

"The Port of Newcastle's proximity to the site and the ability to store the cargo for after-hours transport when the roads are quiet is an advantage. The storage area allows our technicians to prepare the turbines for road transport and deliver them when the site is ready to receive them."

John Gardner, Vice President of Program Delivery at Goldwind Australia

GROWING TRADE

Pictured: *Queen Elizabeth* departs Newcastle, February 2016

Cruise Shipping

The Port has hosted cruise ships since 2000. The Australian Cruise Association estimates that the economic benefit of cruise shipping to the Hunter region's business and tourism sectors is $11 million per annum.[17]

The New South Wales Goverment is committed to continued investment in regional ports to ensure New South Wales captures a larger share of the economic benefits from growth in the cruise market.

There are two types of cruise ship visits:

- A transit call is where Newcastle features as a port on part of a voyage; and
- Home porting, where Newcastle is the start and finish port of a voyage.

Generally, a home port is established based on the catchment area's population as a viable source market, with additional markets sourced from passengers who drive or fly to the destination.

The Newcastle Cruise Terminal has been designed to accommodate cruise line operations, customs and quarantine services required to facilitate home porting, and to grow the market. The natural catchment for the drive cruise market extends to Coffs Harbour, Dubbo and the Central Coast.

Fly cruise opportunities such as Adelaide, Melbourne, and Brisbane to Newcastle are also being explored.

It is anticipated that not only will the number of cruise visits increase, but the size of cruise vessels will also rapidly increase in response to the popularity of cruising. Typical cruise ships making transit calls are likely to have up to 4,000 passengers, home porting up to 2,500 passengers. Newcastle will also continue to attract smaller boutique vessels with lower passenger numbers seeking a more select range of experiences.

The Channel Berth in Carrington is the agreed location for cruise ships within the Port. This site and the Newcastle Cruise Terminal have the capacity to accommodate the current and future land requirements to meet the needs of the cruise industry.

Other infrastructure, such as the improved public transport network and connectivity with the Newcastle City Centre, as identified in the Greater Newcastle Transport Plan, will support the visitor economy. The extension of the Newcastle Transport ferry network, and construction of a new ferry wharf at Dyke Point to facilitate a 'special events' ferry, would provide an alternative method of passenger transit to the city and would leverage the Government's investment in the public transport network to date (Light Rail and Transport Interchange).

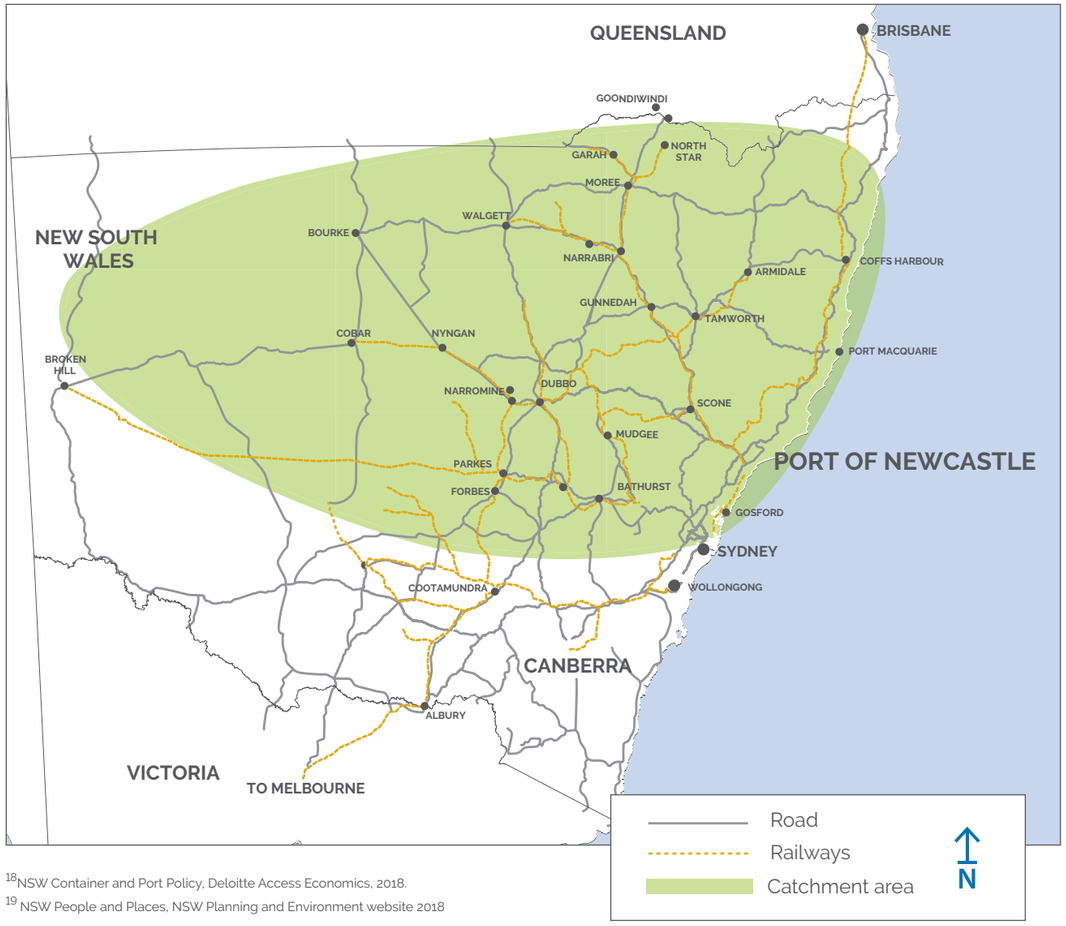
[17] Cruise Down Under Annual Report 2014-15, Australian Cruise Association 2016

Containers

The Port has always handled containers. To date, container trade is handled by geared vessels in the Carrington Basin and Mayfield 4 Berth.

In the Port Development Plan 2015-2020, this was assumed to continue in its current form, with potential for some gradual and organic growth and fluctuation associated with regional demand. However, forecast growth over the next 20 years is expected to see total container volumes in New South Wales increase from 2.5 million TEU p.a. in 2017 to over 5 million TEU p.a. In this period, container volumes in the Port's catchment area will increase from 500,000 TEU p.a. to 1.1 million TEU p.a.[18]

Newcastle's catchment area is defined as those locations within New South Wales that are closer to Newcastle than to other ports, such as Botany or Brisbane. This includes the Hunter, Central Coast, North Western and Western New South Wales, encompassing the major regional centres of Moree, Narrabri, Tamworth, Dubbo and Parkes. The catchment area is approximately half the land area of New South Wales and sustains more than 25% of the current population.[19]



[18] NSW Container and Port Policy, Deloitte Access Economics, 2018.
[19] NSW People and Places, NSW Planning and Environment website 2018

GROWING TRADE

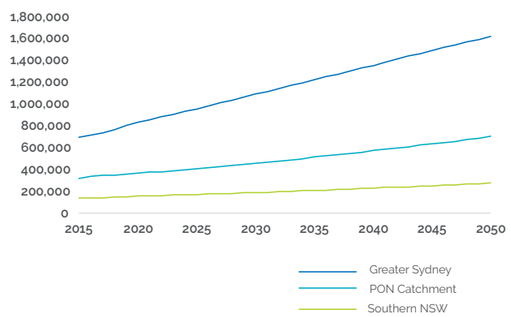
Imports

Container imports destined for the Port's catchment area account for approximately 27% of New South Wales' total imports,[20] meeting the population's demand for retail, manufactured products and consumable goods.

Containerised imports also include materials, machinery, equipment and manufactured goods used by the agricultural, manufacturing, mining and construction sectors, including fertiliser, grinding media, fuels, minerals, seeds, cement, timber products and steel products.

As the population of regional New South Wales grows, so will the corresponding demand for containerised imports. In the period to 2050, the demand for containerised imports from within the Port's catchment will grow from 315,000 TEU p.a. to 700,000 TEU p.a.

Forecast Imports (TEU) to 2050



Exports

Unlike imports, export origins do not correlate as strongly with population distribution, but instead reflect the nature of economic activity in each region.

There is also a growing trend towards the containerisation of grains driven by opportunity to lower logistics costs and broaden market options.

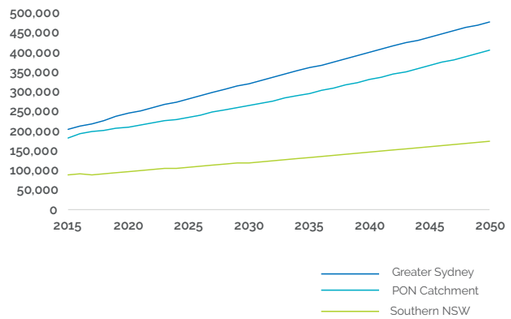
High-volume export cargoes originating within the Port's catchment area include cotton from Macquarie Valley, Barwon River, Bourke, Namoi Valley and Gwydir Valley; grain from Narrabri, Tamworth and Moree; meat from Tamworth, Singleton, Dubbo, Wingham, Scone and Wauchope; wool from the New England region; and wine from Mudgee and the Hunter.

Exports account for a third of all container volumes in New South Wales, with 38% of that volume originating from within Newcastle's catchment area.[20] The forecast for containerised exports originating from within the Port's catchment is forecast to increase to 404,000 TEU p.a. by 2050.

Given the increasing demand for containerised imports, the existing volume and forecast growth of exports originating within the catchment, and the demonstrated capacity of the Channel, land and road and rail corridors, there is a strong case for significant balanced container import/export volumes through the Port of Newcastle.

[20,21] NSW Container and Port Policy, Deloitte Access Economics 2018

Forecast Exports (TEU) to 2050



The Mayfield Site

PON's Mayfield Site is a key strategic asset for Australia.

The site has been extensively remediated and now represents the largest parcel of vacant port land on the eastern seaboard of Australia. The 80 ha. site has frontage to the deepwater South Arm shipping channel of the Hunter River and direct connections to rail and the heavy vehicle road network.

The Mayfield Site is the subject of a Concept Plan Approval, which provides for the redevelopment of the site for Port-related activities, including a container terminal and supporting road and rail infrastructure. The Concept Plan Approval establishes the broad parameters and environmental performance criteria for air quality, noise and traffic generation to assess and develop future projects. It also provides a level of certainty for regulators and the local community that the site will be developed in a consistent and environmentally responsible manner.

The Mayfield Site can accommodate a container terminal with the capacity to handle 2 million TEUs per annum. Given the expanse of port-side land and quay line area available, the site could accommodate two container terminal operators simultaneously.

The Newcastle Container Terminal

As demonstrated, Newcastle has natural advantages including large vessel capabilities, developable portside land and existing road and rail infrastructure, which would provide considerable time and cost savings to both import and export customers and the broader supply chain within New South Wales.

This is a significant advantage for importers and consumers for whom congestion in Sydney will become an increasing cost burden. For export goods originating within the Port's catchment, the land transport cost of moving containers by rail to Newcastle is significantly cheaper than land transport costs to other east coast ports.

A container terminal would position the Port of Newcastle and the Hunter region as a major commercial trade hub, feeding the growth of the state and easing congestion in Sydney. It is therefore PON's intention to develop a container terminal at Mayfield in the near term.

As demonstrated, the supporting rail network has sufficient capacity to facilitate a regular and cost-effective rail service to and from the Port, now and in the future. A Newcastle Container Terminal could accommodate larger regional trains for quick turnaround and generate significant cost savings in land freight transport costs for exporters.

The development of new rail infrastructure within the Newcastle Container Terminal would allow long trains of approximately 1500 metres to be directly railed to the terminal. In contrast, other ports require trains to be broken up before being railed to the port, adding further time and cost. As a major Port with a large export-orientated hinterland, a container terminal could potentially maximise container utilisation, where the majority of import containers can be reused for export cargo, minimising transport costs.

Exporters would benefit from an alternative lower-cost supply chain solution. In some areas, it costs over 30% more to send freight to either Port Botany or the Port of Brisbane. For example, it is nearly 50% cheaper to rail freight from Tamworth to the Port of Newcastle when compared with Port Botany. Cost savings range from 47% cheaper for 640m trains, to 49% cheaper for 900m and 1200m trains, respectively. This freight already travels directly past the Port to Sydney via the Main North Line, competing with passenger services.

Cost savings for exporters via rail

ORIGIN AND DESTINATION	TRAIN LENGTH (M)			
	640m	900m	1200m	1500m
Tamworth - Newcastle	47%	49%	49%	56%
Narrabri - Newcastle	37%	39%	39%	47%
Moree - Newcastle	29%	31%	32%	39%
Dubbo - Newcastle	12%	14%	15%	24%
Newcastle - Central Coast	34%	50%	56%	63%

A lack of competition in container ports creates significant costs for the NSW economy. NSW relies on ports for almost all our international trade, so lack of competition both reduces port efficiency and increases landside costs.

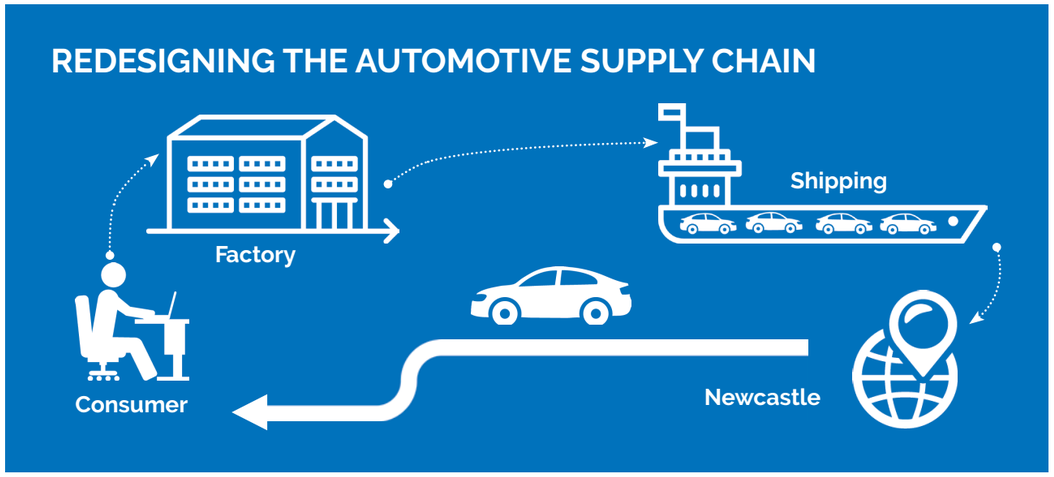
Currently, 87% of containers are transported to intermodals and distribution centres in Greater Sydney for unpacking. However, only 61% of the contents of these containers remain in Sydney. The balance is transported, usually by truck, to its destination in regional New South Wales.

Connectivity to distribution centres within Western Sydney via NorthConnex, and the opportunity to establish new distribution centres within the immediate vicinity of the Port, as well as the Hunter and Central Coast regions, further supports the case for a container terminal at the Port of Newcastle.

A Newcastle Container Terminal could service the import market for northern and central west New South Wales, and Central Coast, as well as Northern and Western Sydney. Cost savings would flow through a substantial increase in imports able to be transported on rail, the ability for longer trains to directly access the Port, and lower congestion for trucks accessing the national highway network.

The establishment of a specialised niche automotive and oversized Ro-Ro facility will enable the Newcastle region to be at the forefront of this changing market, allowing importers and exporters to shorten their supply chains.

This can lead to savings in time and money, benefitting the wider economy and leading to reduced congestion in the Greater Sydney area.



AUTOMOTIVE AND ROLL-ON ROLL-OFF (RO-RO) HUB

In addition to the development of the Newcastle Container Terminal, the Port's connectivity and capacity provides opportunity for the establishment of new supply chains to cater for emerging import industries and innovative technologies.

Whilst the traditional supply chain for the import of domestic and light vehicles into New South Wales is clearly established, existing facilities that service this supply chain will not necessarily cater for newer types of vehicles, such as electric and hydrogen-powered cars or autonomous vehicles. Battery technology is rapidly improving and electric vehicles are becoming cheaper. Major car manufacturers around the world are now moving towards production of electric cars, with Volkswagen, Daimler and BMW Groups committing more than $75 billion to develop electric cars.[22] The rise of China and development of alternate-powered vehicles is another important trend to note.

The Port of Newcastle is well-positioned to serve both traditional and new-wave automotive industries, having adequate land within the Port for the development of dedicated Ro-Ro facilities and the supporting quayside marshalling areas. Additionally, the Greater Newcastle Metropolitan area has a good supply of general industrial land, available for the establishment of traditional automotive supply chain finishing and processing facilities, such as advanced vehicle testing centres during the industry's formative years. Greater Newcastle has growing capabilities in science, technology, engineering and maths, and the region's excellent telecommunications network will support the requirements of advanced automotive technologies.[23]

These locational advantages mean that the Port is ideally placed to leverage these opportunities to develop an alternative operational model for automotive imports and distribution supply chain.

The majority of project cargo received by the Port is shipped in a lift-on lift-off (Lo-Lo) vessel with on-board cranes to load and unload cargo. Ro-Ro cargo is wheeled cargo such as cars, trucks and machinery that is driven rather than lifted off a vessel. Ro-Ro vessel operators have been regular callers to the Port, delivering high and heavy cargoes, mining machinery, construction equipment and rail rolling stock.

Customers with smaller Ro-Ro volumes are sometimes disadvantaged by having their cargo sail past their closest port to an alternate port, with the customer incurring the cost and significant transport times to then be trucked to the end destination. An example is mining machinery imports, which are destined for the Hunter Valley but are currently delivered to other ports and then unnecessarily trucked back through Sydney.

[22] The future is electric, NRMA October 2017

[23] Greater Newcastle Metropolitan Plan, Department of Planning 2018

NEW FACILITIES AND INFRASTRUCTURE

SUPPORTING DEVELOPMENT OF NEW FACILITIES AND ENABLING INFRASTRUCTURE

NEW FACILITIES AND INFRASTRUCTURE

The Port Master Plan supports the development of new transport infrastructure and logistics facilities that can leverage proximity to existing and proposed transport corridors.

This includes smaller enabling projects that can utilise, improve and enhance the existing road and rail networks for greater efficiency, productivity and consequence. Strategic land opportunities within the Port and the broader region provide immense opportunity to optimise the Port's capacity and connectivity.

Major projects such as the Inland Rail and the development of new intermodal facilities upcountry from the Port provide opportunity to further enhance connectivity, as well as improve alternatives to road freight, not only for regional NSW but further afield.

STRATEGIC LAND OPPORTUNITIES

The development of the Newcastle Bulk Terminal in Walsh Point will be a catalyst for new facilities and infrastructure. Vacant land within the Walsh Point Precinct represents a strategic opportunity to capitalise on PON's investment in new unloading equipment at K2.

The Walsh Point Precinct contains more than 14 ha. of the Port's development-ready land and is suitable for the construction of bulk storage facilities and warehousing. The average depth of sites is between 100 and 150 metres, with frontage to Greenleaf Road, part of the Port's private road network. This land is serviced by sufficient water and electricity to supply bulk storage facilities.

This land fronts the North Arm of the Hunter River. The North Arm is not a dredged channel and is restricted to vessels with a shallow draft, such as barges. However, the land is a short distance from the Newcastle Bulk Terminal, with potential opportunity to connect via conveyor systems.

NEW FACILITIES AND INFRASTRUCTURE

Supporting Industrial Land

Supply chain efficiencies are gained when there is integration between a port and supporting infrastructure. Fewer handling points for cargoes between different transport modes, mean time and cost savings to consumers. In Newcastle there is industrial land available both within and external to the Port to develop supporting land uses and facilities, such as intermodal facilities and distribution centres.

Freight and Logistics Precinct
Immediately adjoining the Mayfield Site is the 52 ha. Freight and Logistics Precinct. This vacant remediated site fronting Industrial Drive has been earmarked in the Greater Newcastle Metropolitan Plan for the development of freight and logistics and warehousing facilities to complement the Port's global gateway role.

The development of this Precinct will complement and support the adjoining Newcastle Container Terminal. It also offers enormous opportunity for customers to streamline their supply chains.

The Precinct could include direct rail access, dedicated facilities for container unpacking, sorting, warehousing and distribution, temporary container storage and empty container storage parks. A private road network, operating between the Port gates and the terminal and distribution or sorting centres, would allow for the seamless and quick shunting of cargo. Land is also available for required Border Control and quarantine facilities.

Beresfield-Black Hill
The industrial land and employment precinct at Beresfield-Black Hill is at the nexus of the national road and rail trade routes intersecting with an international trade port, and located beyond the Newcastle metropolitan footprint. This provides growth opportunities for freight, logistics and industrial sectors, helping to connect Greater Newcastle and the Hunter to global markets.[24]

The cluster of freight and logistics industries developing around Beresfield-Black Hill will continue to grow in response to the changing freight demand and new freight tasks. Future expansion of the precinct to the south-west, including the adjoining mine site, internal road network and access points to John Renshaw Drive, will be investigated by local councils in the near term.

[24] Greater Newcastle Metropolitan Plan, Department of Planning and Environment 2018

Tomago Employment Lands
Tomago Industrial Precinct, north of the Port, is identified as a major employment catalyst area in the Greater Newcastle Metropolitan Plan 2036.

The proximity of the Port to major employment areas such as this, as well as Newcastle Airport and the emerging defence and aerospace hub at Williamtown, are important to identify and plan for. Synergies between the two global gateways of the Port and Airport will continue to be explored.

Central Coast Employment Lands
A key action of the Central Coast Regional Plan is the locating of large-scale industrial uses, and freight, manufacturing and logistics businesses near freight routes such as the M1 Motorway.

The 744 ha. Wyong Employment Zone provides for a wide range of business and employment opportunities, including industrial, manufacturing, warehousing, storage and research facilities. This zone includes the Warnervale Business Park located between the M1 Motorway-Warnervale interchange and the Main North line. It supports major transport services and distribution centres including the 81,000sqm Woolworths Distribution Centre.

Improved road and rail transport projects, including NorthConnex, M1 Motorway Upgrades, and the Main North Line rail improvements, will continue to support the clustering of freight and logistics businesses, to maximise these locational opportunities. Access between Sydney and the Port of Newcastle is important for business, industry and consumers, allowing freight to move freely in, out and through the Central Coast,

Future Port Growth
It is important to consider where future Port growth can occur beyond the current footprint. Unlike capital city ports, which are constrained and landlocked by existing urban development, there is opportunity for growth in Newcastle. The entire State significant Newcastle Port Precinct is over 1000 ha. with PON managing a large proportion of this land.

Vacant or underutilised private landholdings in the Mayfield, Kooragang and Walsh Point Precincts may provide land needs for future Port growth beyond PON's current footprint. As current industrial uses transition away from older manufacturing processes in the future, this zoned industrial land could be repurposed for Port uses.

NEW FACILITIES AND INFRASTRUCTURE

Inland Rail

Inland Rail is an opportunity to leverage the existing rail network to transform the way goods move from producers to markets through the effective linking of production areas, existing networks and freight hubs.

Once completed, the Inland Rail will become a dedicated freight network linking Melbourne and Brisbane via regional Victoria, New South Wales and Queensland. The track will enable the use of double-stacked, 1,800- metre-long trains with a 21TAL at a maximum speed of 115km/h, allowing for the transit of greater freight volumes. Each train could carry the equivalent volume of 110 B-double trucks.

Newcastle Port is already linked to major inland hubs through the extensive Hunter Valley and Country Rail networks. The Inland Rail, however, will provide the opportunity to link to a broader catchment. For example, grain from regional New South Wales could be railed to the Port instead of trucked to the Port of Brisbane. This modal shift will provide greater benefits to growers and producers by effecting a more efficient use of the transport network and ensuring that the economic benefits are retained in New South Wales.

Upcountry Intermodals

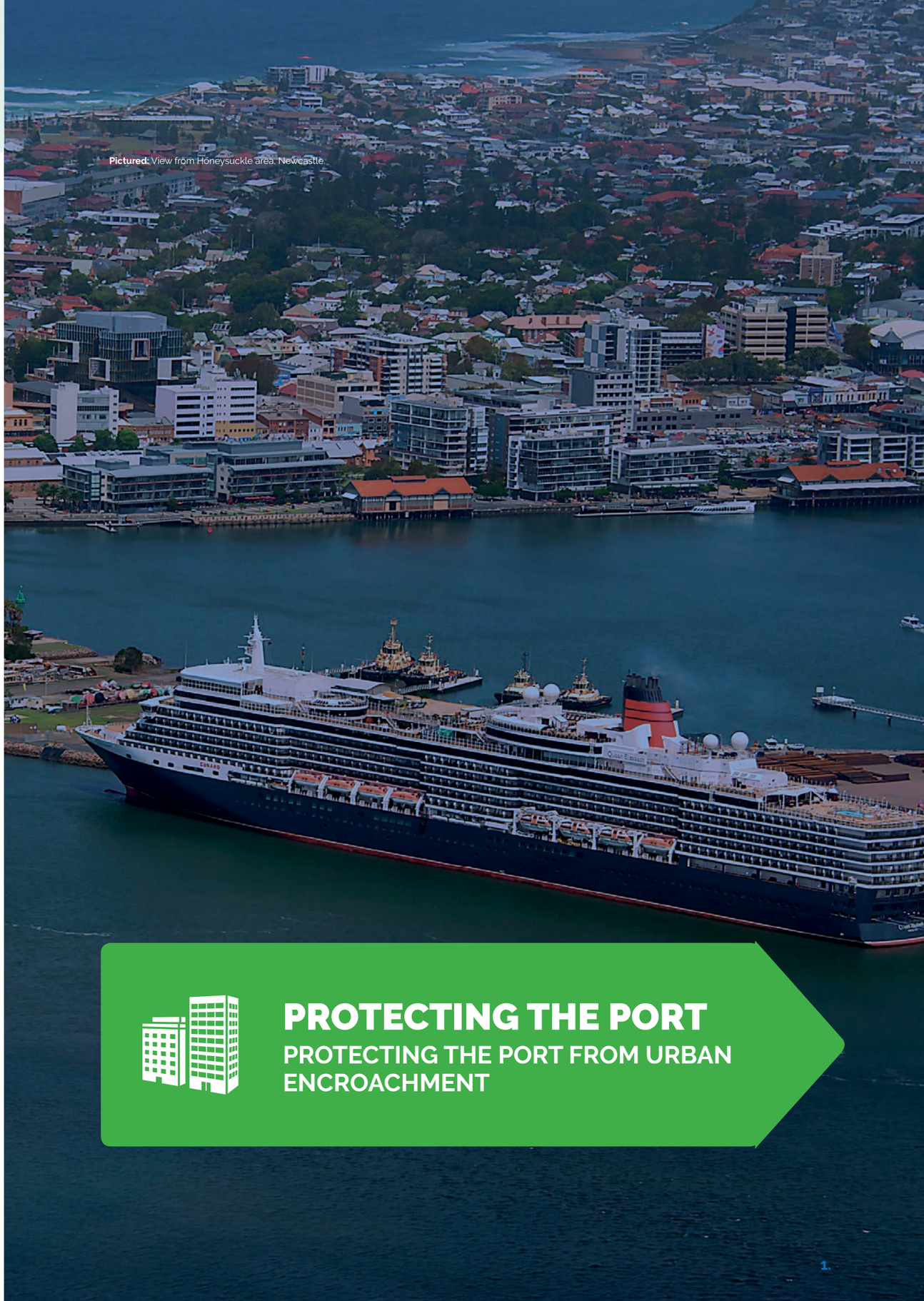
The Port's rail connectivity and capacity provides opportunity to connect the Port to the inland container trade and support the development of upcountry intermodals.

Tamworth is directly connected to Newcastle by rail but is not on the Inland Rail route. Plans to develop and expand the intermodal facility in Tamworth to capture freight flows could ultimately utilise the Port of Newcastle for export and import opportunities.

The Central West and Orana Regional Plan has identified the development of Parkes as a natural location for the development of a National Logistics Hub, with supporting infrastructure including roads, rail and air linking Parkes to capital cities and ports. The project will provide the catalyst for more efficient freight transport and a stronger Parkes National Logistics Hub, being a 600 ha. site dedicated to 24/7 multi-modal activity.

"A key focus for NSW is to ensure that Inland Rail optimises the movement of freight in Regional NSW through efficient linkages to NSW and the development of economically sustainable freight hubs by the private sector at appropriate locations along the route."

NSW Freight and Ports Plan, TfNSW 2018



Pictured: View from Honeysuckle area, Newcastle

PROTECTING THE PORT

PROTECTING THE PORT FROM URBAN ENCROACHMENT

PROTECTING THE PORT

Pictured: Honeysuckle Foreshore area

Protecting the Port from urban encroachment, proactively managing the Port's interface to focus on economic and environmental sustainability, and forward planning are essential for the benefit of the Port and community.

The Port of Newcastle is the custodian of the Port for the next 95 years, charged with the responsibility to maintain and enhance the Port as a major seaborne gateway for New South Wales.

It is important to protect the Port, and the transport assets that support it, from the impacts of urban encroachment to ensure the ongoing operation and prosperity of the Port. Being forward-thinking about future transport needs through the preservation of corridors will ensure the longevity of the Port into the next century.

In implementing the developments and projects outlined in the Port Master Plan, it is reasonable to expect that there will be impacts associated with the environment. Actions to proactively manage impacts and issues that may potentially affect the biophysical environment will help achieve environmental sustainability and ameliorate or prevent the impacts of development of the Port on the environment.

PROTECTION FROM URBAN ENCROACHMENT

Urban encroachment is the term used to describe the effect of new urban development changing the character of an area, and the potential conflict and tension between new and established uses at the interface. Infrastructure Australia noted that the pressure from urban encroachment to introduce curfews or otherwise limit the use of corridors is a serious concern for those in the freight and logistics sector.[25]

The Port lands have been specifically zoned to maximise the use of waterfront areas for Port facilities and those industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to Port facilities. This enables the efficient movement and operation of commercial shipping, provides for the efficient handling and distribution of freight from Port areas through the provision of transport infrastructure, and encourages employment opportunities.

[25] Corridor Protection: Planning and Investing for the long term, Infrastructure Australia 2017

It is therefore reasonable to expect that Port land will be developed and used for shipping, Port-related and intensive industrial uses, which may have a range of noise and amenity impacts on nearby residents.

The Port lands provide for development that by its nature or scale, requires separation from residential areas and other sensitive land uses. These include facilities that receive, store or distribute products or materials that may be hazardous or offensive. These products are essential for daily life; for example, the supply of fuel for the domestic market or fertiliser for the agricultural sector.

The consideration of the individual and societal risk implications of sensitive receptors and increased intensification of people in the vicinity of the dangerous goods transport routes is a critical task when rezoning land or permitting the intensification of development near the Port boundary. Planning strategies should ensure that sensitive receptors and residential, recreational or commercial developments are located such that they would not impede expansion of current Port facilities, or restrict facilities in the future.

PON encourages the proactive management of urban interface with the Port and transport corridors to ensure sustainable operations and protection from issues of urban encroachment. Recognition of the Port's economic value and operational requirements in Government land use policy and plans is critical.

Even when the economic importance of freight, ports and logistics is identified in planning strategies, the issues of urban encroachment and land use conflict are often not adequately considered in the planning, design and assessment of individual proposals near the Port.

Impacts of Urban Encroachment

- New residential developments near the Port are not designed with appropriate noise amelioration to mitigate current or future noise sources.
- Potential impacts of new high-rise development on the safe navigation of vessels are not considered i.e. blocking of sightlines to navigation aids.
- Lack of separation or appropriate buffers between Port land and adjoining residential uses.
- Sensitive land uses such as childcare centres, healthcare facilities, aged care facilities or schools located near or adjacent to Port boundary restricts planned expansion or operations.

Education and communication are also keys aspects of ensuring that the Port community is well-informed and accepting of the Port's operational requirements. Incoming residents often have unrealistic expectations of the experience of living near a working port, particularly with regards to views and amenity. PON's Community Liaison Group will continue to be an opportunity for the community to engage with the Port, learn about its operations and provide feedback.

"Urban development pressures around airports, seaports and intermodal facilities need to be carefully managed to prevent these important economic hubs and corridors from being constrained and to reduce their impacts on surrounding communities."

Smart Cities Plan,
Australian Government 2016

PROTECTING THE PORT

CORRIDOR PROTECTION

The 2015 Australian Infrastructure Audit Report maintains that an improved framework is required to protect corridors for transport and other linear infrastructure.

Failure to protect corridors can lead to significantly higher construction costs, making otherwise beneficial projects uneconomic. The Port will grow and its trade base will significantly diversify. This will mean that the transport system that supports the Port will be required to also grow in capacity. Although the Port is well-serviced by existing corridors now, it is prudent that there is proactive planning for the next 20 years and beyond.

Industrial Drive Corridor Strategy
Industrial Drive is the Port's key access road, providing east-west connection from the Port to the national highway network. It directly links to the Carrington and Mayfield Precincts, and links the Kooragang and Walsh Point Precincts via Cormorant Road and Tourle Street. It also provides an important function servicing the urban populations of Inner Newcastle and Port Stephens.

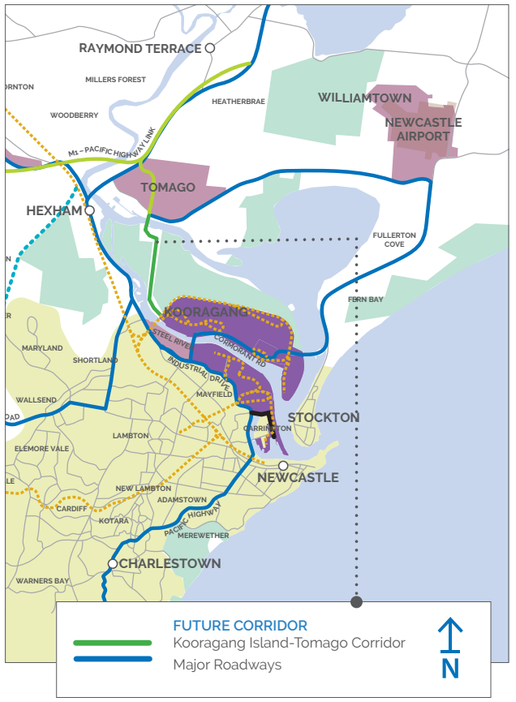
Key improvements that would assist the future functioning of Industrial Drive would include:

- Localised road widening to alleviate potential queuing at intersections;
- Intersection upgrades along Industrial Drive; and
- Improved flow into and out of the Mayfield Precinct as part of the broader development of the Mayfield Precinct.

The coordination of these improvements should be outlined in an Industrial Drive Corridor Strategy. A key aspect of this strategy would be to identify and preserve any additional land likely to be required for localised widening to accommodate future capacity.

Kooragang Island-Tomago Corridor
The Kooragang Island-Tomago Corridor is an existing transport corridor that links the Port through the western part of Ash Island and crosses the North Arm of the Hunter River to Tomago Road.

This corridor, together with the M1 Pacific Motorway Extension to Raymond Terrace provides opportunity for an alternate access Kooragang Island. Whilst the M1 Pacific Motorway Extension project is focused on



improved connection between the M1 Pacific Motorway and the A1 Pacific Highway, the inclusion of a free flowing interchange at Tomago provides for east-west connection for the Tomago Industrial Area, Newcastle Airport, Defence Employment lands, and potentially Kooragang Island.

The corridor is established by SEPP State Significant Precincts and is reflected in the zoning plans for both Newcastle and Port Stephens Councils. This corridor should be preserved in future planning schemes to provide a valuable link to the strategic road network over the life of the Port Master Plan.

Outer Sydney Orbital
The NSW Freight and Ports Plan has identified the need for longer-term planning for a future freight corridor between Western Sydney and Newcastle, as part of expanding the dedicated rail freight network in New South Wales. PON is supportive of this, including the protection of a corridor for the Outer Sydney Orbital corridor to directly connect Newcastle Port with rail freight intermodal precincts in Western Sydney.

Pictured: Royal Spoonbills, Kooragang Wetlands.
Image source: Chris Gilmore.

IMPACTS ON BIOPHYSICAL ENVIRONMENT

In addressing the environmental sustainability of the Port's operations, PON aims to minimise both direct and indirect impacts on the natural environment. A working port is a 24 hour industrial environment.

Direct impacts can include noise, impacts on flora and fauna from construction, or air pollution through the handling of bulk products. Indirect impacts could include increased traffic congestion, impacts of residential amenity or emissions from trains, trucks and vessels.

PON's activities are subject to a wide range of environmental conditions set through environmental protection licences, planning approvals and lease conditions. New developments or the expansion of existing facilities are assessed, constructed and operated in accordance with relevant environmental legislation. All State Significant proposals are subject to a full, merit-based assessment process by the Department of Planning and Environment.

PON's Environmental Policy outlines its commitment to environmental compliance and the establishment, monitoring and review of environmental objectives, targets and action plans. PON's Environmental Management System enables compliance, commerciality and efficiency within a culture of continual improvement and innovation.

PON also encourages all Port tenants to act in an environmentally responsible manner, requiring the submission of an environmental management plan as part of all new lease arrangements. This supports compliance with relevant Commonwealth, state and local regulations by Port tenants and encourages the adoption of industry best practice and management.

"Land planning and corridor preservation needs to balance the freight requirement against community and traffic amenity."

National Ports Strategy, Infrastructure Australia 2012

PROTECTING THE PORT

Air Quality

PON is conscious of the important local airshed in which it operates.

Ambient air quality and wind data is currently monitored via the Lower Hunter Quality Monitoring Network (LHAQMN). The LHAQMN was introduced in 2015 by the EPA in conjunction with NSW Health and the Office of Environment and Heritage. It is an industry-funded initiative that provides continuous local air quality monitoring with public access to real-time data. PON supports and provides funding to the LHAQMN.

The parameters monitored within the network include fine particulates, combustion gases and wind speed and direction. This set of parameters is able to provide a qualitative assessment of the impact on local air quality from the current activities within and surrounding the Port.

The National Pollution Inventory (NPI) provides the community, industry and Government with information about substance emissions in Australia. PON provides data on its vehicle and plant emissions on an annual basis.

Noise

Noise from the operations of the Port includes noise from vessels and tug boats (ship engines, auxiliary engines and ships horns), cargo loading and unloading operations and landside operations for storage and distribution.

These on-water operations or activities that are conducted in the open air are required to operate on a 24-hour seven days-a-week basis and must conform to international regulations for safety and navigation. This means noise sources cannot be eliminated or easily mitigated by engineering or design solutions.

PON works closely with the EPA, Newcastle City Council, Port Authority of New South Wales and Port tenants to identify, manage and mitigate noise, and provide information and education to help people understand the operational needs of a working harbour.

Water Quality

PON is an active manager of the water that enters into the Hunter River, including monitoring of storm water from key operational sites.

For new projects, there are strict environmental assessment and licensing requirements in place to ensure that potential impact on the Hunter River is avoided, mitigated or managed. This includes any likely impacts relevant to the Hunter Estuary Wetlands.

Pictured: Entrance to Newcastle Harbour, April 2015

CLIMATE CHANGE

Climate change, the increased occurrence and severity of storm events and rising sea levels are critical issues to consider in the planning of the Port. Resilience in dealing with floods is already a key management issue for PON as part of our responsibility to maintain the depth of the Channel.

The Hunter catchment has many river feeder tributaries that continuously bring natural sediments into the harbour bed. Maintenance dredging of the Port is undertaken by PON to remove the build-up of silt from upstream and to keep the Channel operational.

Heavy flooding in the Hunter River, upstream of the Port, often sees a significant amount of floodwater and silt flow into the Channel and berth areas. Additional dredging and resources are deployed by PON during and after the weather event to recover depths and lessen the impact on customers.

Loss of Channel depth equates to a loss of trade, and there is a need for statutory certainty in terms of ongoing maintenance dredging and sea dumping. Maintenance dredging is conducted in accordance with Commonwealth and state regulations. Currently, PON holds a 10-Year Sea Dumping Permit issued by the Department of Environment for the disposal of maintenance dredge material. To secure the ongoing availability of the Channel and protection of this corridor, a perpetual Sea Dumping Permit, subject to ongoing monitoring and reporting, should be considered.

Pictured: In the flood following the April 2015 superstorm, the Channel and berth boxes were affected by an additional 500,00 cubic metres of silt and mud from upstream. In comparison, the normal maintenance dredging volume for a 12-month period is usually around 450,000. That is more than one year's siltation in a single flood event.

IMPLEMENTATION

The Port Master Plan demonstrates the Port's connectivity and capacity to accommodate, attract and grow trade, and assist in addressing the freight task in an efficient, sustainable, profitable and innovative manner to 2040.

The Port Master Plan provides a broad and strategic approach to future opportunities and developments within the context of expected market conditions.

For our customers, the Port Master Plan articulates the strategic alignment between our vision and long-term plans, and those of our customers. The Port Master Plan will be part of our ongoing conversation with our customers, partners and Government. Key projects include:

- the **Newcastle Container Terminal**;
- the **Newcastle Bulk Terminal**;
- an **Automotive and Ro-Ro Hub**;
- the **Maritime Precinct**; and
- the **Newcastle Cruise Terminal**.

Within the timeframe of the plan, it is recognised that there will be changes in technology, processes and priorities that are not yet known. For this reason, the Port Master Plan is not considered to be a static document. As PON implements its strategy to diversify its trade base, there will be continual refinement of our long-term plans.

Our five goals will underpin and drive our key strategic development opportunities:

- Promote the capacity of the Port and the supply chain to support the economy.
- Utilise the existing road and rail transport assets to improve freight efficiency.
- Facilitate new trades and supply chains.
- Support the development of new facilities and enabling infrastructure.
- Protect the Port and transport corridors from urban encroachment

PON will actively review the Port Master Plan on a five-yearly basis to ensure that the goals underpinning the plan are relevant and continue to be met.

As the custodians of the Port into the next century, we are committed to working with the New South Wales Government, our partners and the community to ensure that the Port can continue to grow its diverse trade base, deliver sustainable port development and provide economic benefits to the Hunter Region, New South Wales and Australia.

GOALS	KEY PROJECTS		THE NEXT FIVE YEARS
PROMOTE THE CAPACITY OF THE PORT AND THE SUPPLY CHAIN TO SUPPORT THE ECONOMY	***The connectivity and capacity of the Port and supporting supply chain infrastructure means that the Port of Newcastle is well-placed to support Australia's growing freight task and promote the regional and national economy.***	• The **Newcastle Bulk Terminal** will leverage the Port's existing channel, berth and land capacity. • The **Newcastle Cruise Terminal** and **Maritime Precinct** will contribute to the economy through investment in infrastructure and creation of jobs.	**COMPLETE** **Newcastle Bulk Terminal** to service mining,agriculture and construction sectors in NSW. **COMPLETE** **Newcastle Cruise Terminal** to support growth in tourism in the Hunter and NSW. **CONTINUE** supporting the expansion of the **Maritime Precinct.**
UTILISE EXISTING ROAD AND RAIL TRANSPORT ASSETS TO IMPROVE FREIGHT EFFICIENCY	***Improved utilisation of existing transport networks will accommodate the current and future freight task. Key projects that will enhance and support the existing networks include:*** • Golden Highway and New England	Highway upgrades; • M1 to Pacific Highway at Raymond Terrace; • Northern Sydney Freight Corridor Stage 2; • Lower Hunter Freight Corridor; and • Fixing Country Rail and Fixing Country Roads Programs.	**CONTINUE** to work with transport agencies to advocate for **road and rail projects** that align with the Infrastructure Australia Priority List and the NSW Government's State Infrastructure Strategy, Future Transport 2056, and the Freight and Ports Plan.
FACILITATE NEW TRADES AND SUPPLY CHAINS	***Facilitating the establishment of new trades and supply chains will address capacity constraints and respond to change. Port of Newcastle will:*** • Establish the **Newcastle Container Terminal** to service containerised exports	from the catchment and containerised imports for the Sydney and NSW market; and • Attract and develop a specialised **Automotive and Ro-Ro Hub** to meet the needs of a changing market.	**COMPLETE** first stage of the **Newcastle Container Terminal** and commence operations. **WORKING TOWARDS** an **Automotive and Ro-Ro Hub** concept that responds to changing markets and technologies.
SUPPORT THE DEVELOPMENT OF NEW FACILITIES AND ENABLING INFRASTRUCTURE	***Enabling projects can utilise, improve and enhance the existing road and rail networks for greater efficiencies and productivity. Port of Newcastle supports the development of the following key sites and projects:*** • Development of the **Mayfield Freight and Logistics Precinct** for an integrated multi-modal freight and logistics hub to	complement the Newcastle Container Terminal; • Development of industrial land for warehousing and logistics activities within the Port, the Hunter and the Central Coast; and • Development of Inland Rail and Upcountry Intermodals.	**COMPLETE** first stage of the **Freight and Logistics Precinct** in conjunction with the Newcastle Container Terminal. **CONTINUE** to actively support the establishment of **warehousing and logistics facilities** within the Port of Newcastle catchment.
PROTECT THE PORT AND TRANSPORT CORRIDORS FROM URBAN ENCROACHMENT	***Port of Newcastle proactively manages the Port's interface to focus on economic, social and environmental sustainability. This includes:*** • Supporting the efficient development and protection of Port land and transport corridors from the impacts of urban encroachment;	• Identifying and supporting the preservation of corridors including Industrial Drive Corridor and Kooragang Island-Tomago Corridor, and the long-term planning for the Outer Sydney Orbital; and • Improving environmental outcomes to manage the Port's interface with the surrounding biophysical environment.	**CONTINUE** to work collaboratively with **community and industry** to facilitate port development and operations in a way that reduces impact on residents.

GLOSSARY	
Axle load	The axle load is related to the strength of the track, which is determined by weight of rails, density of sleepers and fixtures, train speeds, amount of ballast, and strength of bridges.
B-double	A truck and trailer combination consisting of a prime mover coupled to two trailers.
Cape Class	Largest size dry bulk cargo vessel with 100,000– 170,000 deadweight tonnage.
Common User Berth	Berths owned and managed by PON, with stevedores and terminals allowed access on a common user basis.
Commonwealth	Commonwealth Government of Australia.
Concept Approval	Planning approval granted for an overall concept plan under the Environmental Planning and Assessment Act 1979.
Core Port Infrastructure	Facilities used or intended for use in connection with operation of the Port, such as berths and berth boxes, unloading facilities, conveyors and pipelines, hardstand areas, road and rail infrastructure and storage facilities.
DPE	NSW Department of Planning and Environment – agency responsible for regional planning, revitalising urban areas, policy development to guide planning activities and assessment of major projects.
EBDC	The Eastern Basin Distribution Centre storage and distribution facility in the Carrington Precinct.
EPA	NSW Environment Protection Authority - agency responsible for environmental regulation in NSW.
ha	Hectare.
Handymax	Vessel with 40,000 to 50,000 deadweight tonnage.
HML	Higher Mass Limits – a scheme allowing heavier vehicles enrolled in the Intelligent Access Program to be loaded above General Mass Limits.
HVCC	Hunter Valley Coal Chain.
HVCCC	Hunter Valley Coal Chain Coordinator.
KIWEF	Kooragang Island Waste Emplacement Facility.
LOA	Length overall – the maximum length of a vessel's hull measured parallel to the waterline.
m	Metres.
ML	Megalitre.
Mt	Mass tonnes.
Mtpa	Million tonnes per annum – unit of measurement for annual bulk freight volumes.
NCIG	Newcastle Coal Infrastructure Group.
NHVR	National Heavy Vehicle Regulator - responsible for administration of national heavy vehicle regulations.
NSFC	Northern Sydney Freight Corridor – Program to support the separation of freight and passenger trains to increase freight capacity between Sydney and the Central Coast.
NSW	New South Wales.
OSOM	Oversize and Overmass vehicle is a heavy vehicle that is carrying, or specially designed to carry, a large indivisible item.
Panamax	Vessel with 60,000–100,000 deadweight tonnage that can travel through the Panama Canal.

GLOSSARY	
Planning Approval	Consent to a development application or State Significant Development application pursuant to the NSW Environmental Planning and Assessment Act 1979.
PON	Port of Newcastle – the private operator of the Port.
Port area	Area defined by SEPP (Three Ports) as the Port of Newcastle.
Port Lease	Head Lease with Port of Newcastle Lessor Pty Limited - the NSW State entity that owns the Port land.
Port Services	Facilities used or intended for use in connection with operation of the Port, such as services related to safety, security, dredging and administration.
Ports Australia	Australia's peak body representing port businesses through advocacy and engagement with public policy and regulatory issues.
Project Cargo	Large oversized cargo such as wind turbines, heavy plant machinery, transformers, mining equipment.
SEPP	NSW State Environmental Planning Policy.
TAL	Tonne axle load - measure of weight in relation to the permitted axle load of a length of track.
TEU	Twenty-foot Equivalent Unit – The international unit of measure used for standardising container throughput numbers.
TfNSW	Transport for New South Wales – agency responsible for the development of safe, integrated and efficient transport systems in New South Wales.
VTIC	Vessel Traffic Information Centre provides long-term planning, reviews vessel bookings and coordinates vessel movements in Newcastle Harbour.

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COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE CERTIFICATE
DP-3

This is the Annexure marked "DP-3" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

Submission No 14

INQUIRY INTO IMPACT OF PORT OF NEWCASTLE SALE ARRANGEMENTS ON PUBLIC WORKS EXPENDITURE IN NEW SOUTH WALES

Organisation: Port of Newcastle

Date Received: 11 January 2019

Port of Newcastle

6 Newcomen Street (PO Box 790) Newcastle NSW 2300 Australia
Tel: 61 2 4908 8200 | info@portofnewcastle.com.au
www.portofnewcastle.com.au

11 January 2019

Hon. Robert Brown MLC
Chairman
Legislative Council Public Works Committee
NSW Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Brown

SUBMISSION: INQUIRY INTO THE IMPACT OF PORT OF NEWCASTLE SALE ARRANGEMENTS ON PUBLIC WORKS EXPENDITURE IN NEW SOUTH WALES

I take this opportunity to provide to the Committee Inquiry Port of Newcastle's submission.

Our proposal

Our proposal is that Port of Newcastle develop a container terminal that enables cost-effective economic growth in New South Wales, and a cost-effective answer to some of the road and rail congestion problems in Sydney.

New South Wales has around one-third of Australia's population and is expected to exceed 11 million by 2050, up from the current 7.8 million. Yet there is only one container port in NSW - Port Botany. It is encircled by a city, 90% of its containers first move by road to the West of the city and the throughput of the port will likely double to around 5 million TEUs in 2050. Investment of over $27 billion has been committed to port-related road and rail infrastructure in and around Sydney, to reduce the freight bottlenecks.

Currently, around one-third of inbound and outbound containers at Port Botany originate in or are destined for the 'Port of Newcastle Catchment', which extends to the Far West and north to the Queensland border.

Port of Newcastle has the port, the deep-water channel, the land and the road and rail connections for a container terminal that will take-up this container-demand and service regional NSW.

We suggest that a Port of Newcastle container terminal be evaluated on two levels:

1. it's ability to take the transport burden off Sydney; and

2. its accretive benefit to the entire NSW economy, with reference to utilisation of existing infrastructure, trade access, transport logistics efficiency, job-creation and the support of price-equalisation in regional NSW. Deloitte Access Economics estimates that ports competition (ending Botany's monopoly on containers) would add 2.5% to port productivity growth rates and, introducing NSW port competition would add $111 million per year to GSP.[1]

[1] Deloitte Access Economics, 'NSW Container and Port Policy: Port of Newcastle' 2018. Page 71

We propose a 1.7 million TEU container terminal at Port of Newcastle, allowing the NSW government to utilise existing infrastructure, unlock capacity and develop assets that promote economic growth.

In our full submission we give a demand-driven argument for a container terminal at the Port of Newcastle on the basis of a network-benefit to all of NSW. It includes:

- economic growth and demand-drivers in regional NSW;
- lower freight charges for NSW producers and consumers;
- reduction of road/rail congestion at Port Botany and intra-Sydney;
- alternative source of containers for growing demand north of Sydney;
- elimination of Sydney double-handling for NSW's imports;
- diversification and enhanced trade connectivity in regional NSW.

We believe there is significant potential for Port of Newcastle to drive business diversification, trade, and jobs-growth in regional NSW.

The Economic Benefits

On 11 December 2018 Port of Newcastle released our most recent economic study by AlphaBeta Economics on the economic benefits of a container terminal at Newcastle. The AlphaBeta Report is attached for the Committee to consider along with the summary presentation outlining key findings by Jim Minifie – Principal AlphaBeta.

The report – *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle* – shows that a world-class container terminal at Newcastle would create 4,600 jobs, boost the state economy by $6 billion and slash land transport costs across the state by $2.8 billion. Exports from the Hunter region and northern NSW will increase by $1 billion by 2050 as a result.

The report found that by introducing container competition all NSW businesses will reap a benefit of $1.2 billion by 2050.

Sydney could slash 20 million truck-kilometres from its roads and reduce the combined cost of congestion and pollution by $25 million each year. Reducing urban congestion translates into overall cheaper freight cost for regional importers and exporters, many of which can look forward to savings of more than $500 per standard shipping container with their freight travelling through Newcastle rather than Port Botany or Port of Brisbane.

The AlphaBeta report compared Newcastle with Port Botany and Port of Brisbane in terms of container transport costs and found that the savings using Newcastle ranged from $193 to $583 per TEU (twenty-foot container).

Deloitte Access Economics found that *"NSW is currently facing increasingly intense challenges in managing port related freight. These challenges are fundamentally driven by growing population and economic activity but are made acute by the fact that the majority of NSW port freight currently moves through the congested population centre of Sydney, by the current limitations of freight network infrastructure and the difficulty in efficiently expanding the freight network. This problem is present for both road and rail transport of port freight with each mode facing unique challenges (toll increases and a growing passenger rail task squeezing out freight rail, for example). As the freight task grows, this problem is only going to become more challenging."*[2]

International Shipping Trends

I recently highlighted in a speech to the Hunter Business Chamber that world shipping companies are moving to very large vessels – those handling up to 18,000 TEU – that substantially reduce the

[2] NSW Container and Port Policy: Port of Newcastle, pg iv Deloitte Access Economics, March 2018

cost per container. All major shipping lines are building these very large container vessels, with the deliberate intent of making these vessels the new workhorse of global container shipping trade.

The future of World trade is large vessels – and the countries trading with them will enjoy a significant reduction in their supply chain costs.

A recent United Nations report on Trade and Development estimates that shipping carries 80 per cent of the world's trade.[3] In Australia, 97 per cent of our trade travels by sea; making us the fifth-largest shipping task in the world.

The surge in container volumes means the long-term trends emerging that will affect Australia's future prosperity are:

- A move to larger container vessels, and
- The need for port infrastructure that can handle these vessels.

Australia's east coast ports are unable to efficiently accommodate these large vessels, which are twice the size of the maximum the capital cities can handle. In effect our container ports have been built inside bottlenecks.

In Sydney, the commitment to new transport infrastructure to support Port Botany's growth, is around $11 billion in direct support – more than $27 billion in broader transport upgrades.

The spending is mostly on roads as rail is a high cost and inefficient prospect at Botany. The longest train able to service Port Botany is 640 metres – but truly efficient port trains are 1.2 km and the best are up to 1.8 km long.

As the global trade system scales-up, our east coast container ports are stranded assets reliant on trucks which will continue increase container volumes on Sydney roads.

Port Botany's container trade will double by 2040. In a city such as Sydney, the traffic congestion is already famous – where will all the extra trucks go?

Australia must be part of the global trade network – Port of Newcastle's container terminal is the best opportunity to ensure Australia and NSW are not left behind as the fundamental nature of global shipping changes.

The Hunter Region has a larger economy than Tasmania or the Northern Territory, and NSW north of Sydney is growing strongly, on the back of industries such as coal, wine, and agricultural exports – as well as advanced manufacturing, food processing, defence industry and high-tech services.

Port of Newcastle is regional Australia's global gateway and already has the deep channel and the road and rail landside capacity to manage these super-sized container ships.

Our development plan is costed at approximately $1.8 billion in private investment involving 11 quay cranes.

Our best-in-class stevedoring operation will feature:

- Automated quay cranes;
- Driverless straddle cranes;
- Automated gantry cranes to load trains;
- All operations electric – no diesel, no noise pollution;
- 24/7 operation;

[3] Review of Maritime Transport 2018, United Nations Conference on Trade and Development, 23 October 2018

- Intermodal, warehousing and distribution centres within the precinct, and connected to main freight routes, and
- Automated logistics management platforms.

There is strong interest in this opportunity from a number of globally-significant port operators, as well as from the community, which recognises the need to transition our economy and make Australia more globally-competitive.

The regional NSW economy is diversifying and the freight savings from a Newcastle Container Terminal would be enjoyed across many industries, from agriculture and food processing to advanced manufacturing and mining services.

Conclusion
Port of Newcastle appreciates this opportunity to inform the Committee of the economic benefits for NSW, and more widely for Australia, of a container terminal at Newcastle.

Attached are the following documents for the Committee's information:

1. Port of Newcastle's Submission to the Inquiry;
2. Deloitte Access Economics: *NSW Container and Ports Policy – Port of Newcastle*;
3. AlphaBeta Strategy Economics report: *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*;
4. AlphaBeta presentation outlining key findings by Jim Minifie – Principal AlphaBeta;
5. Case Studies – *Port of Newcastle Container Terminal*, prepared by Hunter Research Foundation Centre at the University of Newcastle (December 2018);
6. Port Master Plan 2040; and
7. Speech to the Hunter Business Chamber Infrastructure Lunch, 30 November 2018: *'Future Proof: Port of Newcastle Container Terminal'*

As concluded in our submission, we believe a 1.7 million TEU container terminal at Port of Newcastle is compelling – we hope you agree.

Should the Committee require further information in relation to this submission please contact me on

Yours sincerely

Craig Carmody
Chief Executive Officer

Port of Newcastle Operations Pty Ltd

Submission

New South Wales Legislative Council

Public Works Committee

January 2019

Submission to the New South Wales Public Works Committee

From Port of Newcastle: we submit that the NSW Government lift its limitations on container port operations in New South Wales, and Port of Newcastle be permitted to build a 1.7-million TEU[1] container terminal in its port precinct. This will render much of current and planned transport infrastructure investment in 'decongesting' metropolitan Sydney redundant and unnecessary, freeing up public resources and contributing to the development of an optimal freight and ports system in New South Wales.

Introduction

New South Wales is reaching a tipping point in its container freight task. The designated container port for NSW - Port Botany - operates inside Sydney's Metropolitan area, Australia's most populous. Port Botany facilitates container volumes of 2.4 million per year which will more than double to 5 million TEU by 2050 and reaching capacity ceiling some time between 2030 and 2040[2]. The container freight task must be facilitated in a city which will grow from the current 5 million people to 7.75 million by 2050[3]. Infrastructure Australia has forecast a 400 per cent increase in truck movements at Port Botany by 2029/30 if the rail share is not increased[4], and Port Botany has failed to lift its rail mode-share above 20 per cent largely because of the limitations on rail infrastructure-size in the Port precinct and the Sydney rail network. Sydney's population and traffic congestion challenges are such that the NSW Premier, Gladys Berejiklian, recently called for a halving of Australia's migration numbers to ease the burden on Sydney[5]; the NSW Opposition Leader, Luke Foley, said "Sydney is groaning under the weight of congestion.[6]"

Port Botany's container volumes are growing by around 5 per cent per year but Sydney lacks an 'orbital road' network of motorways that can efficiently move the containers from Port Botany and avoid adding to congestion on local roads. The rail infrastructure around Port Botany is not adequate for the growing container trade: the Port can't accept the most efficient 1500 metre container trains - it's limited to 640m trains, with some stevedoring operations at the Port limited to around half of that. Deloitte Access Economics estimates that more than 90 per cent of Port Botany containers move around the Sydney Metro area on the road[7]. The congestion is worsened by Sydney's road tolls - Deloitte

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[1] TEU = twenty-foot equivalent unit, one container

[2] Deloitte Access Economics, 'New South Wales Container and Port Policy: Port of Newcastle', 2018 p. vi

[3] Deloitte Access Economics p. xii

[4] Infrastructure Australia 2014-2015 Assessment

[5] ABC News, October 10, 2018. http://www.abc.net.au/news/2018-10-10/nsw-premier-calls-for-immigration-rethink/10358696

[6] ABC News, October 10, 2018. http://www.abc.net.au/news/2018-10-10/nsw-premier-calls-for-immigration-rethink/10358696

[7] Deloitte Access Economics p. xiv

estimates that one TEU truck journey from Port Botany to Western Sydney costs between $60 and $80[8]. This amounts to over $16 million a year in toll costs, or $314 million in net present value terms.

Sydney's growing congestion problem is exacerbated by the NSW Government's decision from 2012 to effectively limit the primary container trade to Port Botany by limiting the container volumes that other NSW ports can move. Port Kembla has been designated as the container 'overflow' for Port Botany and in the Greater Sydney Region Plan 2018, Port Kembla's upgrade in container handling capacity is budgeted at $1 billion[9], but not counting the ancillary landside transport upgrades.

Designating Port Kembla as the overflow port to Botany will likely be inadequate. By 2050, one-third of NSW's total container trade will come from or go to the **Port of Newcastle Catchment** area **(**defined by Deloitte Access Economics as the Hunter, Western NSW, Central Western NSW, Mid-North Coast, Central Coast and Northern NSW). That container trade will equal around 1.1 million TEU in 2050, while Port Kembla's catchment of Southern NSW will only produce and receive 450,900 TEU in 2050[10]. In simple geographic and economic terms, the Port Botany overflow port should be to the north of Sydney, at Port of Newcastle.

The Port of Newcastle currently has a development consent to build a 350,000 TEU container terminal at PoN, which dates from 2001[11]. Port of Newcastle can begin building a container port to this approval, considerably greater than its currently allowed volume-limit of 30,000 TEU. However, PoN calculates that the current break-even for a modern container port lies somewhere between 350,000 and 500,000 TEU[12]. The PoN Container Terminal needs greater-than break-even volumes to allow for an economic return on the investment in infrastructure, including a commitment to automated stevedoring.

The Port of Newcastle also gained approval from the NSW Government in 2012 to move ahead with the Mayfield Precinct Concept Plan - a development proposal for a 1.2 million TEU container terminal on the 90 hectare site. This approval of the concept marks the penultimate step before final consent is given. In other words, the NSW Government has already agreed that there is a strong case for a container terminal at Newcastle - up to 1.2 million TEU - however we argue for a 2 million TEU container terminal and the lifting of

[8] Deloitte Access Economics p. 26
[9] Deloitte Access Economics p. 57
[10] Deloitte Access Economics p. xii

[11] NSW Minister for Urban Affairs & Planning, April 6, 2001. 'Integrated State Significant Development Determination of Development Application - No. 293-08-00'

[12] Newcastle Herald, August 1, 2018. 'Port of Newcastle's New Chief Pushing for a Container Terminal.'

limitations on NSW container operations so we can move forward.

The Government's non-competition policy for container ports in NSW not only denies trade infrastructure to growth areas such as Hunter Region and North and Northwest NSW, but it is also expensive: the NSW Government has committed more than $27 billion to transport infrastructure spending in and around Sydney, which is intended to allow the freight task to move more efficiently and with less negative impact on Sydney's road and rail traffic. Unfortunately, some of the government's investments are unlikely to work as intended:

- **Sydney Gateway:** the $800 million project will link the domestic and international airport terminals to the yet-to-be constructed Orbital Road system called WestConnex. This "Gateway To Nowhere" stops around 3 kilometres short of Port Botany which means the main traffic congestion around Port Botany - container trucks on Foreshore Road and entering/exiting the Port precinct's Penrhyn Road - will continue to grow.
- **Port Botany Rail Line**: the $200 million project to duplicate the rail line into Port Botany is planned by the NSW Government but it has not been taken-up by the responsible entity, the ARTC. At any rate it does not lengthen the trains above 640 metres, to the more efficient length of 1500 metres planned for Port of Newcastle Container Terminal.
- **Port Kembla 'overflow':** the decision by the NSW Government to designate Port Kembla as the 'overflow' container port for Port Botany, requires significant investment in the port, and in the roads and rail to connect Port Kembla to the NSW freight network.
- **Maldon-Dumbarton Rail Line upgrade:** the $800 million upgrade is intended to make Port Kembla suitable for the international container trade, however the plan does not indicate that trains of more than 640 metres will be able to operate into Port Kembla.

Port Kembla:
In the 2003 Port Growth Plan, Port of Newcastle was listed as the container 'overflow' port for Port Botany - the port that would be developed as a container port when Botany reached capacity. However, in 2012, the Port of Newcastle Leasing Agreement process followed the Government's new freight policy: that Port Botany was the state's primary container port until it reaches capacity at which point Port Kembla will take Botany's capacity-overflow. Port Kembla will undergo significant investment to make it ready for this overflow task:

* Outer Harbour works	$700 million
* Maldon-Dombarton Railway upgrade	$800 million
* M1 Princes Motorway upgrades	$80 million
* Southern Sydney Freight Line upgrade	$80 million[13]

[13] Deloitte Access Economics p. xvii

This does not include the Appin Road upgrade connecting Sydney to the Illawarra, or the $2.2 billion earmarked for intermodal terminals and rail/road connections in southwest and western Sydney that will eventually allow Port Kembla to connect with the Port Botany rail corridors.

Problems with non-competition:
The current planning environment is aimed at heading-off future traffic congestion problems in Sydney and preserving the non-competition Port Botany container policy, rather than optimising NSW's freight performance.

The cost to NSW of retaining one container port for Australia's economically largest state, is measurable. Deloitte Access Economics - using a Lycopodium Infrastructure report on NSW freight costs - calculates that landside transport costs for freight in the PoN Catchment could be reduced by around $60 million a year, a NPV of around $1.1 billion over the period to 2050. When externalities are added, lack of container port competition in NSW could generate around $1.3 billion in additional landside transport costs in NSW over the period to 2050.[14] Neglecting the growth of regional NSW and Port of Newcastle's role in it, has real-world economic consequences. EconSearch, in an economic impact statement for Port of Newcastle, stated, "For every dollar spent in the Port of Newcastle a flow on benefit for the local, state and national economies of between $0.84 and $1.32 is generated. For every million dollars of output generated by the Port of Newcastle, 5.2 jobs are created[15]."

Yet most of the planned investments support Port Botany and capacity enhancement between Port Botany and Western Sydney[16], while Port Kembla's future can only be underwritten by investments that make it suitable for container ships and to connect it to the NSW freight network.

Infrastructure Australia says the cost of road congestion to the area of Wollongong-Sydney-Newcastle will increase from $5.6 billion in 2011 to 14.8 billion in 2031 if not addressed. The WestConnex project - potentially $45 billion in total budget[17] - is supposed to create an Orbital Road arterial system through and around Sydney, but its 'Sydney Gateway' component is not a gateway to Port Botany. Moreover, AI's analysis of WestConnex says it does not do enough, "about ensuring connectivity to the airport and port,"[18] or do enough work on induced demand. The subsequently amended WestConnex, which adds Sydney Gateway, *reduces* the benefit of the project by around 25%[19]."

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[14] Deloitte Access Economics p. xx
[15] EconSearch, 'Economic Impact of the Port of Newcastle 2016/17'[15], as quoted in Port of Newcastle, submission to The Freight and Ports Plan, p. 6.
[16] Deloitte Access Economics p. xv - xvi
[17] Clover Moore, Lord Mayor of Sydney, press release 2017, https://www.clovermoore.com.au/westconnex-real-cost
[18] Infrastructure Australia, Project Business Case Evaluation, April 2016. 'WestConnex'.
[19] IA 2016.

Induced demand describes the situation where building bigger and better roads simply increases the demand.

Infrastructure Australia has undertaken an audit of the business case behind WestConnex and found the traffic situation in Sydney is not expected to improve. "The Audit noted that a number of corridors in Sydney's inner west are severely congested now, and that this will continue to worsen into the future.[20]"

As analysed by Deloitte Access Economics and Lycopodium Infrastructure, the current planning by NSW Government omits the Port of Newcastle and the role it can play in reducing freight volumes through Sydney, enhancing the regional NSW economy and acting as a growth-engine for the fast-growing Hunter region.

Port of Newcastle - the alternative:
While the NSW and federal governments spend tens of billions of dollars to make Sydney's landside transport adequate for Port Botany's status as the only container port in NSW, an obvious lower-cost solution - a container terminal at Port of Newcastle - is overlooked[21]. It should not be overlooked because:

- More than one quarter of Port Botany's inbound containers are bound for the **'Port of Newcastle Catchment'.[22]**
- The costs of sending containers by rail from north-western NSW are around 30% greater to Port Botany than to Port of Newcastle.[23]
- More than a third of Port Botany's export containers come from the Port of Newcastle Catchment.[24]
- PoN Container Terminal would take 500,000 containers per year off Sydney's roads and rail network[25]
- A PoN Container Terminal would act as a growth-engine for regional NSW's growth by significantly reducing the cost of container freight to regional NSW[26].
- The Hunter Region will have population growth second-only to Greater Sydney to 2036 and it should be noted that the Hunter Region had a greater economic output than Tasmania, ACT or Northern Territory in 2017 - it is not erroneous for the Hunter Region to have its own container port, or for regional NSW to enjoy its economic benefits.
- Port of Newcastle already has significant rail connections into Sydney and regional NSW, that operate under-capacity. There are marginal

[20] IA 2016.
[21] Deloitte Access Economics, 'Executive Summary'.
[22] Deloitte Access Economics p. xiii
[23] Lycopodium Infrastructure pty ltd., 'Port of Newcastle Container Transport Economics Study Update' p. 1.3
[24] Deloitte Access Economics p. xiii
[25] Deloitte Access Economics p. v
[26] Lycopodium Infrastructure pty ltd., 'Port of Newcastle Container Transport Economics Study Update' 2018, p. 9.15 - 9.30

costs associated with making PoN ‘container-ready’.

- Port of Newcastle increases NSW freight productivity because its planned Container Terminal can accept 1500m trains to the berth, with future capacity to accept 1800m trains.
- Port of Newcastle has significant landside road infrastructure which connects to M1 to Sydney, New England Highway (north west) and Pacific Highway (north).
- PoN has the land availability on its Mayfield precinct which will accept 1500m trains onto the berth with future capacity to accept 1800m trains.
- PoN has significant, globally-recognised expertise in Transport Management Systems (TMS) through its membership of HVCCC. This gives PoN the ability to reach worlds-best port productivity, which aids businesses, households and the regional and national economies.

The Case for Port of Newcastle Container Terminal

We plan to build a 1.7-million TEU per year container terminal at Port of Newcastle that services the **‘Port of Newcastle Catchment’** defined by Deloitte Access Economics as the Hunter, Western NSW, Central Western NSW, Mid-North Coast, Central Coast and Northern NSW. **The Port of Newcastle Container Terminal will be privately-funded** (with some input from Government) and will operate inside current Port boundaries. The Newcastle Container Terminal (NCT) is aligned with current NSW government infrastructure and economic policy and it leverages available land, existing deep-water channel, and existing road and rail infrastructure.

Port of Newcastle

Ninety-eight per cent of Australia’s trade is conducted through sea ports, so problems with capacity, efficiency, productivity and costs are amplified through the supply chain if the problems are allowed to grow at our ports.

In a report for Port of Newcastle, Lycopodium Infrastructure found that exporters in NSW’s Central West and North West would spend 32% less on their rail transport costs to Port of Newcastle container terminal compared to Botany, and 18% less on road costs to Newcastle compared to Botany.[27] We consider such efficiencies would encourage investment in regional industries and regional jobs-growth and would align with the NSW Government’s goal of creating diversified and resilient regional economies by leveraging existing and planned infrastructure.

Comparisons

The comparative freight calculations were made by Lycopodium for the landside container logistics cost for rail and road movements to the ports:

[27] Lycopodium Infrastructure pty ltd., ‘Port of Newcastle Container Transport Economics Study Update’ 2018, p. 9.15 - 9.30

- Newcastle
- Brisbane
- Botany
- Port Kembla

The calculation of costs of containerised exports from the regional areas where there is a tangible benefit:

- Moree
- Narrabri
- Tamworth
- Dubbo

The Port Plan

Port of Newcastle is a diverse sea port with operations in:

- Bulk Liquids
- General Cargo
- Bulk
- Project Cargo

It is the world's largest coal export port - 160 million tonnes in 2017 - and has significant operations in wheat export and in bulk fuels. In the past 10 years we have seen the expansion of the fuel terminal and storage/distribution activities; the expansion of the wheat terminal and the building of new coal-loading infrastructure at Kooragang Island. We are planning to build a cruise terminal.

The building of a container terminal at the vacant Mayfield site is part of the PoN plan to accommodate the future growth of the Hunter Region, to respond to the expected doubling of Australia's freight task in the next 20 years and to ensure that regional NSW has efficient and affordable access to national and international markets.

The PoN container terminal proposal consists of the following:

- 80 hectare site
- hardstand to support Rail/Road interface behind berth operation
- rail and road connectivity
- supporting quay-line and berth interface infrastructure
- multiple 900m rail sidings on the berth interface

The public infrastructure at NCT will include cutting-edge stevedoring systems, including automation, machine learning, robotics and digital logistics management systems that integrate with rail and road transport operators. We are committed to benchmarking our productivity to the world's best ports, a concern flagged by the ACCC in its 2017 report into stevedoring at Australia's container ports: "In 2016-17, capital productivity decreased by 1.7 per cent to 29.2 containers per hour, labour productivity decreased by 1.1 per cent to 46.5

containers per hour, while multifactor productivity was flat at 55.6 containers per hour. Australian quayside productivity levels continue to lag levels achieved in comparable countries[28]."

Our grasp of the 'hard' and 'soft' aspects of port infrastructure allow us to pursue what the World Economic Forum refers to as 'The Fourth Industrial Revolution' - the "fusion of technologies that is blurring the lines between the physical, digital, and biological spheres.[29]" Our plan for the NCT uses the best and most modern in port infrastructure, stevedoring facilities and logistics management systems, to drive industry-best productivity from the NCT and drive competition in prices and services across the Australian port supply chain network.

Within the NSW Government's Metropolitan planning for the Greater Newcastle area, the Mayfield Port Precinct has been identified to support the growth and diversification of port import and export operations including handling of containers. This is associated with the development of the adjoining land as the Mayfield Freight and Logistics Precinct for freight, logistics, intermodal and warehousing to complement the Port's export role[30]:

Master Plan

Port of Newcastle will shortly release its 'Port Master Plan 2040' which outlines the key strategic development opportunities for the Port and the broader region. In addition to the Newcastle Container Terminal, PoN's diversification strategy includes the development of the Newcastle Bulk Terminal in Walsh Point, working towards a specialised Automotive and Ro-Ro hub, supporting the Maritime Precinct in Carrington and the construction of the Newcastle Cruise Terminal, as well as supporting the continuation and growth of major bulk trades such as coal, fuel, fertiliser, wheat and mineral concentrates.[31]

Market

The existing demand in regional NSW for a container terminal at Port of Newcastle (PoN) would see an initial throughput of around 200,000 TEUs of container trade per year. Deloitte Access Economics has modeled the total current *available* containerised freight in the PoN catchment at 500,000 TEUs per year.[32] In any event, these estimates are economically sufficient to establish latent demand and initiate the container terminal. The nameplate capacity of our container port - 2 million TEUs per annum - allows the container trade to grow

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[28] ACCC, 2017. 'Container Stevedoring Monitoring Report 2016-17', p. x

[29] World Economic Forum, 'The Fourth Industrial Revolution,' https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond

[30] Greater Newcastle Metropolitan Plan 2018

[31] Port of Newcastle, 2018. 'Port Master Plan 2040: Our Strategic Development Opportunities to 2040'

[32] Deloitte Access Economics p. 24

with population, business activity and customer preference for our cost and efficiency proposition.

The PoN container terminal plan is **demand-driven** and it represents a long-term response to the changing demographics and evolving business environment of the NSW region north of Sydney. It also creates a low-cost solution to the capacity-constraints produced in and around Port Botany and a low-cost/high efficiency alternative to Port Kembla as the overflow container port for Port Botany. If the Port of Newcastle container terminal is to progress, the NSW Government will have to alter its competition policy to allow Port of Newcastle to build a container-freight alternative for regional NSW.[33]

The State of Trade

NSW's freight task is divided into three economic zones: Greater Sydney, Southern NSW, and the PoN Catchment. The dividing line for the two regional NSW economies is a westerly line from Sydney through Parkes[34]..[35]

> **Imports**
> Just over 61% of containerised imports remain in Sydney. The Port of Newcastle Catchment, accounts for around 27% of containerised imports with the southern part of NSW taking 12% of containerised imports.[36]
>
> **Exports**
> New South Wales exported around 186 million tonnes of freight in 2014-15, of which approximately 6.9 million tonnes was containerised. Sydney accounted for around 43% of containerised export tonnage while the Port of Newcastle Catchment accounted for 38% of all containerised exports.[37]

As the containerised trade grows (doubling by 2050), and all of NSW's incoming and outgoing container freight has to be transported through Sydney, extra costs must be paid by regional NSW importers and exporters - the extra rates cover the costs of their freight going through Western Sydney intermodal centres and being trans-shipped onto shuttle rail services into Port Botany. This, in comparison to the direct rail access onto PoN container terminal.

Deloitte Access Economics calls a Port of Newcastle container terminal an "untapped solution in managing freight challenges in NSW"[38], and one that could reduce landside freight costs by $1.3 billion in the long-term and increase port productivity by 2.5% pa over 6-7 years. Requiring PoN Catchment's

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[33] Deloitte Access Economics p. 22

[35] Deloitte Access Economics p. 44
[36] Deloitte Access Economics p. ix
[37] Deloitte Access Economics p. x
[38] Deloitte Access Economics, 'New South Wales Container and Port Policy: Port of Newcastle', 2018

container trade to pass through Botany also adds to congestion in Sydney's freight network, and creates environmental impacts since more than 90% of the container freight through Sydney is carried on trucks. Also, if future overflow of container freight at Port Botany has to move through Port Kembla, it further adds to transport costs for regional NSW businesses - especially those in the north - and provides only marginal relief to Sydney's congestion because containers would still pass through Western Sydney.[39]

What is the demand for container services at Port of Newcastle?

Potential Volumes - PoN Container Terminal

- the immediate landside savings would justify the transfer of approximately 112,000 TEU per annum of export containers to PoN (100,000 rail; 12,000 road);
- containers sourced from around Parkes could be transferred to PoN, potentially in excess of 60,000 TEU;
- Additional export containers might be economically transferable from Botany to PoN but may depend on industrial and freight facilities relocating from the Western suburbs of Sydney where the bulk of containers make their primary move;
- Further growth in exports is possible with transfer from road to rail, eg. replacing Moree to Brisbane by road with Moree to Newcastle by rail;
- the trend for some bulk exports to be containerised means competitive container freight and handling costs at PoN would support this trend;
- with balanced exchange volumes, shipping lines could include Newcastle in the East Coast schedule;
- Deloitte notes that 27% of imported containerised goods are estimated to end up in the Port of Newcastle Catchment which would amount to over 300,000 TEU;[40]
- The import of containers and containerised goods will require appropriate facilities in the Hunter or environs to unpack and distribute the contents. In the early years of operation there will be an opportunity to move containers into the Central Coast;
- Considering the above, the potential initial volume with balanced ship exchange would be **224,000 TEU per annum**, and up to **350,00 TEU per annum** if the Central West via Parkes volumes can be attracted to Newcastle.[41]

In its report to Port of Newcastle, Lycopodium Infrastructure says, "It is important to note that apart from the proposed container port development, transport to the Port of Newcastle from the identified catchment does not require additional investment. The rail and road networks to the Port of

[39] Deloitte Access Economics p. xix
[40] Deloitte report on NSW Container and Port Policy March 2018
[41] Lycopodium p. 10.35-36

Newcastle have been significantly upgraded over many years, particularly the Hunter Valley Rail Network. From a landside transport logistics cost basis, there is a compelling argument to consider container capacity at the Port of Newcastle as it offers a lower cost solution for the export industries it will be able to service." [42]

Regional Demography

Regional New South Wales makes-up 40% of the New South Wales population and while much is made of Sydney's forecast growth, regional NSW will be growing too. ABS figures show that while Greater Sydney's population grows at 1.1% per annum to 2039-40, the NSW population grows at 0.8%. When the Greater Sydney population grows at 0.9% per annum to 2049-50, the NSW population is growing at 0.7%.[43]

The total NSW population is projected to rise from 7.8 million in 2016-17 to about 11.1 million in 2049-50 - an addition of 3.3 million people. The Hunter Region has around 9% of NSW's population and is expected to be home to more than 1 million people within 30 years44. The Hunter is a significant economy in its own right. It had a Gross Regional Product of $48.351 billion in 2017, greater than the Gross State Product of Tasmania, Australian Capital Territory or Northern Territory[45]. It is sufficiently large to have its own container port. NSW regional industries include tourism, wine, equine, horticulture, forestry, cattle, wheat, wool, fruit and vegetables, transport and logistics, construction, services, and a range of manufacturing that includes advanced manufacturing, defence industries and maritime, mining and heavy engineering. Regional NSW is one of the world's premier exporters of high-grade thermal and coking coal and regional NSW has large coal-seam gas reserves.

The largest city in regional NSW is Newcastle; the Newcastle Metropolitan area is Australia's seventh-largest urban area with a population of around 675,000. It is NSW's dominant regional city, with a large airport, an expanding university, a highly-regarded health sciences research organisation (HMRI) and a flourishing defence industry precinct at Williamtown that is home to some of the world's largest defence contractors.

Newcastle - Global Gateway

In its 2018 report, 'NSW Container and Port Policy: Port of Newcastle', Deloitte Access Economics defined the region north of Sydney as the 'Port of Newcastle Catchment'. This region is essentially the area to Sydney's West and North, all

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[42] Lycopodium Infrastructure, 2018. "Port of Newcastle Container Transport Economics Study Update", p. 11.42

[43] Deloitte Access Economics p. xii

[44] Regional Development Australia web site, 'The Hunter Region' http://rdahunter.org.au/hunter-region/hunter-region

[45] Australian Bureau of Statistics, Australian National Accounts: State Accounts, 2016-17 http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5220.02016-17?OpenDocument

the way to the Queensland border[46]. The Catchment region is so created because the transport systems of Western and Northern NSW 'funnel' southwards and eastwards to the lower Hunter Valley and Newcastle, rather than to Sydney. Along with the Port, the Greater Newcastle area is NSW's Global Gateway for transport logistics and energy.

- **Williamtown Airport:** a significant airport which will commence international flights in November;
- **North Coast railway:** originates in Maitland; services the Mid-North Coast to Coffs Harbour and Brisbane, passengers and freight;
- **Hunter Valley Rail Network:** connects Newcastle and Narrabri and to Inland Rail;
- **Main North-South Line:** connects Newcastle and Sydney via the Sydney Metro Network;
- **Pacific Highway:** originates at Raymond Terrace and connects to Tweed Heads;
- **M1:** originates at Hexham and connects to Sydney;
- **M1 extension to Raymond Terrace:** will connect Sydney to Pacific Highway with new freeway over Hunter River;
- **Hunter Expressway**: connects M1 and Newcastle to New England Highway;
- **Golden Highway**: connects New England Hwy to Dubbo at Singleton;
- **Bucketts/Thunderbolts Way**: connects Pacific Hwy to Tamworth north of Raymond Terrace;
- **ARTC Hunter Valley Coal Rail Network:** takes coal trains from around NSW to PoN;
- **Hunter Valley Coal Chain Co-ordinator (HVCCC):** manages the scheduling of trains from 35 coal mines to 1400 ships each year;
- **Planned - Dubbo-Gulgong railway upgrade (completing the Muswellbrook-Dubbo freight link)**
- **Planned - Lower Hunter Freight Rail Corridor**
- **Planned - Newcastle links to the Inland Rail at two points: Narromine (via Dubbo) and Narrabri (via Gunnedah & Werris Creek)**

Greater Newcastle is also an energy hub for regional NSW:

- **World's Largest Coal Port**
- **Newcastle Fuel Terminals** at Port of Newcastle (servicing Greater Hunter, Western & Northern NSW)
- **AGL Gas Storage Facility, Tomago** (compresses and freezes gas into LNG at Tomago plant)
- **AGL's Tomago Power Station** (replaces the soon-to-be retired Liddell coal-fired power station with gas turbines)

[46] Deloitte Access Economics, 'NSW Container and Port Policy: Port of Newcastle' 2018. P. x

- **Bayswater, Eraring, Liddell, Vale Point power stations** (coal-fired turbines producing 9700 megawatts of power)

Productivity

Our plan will leverage technology and advanced digital platforms to make the PoN Container Terminal the most efficient in the world, both in the technology and systems used in our own precinct operations, and also in landside scheduling and logistics management. We will use lessons learned in our membership of the global benchmark-setting HVCCC to leverage a digitally-managed transport-logistics system across road, rail, sea and air, managing demand and supply signals from the PoN container terminal.

Our container terminal plan aligns with:
* NSW Government's Greater Newcastle Metropolitan Plan 2036[47]
* our 'Newcastle Container Terminal' planning[48]
* TfNSW Strategic Action Program 1: Network Efficiency
* TfNSW Strategic Action Program 2: Network Capacity
* TfNSW Strategic Action Program 3: Network Sustainability.

We acknowledge the macroeconomic work by the Australian Logistics Council which shows that for every 1% efficiency increase in the logistics sector, national GDP is boosted by $2 billion[49]. This must be taken alongside Ports Australia's forecasts that container movements in Australia will increase by 165% by 2031, considerably out-running population growth.

As a Global Gateway we understand the influential role that major sea ports play in supply chain economics and we are committed to using technology and best-practice to drive improvements in landside logistics management and our own container terminal performance. The World Economic Forum's work on infrastructure/digital informs the Port of Newcastle vision of the high-productivity 'smart port'. Because of our existing logistics management systems - as part of HVCCC - we realistically anticipate being able to push landside logistics efficiencies throughout the entire freight network of regional NSW, resulting in lower prices, greater reliability and improved speed-to-market. Our improvements will drive price- and service-competition in other ports such as Port Botany, especially as our port supply chain becomes accustomed to the digital platforms that we use for scheduling.

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[47] NSW Department of Planning and Environment, 2018. 'Greater Newcastle Metropolitan Plan 2036' http://www.planning.nsw.gov.au/Plans-for-your-area/Greater-Newcastle-metropolitan-planning

[48] Port of Newcastle, 2018. 'Newcastle Container Terminal', https://www.portofnewcastle.com.au/Projects-and-Development/Newcastle-Container-Terminal.aspx

[49] Australian Logistics Council & ACIL Allen, 2014, 'The Economic Significance of the Australian Logistics Industry'.

While the plan for Port of Newcastle's container terminal can be supported with quantitative data, we are receptive to modern metropolitan planning which puts large infrastructure - such as ports and container terminals - at the centre of 'catalyst areas' where economic growth, higher learning, industrial innovation and high-paying jobs can coalesce. We are currently one of the Greater Newcastle Metropolitan Planning partners and we are committed to creating both quantitative and qualitative outcomes for the broader community.

We plan to build a Global Gateway that includes a worlds-best container terminal that connects Regional NSW with Newcastle and the World.

Regional NSW has been the focus of a number of NSW Government planning and policy documents, producing priorities that include:

- Regional development must focus on 'engine industries' that represent a specialisation for the region so it can play to its comparative advantage;
- Attempts to implant industries won't be encouraged by NSW Government
- Industry-enabling investments (including infrastructure) will be considered on a cost-benefit basis;
- Fostering skills and encouraging greater participation in the workforce is a policy priority.

Regional and infrastructure planning has been comprehensive but has not articulated the potential role for the Port of Newcastle in managing regional NSW's increasing freight task for a growing and spread-out population. Road and rail projects in support of port freight are outlined in the *NSW Freight and Ports Plan 2018-2023*, the *2015-2024 Sydney Metropolitan Freight Strategy*, and the *Infrastructure Priority List*. There are also port-specific projects within regional development plans, including *The Hunter Regional Plan*, a plan by NSW Government to 2036 which positions the Port of Newcastle and Newcastle Airport as a Global Gateway, through improved interregional links and infrastructure for freight movements;[50] and the *Greater Newcastle Metropolitan Plan 2036* which references the significant developments planned at Port of Newcastle, including the Mayfield Freight and Logistics Precinct. However, according to Transport for NSW, Port Botany will remain the key container port in NSW; Port Kembla will be the primary port for motor vehicle imports and Port of Newcastle will need to support forecasted growth in coal exports[51] . When Botany hits container capacity in the 2040s, Port Kembla will become the 'overflow' container port.

The current planning direction is expensive. Deloitte Access Economics estimates there is around $27.6 billion in planned investment to support port freight in NSW, with upcoming investments to directly support current port

[50] Deloitte p. xviii
[51] Transport for NSW, 2013, p. 111

freight in excess of $3 billion.[52]

The Arguments for a container terminal:

1. **Freight Task:** Studies such as the NSW Freight and Port Strategy provide estimates of the predicted increase in the total freight task across NSW over coming decades, which suggest increase in freight volumes through the Port of Newcastle at approximately 3-7% annual compound growth[53];
2. **Lower Freight Costs:** Lycopodium Infrastructure found that exporters in NSW's Central West and North West would spend 32% less on their rail transport costs to Port of Newcastle container terminal compared to Botany, and 18% less on road costs to Newcastle compared to Botany.[54] Even a city as far south as Parkes was considered 'contestable' for PoN given the ability of Newcastle Port to handle longer trains than currently envisaged for Botany[55];
3. **Rail Mode-Share:** Consistent with the NSW Government's priority that existing transport infrastructure be optimised, PoN is currently connected into the most advanced rail-management system in Australia. According to TfNSW's Freight Plan, Port of Newcastle already transacts the two most rail-intensive freight tasks in New South Wales: coal and agriculture. Of the eight freight-types listed by TfNSW, those most shifted by rail - coal (87%) and agriculture (46%)[56] - are the freight tasks predominantly transacted at Port of Newcastle;
4. **Cycle times:** Cycle time is a key factor in the calculation of freight costs, particularly for rail. Delays in cycle time through congested ports and staging terminals such as Enfield Yard and Cooks River in Sydney, add significantly to the cost of transport[57];
5. **Travel/dwell times:** The additional travel and dwell time for freight transported through the Sydney Metropolitan rail network to Port Botany from the North West and Western regions leads to an increase in costs in excess of the cost of transport direct to the Port of Newcastle[58];
6. **Direct freight comparison:** The additional cost of transporting containers to Port Botany compared to the cost of direct transport to the Port of Newcastle, is calculated to be as much as 30% higher;[59]
7. **Train Length:** the greatest transport efficiencies are delivered by long trains, equal to or greater than 900m. The trains at the PoN Container

[52] Deloitte Access Economics, 'New South Wales Container and Port Policy: Port of Newcastle', 2018. p. vi
[53] Lycopodium p. 1.6
[54] Lycopodium Infrastructure pty ltd., 'Port of Newcastle Container Transport Economics Study Update' 2018, p 9.15 - 9.30
[55] Lycopodium p. 1.6
[56] TfNSW, 'Freight and Ports Plan 2018-2023', 2018. P. 22
[57] Lycopodium p. 1.3
[58] Lycopodium p. 1.3
[59] Lycopodium p. 1.3

Terminal will be up to 1800m - Port Botany on-berth trains are limited to 640m but most are 340m;

8. **Rail Infrastructure:** the Inland Rail will not materially change the connections by rail to either Botany or Newcastle, although the Parkes to Narromine section which has just been approved for construction could favourably alter the economics of container movements to Newcastle from Parkes and southern regions[60];
9. **Pressure off Sydney**: The relief on the Port Botany Rail line, created through the development of a container terminal at Port of Newcastle, is likely to improve reliability and journey time for short distance shuttle services into Port Botany from intermodal terminals in Sydney. These benefits extend also to services from the South, which terminate at Port Botany[61];
10. **Productivity Dividend:** As Ports Australia CEO Mike Gallacher has stated: "Congestion costs the economy $16 billion a year - a holistic approach to freight can reduce congestion much more effectively than a $1 billion Band-Aid on road bottlenecks."[62]
11. **Freight Task Efficiency:** Lycopodium notes that the natural efficiency advantage at Port of Newcastle include its geography and lack of network constraints compared to Port Botany, Port Kembla and Brisbane. In particular, PoN container terminal can offer access for 1500m trains [increasing to 1800m] and PoN has no limit on B-double trucks[63]; the longest sidings at Botany are 640m but most are 340m. This increases handling times and costs and reduces the volume-cost advantages of rail[64];
12. **Rail infrastructure:** The supply chain through to the Port of Newcastle has already undergone significant upgrade resulting in excess capacity;
13. **Demand:** Port of Newcastle calculates an immediate demand for container export services through a PoN Container Terminal from the Hunter, North West and Western areas of NSW, of 224,000 TEU on the clearly contestable freight from the North and Hunter regions, and up to 350,000 TEU based on the Central West via Parkes being contestable[65];
14. **Costs to customers:** Botany operates 640m trains, used as 'shuttles' from the Western Sydney intermodals and staging yards. Port of Newcastle's quay line and hardstand plans allow for 1500m trains - increasing to 1800m - which boosts freight productivity and lowers cost per tonne and cost per TEU[66]. Lycopodium found that a 900m container train from Narrabri to Botany (via an intermodal before being reduced to 640m) would cost the customer $47 per tonne while a 1500m train from

[60] Lycopodium p. 1.3
[61] Lycopodium p. 1.6
[62] Mike Gallacher, CEO Ports Australia
[63] Lycopodium p. 1.6
[64] Lycopodium p. 1.6
[65] Lycopodium p. 1.7
[66] Lycopodium p. 9.15 - 9.25

Narrabri to Newcastle direct would cost the producer $23 per tonne[67]. Being able to ship goods for half the price of the incumbent provider is a considerable benefit to regional NSW;

15. **Terminal Handling:** there are reduced terminal handling charges as trains travel direct to the Port of Newcastle through the highly efficient ARTC Hunter Valley rail network[68];
16. **Limits on Port Kembla:** train lengths and payload sizes are restricted for trains into Port Kembla. General rail freight originating from the Central West of NSW travelling to Port Kembla generally transits via the Moss Vale to Unanderra rail line which is restricted to a maximum train length of 640m[69];
17. **Natural Catchment:** the main container-railed freight to Port Botany is from Forbes, Dubbo, Wee Waa, Narrabri, Narromine etc.[70]. Botany's rail throughput is based on long-haul transport from key catchment regions for the Port of Newcastle;
18. **Congestion:** Sydney's cost of traffic congestion will rise from $16.1 billion in 2015 to approximately $12.6 billion by 2030, according to Bureau of Infrastructure, Transport & Regional Economics (BITRE)[71];
19. **Competition:** Deloitte Access Economics estimates that ports competition (ending Botany's monopoly on containers) would add 2.5% to port productivity growth rates and, introducing NSW port competition would add $111 million per year to GSP[72];

Smart Port - Smart Options:

Finally, we note that many planning documents are focusing on utilising existing infrastructure, making more of current networks and using non-physical assets - smart people and technology - to get better performance out of physical assets. The rail-management project work at Port Botany, for instance, has concluded that better landside management of rail infrastructure yields productivity and mode-share benefits greater than simply building more rail infrastructure[73]. Port of Newcastle concurs with this posture - it is a strategy we have been pursuing for many years:

- **Landside Logistics:** PoN is a member of the Hunter Valley Coal Chain Coordinator along with Pacific National Internet, QRNational, Australian Rail Track Corporation (ARTC), Rail Corporation New South Wales

[67] Lycopodium p. 9.18
[68] Lycopodium p. 9.26
[69] Lycopodium p. 9.26
[70] Lycopodium p. 10.31-32
[71] BITRE, Information Sheet 74, 'Traffic and Congestion Cost Trends for Australian Capital Cities'. https://bitre.gov.au/publications/2015/files/is_074.pdf
[72] Deloitte Access Economics, 'NSW Container and Port Policy: Port of Newcastle' 2018. P. 71
[73] 'Simulation and Analysis of Container Freight Operations Port Botany' Research Paper Daniel Guimarans from the Amsterdam University of Applied Sciences and NICTA Optimisation Research Group and Daniel Harabor, also from NICTA Optimisation Research Group, together with Pascal Van Hentenryck from University of Michigan

(RailCorp) and Port Waratah Coal Services. The HVCCC is a world leader in rail scheduling and logistics management and allows us to drive two-week scheduling windows, a 5-day sort-and-load performance at PoN, for 35 mines and 1400 sailings each year. This system will be implemented on PoN's container operations to create the most efficient container-freight system in the world, right here in Regional NSW;

- **Smart Systems:** The Hunter Valley Rail Network and HVCCC are leaders in developing and implementing efficient scheduling algorithms and procedures. Lycopodium has assessed Newcastle Port container operation as being capable of utilisation levels approaching 90%;
- **Smart People:** through our membership of HVCCC we have seen the benefits in attracting the smartest engineers, mathematicians and IT professionals to build and run the logistics systems that make our coal supply chain the world's most efficient. One such person - Dr Alex Mendes from the University of Newcastle - helps build the digital platforms on which HVCCC rides.[74] His work for HVCCC includes a genetic algorithm focusing on the train speed in each network section, creating high-quality scheduling decisions in less than 4 minutes[75];
- **Smart Connections:** we have relationships with University of Newcastle, we have a planning agreement with Newcastle Airport and we have close planning ties to the defence industry at Williamtown, given their need for international and internal freight options. We have strong commercial and planning arrangements with the large energy companies (gas, petroleum, coal) and we have planning and development contingencies in place for such as time when coal seam gas extraction is once again supported by the NSW Government.
- **Smart Ports:** the WEF's 'Fourth Industrial Revolution' concept brings together hard public infrastructure, digital and management value-adding to the infrastructure, and the biological sphere[76] - the environment, the communities, the workplaces. Our planning is aligned with this goal and we have the components in place to make it a reality for the people of the Hunter Region and regional NSW.

Conclusion:

We submit that is time for Regional NSW to be allowed a significant container port - its own Global Gateway. As mentioned, the Hunter Region alone has a

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[74] University of Newcastle, 'Artificial Intelligence', 2015. Story on Dr Alex Mendes. https://www.newcastle.edu.au/highlights/our-researchers/engineering-built-environment/electrical-engineering/artificial-intelligence

[75] A. Mendes, M. Jackson, M. Rocha de Paula and O. Rojas, 'Iterative train scheduling in networks with tree topologies: a case study for the Hunter Valley Coal Chain' *School of Electrical Engineering and Computing, The University of Newcastle, NSW & Hunter Valley Coal Chain Coordinator, Broadmeadow, NSW.* https://mssanz.org.au/modsim2017/J5/mendes.pdf

[76] WEF, 'The Fourth Industrial Revolution'.

bigger economy than Tasmania, ACT or NT. It is growing and with population growth is coming new industries and new jobs that will require inter-regional and international freight connections to facilitate their success. The fact that we can build a 1.7-million TEU container terminal at low cost, on existing land, is only part of the proposition: we can also build this terminal to accept the most efficient form of land transport (1800 metre trains), we can connect this terminal to four major rail networks (Main North-South Line, Hunter Valley Rail Network, North Coast, Inland Rail), we connect to the major trucking routes (Pacific Highway, M1 and New England Highway) and we have the worlds-best rail logistics management platforms, given our membership of the HVCCC.

We propose that a 2 million TEU container terminal at Port of Newcastle can resolve several issues: it can service the growing population of Hunter Region; it can service the growing containerised trade from Regional NSW north of Sydney; it can take pressure off Port Botany's well-documented landside congestion problems; it can save costs for importers and exporters, and therefore make it more affordable for regional households and businesses; and it can create a network-effect across regional NSW, driving economic growth, skills and jobs and a diversity of business types.

We believe a 1.7 million TEU container terminal at Port of Newcastle is compelling - we hope you agree.

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE CERTIFICATE
DP-4

This is the Annexure marked "DP-4" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

Port of Newcastle
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12 February 2019

Hon Robert Brown MLC
Chairman
Legislative Council Public Works Committee
NSW Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Brown

Inquiry into the impact of Port of Newcastle sale arrangements
Response to Supplementary Questions

I take this opportunity to provide to the Committee Port of Newcastle's responses to the Supplementary Questions following the public hearing and the corrected transcript (**see attached**).

I would also like to specifically clarify the following:

- Within the first ten years of the project there will be an estimated 479 truck movements per day to move 350,000 TEU per year
- This is in stark contrast to claims made at the hearing, including those by Mr Ken Kanofski, Chief Executive of Roads and Maritime Services, who referred to up to 5,000 truck movements per day
- It is unclear how these numbers have been calculated.

It is important to recognise that the Newcastle Container Terminal will likely be developed in three stages. Stage 1 will handle up to 350,000 TEU (at full capacity) in accordance with the existing Planning Approval over the next ten years. Subsequent stages will grow the terminal capacity to potentially 1.7 million TEU by 2065, which would equate to an estimated 2,328 truck movements per day. This is within the limits of the ultimate stage approved in the 2012 Mayfield Concept Plan Approval.

It should also be noted that there are already large volumes of deconsolidated freight moving north from Sydney by road that would no longer be required, actually reducing current road freight volumes. Furthermore, the majority of truck freight will not move south to Sydney but be evenly distributed to local and regional areas within the catchment area.

Like other Australian ports, the Port of Newcastle will see greater uptake of better utilised trucks or Higher Productivity Freight Vehicles (HPFVs) which can carry four TEU per truck movement. This will equate to even less truck movements.

Port of Newcastle welcomes an open and transparent discussion about the facts and thanks the Committee for the opportunity to participate in the Inquiry.

Should the Committee require further information in relation to this submission please contact me on

Yours sincerely

Tanya McDonald
EXECUTIVE MANAGER CORPORATE AFFAIRS

Enclosures:

- **A. Responses to Questions on Notice for the Port of Newcastle.**
- **B. Transcript corrections**

Attachment A

Supplementary Questions on Notice for Port of Newcastle

No	Question	Response
1	What modelling has been relied upon by the Port of Newcastle on the long-term outlook for coal?	The Port of Newcastle's long-term outlook for coal is informed by a range of analysis and modelling including publicly available reports, advisory subscription services and tailored advisory reports which are Commercial-in-Confidence.
2.	What planning has been done within Port of Newcastle to determine the future of coal exports from Newcastle?	Please refer to Question 1. In May 2018 Port Waratah Coal Services (PWCS) announced it would not be pursuing the development of a proposed new coal handling facility (located at Terminal 4). PWCS indicated that it had consulted with coal producers and formed a view that expansion was not required, and existing terminals could handle the foreseeable coal export task. (See p 49 Port Master Plan 2040). https://pwcs.com.au/news/latest-news/port-waratah-terminal-4-announcement/ https://www.portofnewcastle.com.au/General/Port-Master-Plan-2040.aspx
3	What specific emissions trajectories or scenarios (for instance, IPCC scenarios) have been used to determine the long-term outlook for coal for the Port?	Please refer to Question 1. The future outlook for coal is uncertain but the merits of a container terminal at Port of Newcastle stand alone.
4	What are the assumptions these scenarios are based on, including trends in global coal demand?	Please refer to Question 3.
5.	What is the projected share of coal tonnage to other commodities at Newcastle Port in 2030 and 2050?	Every cargo type moving through the port is unique and each is projected relative to future supply and demand for that cargo type. Given the many variables affecting each cargo type over the long-term, it is not possible to accurately predict cargo share percentages.

		Port of Newcastle's trade forecasts do not currently include container volumes as the project is at preliminary stage of development. The port has enviable channel, road and rail capacity that would enable it to support current and projected coal exports as well as facilitating containership visits to a world-class container terminal in Newcastle. In the absence of diversification, particularly major initiatives such as the container terminal, then coal will remain the source of the majority of the Port of Newcastle revenue base in the future.
6.	What is the projected modal share of road/rail transport accessing the port in 2030 and 2050?	It has long been recognised that rail is the most efficient and environmentally sustainable mode of land freight transport. Given its enviable rail connections and the social, cost and efficiency benefits of this modal choice, Port of Newcastle expects to continue relying on rail to move the bulk of its cargo for many decades. This is an integral part of the Port of Newcastle's container terminal plans. The Port of Newcastle's container terminal modal share is geared around an integrated and efficient rail solution. Currently, all coal exports through the port are carried by rail. This is not projected to change between now and 2050. Other cargoes, such as grain and mineral concentrates are also predominantly carried by rail. This is not expected to change in this period. In relation to the Newcastle Container Terminal, Port of Newcastle is targeting 50% of this freight being carried by rail. The design of the container terminal and levels of efficiency are both predicated on rail as the preferred modal choice.
7.	What other economic activity, including landside value-added services, will be stimulated at the Port and surrounding area as a consequence of the container terminal?	The Alpha Beta Report 'Global Gateway for NSW' identifies the overall economic uplift from the container terminal for the Hunter Region and Northern NSW to be in the order of $6 billion in net present value by 2050. There is significant industrial land both adjacent to and in the vicinity of, the Port, available for the development of complementary and supporting land uses and facilities, such as container unpacking, sorting, warehousing and distribution, temporary container storage and empty container storage parks.

		The Container Terminal will stimulate broader economic and social benefits creating over 4,600 jobs by 2050 diverse industries across the region including transport, manufacturing, agriculture, services and construction. AlphaBeta modelling in conjunction with work undertaken by the University of Newcastle indicated for example that businesses in the Hunter and Northern NSW could save over 40 per cent of their land freight costs, on average. For example, an agri-business at Narrabri could save $517 per TEU. Case studies were submitted to this inquiry as part of the Port's submission. In the absence of publicly available objective analysis examining the economic benefits of developing a container terminal at Newcastle, Port of Newcastle decided to commission economic modelling. This modelling, undertaken by Alpha Beta, looks at the economics over a 30-year period. Deloitte Access Economics was also commissioned to undertake analysis in this area.
8.	What is the current health burden on residential populations in the port and rail-side suburbs from the Carrington T1 Coal Terminal?	The Environment Protection Authority operates the Lower Hunter Air Quality Monitoring Network which provides location specific information on air quality. Outputs from the network are publicly available. The Environment Protection Authority regularly consults with the Newcastle Community Consultative Committee on the Environment on policy and program initiatives to improve air quality in the region.
9.	What has been undertaken by the Port of Newcastle to reduce the particulate pollution impacts on the port and rail-side suburbs?	Individual operators are obligated to comply with their relevant approvals and licences to operate to manage particulate emissions from their operations. The Environmental Protection Authority drives improvements through Environment Protection Licences as required for those operations, like Port Waratah Coal Services, holding an Environment Protection Licence.
10.	What would be the expected public health benefits from repurposing the T1 site to the container terminal, especially with regards to impacts on surrounding suburbs?	The Environmental Protection Authority has completed studies to understand the air quality in the Newcastle area. These studies include a particle characterisation study and a dust deposition study. These documents are publicly available.
11.	What is the current export coal capacity of the Port of Newcastle?	The combined coal terminal capacity is 211MTpa, based on Government approvals and licences setting capacity limits for each terminal, as follows:

	a. What is the current annual rate of utilisation? b. What is the contribution of Carrington on export capacity and utilisation? c. Can the existing coal export facilitates at Kooragang accommodate the decrease in capacity from the closure of the Carrington Terminal?	• Port Waratah Coal Services (PWCS) T1 - Carrington Coal Terminal: 25MTpa; • Newcastle Coal Infrastructure Group (NCIG) T2 66MTpa; and • Port Waratah Coal Services (PWCS) T3 – Kooragang Coal Terminal: 120MTpa. This capacity may differ from the actual capacity of terminal infrastructure. The Port of Newcastle is not in a position to respond to other parts of this question as per Question 1.
12.	What will be the impact of renewing the T1 Coal Terminal lease on the future opportunities for diversification?	Matters pertaining to the specific arrangements for the Terminal 1 contract are Commercial-in-Confidence.
13.	Is China Merchants Port Holdings Company Limited at 50% shareholder of Port of Newcastle?	The current NSW government sold the Port of Newcastle in 2014 to The Infrastructure Fund (TIF) and China Merchant Group. The port sale received all Australia Government Foreign Investment Review Board approvals. Information relation to Port of Newcastle owners is publicly available on the Port of Newcastle website: https://www.portofnewcastle.com.au/OUR-COMPANY/Shareholders.aspx Further information can be found on Gardior, TIF and China Merchant websites.
14.	Is China Merchants Group the parent company of China Merchants Port Holdings Company Limited?	Information regarding China Merchants Group is available on the China Merchants Group website - http://www.cmport.com.hk/EN/investor/Default.aspx?p=1
15.	Is China Merchants Group a state-owned corporation of People's Republic of China?	Information regarding China Merchants Group is available on the China Merchants Group website - http://www.cmport.com.hk/EN/investor/Default.aspx?p=1
16.	Is China Merchants Group the owner of 85% of Hambantota Port in Sri Lanka?	Information regarding China Merchants Group is available on the China Merchants Group website - http://www.cmport.com.hk/EN/investor/Default.aspx?p=1

17.	Is China Merchants Group a shareholder in the Port of Djibouti?	Information regarding China Merchants Group is available on the China Merchants Group website - http://www.cmport.com.hk/EN/investor/Default.aspx?p=1
18.	You answered that the deed had to be accepted as "people were desperate to buy a port (Transcript Page 7). What would make someone desperate to buy a port irrespective of conditions or price?	The NSW asset sales program was highly contested at the time and is a matter of public record. 'Busloads of bidders roll through Newcastle port' (Australian Financial Review - 6 March 2014, https://www.afr.com/business/infrastructure/ports/busloads-of-bidders-roll-through-newcastle-port-20140306-ij89a)
19.	Given GrainCo currently export the majority of its produce through Brisbane, is it permitted within the deed for that volume to be redirected to Newcastle (given it is not taking volume away from Botany)?	This question pertains to matters the subject of legal proceedings by the Australian Competition and Consumer Commission.
20.	Your submission refers to encouraging the 'allowing container freight into Newcastle'. Do you believe that they should be 'incentivising' freight through Newcastle by removing the fee contained in the deed?	This question pertains to matters the subject of legal proceedings by the Australian Competition and Consumer Commission.
21.	In your time as CEO of Port of Newcastle, have you met with Ryan Park (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say?	No.

	d. What commitments were made or undertakings given?	
22.	In your time as CEO of Port of Newcastle, have you met with Jodi McKay (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	Yes. a) 13 September 2018 at Shipping Australia Luncheon 12 December 2018 - Phone conversation b) Newcastle Container Terminal c) If elected to Government an ALP Government would review the PCD
23.	In your time as CEO of Port of Newcastle, have you met with Clayton Barr (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	Yes, see response to Question 28
24.	In your time as CEO of Port of Newcastle, have you met with Luke Foley (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	No

25.	In your time as CEO of Port of Newcastle, have you met with Penny Sharpe (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	No
26.	In your time as CEO of Port of Newcastle, have you met with Michael Daley (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	Yes a) 29 November 2018 – ALP function b) Newcastle container terminal c) If elected to Government an ALP Government would review the PCD.
27.	In your time as CEO of Port of Newcastle, have you met with Ernest Wong (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	No
28.	In your time as CEO of Port of Newcastle, have you met with any	Yes

	other members of the NSW Parliamentary Labor Party? If yes, who? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	1. Tim Crakenthorp - meeting a. 2 October 2018 b. A range of matters relating to the Port of Newcastle and Newcastle in general. c. If elected to Government an ALP Government would review the PCD. 2. Kate Washington - meeting a. 28 November 2018 b. Diversification plans of the Port of Newcastle. c. If elected to Government an ALP Government would review the PCD 3. A joint meeting with Hunter State MP's – Kate Washington, Meryl Swanson, Jodie Harrison, Clayton Barr, Yasmin Catley, Adam Searle and Tim Crakenthorp. a. 15 August 2018 b. Diversification plans of the Port of Newcastle c. If elected to Government an ALP Government would review the PCD
29	Additionally, in your time as CEO of Port of Newcastle, have you met with Sam Dastyari (either in person or by telephone)? a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made or undertakings given?	No
30.	Additionally, in your time as CEO of Port of Newcastle, have you met with Rod Sims or any representative of the Australian Competition and Consumer Commission (either in person or by telephone)?	Yes a) 11 October 2018 by telephone. b) To discuss the Access Dispute c) Discussion did not relate to the Committee's Terms of Reference

	a. If so, what was the date of the meeting? b. What was discussed? c. What did the member say? What commitments were made, or undertakings given?	
31.	In your oral evidence you made reference to securing funding from investors for the development of the port as a container terminal: "The investors are saying, "We are not going to give you $30 million until we know that you actually can build this thing and not to have to pay an extra $100 per box" " a. Who are these 'investors' and 'new investors' referred to in your evidence? Please provide. b. Alternatively, what kinds of entities are these 'investors' and 'new investors'? c. What kind of funding arrangements have been discussed?	Discussions with investors are Commercial-in-Confidence.
32.	Are the monies to be advanced by way of debt funding or equity funding? If by equity funding, please provide details of the terms of such funding. If by debt, please provide advices as to the term of any load, the anticipated interest rate to apply and the terms of repayment.	Discussions with regards to the funding structures are Commercial-in-Confidence.

33.	Have any debt-for-equity swaps been proposed?	Discussions with regards to the funding structures are Commercial-in-Confidence.
34.	You referred to a development cost of $1.8 billion (Transcript page 3). What will this development cost cover? Does it include the proposed intermodal?	The full development costs of the proposed $1.8 billion container terminal will be met by private equity. This is a high-level preliminary estimate of the capex required over three stages with a total capacity of 2 million TEU over a period of approximately 45 years. This includes capital for the intermodal facility, all berth and channel dredging, construction (civil, electrical) of wharfs, terminal and transport infrastructure (such as rail sidings, internal roads) and equipment.
35.	In your evidence you gave evidence regarding the possibility of larger container vessels offloading containers at the Port of Newcastle: "If we actually offer a container terminal that can take 10,000 plus, all of a sudden the top eight shipping lines in the world will go, "Right, there might be a reason to go to Australia"…" Transcript page 8 a. Which shipping companies have committed to bringing larger container vessels to Australia? What is the capacity of these vessels?	Discussion with specific shipping lines are Commercial-in-Confidence. The Port of Newcastle commissioned a report by HoustonKemp on containerisation trends, as current state and federal policy does not appear to account for shipping trends and the impact on state infrastructure and trade opportunities for our importers and exporters. The HoustonKemp report was submitted to the Committee on the day of hearings. It highlighted the competitive pressures to lower costs amongst international container shipping lines have resulted in container ships growing in size. Current port facilities in Australia's container ports have infrastructure and physical constraints for larger container vessels, which constrains the scope to obtain lower shipping cost benefits from larger ship sizes as containerised trade continues to grow into the future.
36.	What assessments (if any) have been undertaken as to dredging of the Port of Newcastle that would be needed to accommodate these vessels? If so, please provide details.	A number of vessel simulations and studies to identify the infrastructure requirements for larger vessels has been carried out as part of the preliminary investigation for the Container Terminal. The findings of these investigations indicate that some localised ancillary dredging and widening of the Steelworks Channel and the Horseshoe area are required to accommodate some larger vessels. These costs are included in the preliminary costings and will be privately funded.

37.	What environmental assessments (if any) have been undertaken as to dredging of the Port of Newcastle that would be needed to accommodate these vessels? If so, please provide details.	Refer to Question 36.
38.	What do you estimate the costs of these dredging and remediation works to be? Who will pay for them?	Refer to Question 36.
39.	Which Stevedores have been approached to operate at Port of Newcastle?	Discussions with stevedores are Commercial-in-Confidence.
40.	Can you confirm DP World has already rejected the opportunity to be involved at the Port of Newcastle?	Then DP World Australia CEO Paul Scurrah, as quoted by Daily Cargo News, said: "But for the port commitment deed, Newcastle would be an attractive option. It's hard to see it working with that handbrake." (INFRASTRUCTURE ACCESS CHARGES ESSENTIAL, SAYS SCURRAH, Daily Cargo News, 29 August 2018, https://www.thedcn.com.au/infrastructure-access-charges-essential-says-scurrah/) Mr Scurrah's comments were further reported by the Newcastle Herald on 11 September 2018, https://www.theherald.com.au/story/5636310/newcastle-container-restrictions-challenged-cap-a-major-factor/)
41.	Have you had discussions with any Chinese or Hong Kong based companies regarding prospective operation of the port?	Discussion with potential operators are Commercial-in-Confidence.
42.	Which shipping lines have been approached to operate at the Port of Newcastle?	Discussion with shipping companies are Commercial-in-Confidence.
43.	Which shipping lines have indicated that they are prepared to bring	Discussion with shipping companies are Commercial-in-Confidence.

	18,500TEU vessel to the Port of Newcastle?	
44.	Has the Newcastle harbour Master confirmed that vessels up to 18,5000TEU can access Port of Newcastle safely without impacting on adjoining vessel berth?	The Port of Newcastle will continue to work with the Harbour Master and all relevant stakeholders to undertake all appropriate studies and investigations as the project evolves.
45.	What is the attraction for a shipping line to call at Newcastle? What modelling have you done to estimate the volume of imports that a shipping line would deliver to Newcastle and where those importers are destined?	The Port of Newcastle has surplus channel capacity, a large greenfield site and road and rail with latent potential to support the development of an efficient, highly automated container terminal. A new container terminal at Newcastle can be designed with appropriately scaled wharf (quay cranes, berths, channel) and landside infrastructure (automated container stacking and transport operations) to optimise productivity and avoid unacceptable levels of congestion both at port and landside transport networks. This is an attractive proposition for shipping lines. The modelling is Commercial-in-Confidence.
46.	Some of the submissions highlight that grain producers could save approximately $20 per tonne on their exported grains. How many tonnes are in the standard shipping container? Therefore what is the total saving per container? If producers were making those savings, wouldn't they be happy to have the amount indicated in the deed passed on in order to receive those freight savings?	This question pertains to matters the subject of legal proceedings by the Australian Consumer and Competition Commission.
47.	In your evidence (Transcript page 8), you say the developed Port of Newcastle will be the first port in	The proposed intermodal facility will be wholly contained within the Port of Newcastle's lease area.

	Australia to have a distribution warehousing intermodal inside the port boundary. Is this proposed intermodal to be located on land already owned by the Port of Newcastle? Does further land have to be acquired to accommodate it? If that land is to be acquired from whom? What is the likely purchase provide of such land? Please provide details.	
48.	It is intended that Newcastle Ports would operate the facility? If not, what discussions have taken place with potential operators? Please provide details. Please identify whom discussions have taken place.	The operation of and any discussions with potential operators of the facility is Commercial-in-Confidence.
49.	What modelling has been undertaken with respect to the operation of the intermodal facility? Who has undertaken such modelling? Please provide a copy of such modelling?	The operation of and any discussions with potential operators of the facility is Commercial-in-Confidence.
50.	In your evidence (Transcript page 9) you referred to the possibility of the transhipment of containers landed at Newcastle. What modelling has been undertaken with respect to the transhipment of containers? Who has undertaken such modelling? Please provide a copy of such modelling?	The HoustonKemp Report identified the opportunity for an Australian Port with facilities to accommodate large container ships, as also having the potentially to create a substantive transhipment hub, in the same way the Port of Tauranga has done for New Zealand and facilitate greater use of coastal shipping within Australia. Transhipment is the use of large container ships (i.e. 14,000+ TEU) used on long distance east-west routes between transhipment ports, as the hub in a global hub and spoke network. Australia is currently being served by a north-south route that connects Australian ports to global transhipment hubs in Singapore, Shanghai, Hong Kong, and with East Asian countries on a relay pattern.

		Transhipment is not currently being used in Australia, as current port facilities in Australia's container ports have infrastructure and physical constraints for larger container vessels. Modelling is Commercial-in-Confidence.
51.	In your evidence you asserted that containers would be moved from the Port in a 50/50 road/rail split: "I think 50:50 would be right" (Transcript page 8) How was the split arrived at? What modelling has been undertaken with respect to this 50/50 split? Who has undertaken such modelling? When was such modelling undertaken? Please provide a copy of such modelling?	The Port of Newcastle Port Masterplan 2040 targets 50:50 road/rail split. The reference by Mr Kahn to an 80-20 road-rail modal split was an assumption used to develop the Concept Plan Approval (09_0096 MOD2), which was issued by the NSW Department of Planning and Environment on 16th July 2012 while the port was owned by the NSW Government. The EIS for the Mayfield Concept Plan estimated that the container terminal would use up to 3 x 1,300 length trains each day. Port of Newcastle is now targeting 1.5km trains as an integral component of operating the most efficient and rail-reliant container terminal in Australia. These plans are based on current and future infrastructure capacity and utilisation rates. The Port of Newcastle's container terminal modal share is geared around an integrated and efficient rail solution. As a result, Port of Newcastle is targeting 50% of this freight being carried by rail. The design of the container terminal and levels of efficiency are both predicated on rail as the preferred modal choice. Modelling is Commercial-in-Confidence.
52.	Based on a 50/50 split of rail/road movements, during each stage of the proposed development, how many freight movements are anticipated each day to and from the container port?	As per answer to Question 6. Within the first ten years of the project there will be an estimated 479 truck movement per day to move 350,000 TEU per year based on the targeted 50/50 spilt of road/rail. This is in stark contrast to claims made at the hearing, including those by Mr Ken Kanofski, Chief Executive of Roads and Maritime Services, who referred to up to 5,000 truck movements per day.

		It is unclear how these numbers have been calculated. It is important to recognise that the Newcastle Container Terminal will likely be developed in three stages. Stage 1 will handle up to 350,000 TEU (at full capacity) in accordance with the existing Planning Approval over the next ten years. Subsequent stages will grow the terminal capacity to potentially 1.7 million TEU by 2065 which would equate to an estimated 2,328 truck movements per day which is within the limits of the ultimate stage approved in the 2012 Mayfield Concept Plan Approval already approved. The assumption of 479 is based on two TEU per truck, allows for the range of truck configurations likely to access the Port in Stage 1. A truck movement is one way only i.e. a truck entering the Port is one movement, the same truck then exiting the Port is two movements. This would be further reduced by using B-doubles, which can carry three TEU per truck. Additionally, there is already large volumes of deconsolidated freight moving north from Sydney by road that would no longer be required, actually reducing current road freight volumes. Furthermore, the majority of truck freight will not move south to Sydney but be evenly distributed to local and regional areas within the catchment area. These truck movements are 80% less that what NSW Ports claim will be added to Newcastle roads in the near term. In comparison, in 2015 Port Botany generated 3,900 trucks per day, with volumes forecast to increase to 6,300 and 6,900 per day by 2045.[1] Like other Australian ports the Port of Newcastle will see greater uptake of better utilised trucks or Higher Productivity Freight vehicles (HPFVs) which can carry four TEU per truck movement. This will equate to even less truck movements. *1.NSW Ports Master Plan Navigating the Future. 2015.*
53.	How many of these movements would pass through the Central Coast?	The allocation of rail paths between Newcastle and Sydney via the Sydney Metropolitan Network are the responsibility of Transport for New South Wales.

54.	In the Port of Newcastle 2040 Masterplan, it is suggested that there would be 80/20 split of rail/road movements. Based on this split or rail/road movements, during each stage of the proposed development, how many freight train movements are anticipated each day to and from the container port?	The 80/20 split reference to rail/road movements is from the Mayfield Concept Plan Approval (09_0096 MOD2) which was issued by the NSW Department of Planning and Environment on 16th July 2012 while owned by the NSW Government. The Port Master Plan *references* this plan for historical purposes - "*The Mayfield Site presents a unique opportunity to design and build the most efficient rail terminal for the loading and unloading of container trains, and the management of train cycles. This is an aspiration of the approved [Mayfield] Concept Plan for the site which is designed to support, at minimum, an 80:20 road rail modal split for containers*." The EIS for the Mayfield Concept Plan estimated that the container terminal would use up to 3 x 1,300 length trains each day. However, Port of Newcastle is targeting 1.5km trains as an integral component of operating the most efficient and rail-reliant container terminal in Australia. These plans are based on current and future infrastructure capacity and utilisation rates.
55.	How many of these Rail movements would pass through the Central Coast?	The allocation of rail paths between Newcastle and Sydney via the Sydney Metropolitan Network are the responsibility of Transport for New South Wales.
56.	Who, if anyone, has undertaken modelling on behalf of Port of Newcastle? When was modelling undertaken? Please provide a copy of this modelling?	Modelling of specific projections are Commercial-in-Confidence. Report findings have been made publicly available on the Port of Newcastle website.
57.	What do you estimate to be the appropriate upgrades required to the existing road and rail infrastructure? What modelling (if any) has been done on the cost of these upgrades? In the Port of Newcastle's view, who is to meet the costs of these upgrades?	Only minor local infrastructure improvements, as identified by the Mayfield Concept Plan approved in 2012, will be needed. A copy of the Mayfield Concept Plan Approval is available on the NSW Department of Planning and Environment's website: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6325 All of these improvements have been costed as part of the preliminary $1.8 billion dollar total project cost estimate, which will be privately funded.

58.	In a future freight ideal scenario, what percentage of containerised freight do you see going in and out of Port of Newcastle?	The HoustonKemp Report identified containerised trade as the fastest growing component of all seaborne trade. Containerised freight is likely to become a significant percentage of the Port's trade volume for both exports and imports over the next 90 years.
59.	Mr Minifie referred to the social cost in terms of pollution and congestion of trucks travelling across Sydney. How have you measured the social costs of heavy vehicles in and out of the Port of Newcastle?	All port and infrastructure development projects in NSW are subject to the state's Environmental Planning and Assessment Act which considers social, economic and environmental impacts. Port of Newcastle has an existing planning approval for a container terminal handling up to 350,000 TEU per annum, issued by the NSW Government, which included an assessment of heavy vehicles.
60.	In your oral evidence you referred to transhipment. To what extent is it currently being used in Australia? Why isn't is used more prominently in Australia?	Refer Question 50.

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	ACT 2 of 2020
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Applicant:	Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-5

This is the Annexure marked "DP-5" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

The Sydney Morning Herald

Exclusive National NSW Renewables

This was published 1 year ago

State deal blocking world's largest coal port from fossil fuel exit

By **Tom Rabe**

February 24, 2020 — 12.00am

The head of the world's largest coal port says it must transition away from the fossil fuel and diversify Newcastle's economy before it's too late, but controversial NSW government policy is stopping it.

As the government worked to improve its climate policy following a summer of drought and bushfires, Port of Newcastle chief executive Craig Carmody said $2 billion of private investment was waiting for the green light to develop a container terminal and move the Hunter away from coal.

Port of Newcastle chief executive Craig Carmody says the company must transition away from coal before it's too late. IAN KIRKWOOD

However, a once-secret facet of the Baird government's 2013-14 port privatisation deal – which would force Newcastle to compensate its competitors if it transported more than 30,000 containers a year – could keep the local economy tethered to coal for decades.

Mr Carmody said the port had about 15 years to transition away from the resource, which makes up more than 95 per cent of its exports. He added that a changing climate and struggling regional sector compounded the situation.

"It doesn't really matter what governments in Australia want to believe, the money we need to do what we need to do have already made their decisions," Mr Carmody told the *Herald*.

"There is a reason why businesses, particularly in the energy space in Australia, are saying, 'Well, if the government won't provide a policy direction, then we're going to go off and do it ourselves'."

Port Waratah Coal Services coal facility on Kooragang Island, Newcastle. LOUIE DOUVIS

But Mr Carmody said the controversial "port commitment deeds" (PCD) placed on Newcastle, which have been deemed "anti-competitive and illegal" by the competition watchdog, were forcing the company to remain reliant on coal.

"We are the world's largest coal port ... if the [PCD] remains in place for the period it's meant to, the Port of Newcastle's best option is to just sweat the coal terminals until 2064," he said. "Let's just keep selling coal, because without the diversification what else have we got?"

Despite the port's complaints about the deeds, Hastings Funds Management and China Merchants, which paid $1.75 billion for the 98-year lease, agreed to all facets of the deal when it was struck.

In late 2018, the Australian Competition and Consumer Commission launched legal action against NSW Ports, which owns ports at Botany and Kembla.

A cargo ship loaded with shipping containers docked in the Port of Newcastle at Dyke Wharf berth. MAX MASON-HUBERS

ACCC chairman Rod Sims criticised the state government over the Botany/Kembla $5.1 billion deal, describing it as "short term" thinking.

While legal proceedings are expected to drag out through 2020, the *Herald* understands the government and ports are slated to enter mediation in April.

Mr Carmody warned that if a deal could not be struck, the city would face another crisis 20 years after BHP pulled out of Newcastle.

"This town remembers BHP and the cliff they fell off," he said. "You transition when you can afford to transition, not when everything is a fire sale."

"We are an island nation that knows absolutely bugger all about ships and ports."

Craig Carmody, chief executive, Port of Newcastle

He said the port was attempting to diversify, with about half of NSW's wind turbines now imported through Newcastle. Rows of the giant, unassembled turbines sit next to the harbour,

waiting to be transported to regional NSW where they will be erected between Canberra and Sydney.

“One day Australia will discover an energy policy, I’m sure. If it’s like the rest of the world and is a mix, and we’re importing and exporting them, it holds up the business and it holds up the economy,” Mr Carmody said.

“We are an island nation that knows absolutely bugger all about ships and ports.”

Asked how imposing the port commitment deal on the Port of Newcastle helped the state transition away from fossil fuel, a Treasury spokesman said the government would defend the court proceedings, but declined to make any further comment.

The government has argued the Port of Newcastle would require more rail and road infrastructure to be efficient, and Sydney's Port Botany has the capacity to service NSW’s container movements for several years.

However, Mr Carmody said international investors had queried why the state government would stand in the way of private investment in the regions.

“I said, ‘No, the government isn’t in favour of getting rid of the port commitment deed.’ There was consternation and then one of the investors said, ‘Is Australia so wealthy it doesn’t need it?’ and I said, ‘That’s a very good question you should ask’,” he said.

Opposition transport spokesman Chris Minns said the container policy was holding back the Hunter’s economy.

“The Premier’s container cap on the Port of Newcastle is a cap on jobs and living standards across the Hunter,” Mr Minns said.

Tom Rabe

Tom Rabe is Transport Reporter with The Sydney Morning Herald.

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

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Applicant:	Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-6

This is the Annexure marked "DP-6" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

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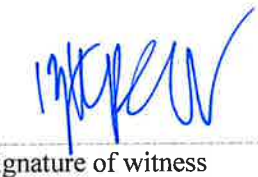

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

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Shipping Schedule (https://www.portauthoritynsw.com.au/newcastle-harbour/daily-vessel-movements/)

Tide Information(http://www.bom.gov.au/australia/tides/#!/nsw-newcastle)

Marine Traffic(http://www.marinetraffic.com/en/ais/home/centerx:152/centery:-33/zoom:9)

Current tenders(https://www.tenderlink.com/portofnewcastle/)

(https://www.youtube.com/channel/UCTGhjtFloAPlbLy4_yrkoWg) (https://www.linkedin.com/company/portofnewcastle/?viewAsMember=true)

PORT of NEWCASTLE (https://www.portofnewcastle.com.au)

NEWS & MEDIA

Port unveils its vision for a multi-purpose deepwater terminal

JUNE 13, 2020(HTTPS://WWW.PORTOFNEWCASTLE.COM.AU/2020/06/13/)

Port of Newcastle has unveiled a new website and realistic animation (https://thefutureuncontained.com.au/) of its vision for the former BHP Steelworks site and the proposed Multi-purpose Deepwater Terminal.

The Port's Special Projects Director, Ross Cadell, said it was the perfect time to bring the vision to life given about 25,000 people in the Hunter have lost their jobs due to the COVID-19 situation.

"We all need to do our bit to help the post-COVID economic recovery. We also need a long-term plan to build a more sustainable Hunter economy, ensuring our region continues to underpin the international competitiveness of Australian businesses," Mr Cadell said.

"The Future Uncontained website (https://thefutureuncontained.com.au/) and container terminal animation articulate the Port's broader vision, including the tangible benefits the project can bring to the region.

"Generating 9,300 jobs and flow-on benefits worth $1.3 billion to the Lower Hunter, a new container terminal at Newcastle will help turbo-charge the economy as it recovers from the effects of COVID-19.

"The Multi-purpose Deepwater Terminal will not only create cost efficiencies for NSW importers and exporters, it will underpin the diversification of the Hunter economy for a sustainable, uncontained future."

"For the foreseeable future, there are no other developments in the Hunter Region with the same level of scope or potential to generate such significant economic growth."

Learn more: https://thefutureuncontained.com.au/ (https://thefutureuncontained.com.au/)

Port of Newcastle

Port of Newcastle is a major Australian trade gateway handling 4,600 ship movements and 171 million tonnes of cargo each year. With its annual trade worth about $25 billion to the New South Wales economy, the Port enables businesses across the state to successfully compete in international markets. 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 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 Port that realises its potential.

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Phone: +61 2 4908 8214 **Email:** media@portofnewcastle.com.au (mailto:media@portofnewcastle.com.au)

(https://www.youtube.com/channel/UCTGhjtFloAPlbLy4_yrkoWg?view_as=subscriber)

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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

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

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Applicant:	Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-7

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Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

Generating 9,300 jobs and flow-on benefits worth $1.3 billion to the Lower Hunter, a new container terminal at Newcastle will help turbo-charge the economy as it recovers from the effects of COVID-19. Proposed for the former BHP site at Mayfield, the Multi-purpose Deepwater Terminal (MDT) will not only create cost efficiencies for businesses across NSW, it will underpin the diversification of the Hunter economy for a sustainable, uncontained future.

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Concept for Newcastle's Multi-purpose Deepwater Terminal

Positioned adjacent to a deepwater shipping channel with direct rail to ship capability, a terminal at Newcastle will not only provide a competitive advantage for NSW importe exporters, it will generate thousands of local jobs and boost the Hunter and NSW eco

Video and terminal imagery by Rollingball Productions

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COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

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ANNEXURE CERTIFICATE
DP-8

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Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

10 Feb, 2021

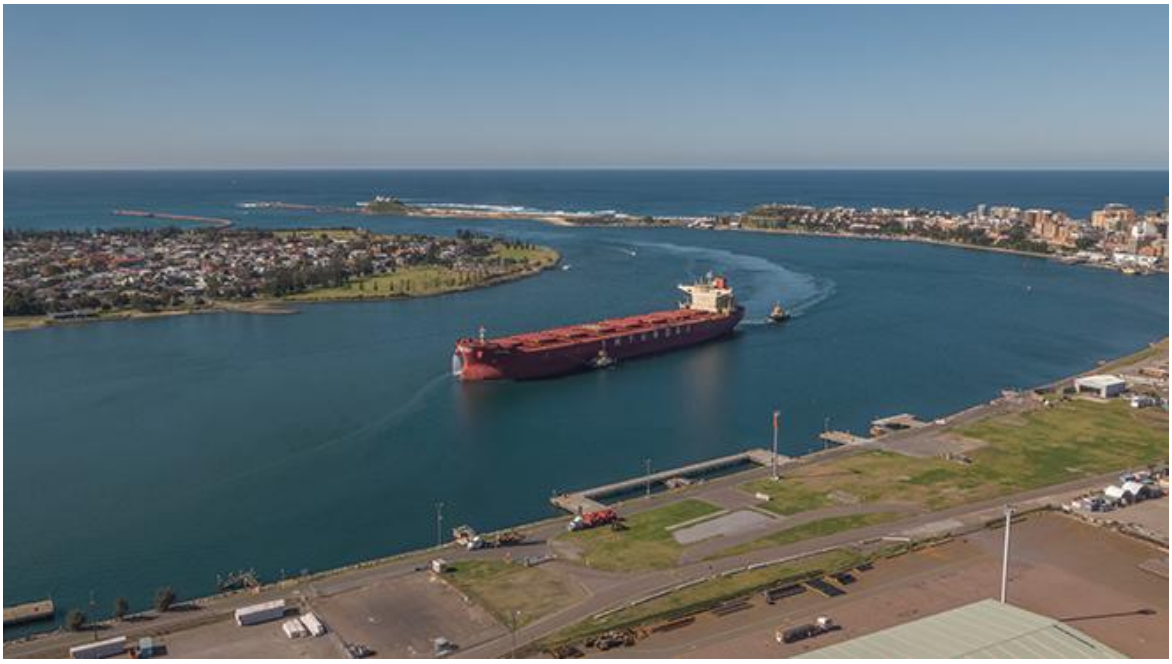
ANZ withdrawal from Newcastle port financing prompts calls for ESG collaboration

Author **Anthony Barich**

Theme Capital Markets, Metals, Corporates, ESG, Banking

Segment Corporations

Tags Global



The Port of Newcastle in New South Wales, Australia, the world's largest coal export port. The port appears to be the latest victim of financiers withdrawing from involvement in high-emitting assets, despite its plan to diversify into more sustainable operations.
Source: Port of Newcastle

Australia and New Zealand Banking Group Ltd. reportedly withdrawing as a major lender to the world's largest coal export port has prompted mining, shareholder advocacy and bank groups to urge financiers to work with large emitters rather than abandon them to achieve Paris Agreement goals.

The Australian reported that ANZ had refused to keep funding New South Wales' Port of Newcastle, which mainly exports thermal coal, though S&P Global Market Intelligence has learned that the bank merely left alone an expired loan facility.

A Port of Newcastle spokesman said the port is "working with responsible lenders who are interested in helping businesses like the Port of Newcastle become more sustainable and diversify."

An ANZ spokesman told Market Intelligence that it does not publicly discuss specific details of its customers.

T*he Australian* also reported that National Australia Bank Ltd. stepped in to help underwrite the port in a refinancing that is part of a long-term program to support the transition into non-coal operations, including an automated multipurpose deepwater container terminal.

Regarding the decision, Minerals Council of Australia CEO Tania Constable told Market Intelligence that "the negative impact of denying a strong and productive sector access to competitive finance could be profound for the Australian economy as well as for many regional communities."

"Miners, innovators, financiers and manufacturers should be working together to deliver real emissions reductions while supporting regional communities," she said.

READ MORE: *Sign up for our weekly ESG newsletter **here**, read our latest coverage of environmental, social and governance issues **here** and listen to our ESG podcast on **SoundCloud**, **Spotify** and **Apple podcasts**.*

Great expectations

Shareholder advocacy group Australasian Centre for Corporate Responsibility's Climate and Environment Director Dan Gocher said that while it was not clear from the report whether ANZ walked away from the refinancing or simply priced itself out of the running, "either way ANZ must consider the return not worth the risk."

The decision does appear to be at odds with ANZ's commitment in November 2020 to work with its 100 largest customers to decarbonize, Gocher said, though the bank also said at the time that there would be customers whose values simply did not align with ANZ's.

Gocher sees the port being almost exclusively dependent on thermal coal exports as its key challenge.

"Unlike other businesses in the supply chain, the options available to the port seem limited. There's little it can do to influence what the Hunter Valley produces and exports, for example," he said.

Constable said investment in mining innovation can also benefit other Australian commodities and industries, like advances in electric vehicles in the Hunter Valley's coal mines.

An ACCR report this month criticized Australian superannuation funds for withdrawing from high-emitting companies without prior public warning, proper climate risk tools, or "exhaustive consultation," which could be doing more harm than good. It also said funds should work with companies to become more sustainable.

NAB CEO Ross McEwan told Melbourne's 3AW radio Feb. 9 that the Newcastle port is in the midst of a "major transition" to more sustainable operations, which needs investment. He said such customers are "taking every effort to become far more conscious of their emissions, and we should be in there supporting, rather than just walking away from them."

NAB has committed to capping thermal coal mining exposures at 2019 levels, reducing by 50% by 2028 on the way to being effectively zero by 2035 apart from residual performance guarantees to rehabilitate existing coal assets. NAB expects its thermal coal mining exposure to be effectively zero by 2030.

ANZ's November pledge said "many communities, particularly those in regional areas, are reliant on the coal industry for employment." The bank pledged to engage with existing customers who have more than 50% thermal coal exposure to support existing diversification plans; and where these are not already in place, ANZ will expect "specific, time bound and public diversification strategies by 2025."

Existential threat

The Australian Institute of Company Directors quoted Port of Newcastle Chair Roy Green as saying in June 2019 that coal's long-term outlook is an "existential threat" to the port and the Hunter Valley region.

"We have to prepare for the further decline of coal as an energy source, but we see this as a huge opportunity," he said. "While world demand for our coal is beyond our control, our ability to invest in new sources of growth and innovation is not."

Though the port also exports other things like alumina, wheat, cement, steel and fertilizer, its 13.9 billion tonnes of coal exports in January alone, worth A$1.44 billion, dominated its commodity exports that totaled A$1.7 billion that month.

In 2020, the port exported 158.43 billion tonnes of coal worth A$18.5 billion, out of a total of A$20.6 billion for commodity exports.

COMMONWEALTH OF AUSTRALIA

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ANNEXURE CERTIFICATE
DP-9

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Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

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NEWS & MEDIA

PM ‘thumbs up’ on Port of Newcastle diversification plans

MARCH 5, 2021(HTTPS://WWW.PORTOFNEWCASTLE.COM.AU/2021/03/05/)

PON CEO Craig Carmody met with the Prime Minister at Carrington yesterday to discuss matters critical to future investment in the region and its port.

Mr Carmody welcomed the Prime Minister’s sweeping support for the Port of Newcastle’s the $2.4 billion Multipurpose Deepwater Terminal (MDT), which is set to create 15,000 jobs and $2.5 billion of gross domestic product during the construction phase alone.

The Prime Minister’s visit is reflective of the importance of the port to the economy and the relevance of our diversification plans to the government’s agenda. Mr Carmody took the opportunity to talk to the Prime Minister about how the Commonwealth can support PON’s diversification plans in a number of areas for the benefit of the region and the nation.

The Prime Minister also discussed with Mr Carmody the National Energy Resources Australia (NERA) announcement last month of the Hunter Hydrogen Technology Cluster and the importance for the region. Mr Carmody noted that the Port had an important role to play in facilitating new and emerging markets such as hydrogen and that the Commonwealth Government’s support has been important in establishing this as a viable opportunity.

The MDT remains an exciting project that will turbo-charge the local economy to the tune of $1.3 billion and create a more cost-competitive supply chain for NSW businesses that trade internationally. Once penalties on container trade through the port are removed, Port of Newcastle is keen to move forward with the project and fuel the jobs and economic opportunities it will bring with it.

LinkedIn

Contact

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Port of Newcastle

Port of Newcastle is a major Australian trade gateway handling 4,600 ship movements and 171 million tonnes of cargo each year. With its annual trade worth about $25 billion to the New South Wales economy, the Port enables businesses across the state to successfully compete in international markets. 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 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 Port that realises its potential.

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COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE CERTIFICATE
DP-10

This is the Annexure marked "DP-10" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

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Marine Traffic(http://www.marinetraffic.com/en/ais/home/centerx:152/centery:-33/zoom:9)
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PORT of NEWCASTLE (https://www.portofnewcastle.com.au)

NEWCASTLE MULTI-PURPOSE DEEPWATER TERMINAL

Newcastle Multi-Purpose Deepwater Terminal

(Newcastle Container Terminal)

The Port of Newcastle has developed the concept for an automated container terminal development at its Mayfield site – the largest and best connected vacant port land site on Australia's East Coast.

Together with the direct water frontage and potential for deep water berthing, the Newcastle Multi-Purpose Deepwater Terminal represents a once in a generation opportunity within the Port of Newcastle.

The Mayfield site has the capacity for a 2 million TEU per annum container terminal, coupled with a shipping channel that can accommodate vessels up to 10,000 TEU, with the capability of even larger vessels with some ancillary channel modifications.

Currently NSW import and export cargoes are trucked or railed through Sydney's metropolitan transport network, adding to congestion issues.

Newcastle's close proximity to major NSW export and import hubs provides a shorter journey by road or rail, making it the efficient option for container imports and exports to central, north, north-western and far-western NSW.

Newcastle's Multi-Purpose Deepwater Terminal will deliver:

- Excellent heavy vehicle access;
- Less double handling;
- Uncongested freight rail network connections and direct on-dock long train access;
- Empty container storage and repair;
- Land available for development of infrastructure, including cold storage, warehousing, packing and distribution facilities;
- Less delays; and
- Less costs.

- **Project Information ()**
- **Publications ()**

"The Newcastle Multi-Purpose Deepwater Terminal is an estimated $1.8 billion development to be entirely funded by private investors - will deliver more jobs in regional NSW, a reduction in unnecessary road and rail movements in and out of Sydney, and cheaper freight costs for importers and exporters across the state."

Craig Carmody, CEO, PORT OF NEWCASTLE

Video

Potential design of the Newcastle Multi-Purpose Deepwater Terminal.

Watch to find out more.

Video

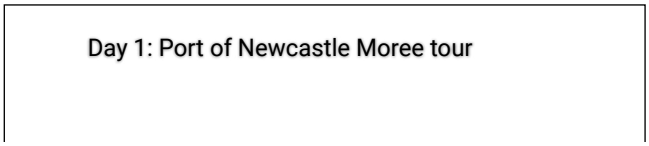
The Newcastle Multi-Purpose Deepwater Terminal will increase the competitiveness of NSW exporters through transport cost savings and time efficiencies.

Watch to find out more.

Video

Port of Newcastle has been touring regional NSW this year and what we're hearing is that regional businesses are paying the cost of supply chain inefficiency.

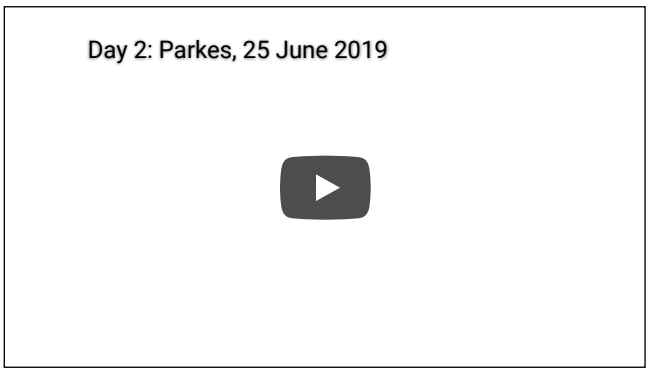
Watch to find out more.



Day 2: Port of Newcastle Moree tour

Day 2: Rebecca Reardon, NSW Farmers Board M...

DAY 1: Dubbo - 24 June 2019



Contact

If you have any questions, please contact Port of Newcastle's Commercial Team
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Port of Newcastle

COMMONWEALTH OF AUSTRALIA

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ANNEXURE CERTIFICATE
DP-11

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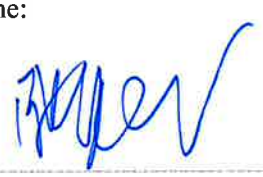
Before me:



Signature of witness

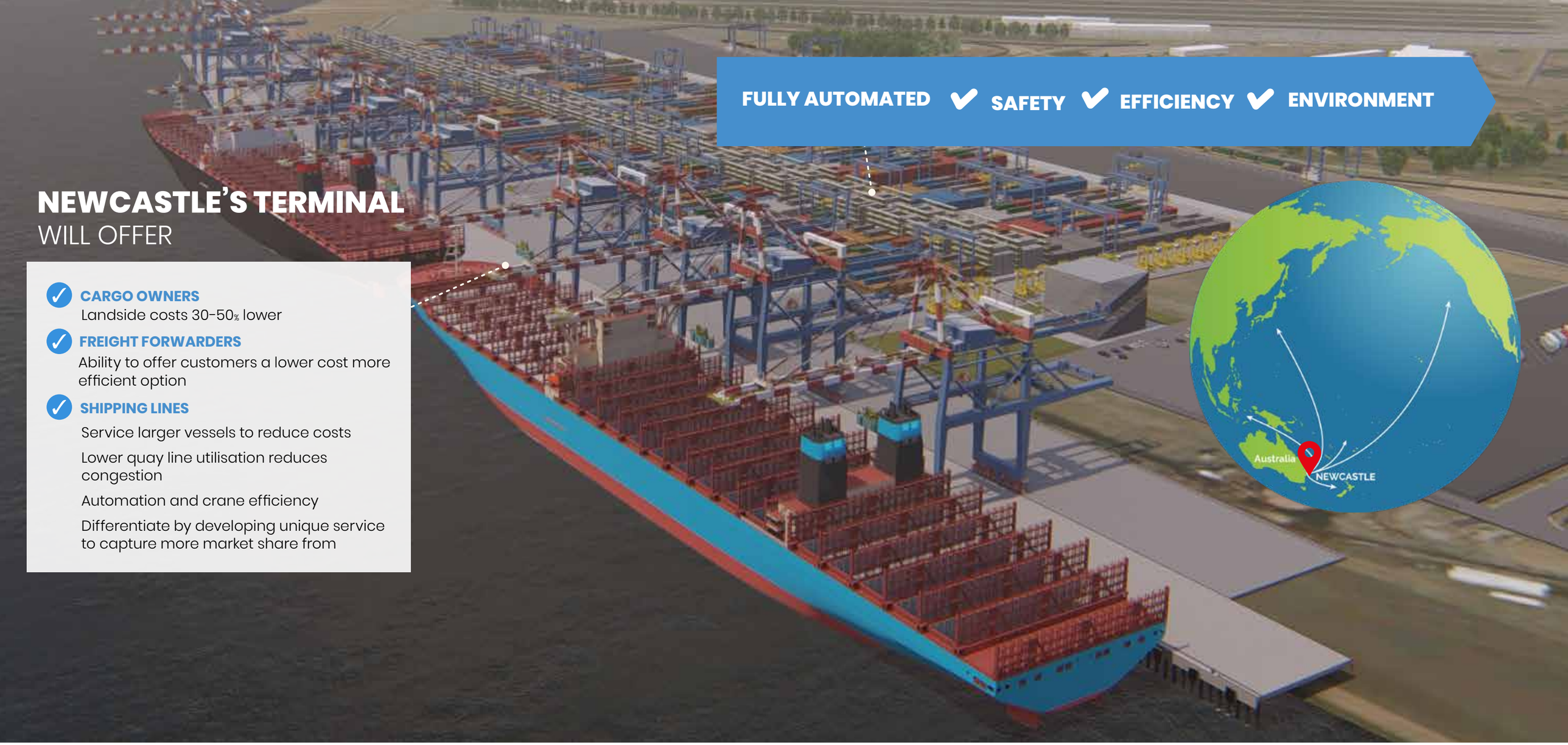
Ryan Draper

Solicitor of the Supreme Court of New South Wales

NEWCASTLE MULTI-PURPOSE DEEPWATER TERMINAL

Newcastle Container Terminal

PORT of NEWCASTLE



FULLY AUTOMATED ✔ SAFETY ✔ EFFICIENCY ✔ ENVIRONMENT

NEWCASTLE'S TERMINAL
WILL OFFER

- **CARGO OWNERS**
  Landside costs 30-50% lower
- **FREIGHT FORWARDERS**
  Ability to offer customers a lower cost more efficient option
- **SHIPPING LINES**
  Service larger vessels to reduce costs
  Lower quay line utilisation reduces congestion
  Automation and crane efficiency
  Differentiate by developing unique service to capture more market share from

Port of Newcastle is a critical global gateway for NSW and Australia.

The Port of Newcastle has developed the concept for a Multi-purpose Deepwater Terminal development at its Mayfield site - the largest and best connected vacant port land site on Australia's East Coast.

Together with the direct water frontage and potential for deep water berthing, a container terminal represents a once in a generation opportunity within the Port of Newcastle.

The Mayfield site has the capacity for a 2 million TEU per annum container terminal, coupled with a shipping channel that can accommodate vessels up to 10,000 TEU, with the capability of even larger vessels with some ancillary channel modifications.

Benefits of the Terminal

- Transport and logistics cost savings for customers;
- Available land with appropriate capability to support high density stacking of containers;
- Quay line to support long berths capable of bearing post-panamax quay cranes;
- Depth of channel and berth boxes to support current Post Panamax vessels and expected future Ultra Large Container Vessels (ULCV);
- Excellent heavy vehicle access;
- Uncongested freight rail network access and ability to support long sidings; and
- Available area, on site or adjacent, for development of empty container parks (ECPs), warehouse and infrastructure.

1240m
Total Quayline

11
Total Quay Cranes

6 RMG

Rail Sidings
4x
Train Length
1800m

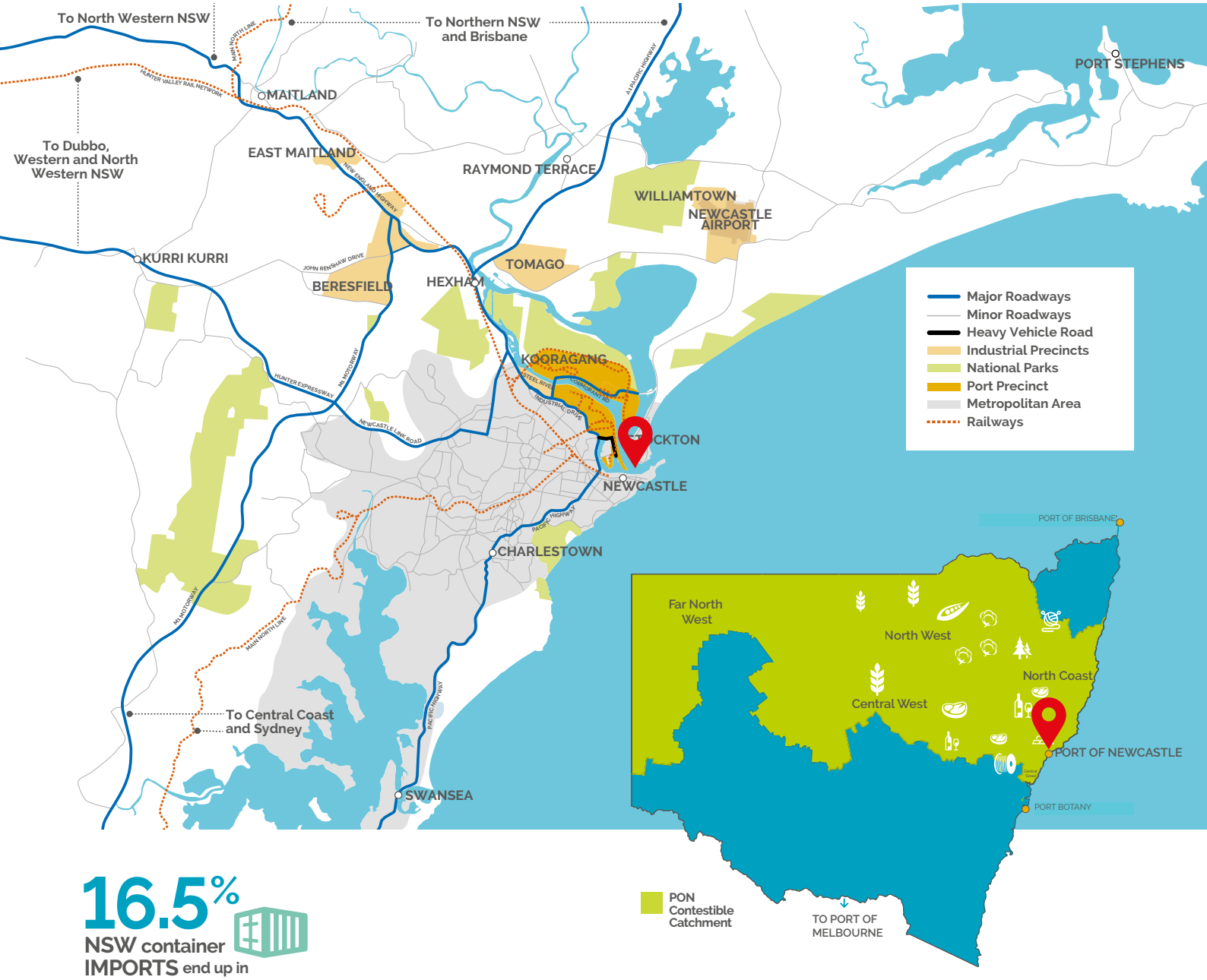
POST PANAMAX
NEW PANAMAX
ULCV

26
Total ASC Modules

The ultimate capacity of the proposal is approximately
2M TEU p.a

WELL CONNECTED

The Port of Newcastle has direct connectivity to the national road and rail network and is located in close proximity to producers and project sites in Sydney and across NSW.



16.5% NSW container **IMPORTS** end up in THE HUNTER AND NORTHERN NSW

NSW container **EXPORTS** **28.8%** originate in the Hunter and Northern NSW

Let's talk

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PORT of NEWCASTLE

COMMONWEALTH OF AUSTRALIA

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ANNEXURE
CERTIFICATE DP-12

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Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

PORT OF NEWCASTLE 2018

TRADE REPORT

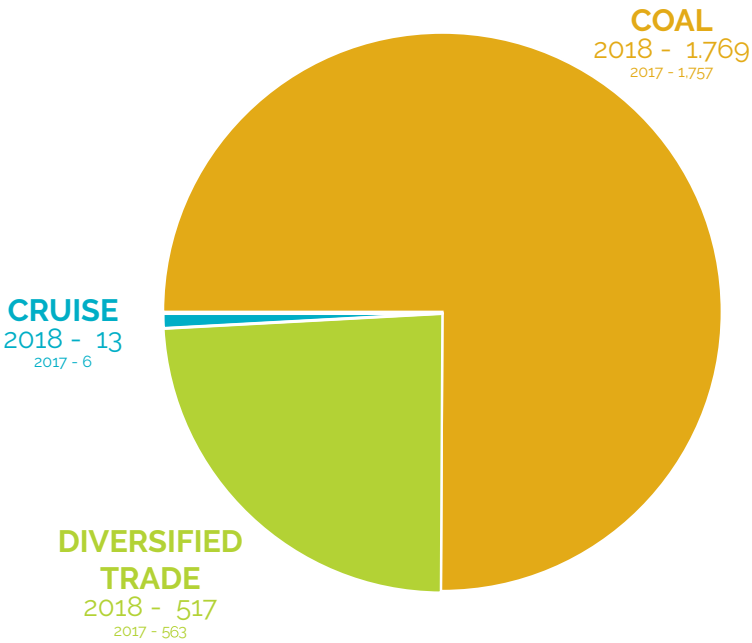
Port of Newcastle

220 YEARS OF SHIPPING

SHIP VISITS

2,299
ship visits in 2018

2,326 ship visits in 2017



COAL TRADE

COMMODITY EXPORTS	MASS TONNES		TRADE VALUE ($ MILLION)	
	2018	2017	2018	2017
Coal	158,606,250	159,014,038	$23,641	$19,437

JAPAN
2018 - 45.9%, 72.8 MT
2017 - 45.7%, 72.6 MT

CHINA
2018 - 17.6%, 28.0 MT
2017 - 14.2%, 22.6 MT

SOUTH KOREA
2018 - 12.1%, 19.1 MT
2017 - 14.6%, 23.2 MT

TAIWAN
2018 - 13.5%, 21.4 MT
2017 - 13.7%, 21.7 MT

MALAYSIA
2018 - 3.0%, 4.8 MT
2017 - 3.1%, 5.0 MT

INDIA
2018 - 1.8%, 2.9 MT
2017 - 1.5%, 2.4 MT

THAILAND
2018 - 1.9%, 3.0 MT
2017 - 2.2%, 3.5 MT

PHILIPPINES
2018 - 0.8%, 1.2 MT
2017 - 1.0%, 1.6 MT

VIETNAM
2018 - 0.8%, 1.2 MT
2017 - 0.5%, 0.8 MT

INDONESIA
2018 - 0.5%, 0.8 MT
2017 - 1.2%, 2.0 MT

OTHER
2018 - 2.1%, 3.3 MT
2017 - 2.3%, 3.6 MT

Coal represented
95%
95% in 2017

EXPORTS

COMMODITY EXPORTS	MASS TONNES		TEUS		TRADE VALUE ($MILLION)	
	2018	2017	2018	2017	2018	2017
Aluminium	39,104	61,131	0	0	$106	$151
Ammonia	128,599	85,521	28	26	$58	$58
Ammonium Nitrate	7,928	979	37	44	$0	$0
Concentrates	570,499	468,543	0	0	$1,630	$693
General Cargo	106,325	180,301	1,370	1,630	$95	$95
Grinding Media	13,269	14,546	634	694	$15	$15
Machinery, Project Cargo and Vehicles	21,199	16,407	959	697	$212	$164
Meals and Grains	77,982	236,899	683	482	$18	$43
Pitch and Tar Products	102,286	103,096	0	0	$72	$72
Silica Sand	16,818	5,552	0	0	$0	$0
Steel	65,096	54,029	290	290	$25	$23
Timber	4,353	799	0	0	$0	$0
Wheat	379,118	1,834,303	283	95	$114	$360
EXPORTS (DIVERSIFIED TRADE)	**1,532,576**	**3,062,106**	**4,284**	**3,958**	**$2,345**	**$1,673**
TOTAL EXPORTS (ALL TRADES)	**160,138,826**	**162,076,144**	**4,284**	**3,958**	**$25,986**	**$21,111**

COMMODITY EXPORTS OVERVIEW

COMMODITY EXPORTS	DEFINITION	DESTINATIONS 2018	DESTINATIONS 2017
Aluminium		Japan and South Korea	Japan and South Korea
Ammonia		Australia and New Zealand	Australia and New Zealand
Ammonium Nitrate		New Zealand	New Zealand
Concentrates	Copper ore concentrates, zinc ore concentrates and lead ore concentrates.	China, Japan and Malaysia	China, Japan and Malaysia
General Cargo		China, New Zealand, Australia, Papua New Guinea, Taiwan, Japan, Solomon Islands, India, Indonesia, Iran, Malaysia, Philipines, Thailand, Vietnam, Untied Kingdom, New Caledonia and South Korea	China, New Zealand, Australia, Papua New Guinea, Taiwan, Japan, Solomon Islands, India, Indonesia, Iran, Malaysia, Philippines, Thailand, Vietnam, Untied Kingdom, New Caledonia and South Korea
Grinding Media		Indonesia, Papua New Guinea and Australia	Indonesia, Papua New Guinea and Australia
Machinery, Project Cargo and Vehicles	Mining machinery, agricultural machinery, power generation machinery, construction machinery, rail wagons, passenger vehicles and commercial vehicles.	Indonesia, Papua New Guinea, Brazil, Singapore, India and New Zealand	Indonesia, Papua New Guinea, Brazil, Singapore, India and New Zealand
Meals and Grains	Barley, sorghum, canola, maize, canola meal and cottonseed meal.	New Zealand, China and Argentina	New Zealand, China and Argentina
Pitch and Tar Products	Pitch, coal tar, tar, carbon black and creosote.	Japan, Philipines and Australia	Japan, Philippines and Australia
Silica Sand		Japan	Japan
Steel		Indonesia, Australia, Peru and New Zealand	Indonesia, Australia, Peru and New Zealand
Timber		New Zealand	New Zealand
Wheat		Indonesia, India, Kuwait, Philippines, Italy, Algeria, Egypt, Malaysia, New Zealand, Kenya, Vietnam, Nigeria, Yemen, Thailand, Singapore, Morocco, China and Japan	Indonesia, India, Kuwait, Philippines, Italy, Algeria, Egypt, Malaysia, New Zealand, Kenya, Vietnam, Nigeria, Yemen, Thailand, Singapore, Morocco, China and Japan

IMPORTS

COMMODITY IMPORTS	MASS TONNES		TEUS		TRADE VALUE ($MILLION)	
	2018	2017	2018	2017	2018	2017
Alumina	1,145,168	1,106,282	0	0	$411	$285
Ammonia	5,920	38,732	0	0	$26	$26
Ammonium Nitrate	56,137	26,822	0	0	$8	$8
Cement	278,281	251,074	0	0	$2	$19
Fertiliser	520,800	587,852	0	0	$209	$209
Fuels	1,768,228	1,856,427	0	0	$1,132	$1,132
General Cargo	73,198	68,490	4,792	5,196	$111	$110
Machinery, Project Cargo & Vehicles	43,557	75,087	87	180	$751	$751
Magnetite	117,892	93,284	0	0	$28	$28
Meals & Grains	270,654	186,176	30	0	$125	$85
Petroleum Coke	211,456	215,383	0	0	$75	$80
Pitch & Tar Products	169,658	146,724	0	0	$116	$116
Steel	237,964	232,102	168	107	$93	$50
Timber	30,440	25,709	57	55	$1	$1
TOTAL IMPORTS (DIVERSIFIED TRADE)	4,929,353	**4,910,144**	**5,134**	**5,538**	**$3,088**	**$2,901**

COMMODITY IMPORTS OVERVIEW

COMMODITY IMPORTS	DEFINITION
Fertiliser	Superphosphate, sulphate of ammonia, potash, urea, phosphates and other general manufactured fertilisers
Machinery, Project Cargo and Vehicles	Industrial machinery, power generation machinery, construction machinery, rail wagons, passenger vehicles and commercial vehicles
Meals and Grains	Soybean meal
Pitch and Tar Products	Pitch, coal tar and carbon black

NOTES

i Trade values are Port of Newcastle's (PON) estimates based on commodity values and prices obtained periodically from sources such as the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), Bureau of Resources and Energy Economics (BREE), Australian Bureau of Statistics (ABS), and IndexMundi.

The trade values are provided for information only and should not be relied on by any party. Any party seeking to rely on information on trade value should undertake its own assessment. Whilst care has been taken in the preparation of this material these are only value estimates, PON gives no warranty as to the accuracy of these values or any of the inputs used by it to develop these estimates. Results have been rounded as appropriate.

ii TEU (twenty-foot equivalent unit) refers to containers handled.

TRADE ASSETS FINANCIAL PERFORMANCE

PORT CHARGES	1 JANUARY - 31 DECEMBER 2018 $'000	1 JANUARY - 31 DECEMBER 2017 $'000	NOTE
Navigation Services Charge	80,922	79,058	
Wharfage	22,443	23,142	
Site Occupation	5,724	5,780	1
Security	1,206	1,195	
Utilities	103	107	
Trade Revenue	**110,397**	**109,281**	
Operations Expense – Trade Assets	39,555	28,860	2, 3
Depreciation – Trade Assets	17,338	15,791	4
Allocated Overheads – Trade Assets	7,173	10,406	3, 5
Trade Expenses	**64,065**	**55,057**	**6**
Operating Profit from Trade Operations	**46,332**	**54,224**	
Trade Assets	**2,209,000**	**2,398,000**	**7, 8**

NOTES

1. Site Occupation includes berth side storage revenue.
2. Operations Expense – Trade Assets is made up of salary and wages, repairs and maintenance, external services, fuel and security. The costs relate to dredging, survey, repairs, maintenance, navigation services fee and Port Community Contribution and other minor costs directly related to Trade Assets.
3. Navigation services fee and Port Community Contribution have been reclassified from Allocated overheads to Operating Expenses in 2018. 2017 balances have not been restated.
4. Depreciation – Trade Assets is the depreciation and amortisation costs specifically related to Trade Assets.
5. Allocated Overheads – indirect costs including transition costs (costs not directly related to income earning operations or capital projects) have been allocated based on relative revenue.
6. Trade Expenses exclude sublease rental, financing costs and income tax.
7. Trade Assets are those assets which generate revenue for the Company excluding those assets which are associated with property leasing activities.
8. The value of Trade Assets as at 31 December 2018 is as reported per the audited financial statements at 31 December 2018. The 31 December 2017 value of trade assets was as per the last assessment date in 2014.

Published April 2019 with the approval of the Board of Port of Newcastle Operations Pty Limited as trustee for the Port of Newcastle Unit Trust.

Published by
Port of Newcastle

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COMMONWEALTH OF AUSTRALIA

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ANNEXURE CERTIFICATE
DP-13

This is the Annexure marked "DP-13" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

STRATEGIC STATEMENT ON COAL EXPLORATION AND MINING IN NSW

NSW GOVERNMENT

Minister's Foreword

Coal mining is an important industry for New South Wales (NSW), and will continue to be so for the next few decades. It is particularly important for our regional economies, who have recently suffered a series of blows from drought, bushfires and the COVID-19 pandemic.

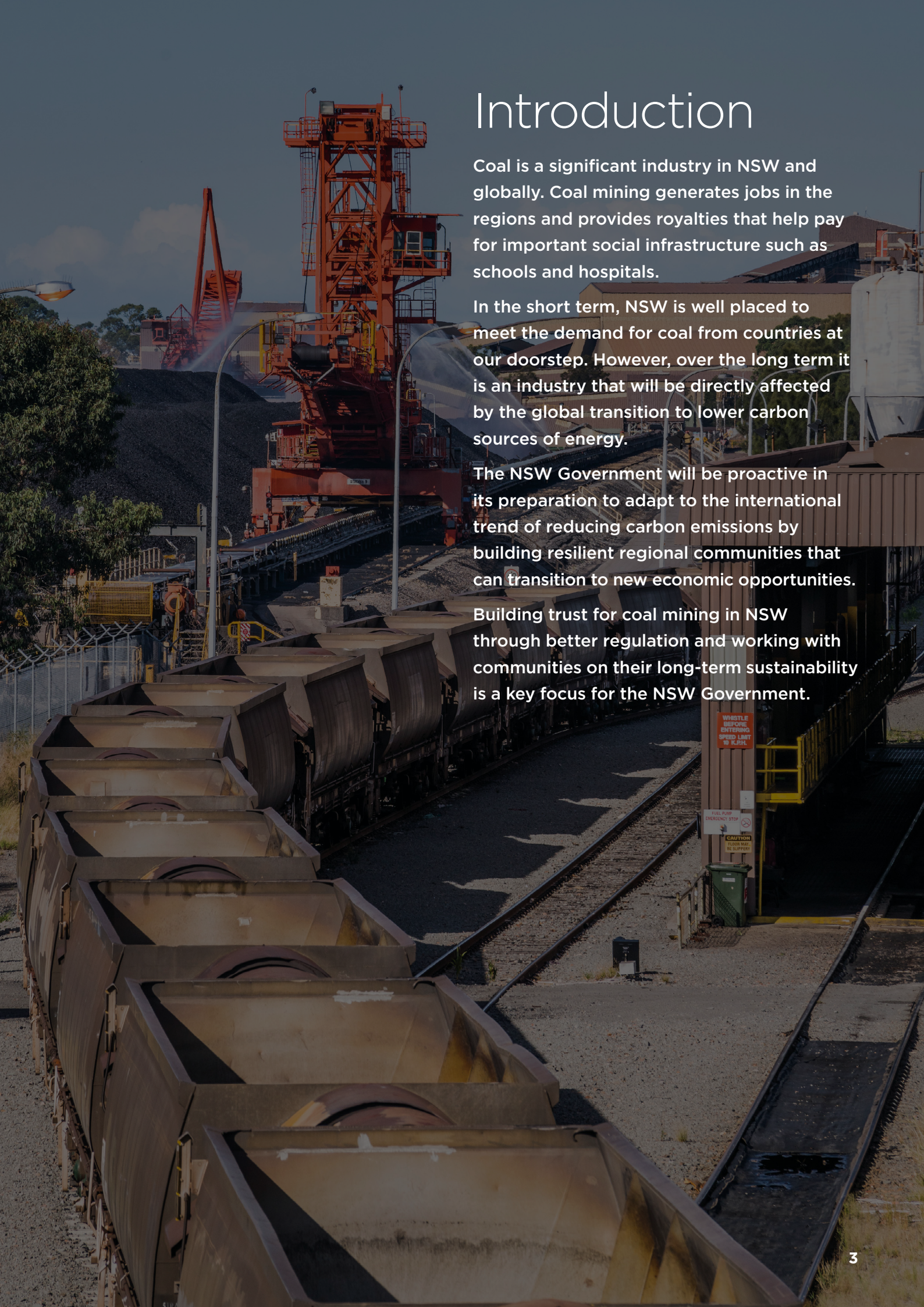
Coal mining is a significant source of direct and indirect jobs in our regions and underpins prosperity in many local economies. It is the state's largest export commodity, and is a major source of revenue, which the NSW Government uses to help fund essential services and infrastructure such as schools, hospitals, roads and transport.

Over the coming decades, the coal mining industry will be directly affected by the global transition to different forms of energy generation. However, this transition will not happen overnight. During the transition, the NSW Government will continue to support the responsible development of our abundant, high quality coal resources for the benefit of the state.

This *Strategic Statement on Coal Exploration and Mining in NSW* aims to provide greater certainty to explorers, investors, industry stakeholders and communities about the future of coal mining in the state. It sets out how the NSW Government will take a balanced approach, allowing exports to continue while there is global demand, but significantly scaling back where mining can occur and working to reduce its impacts and address community concerns. Recognising that coal is likely to have a finite lifespan as an energy source, we will work to support coal-dependent communities to diversify for the future, ensuring they remain vibrant places to live with good employment opportunities.

I encourage you to read the Statement and support this government's efforts to keep NSW open for business for coal production, while we take a responsible and measured approach to the long-term transition to new energy sources.

The Hon John Barilaro MP
Deputy Premier,
Minister for Regional New South Wales, Industry and Trade



Introduction

Coal is a significant industry in NSW and globally. Coal mining generates jobs in the regions and provides royalties that help pay for important social infrastructure such as schools and hospitals.

In the short term, NSW is well placed to meet the demand for coal from countries at our doorstep. However, over the long term it is an industry that will be directly affected by the global transition to lower carbon sources of energy.

The NSW Government will be proactive in its preparation to adapt to the international trend of reducing carbon emissions by building resilient regional communities that can transition to new economic opportunities.

Building trust for coal mining in NSW through better regulation and working with communities on their long-term sustainability is a key focus for the NSW Government.

Purpose

This statement sets out how the NSW Government is taking a responsible approach to the global transition to a low carbon future, consistent with Australia's ambition under the Paris Agreement, and is planning to manage the impact for coal-reliant communities.

The NSW coal industry

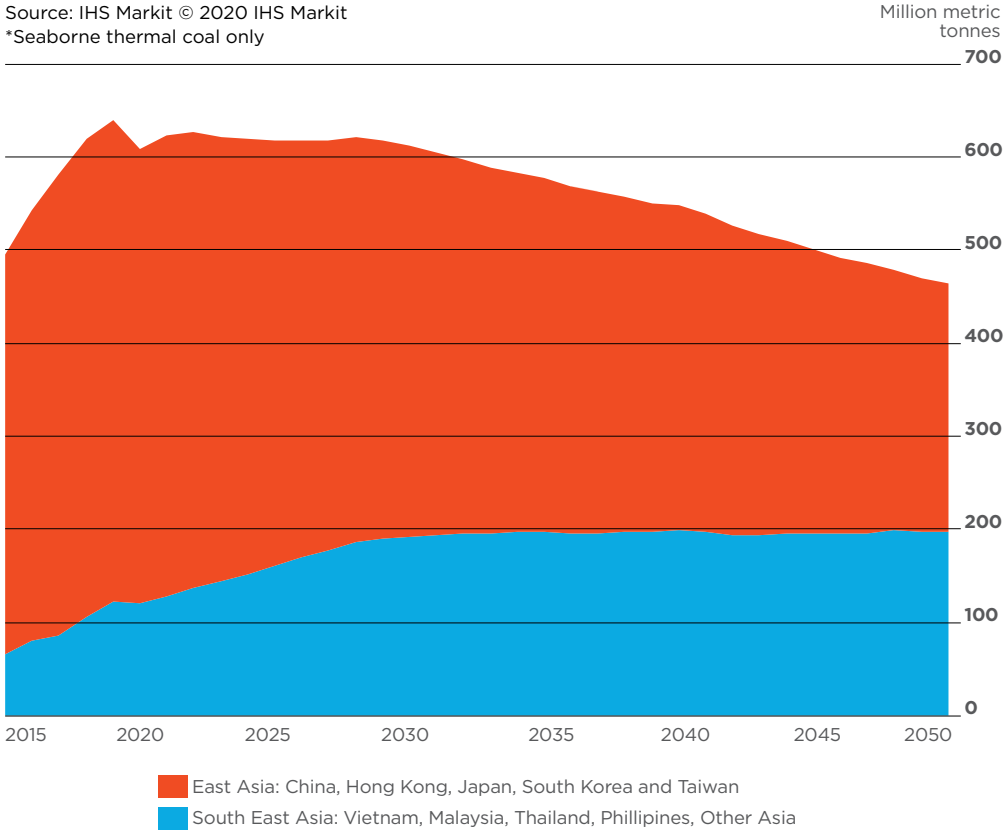
The coal industry provides over 22,000 direct jobs and around 89,000 indirect jobs

Many regional communities in NSW depend on the coal industry, which provides over 22,000 direct jobs and around 89,000 indirect jobs. Royalties from coal brought in around $2 billion in 2018-19, used to fund public services and infrastructure. In NSW, around 80 per cent of our electricity currently comes from coal.

Some 85 per cent of the coal mined in the state is exported, mainly to Japan, China, South Korea and Taiwan, where it is mostly used to generate electricity. Although NSW is an important coal producer, our exports of coal represent only around three per cent of total global coal consumption.

Long term thermal coal demand* outlook for NSW's major export partners

Source: IHS Markit © 2020 IHS Markit
*Seaborne thermal coal only

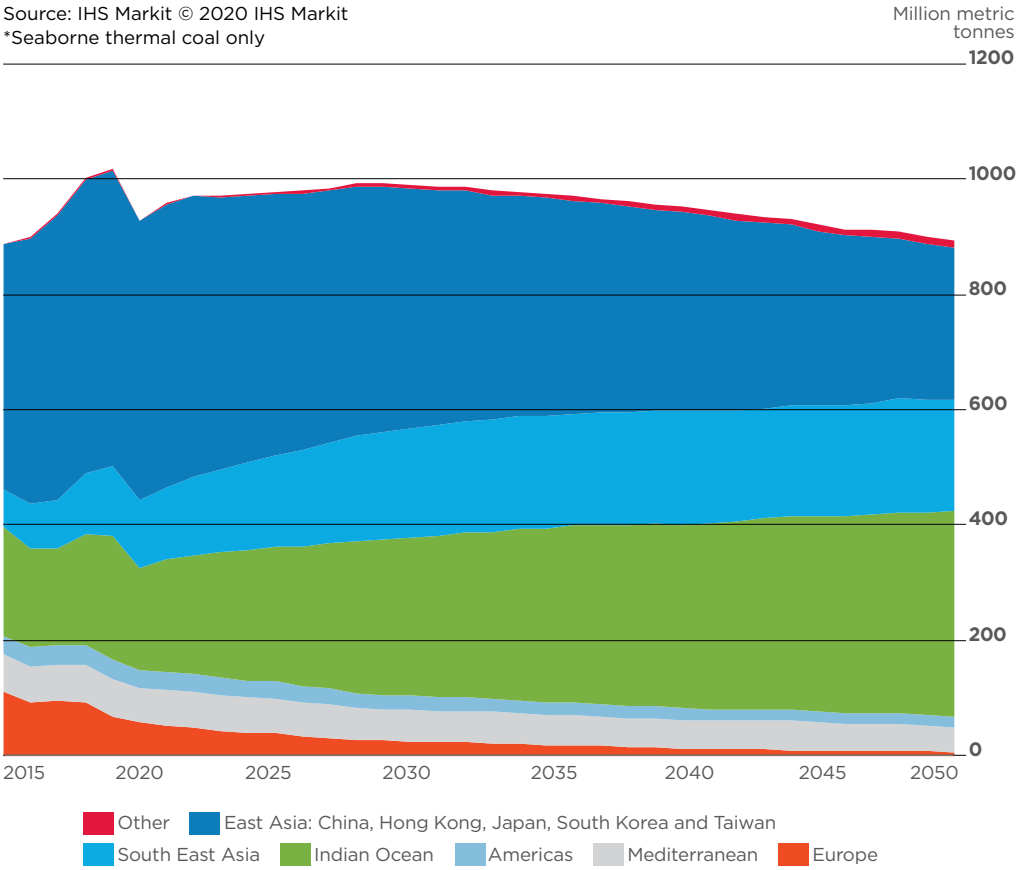


The global future for coal

Many countries around the world have begun a transition away from fossil fuels to low carbon sources of energy to meet commitments under the Paris Agreement. This will ultimately lead to the global phasing out of coal in electricity generation (thermal coal), but will take some decades to complete. Coal currently remains a critical energy source globally, supplying over a third of all electricity.

Long term global thermal coal* demand outlook

Source: IHS Markit © 2020 IHS Markit
*Seaborne thermal coal only



The future of thermal coal in NSW

In NSW, we are doing our part to mitigate climate change by implementing emissions reduction measures over the next decade. The NSW and Australian governments recently committed to jointly fund over $2 billion in energy and emissions reduction initiatives under a Memorandum of Understanding. We are putting in place a range of initiatives to reduce greenhouse gas emissions in the mining and electricity sectors, as well as other sectors. Use of thermal coal will decline in NSW over the coming decades as our aging coal-fired electricity plants reach the end of their technical lives and are replaced with cleaner forms of energy generation.

Ending or reducing NSW thermal coal exports while there is still strong global demand would likely have little or no impact on global carbon emissions.

In the short to medium term, coal mining for export will continue to have an important role to play in NSW. In our immediate region of the world, as elsewhere, there has been a reduction in demand caused by the economic impacts of COVID-19. However, in the medium term, demand is likely to remain relatively stable. Some developing countries in South East Asia and elsewhere are likely to increase their demand for thermal coal as they seek to provide access to electricity for their citizens. Under some scenarios, this could see the global demand for thermal coal sustained for the next two decades or more. The use of coal in the manufacture of steel (coking coal) is likely to be sustained longer as there are currently limited practical substitutes available.

Ending or reducing NSW thermal coal exports while there is still strong long-term global demand would likely have little or no impact on global carbon emissions. Most coal consumers would be likely to source their coal from elsewhere, and much of this coal would be lower quality compared to NSW coal. Reducing demand for thermal coal in line with the Paris Agreement by progressively replacing coal-fired electricity with cleaner energy sources, as has been seen in Europe, will be more effective in reducing global emissions than reducing NSW coal supplies.

The transition to new energy sources is a long-term economic change that will continue to reshape our regional communities that currently rely on the export coal industry. These communities are resilient and can adapt, but need time and support to diversify their economies and develop new sources of employment. It is critical that we continue to responsibly manage the transition away from coal to enable these regional communities to continue to thrive. Part of this will involve supporting the growth of mining for metals that are in increasing demand in the longer run, such as copper, cobalt and rare earths, driven by high technology industries such as the information, energy and transport sectors. NSW has significant untapped potential in these metals, and the NSW Minerals Strategy sets out our plan to grow investment and jobs in the minerals sector. Given our non-fossil fuel minerals are principally in the Central and Far West, there will still be significant disruption for coal-reliant communities. Another part will be the opportunity for the integrated development of Renewable Energy Zones, as recently announced by the NSW Government in the Electricity Strategy.

The NSW Government is taking a responsible approach to the global transition to a low carbon future, consistent with Australia's ambition under the Paris Agreement. Our goal is to set a clear and consistent policy framework that supports investment certainty in NSW as the coal sector responds to global demand, while assisting communities to manage a decline in thermal coal mining in the state over the longer term. This approach strikes a balance that will support the global transition to low carbon energy sources while giving our coal-reliant communities time to adapt.

The transition to new energy sources is a long-term economic change that will continue to reshape our regional communities that currently rely on the export coal industry.

Our plan of action

The NSW Government will act in four areas:

1. Improving certainty about where coal mining should not occur.
2. Supporting responsible coal production in areas deemed suitable for mining.
3. Addressing community concerns about the impacts of coal mining.
4. Supporting diversification of coal-reliant regional economies to assist with the phase-out of thermal coal mining.

1. Improving certainty about where coal mining should not occur

The potential for coal mining to occur in an area can create uncertainty for the local community. To address this, the NSW Government will clearly identify areas where higher priority land uses mean that coal exploration and mining cannot occur. Accompanying this strategic statement is a map that shows a number of areas that will be ruled out for further coal exploration or coal mining.

2. Supporting responsible coal production

The NSW Government is already undertaking reforms to the planning system, some of which will provide greater certainty for coal mining proponents and the broader community. This includes amending the *Environmental Planning and Assessment Act 1979* to prohibit approval conditions relating to exports. Implementation of the findings of the recent review of the Independent Planning Commission will also improve certainty for proponents of major projects.

In addition, the NSW Government will:

- recognise existing industry investment by continuing to consider responsible applications to extend the life of current coal mines, and by streamlining the process for exploring new areas and areas adjacent to current mining operations to deliver a better economic return to NSW
- consider releasing a limited number of new areas for coal exploration. These will be areas where there are minimal conflicting land uses, where social and environmental impacts can be managed, and where there is significant coal production potential. New areas identified for coal exploration will be released through a transparent, competitive tender process whenever there are multiple operators who could develop the resource. Release of an area for exploration is not a guarantee of mining: proponents who may subsequently seek approval to mine will still have to obtain planning approval for mine proposals, which includes consideration of the environmental, economic and social impacts.

3. Reducing the impact of coal mining

The operating and regulatory standards for NSW's coal mines have been significantly improved over the past decades. This has delivered better environmental, social and economic outcomes. However, there remain areas where it might be possible to further reduce or mitigate impacts.

The NSW Government will work to:

- strengthen regulatory requirements for mine rehabilitation and closure planning
- support the improved management of air and water impacts from coal mining
- facilitate beneficial uses of coal mining land once mining has ended
- continue to ensure mining-affected communities receive an appropriate share of the benefits of mining
- address the impacts of mining in the Greater Sydney Water Catchment, responding to the Independent Expert Panel report
- reduce the greenhouse gas emissions directly associated with coal mining in NSW (fugitive emissions)
- monitor security of supply for domestic coal users during the transition to low carbon energy sources, including domestic users of coking coal.

4. Supporting diversification of coal-reliant regional economies to assist with the phase-out of thermal coal mining

The NSW Government will continue to work to strengthen regional economies, including the development and implementation of location-specific plans to diversify those heavily dependent on coal mining. There will be regional variations in the profile of coal production. Some areas will see gradual decline over the next few years, while others could see increased coal production in the short to medium term. We will adopt a systematic, place-based approach to transition planning, starting with the regions that are expected to experience the earliest coal production declines and the Upper Hunter region given the importance of its coal industry.

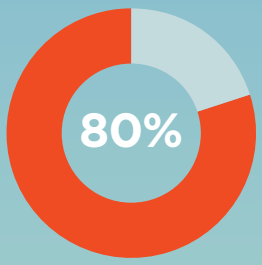
A robust, transparent process

Over the past decade, the NSW Government has made significant reforms to the processes for managing coal exploration licences and mining proposals to ensure they are rigorous and transparent. The NSW Government will continue to apply transparent, evidence-based approaches to decisions about coal land release, exploration and production. This includes rigorous assessment of potential new coal mines and community consultation under the planning framework. Coal exploration and mining activities will continue to be subject to robust regulatory controls to protect human health, the safety of workers, and the environment.

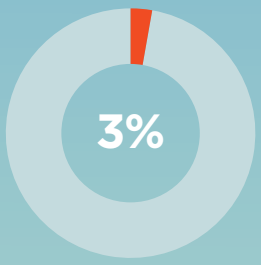
Managing future uncertainty

In the long term, there is uncertainty about global demand for thermal coal. Ongoing demand for coal will depend on how rapidly other countries transition to low carbon energy sources and mass electrification. There are likely to be short term drops and spikes in demand, as we have seen recently with COVID-19. The NSW Government will monitor global coal demand and domestic production and emissions. We will take a flexible, adaptive approach to respond to global economic change, should there be a significant shift in trajectory.

Fast facts



OF NSW ELECTRICITY CURRENTLY COMES FROM COAL



OF TOTAL GLOBAL COAL CONSUMPTION IS FROM NSW COAL EXPORTS

$2 Billion

GOVERNMENT COMMITMENT FOR ENERGY AND EMISSIONS REDUCTION INITIATIVES

$2 Billion

IN ROYALTIES FROM COAL WAS USED TO FUND PUBLIC SERVICES AND INFRASTRUCTURE IN 2018-2019

OF NSW COAL IS EXPORTED MAINLY TO JAPAN, CHINA, SOUTH KOREA AND TAIWAN

COAL INDUSTRY PROVIDES

22,000

DIRECT JOBS

89,000

INDIRECT JOBS

resourcesandgeoscience.nsw.gov.au/future-of-coal

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JN0125 0620

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE CERTIFICATE
DP-14

This is the Annexure marked "DP-14" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

NSW Mining Industry Expenditure Impact Survey 2018/19

Prepared for NSW Minerals Council

February 2020

EXECUTIVE SUMMARY

The New South Wales Minerals Council (NSWMC) analysed the expenditure patterns of 28 NSW exploration and mining companies to determine the economic contribution of the industry throughout NSW in 2018/19. The spending data, which included employee salaries and wages, business purchases, community contributions and local and state government payments, was collected by postcode where it was spent to allow local, regional and state-wide economic benefits to be assessed. This report is an extension of previous annual surveys completed over the last seven years.

Direct expenditure

The 28 companies surveyed **directly spent an estimated $13.7 billion** in the NSW economy in 2018/19, comprised of:

- Total workforce of 25,844 full-time equivalent workers (including direct resident employees and contract workers), which represented an annual increase of 2.0%;
- **$2.5 billion in wages and salaries** to approximately **18,820 full-time equivalent residing direct employees** (not including contractors), representing an average salary level of $130,374 per annum across the sector;
- **$8.9 billion** in purchases of goods and services from approximately 7,003 local businesses, community contributions and payments to local government (including rates, developer contributions and other payments); and
- **$2.3 billion** in state government payments (including royalties, stamp duty, payroll tax and land tax).

In terms of annual trend, total spending in NSW by companies surveyed was 27.9% higher than 2017/18. There was also significant annual growth in total direct wages (up 15.6%), contract payments (up 22.3%), contributions to community organisations (up (30.9%), local government payments (up 55.9%) and state government payments (up 17.1%).

The Hunter region recorded the highest direct expenditure in 2018/19, with $5.4 billion (or 39.5% of the total direct spend across NSW), followed by the Sydney ($3.2 billion, or 23.6%) and Illawarra ($0.8 billion, or 6.0%) regions.

Direct Stimulus by Region of Companies Surveyed

New South Wales, 2018/19

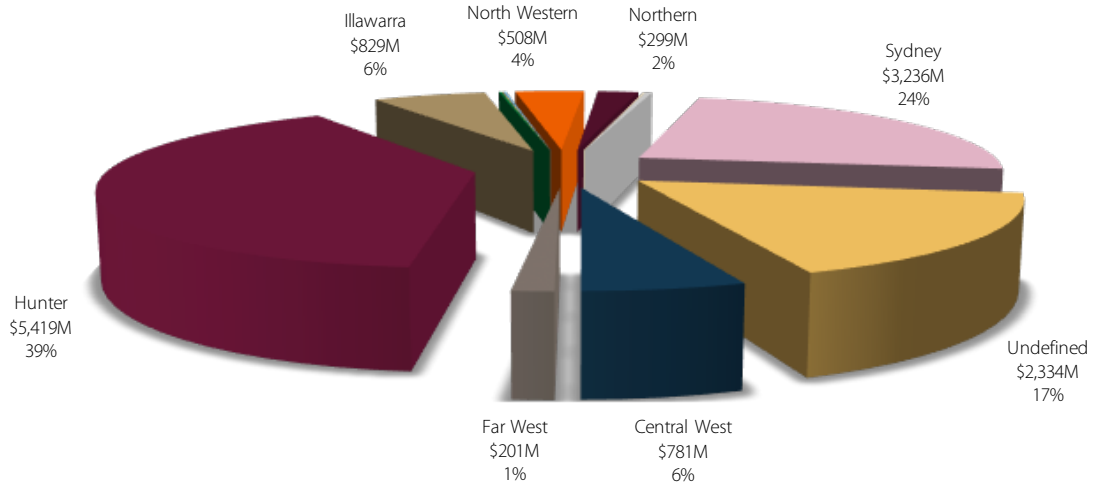


Table E1: Direct Impact of Surveyed Companies by Region, 2018/19

Region	Residing employees	Associated salaries	Total workforce[(b)]	Business purchases & community contributions	No. of businesses	Total direct spending	% of total direct spend, NSW
	(FTEs)	($M)	(FTEs)	($M)		($M)	
Central West	2,619	318.1	3,266	463.2	632	781.3	5.7%
Far West	490	56.9	552	144.4	186	201.2	1.5%
Hunter	10,010	1,380.7	13,347	4,038.0	3,282	5,418.6	39.5%
Illawarra	1,384	187.1	2,107	642.2	468	829.2	6.0%
Mid-North Coast	31	3.4	31	16.8	31	20.2	0.1%
Murray	20	1.9	20	5.0	32	6.9	0.1%
Murrumbidgee	21	2.2	21	18.3	36	20.5	0.1%
North Western	2,041	242.4	2,338	265.8	468	508.2	3.7%
Northern	1,499	153.3	2,861	145.3	442	298.6	2.2%
Richmond-Tweed	12	1.2	12	5.8	18	7.0	0.1%
South Eastern	22	6.1	82	43.1	108	49.1	0.4%
Sydney	654	98.7	1,189	3,137.1	2,550	3,235.7	23.6%
Unallocated[(a)]	15	1.8	17	4.5		2,344.1	17.1%
Total NSW	**18,820**	**2,453.6**	**25,844**	**8,929.1**	**7,003**	**13,720.6**	**100.0%**
Rest of Australia	487	64.8	489	5,769.3	2,415	5,834.1	-
Total Australia	19,307	2,518.4	26,333	14,698.4	9,418	19,554.7	-

Note: (a) Includes state government payments. (b) Includes full-time resident direct employees and contract workers by place of operation.

Indirect and Total Economic Impacts

Economic modelling of the flow-on effects of the surveyed companies' direct expenditure allowed the indirect and total economic impact to be estimated. Across NSW, the total economic impact of the surveyed companies in 2018/19, based on Type II multipliers (i.e. including both indirect industry and consumption-induced effects), amounted to:

- $33.4 billion in output/turnover (a measure of direct and supply chain purchases from businesses);
- **$29.9 billion in value added (contribution to Gross State Product), amounting to 4.8% of GSP for NSW in 2018/19**, through $13.7 billion in direct effects and $16.1 billion in supply chain and consumption-induced effects;
- $11.4 billion in income (wages and salaries) paid to direct and indirect workers; and
- **156,205 full time equivalent jobs supported, or 3.9% of total employment in NSW during 2018/19.**

Table E2: Economic Impact of Companies Surveyed, 2018/19

	New South Wales	Rest of Australia	Total Australia
Value Added ($M)			
Direct	13,721	5,834	19,555
% of GSP/GDP	2.2%	0.4%	1.0%
Indirect	10,308	3,919	14,228
Total value added (Type I)	24,029	9,753	33,782
% of GSP/GDP	3.8%	0.7%	1.7%
Consumption-induced	5,841	2,324	8,165
Total value added (Type II)	29,870	12,078	41,947
% of GSP/GDP	4.8%	0.9%	2.2%
Employment (FTEs)			
Direct	18,820	487	19,307
% of total state/national employment	0.5%	0.0%	0.2%
Indirect	84,442	23,514	107,956
Total employment (Type I)	103,261	24,002	127,263
% of total state/national employment	2.6%	0.3%	1.0%
Consumption-induced	52,944	14,739	67,682
Total employment (Type II)	156,205	38,740	194,945
% of total state/national employment	3.9%	0.5%	1.5%
Business spend (incl. community contributions and govt payments) ($M)			
Direct	11,267	5,769	17,036
Indirect	8,263	4,106	12,369
Total business spend (Type I)	19,530	9,876	29,406
Consumption-induced	11,388	4,369	15,757
Total business spend (Type II)	30,918	14,245	45,163
Wages & salaries ($M)			
Direct	2,454	65	2,518
Indirect	5,608	2,021	7,629
Total wages & salaries (Type I)	8,061	2,086	10,147
Consumption-induced	3,338	1,070	4,408
Total wages & salaries (Type II)	11,399	3,155	14,555

Note: Consumption-induced impacts seek to measure the change in consumption for all goods and services that arise from an increase in final output from the industry in question. Direct employment and wages relate specifically to **full-time equivalent residing direct employees** (not including contractors).

The direct expenditure of the 28 companies surveyed has the highest overall impact in the Hunter region, with estimated total value added of $11.5 billion, meaning these companies contributed 22.8% to gross regional product ($50.2 billion) in 2018/19, although the largest proportional impact occurred in the Far West region, where the direct and indirect effects of the 28 companies surveyed contributed approximately 37.2% to the regional economy. The impact in the Hunter region was significantly higher than other regional economies, the next highest of which was Sydney ($6.7 billion in value added) and Illawarra ($2.0 billion).

Table E3: Total Economic Impact of Companies Surveyed by Region, 2018/19 (Type II)

Region	Total output ($M)	Total estimated value added ($M)	Gross regional product ($M)	Total value added as % of GRP
Central West	1,739.1	1,710.9	11,497.7	14.9%
Far West	527.1	489.4	1,314.8	37.2%
Hunter	12,623.0	11,457.4	50,229.9	22.8%
Illawarra	2,182.0	2,027.0	20,766.9	9.8%
Mid-North Coast	52.8	52.2	12,741.2	0.4%
Murray	15.7	14.6	6,644.5	0.2%
Murrumbidgee	32.5	32.0	10,890.2	0.3%
North Western	1,157.1	1,139.6	7,776.1	14.7%
Northern	686.6	676.0	12,428.5	5.4%
Richmond-Tweed	16.8	15.5	12,796.0	0.1%
South Eastern	120.6	119.3	10,440.8	1.1%
Sydney	7,937.1	6,703.0	467,877.5	1.4%
Undefined	6,281.6	5,432.7	-	-
Total NSW	**33,372.0**	**29,869.9**	**625,405.0**	**4.8%**

Note: Regions are based on 12 former Statistical Divisions in NSW

Number of Businesses Directly Supported by the Mining Industry

Supplier business details were analysed to determine the total number of businesses supported by survey respondents. Duplicates were removed to the best extent practicable to ensure an accurate estimation of the number of individual businesses supported.

An estimated 7,003 businesses in New South Wales received payments for goods and services supplied to survey respondents during 2018/19. The highest number of businesses was recorded in the Hunter (3,282 businesses) and Sydney (2,550 businesses) regions.

Table E4: Number of Businesses Supported by Region

Region	Number of businesses supported
Central West	632
Far West	186
Hunter	3,282
Illawarra	468
Mid-North Coast	31
Murray	32
Murrumbidgee	36
North Western	468
Northern	442
Richmond-Tweed	18
South Eastern	108
Sydney	2,550
Total NSW	**7,003**

Note: The total number of businesses supported for New South Wales is less than the aggregate for all regions due to the removal of duplicates.

Community Contributions

During 2018/19, survey respondents directly contributed $9.5 million to 1,137 community groups across New South Wales in a wide range of areas including health, education, environment and the arts.

The largest category of expenditure was Social and Other, both with $1.9 million in contributions by survey respondents, followed by Education ($1.7 million) and Health ($1.3 million).

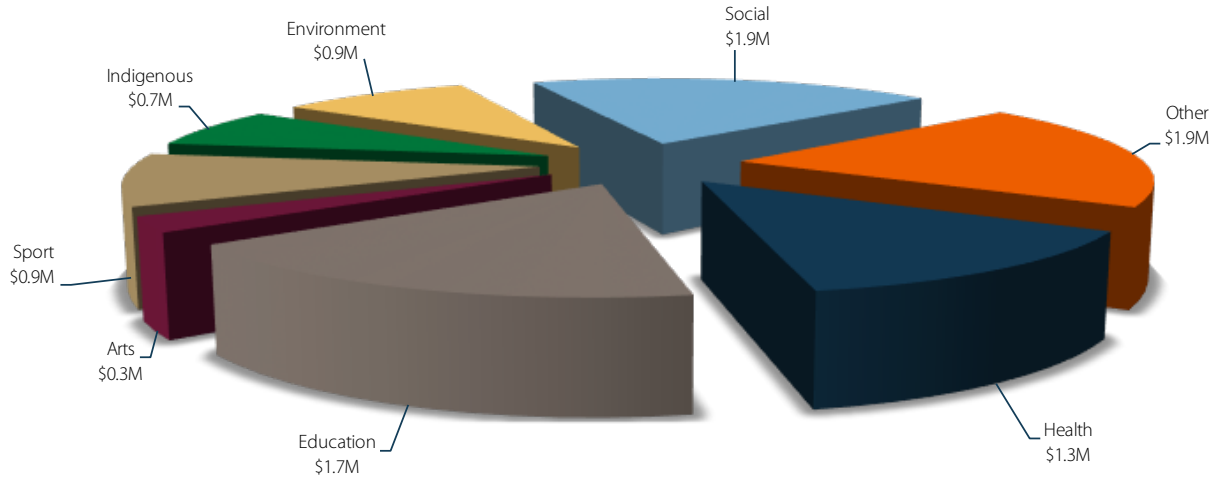
Table E5: Number of Community Groups Supported by Region

Region	Number of community groups	Total contributions ($)
Central West	338	1,456,702
Far West	11	44,377
Hunter	397	3,971,458
Illawarra	24	406,207
Mid-North Coast	0	0
Murray	2	7,018
Murrumbidgee	1	1,057
North Western	145	1,038,628
Northern	110	662,140
Richmond-Tweed	0	0
South Eastern	12	66,003
Sydney	98	1,882,012
Total NSW	**1,137**	**9,536,971**

Note: The total number of community organisations supported for New South Wales is less than the aggregate for all regions due to the removal of duplicates.

Community Contributions by Category of Expenditure

New South Wales ($ million), 2018/19



Local Council Contributions

Mining companies contribute to local councils through the payment of rates, developer contributions agreed as a condition of planning approval, and through other payments such as water rates and payments for specific infrastructure upgrades.

During 2018/19, survey respondents reported direct contributions to local councils totalling $95.5 million – representing a substantial annual increase of 55.9% – with Rates ($45.1 million) comprising the largest proportion of local council payments, followed by Other contributions ($32.7 million) and Voluntary Planning Agreements (VPA)/developer contributions ($11.3 million).

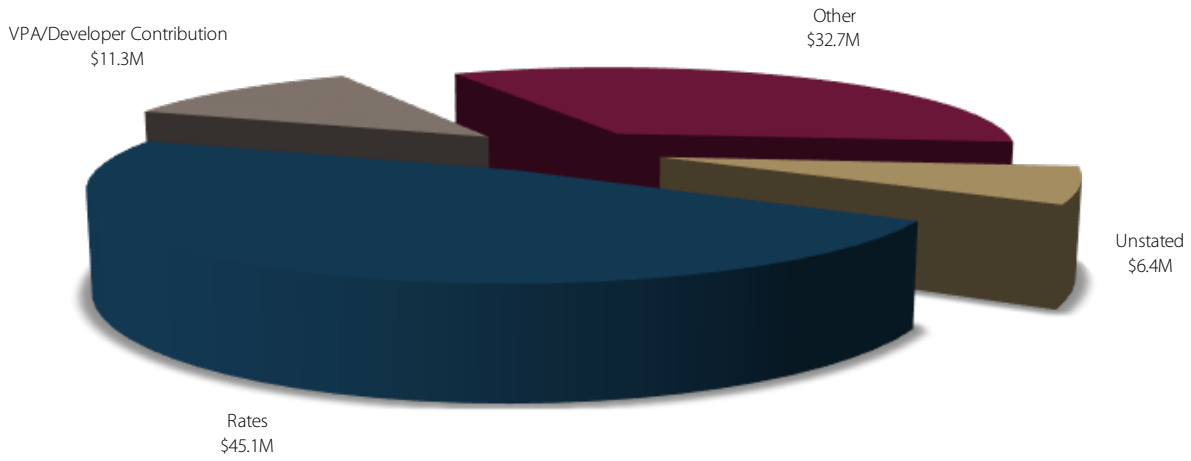
Table E6: Local Council Contributions by Region

Region	Rates ($)	VPA/Developer ($)	Other ($)	Total contributions ($)
Central West	12,503,285	3,249,980	193,651	16,107,851
Far West	1,949,806	0	0	1,949,806
Hunter	17,998,715	5,035,005	31,935,083	54,989,306
Illawarra	463,839	0	8	670,710
Mid-North Coast	4,809	0	0	4,809
Murray	1,500,939	0	11,874	1,512,814
Murrumbidgee	0	0	0	0
North Western	4,755,455	1,752,436	471,247	12,957,140
Northern	4,712,390	1,286,643	5,210	6,004,243
Richmond-Tweed	0	0	0	0
South Eastern	0	0	39,873	39,873
Sydney	1,111,942	223	4,096	1,165,179
Total NSW	**45,067,465**	**11,323,376**	**32,661,004**	**95,468,011**

Note: The total local government payments for each region may be less than the aggregate of contribution type due to unstated amounts and statistical or rounding errors from the original source.

Local Council Contributions by Category

New South Wales ($ million), 2018/19

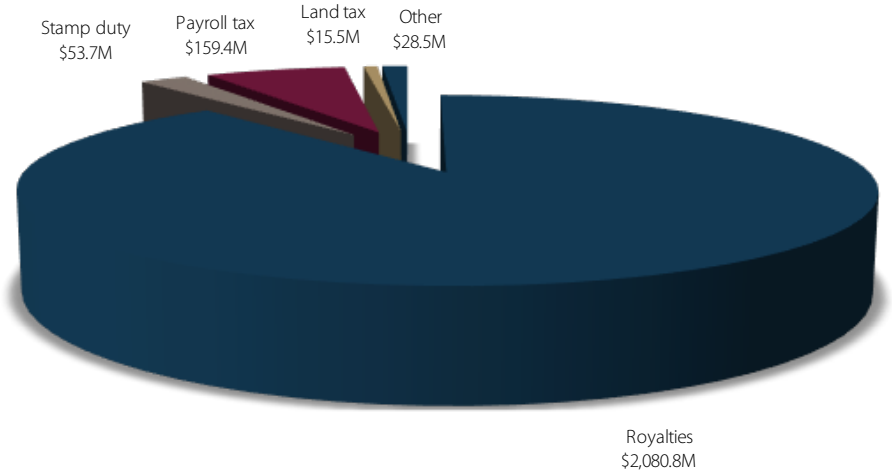


State Government Payments

During 2018/19, the direct contribution made by companies surveyed in state government payments was approximately $2.3 billion – representing an annual increase of 17.1% from the level recorded in 2017/18 ($2.0 billion) – comprised of royalties ($2.1 billion), payroll tax ($159.4 million), stamp duty ($53.7 million) and land tax ($15.5 million).

State Government Contributions by Category

New South Wales ($ million), 2018/19



Comparison to Previous Survey Results

Comparison with results from previous surveys is difficult due to differences in the composition of participating companies. Based on whole-of-survey totals, the direct expenditure in NSW of the companies surveyed in 2018/19 increased by approximately $3.0 billion, or 27.9% compared to 2017/18, whilst the total number of direct employees grew annually by 2,047 FTEs, or 12.2%.

Table E7: Comparison of Survey Results

	Level 2018/19	Level 2017/18	Level 2016/17	Level 2015/16	Level 2014/15	Level 2013/14	Annual % change 2017/18-2018/19
No. of companies surveyed	28	28	26	25	23	22	0.0%
DIRECT EMPLOYEES							
No. of direct employees (FTEs)	18,820	16,772	17,061	17,209	17,566	17,517	12.2%
No. of apprenticeships and traineeships (FTEs)	261	223	247	261	284	227	17.0%
Total wages/salaries paid ($M)	2,453.6	2,122.4	2,222.0	2,165.4	2,254.1	2,351.6	15.6%
BUSINESS PURCHASES							
No. of suppliers	7,003	7,135	6,681	8,078	7,694	8,202	-1.9%
OPEX							
Payments to contractors ($M)	1,194.6	942.1	797.0	1,445.2	1,308.7	1,919.6	26.8%
Other goods and services purchases ($M)	6,670.9	4,875.5	5,150.2	4,971.5	5,462.3	7,058.6	36.8%
Total opex spend ($M)	7,865.5	5,817.6	5,947.2	6,416.6	6,771.0	8,978.2	35.2%
CAPEX							
Payments to contractors ($M)	187.6	188.1	82.0	252.6	464.4	537.4	-0.3%
Other goods and services purchases ($M)	771.1	532.1	444.1	638.2	438.3	560.8	44.9%
Total capex spend ($M)	958.6	720.2	526.1	890.8	902.6	1,098.2	33.1%
Total business purchases ($M)	8,824.1	6,537.7	6,473.3	7,307.4	7,673.6	10,076.0	35.0%
COMMUNITY CONTRIBUTIONS							
No. of community organisations supported	1,137	980	997	991	1,298	1,014	16.0%
Total community contributions ($M)	9.5	7.3	6.8	9.9	12.3	11.2	30.9%
LOCAL COUNCIL PAYMENTS							
Total local government payments ($M)	95.5	61.2	46.5	58.6	60.6	59.1	55.9%
STATE GOVERNMENT PAYMENTS							
Total state government payments ($M)	2,337.9	1,996.0	1,700.6	1,290.3	1,323.6	1,141.6	17.1%
TOTAL SPEND ($M)	**13,720.6**	**10,724.6**	**10,449.2**	**10,831.6**	**11,324.3**	**13,639.9**	**27.9%**
TOTAL WORKFORCE (FTEs)	**25,844**	**25,335**	**-**	**-**	**-**	**-**	**2.0%**

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Prepared by:

lawrence consulting

INTRODUCTION

The NSW Minerals Council (NSWMC) commissioned Lawrence Consulting to determine the total direct, indirect and consumption-induced economic benefit to the state economy based on expenditure data provided by 28 exploration and mining companies operating in NSW. This report provides a detailed summary of the level of expenditure into the New South Wales economy by these companies in 2018/19 and the multiplier and consumption-induced effects that are generated by that initial stimulus. The analysis is an update of previous studies completed over the past seven years, available to download at www.nswmining.com.au.

While the mining sector[1] makes a significant contribution to the New South Wales and Australian economies, information about the impacts of the sector on regional and metropolitan economies within New South Wales is limited. Impacts on regional and metropolitan areas of New South Wales occur through direct, indirect and consumption-induced effects. There are two key types of direct impacts:

- Wages for direct employment of workforce; and
- Expenditure on business goods and services in local and regional economies.

Business expenditure generates both upstream and downstream ripple effects through the supply chain as local businesses purchase goods and services from other businesses, often through several links in the supply chain. The net effect of subsequent rounds of economic activity in the business supply chain can be categorised as indirect effects. The increased employment generated through the direct effects (resources sector employment) and the indirect effects (business supply chain) generates a number of final consumption-induced effects to support the increased population base.

The focus of this report is to identify the geographical spread of impacts (direct, indirect and consumption-induced) from the mining industry across New South Wales at five geographic scales:

- State (the whole area of New South Wales);
- Regional (represented by 12 former Statistical Divisions in NSW);
- Local (represented by 128 Local Government Areas in NSW);
- State electoral divisions (represented by 93 SEDs in NSW); and
- Commonwealth electoral divisions (represented by 47 CEDs in NSW).

[1] For these purposes, mining is defined broadly as the ANZSIC industry division and includes mine operation (i.e. operating mines, quarries, or oil and gas wells, as well as mining sites under development) and mining support activities (i.e. businesses that perform mining services on a contract or fee basis, and exploration (except geophysical surveying)).

METHODOLOGY

Data Collection

The process was initiated in July 2019 when NSWMC distributed an expenditure survey form to 34 exploration and mining companies, which were asked to disclose total operational spending in 2018/19 in the following categories:

- Employee salaries and wages (by place of residence) for full-time direct employees, along with the number of apprenticeships and traineeships;
- Goods and services expenditure, including payments made to contractors (including identification of the number of contract FTEs employed on-site) as well as other goods and services providers;
- Voluntary community contributions;
- Local government payments, including council rates and infrastructure charges; and
- State government payments, including royalties, stamp duty, payroll tax and land tax.

Of the 34 companies surveyed, 28 returned the survey, representing the majority of the New South Wales mining sector based on current value of production. The data includes both operational expenditure (OPEX) data for current projects and capital expenditure (CAPEX) data from proposed investments currently under development. This data was supplied by the location where the salary was paid (residence of the worker or contractor) and where the community contributions and business expenditures were made by Australia postcode. The companies that provided expenditure data as part of the study are listed in Table 1.

Table 1: Companies Supplying Expenditure Data	
Aeris Resources	Idemitsu Australia Resources Pty Ltd
Alkane Resources Limited	Iluka Resources
Australian Pacific Coal Dartbrook	Kepco Bylong Australia
Aurelia Metals	Mach Energy Australia Pty Ltd
Bengalla Mining Company Pty Ltd	Malabar Coal Limited
BHP Billiton NSW Energy Coal	Newcrest Mining Limited Cadia Valley Operations
Bloomfield Collieries Pty Ltd	Peabody Energy Australia
Centennial Coal Company Limited	Perilya Limited
CleanTeq Holdings Pty Ltd	Silver Mines Limited
CMOC Northparkes	South 32 Illawarra Coal
Cristal Mining Australia	Thiess Pty Limited
Evolution Cowal Gold	Whitehaven Coal Limited
Glencore Coal (NSW) Pty Ltd	Wyong Areas Coal Joint Venture
Heron Resources	Yancoal Australia

The postcode spend data was then aggregated using geographical concordance files[2] from the Australian Bureau of Statistics and the economic impacts (direct, indirect and consumption-induced impacts) of the survey respondents were analysed at five geographic levels:

- State (the whole area of New South Wales);
- Regional (represented by 12 former Statistical Divisions in NSW);
- Local (represented by 128 Local Government Areas in NSW);
- State electoral divisions (represented by 93 SEDs in NSW); and
- Commonwealth electoral divisions (represented by 47 CEDs in NSW).

[2] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1259.0.30.001Main+Features1July%202010?OpenDocument

Input-Output Modelling

Background

For this study, input-output (I-O) modelling has been used to estimate the sum of direct, indirect and consumption-induced effects of the companies surveyed on different regions of New South Wales. I-O techniques provide a solid approach for taking account of the inter-relationships between the various sectors of the economy in the short-term and hence are an appropriate tool for determining the direct, indirect and induced economic impact of economic stimuli.

Development of I-O Modelling

The I-O technique was developed by Wassily Leontief in the 1930s to describe how impacts in one sector of an economy interacted with other sectors to generate economic changes, with matrix algebra used to perform the complex calculations. More advanced forms of I-O models are computable general equilibrium models, which are used for analysis of larger national economies, but are generally not as applicable for smaller areas. The standard I-O model approach is particularly useful for predicting the impacts of events or projects in an economy, or analysing local or regional level economies (Loveridge 2004).

Outside of the previous analysis of the impact of mining in New South Wales completed in 2011/12 to 2017/18 – and similar studies undertaken by Lawrence Consulting and Central Queensland University in Queensland in recent years on behalf of the Queensland Resources Council and in Western Australia on behalf of the Chamber of Minerals and Energy of Western Australia (CMEWA) based on the same underlying methodology – there have been several studies applying input-output modelling techniques to analyse the contribution of resources industries to economic growth in different countries and regions. Previous modelling directly relevant to this study was carried out by ACIL Tasman in 2007, and reported by the State of Queensland (Department of Mines and Energy) (2007). In that report, the contribution of the mining and minerals processing sector to the Queensland economy, using 2004-05 data, was estimated with the use of I-O analysis and general equilibrium modelling. More recently, the Reserve Bank of Australia completed a study in 2013 that quantified the links from demand for Australia's natural resources to activity in other domestic industries using input-output tables (Rayner and Bishop, 2013).

Rubin and Solomon (1983) used economic base and regional multiplier analysis to estimate the impacts of coal liquification projects on 27 counties in Indiana and Kentucky in the United States. Stilwell et al. (2000) used the technique to estimate the contribution of the mining industry to South Africa over a 22-year period. Bangsund and Leistritz (2007) estimated the economic contribution of the petroleum industry to the state economy of North Dakota in the United States. Fannin et al. (2008) used community impact models to estimate the economic effects of oil and gas production from deepwater leases on growth on a regional area of Louisiana in the United States. Finally, Leaming (2010) estimated the economic impacts from the copper industry to the Arizona economy in 2009.

I-O models can be used to capture only the indirect impacts that occur through other industry sectors (Type I models), or the indirect plus the consumption-induced effects (Type II models), which have been adopted for the current study. Further, the I-O models used in this study were based on the ABS model of the Australian economy generated from general equilibrium models.

A concept underlying I-O modelling is that an initial economic shock or stimulus can have multiplier effects through a series of successive spending rounds. The size of the economic multiplier in a local or regional area can be summarised in the following way (Jensen and West 2002):

- The extent to which project operators purchase inputs from the local or regional economy. Examples of inputs include wages for labour supplied from the local or regional area, and purchases of goods and services. The more that a project operator sources from the local or regional economy, the more money that is directly injected into the economy; and

- The extent to which money spent in a local or regional economy is retained within that economy. If there is not much opportunity for people receiving income to spend it on goods and services in their local or regional area, then not as much money will be kept in the local or regional area. Larger and more diverse regional economies tend to be better at keeping expenditures in their economy and not 'losing' it to other regions.

To generate predictions, the economic contribution of an industry is applied to the relevant industry sectors of the input-output model of a regional economy. The stimulus from economic activity can be traced through the economy in several different ways:

- The first round effects, or direct effects, are those from the expenditure in purchasing goods and services from other industries;

- The second round effects are those from supplying industries increasing their purchases to meet the additional demand. The second and subsequent rounds of purchasing are termed the indirect effects; and

- The consumption-induced effects identify the increase in economic activity generated to service the additional employment (and population) generated or sustained through the direct and indirect effects.

Advantages and Assumptions in I-O Models

Key advantages of using input-output models are the fineness of detail available at a disaggregated industry level, the relative ease of application, particularly for sub-regional levels, and the ability to model effects in a timely manner (Loveridge 2004). However, care has to be taken in its application and interpretation of results. Key assumptions that underpin the application of I-O models are (Stilwell et al. 2000, Department of Mines and Energy 2007):

- The inputs purchased by each industry are a function of the level of output of that industry. The input function is generally assumed linear and homogenous of degree one (which implies constant returns to scale and no substitution between inputs);

- Each commodity (or group of commodities) is supplied by a single industry or sector of production. This implies that there is only one method used to produce each commodity and that each sector has only a single primary output;

- The total effect of carrying on several types of production is the sum of the separate effects. This rules out external economies and diseconomies and is known simply as the additivity assumption;

- The system is in equilibrium at given prices. This would not be the case in an economic system subject to external influences;

- In the static input-output model, there are no capacity constraints so that the supply of each good is perfectly elastic. Each industry can supply whatever quantity is demanded of it and there are no capital restrictions. This assumption would come into play depending upon the magnitude of the changes in quantities demanded, brought about through changes in taxation levels; and

- The input-output model is an optimisation model that allocates resources between sectors to their most efficient use.

Type II models involve additional assumptions about fixed relationships between income and consumption patterns. These factors mean that the results of I-O models should generally be treated as the upper bound of estimates, and that care has to be taken in interpreting the results of very large changes in demand or production.

I-O Model Outcomes

Predictions from I-O models are summarised in terms of multipliers and changes in four key variables:

Output

The output impact measures the increase in gross sales throughout the whole economy by summing all the individual transactions resulting, directly and indirectly, from the economic stimulus.

Income

The income impact measures the additional amount of wages and salaries paid to employees of the industry under consideration and to other industries benefiting from the stimulus to the economy.

Employment

The employment impact measures the combined number of existing jobs sustained and new jobs generated by the stimulus, both directly and indirectly, although allocation between these forms of employment is not separately identified.

Value Added

The value added or Gross Regional Product (GRP) impact measures only the net activity at each stage of production. GRP is defined as the addition of consumption, investment and government expenditure, plus exports of goods and services, minus imports of goods and services for a region. The GRP impacts are the preferred measure for the assessment and contribution of a stimulus to the economy.

I-O techniques provide a solid approach for taking account of the inter-relationships between the various sectors of the economy in the short-term – particularly at the small area and regional level – and hence are an appropriate tool for determining the direct, indirect and induced economic impacts of the NSW mining sector.

Construction of the NSW Regional I-O Models

For the derivation of the regional I-O tables based on the Statistical Divisions (SDs) in New South Wales, a variable interference non-survey technique was applied, involving a formalised non-survey method compilation. This allowed data on direct effects of the companies surveyed to be inserted at any stage of the compilation procedure. This approach is based primarily on the Generation of Regional Input-Output Tables (GRIT) technique as developed by Associate Professor Guy West and Professor Rod Jensen of the University of Queensland (Jensen *et.al.*, 1979), a widely used method of constructing local and regional input-output tables in Australia, America and Europe. The procedure utilises cross-industry location quotients (Flegg and Webber 2000) as well as superior data (including expenditure patterns of within the primary company data) for the regionalisation of the national direct requirements matrix (DRM) or at the elements of other final payments and demand, which are at the core of any I-O table.

In summary, the construction of the local and regional I-O models employed the following steps:

- Adjustment to the latest available national I-O table;
- Computation of the regional direct requirement matrix;
- Aggregation of regional sectors (if necessary); and
- Computation of the complete regional I-O table.

All the necessary data for the regionalisation procedure were collected from the Australian Bureau of Statistics as well as other reliable sources for secondary data such as regional household expenditure patterns, income and productivity measures. The latest available national I-O tables were 2016-17, which consisted of 114 sectors of economic activity, at the 4-digit level, compiled following the industry-technology assumption, product-by-product, with total flows and valued at basic values in current prices.

For estimating the regional I-O tables, and especially in the interpretation of results, relevant limitations of the I-O approach (static, linear production function, no substitution or scale economy effects, infinite elasticity of supply) were taken into consideration. Once the I-O models were generated, predictions of impact were estimated for each regional area of interest in New South Wales using the available data on salary and business expenditure.

The predictions of the I-O models for each SD and LGA were estimated in two separate groups. The first group involved the economic impacts of expenditure on business goods and services (business suppliers), while the second involved economic expenditure of the labour force. Each stimulus group was modelled using expenditure coefficients and household consumption patterns applicable for each region, also taking into account the nature of the expenditure (i.e. operating or capital expenditure). The outputs of the models can be classified into First Round and Indirect Effects, representing industry impacts through the business chain, and Final Consumption-Induced effects, which represent the economic activity needed to support the increased workforce from Direct, First Round and Indirect Effects.

The data collection and the methodology applied in this study are notable in three key aspects:

- First, the data collected on actual spending by the resources industry allowed an assessment of impacts by spending in the economy in comparison to the more traditional approach of predicting economic impacts from total revenue changes;

- Second, the collection of primary data by local area allowed a much more accurate assessment of the direct impacts by geographic area than had previously been available; and

- Third, the application of the I-O modelling framework down to the LGA level, when combined with the accuracy of the primary data, meant that relatively accurate models of local impacts from the 28 NSWMC full-member companies surveyed could be generated.

The outcomes of the data collection and modelling approach meant that the assessment of direct, indirect and consumption-induced effects could be expected to be more detailed and accurate at the LGA level than could be achieved with standard applications of general equilibrium models.

ECONOMIC BENEFITS

State Impact

Direct Spending

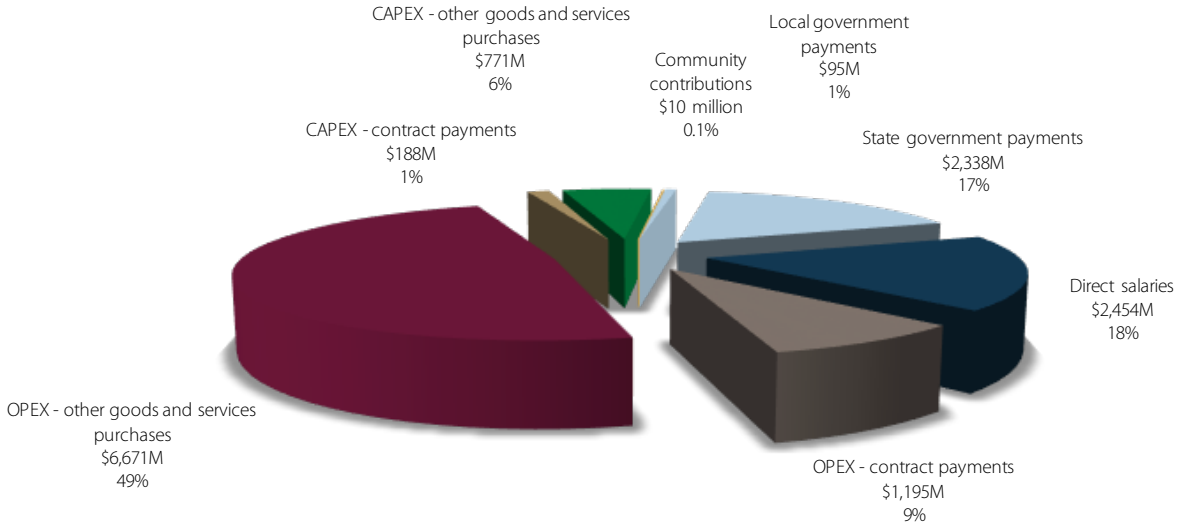
Expenditure data provided by the 28 companies surveyed indicated that these companies **contributed an estimated $13.7 billion** in direct spending to the NSW economy in 2018/19, comprised of:

- Total workforce of 25,844 full-time equivalent workers (including direct resident employees and contract workers), which represented an annual increase of 2.0%;
- **$2.5 billion in wages and salaries** to approximately **18,820 full-time equivalent residing direct employees** (not including contractors), representing an average salary level of $130,374 per annum across the sector;
- **$8.9 billion** in purchases of goods and services from approximately 7,003 local businesses, community contributions and payments to local government (including rates, developer contributions and other payments); and
- **$2.3 billion** in state government payments (including royalties, stamp duty, payroll tax and land tax).

In terms of annual trend, total spending in NSW by companies surveyed was 27.9% higher than 2017/18. There was also significant annual growth in total direct wages (up 15.6%), contract payments (up 22.3%), community contributions (up (30.9%), local government payments (up 55.9%) and state government payments (up 17.1%).

Direct Expenditure by Type for Companies Surveyed

New South Wales ($ million), 2018/19



The direct economic stimulus provided by the 28 mining companies in 2018/19 also extended to other states, with an additional $5.8 billion in direct spending, which combined with the impact in New South Wales for a total impact of $19.6 billion for the whole of Australia, comprised of:

- $2.5 billion in wages and salaries to approximately 19,307 full-time direct residing employees; and
- $17.0 billion in purchases of goods and services from local businesses, government (state and local) and community contributions.

The total direct spending stimulus to the New South Wales economy by the companies surveyed in 2018/19 can be disaggregated into the following areas:

- $2.5 billion in wages and salaries to 18,820 direct employees;
- $7.9 billion in operating expenditure (OPEX), comprised of:
  - $1.2 billion in contract payments;
  - $6.7 billion in purchases of other goods and services;
- $958.6 million in capital expenditure (CAPEX), comprised of:
  - $187.6 million in contract payments (including 677 contract workers);
  - $771.1 million in purchases of other goods and services;
- $9.5 million in community contributions;
- $95.5 million in local government payments; and
- $2.3 billion in state government payments.

The 28 companies surveyed made payments to 7,003 separate businesses in New South Wales in 2018/19 and a further 2,415 businesses across the rest of Australia for a total number of businesses supported of 9,418.

The companies surveyed supported 1,137 community organisations across New South Wales through voluntary contributions across a number of categories, including:

- Health – 93;
- Education – 271;
- Arts – 54;
- Sport – 231;
- Indigenous – 34;
- Environment – 45;
- Social – 308; and
- Other – 98.

Comparison with results from previous surveys is difficult due to differences in the composition of participating companies. Based on whole-of-survey totals, the direct expenditure in NSW of the companies surveyed in 2018/19 increased by approximately $3.0 billion, or 27.9% compared to 2017/18, whilst the total number of direct employees grew annually by 2,047 FTEs, or 12.2%.

Table 2: Comparison of Survey Results

	Level 2018/19	Level 2017/18	Level 2016/17	Level 2015/16	Level 2014/15	Level 2013/14	Annual % change 2017/18-2018/19
No. of companies surveyed	28	28	26	25	23	22	0.0%
DIRECT EMPLOYEES							
No. of direct employees (FTEs)	18,820	16,772	17,061	17,209	17,566	17,517	12.2%
No. of apprenticeships and traineeships (FTEs)	261	223	247	261	284	227	17.0%
Total wages/salaries paid ($M)	2,453.6	2,122.4	2,222.0	2,165.4	2,254.1	2,351.6	15.6%
BUSINESS PURCHASES							
No. of suppliers	7,003	7,135	6,681	8,078	7,694	8,202	-1.9%
OPEX							
Payments to contractors ($M)	1,194.6	942.1	797.0	1,445.2	1,308.7	1,919.6	26.8%
Other goods and services purchases ($M)	6,670.9	4,875.5	5,150.2	4,971.5	5,462.3	7,058.6	36.8%
Total opex spend ($M)	7,865.5	5,817.6	5,947.2	6,416.6	6,771.0	8,978.2	35.2%
CAPEX							
Payments to contractors ($M)	187.6	188.1	82.0	252.6	464.4	537.4	-0.3%
Other goods and services purchases ($M)	771.1	532.1	444.1	638.2	438.3	560.8	44.9%
Total capex spend ($M)	958.6	720.2	526.1	890.8	902.6	1,098.2	33.1%
Total business purchases ($M)	8,824.1	6,537.7	6,473.3	7,307.4	7,673.6	10,076.0	35.0%
COMMUNITY CONTRIBUTIONS							
No. of community organisations supported	1,137	980	997	991	1,298	1,014	16.0%
Total community contributions ($M)	9.5	7.3	6.8	9.9	12.3	11.2	30.9%
LOCAL COUNCIL PAYMENTS							
Total local government payments ($M)	95.5	61.2	46.5	58.6	60.6	59.1	55.9%
STATE GOVERNMENT PAYMENTS							
Total state government payments ($M)	2,337.9	1,996.0	1,700.6	1,290.3	1,323.6	1,141.6	17.1%
TOTAL SPEND ($M)	**13,720.6**	**10,724.6**	**10,449.2**	**10,831.6**	**11,324.3**	**13,639.9**	**27.9%**
TOTAL WORKFORCE (FTEs)	**25,844**	**25,335**	**-**	**-**	**-**	**-**	**2.0%**

Indirect and Consumption-Induced Spending

The I-O modelling conducted for this project has estimated the direct and indirect (Type I) and consumption-induced (Type II) effects flowing from the business expenditure, community and government contributions of $11.4 billion, and the employment expenditure of $2.5 billion. These impacts have been modelled separately but simultaneously for each region and then aggregated to identify the level of impacts on output, incomes, employment and industry value added in New South Wales. In 2018/19, the $13.7 billion in direct spending in New South Wales by the 28 companies surveyed supported additional combined supply chain and consumption-induced effects of **137,386 full-time equivalent jobs** and **$28.6 billion in aggregate spending** ($8.9 billion in wages and salaries and $19.7 billion in purchases of goods and services).

Table 3: Economic Impact of Companies Surveyed, 2018/19

	New South Wales	Rest of Australia	Total Australia
Value Added ($M)			
Direct	13,721	5,834	19,555
% of GSP/GDP	2.2%	0.4%	1.0%
Indirect	10,308	3,919	14,228
Total value added (Type I)	24,029	9,753	33,782
% of GSP/GDP	3.8%	0.7%	1.7%
Consumption-induced	5,841	2,324	8,165
Total value added (Type II)	29,870	12,078	41,947
% of GSP/GDP	4.8%	0.9%	2.2%
Employment (FTEs)			
Direct	18,820	487	19,307
% of total state/national employment	0.5%	0.0%	0.2%
Indirect	84,442	23,514	107,956
Total employment (Type I)	103,261	24,002	127,263
% of total state/national employment	2.6%	0.3%	1.0%
Consumption-induced	52,944	14,739	67,682
Total employment (Type II)	156,205	38,740	194,945
% of total state/national employment	3.9%	0.5%	1.5%
Business spend (incl. community contributions and govt payments) ($M)			
Direct	11,267	5,769	17,036
Indirect	8,263	4,106	12,369
Total business spend (Type I)	19,530	9,876	29,406
Consumption-induced	11,388	4,369	15,757
Total business spend (Type II)	30,918	14,245	45,163
Wages & salaries ($M)			
Direct	2,454	65	2,518
Indirect	5,608	2,021	7,629
Total wages & salaries (Type I)	8,061	2,086	10,147
Consumption-induced	3,338	1,070	4,408
Total wages & salaries (Type II)	11,399	3,155	14,555

Note: Consumption-induced impacts seek to measure the change in consumption for all goods and services that arise from an increase in final output from the industry in question. Direct employment and wages relate specifically to **full-time equivalent residing direct employees** (not including contractors).

The results of the I-O modelling allow predictions to be made about the total size of impacts from the surveyed companies' direct expenditure on both the New South Wales and Australian economies. For each key measure, the total impact on the economy is the sum of the direct effects from industry, the indirect effects through the business chain, and the consumption-induced effects. The total economic impact (i.e. direct, indirect and induced, or Type II impact) from the surveyed companies to the New South Wales economy in 2018/19 amounted to:

- $33.4 billion in output/turnover (or purchases from supplying businesses);
- $29.9 billion in value added (contribution to gross state product);
- $11.4 billion in income (wages and salaries); and
- 156,205 full-time equivalent jobs.

Estimates of the contribution to Gross State Product (GSP) require an estimate of the initial contribution of the industry in terms of direct value added – defined as compensation of employees plus gross operating surplus plus other taxes less subsidies on production – plus the value added effects generated through the business chain and consumption-induced effects. A precise measure of direct value added for the companies surveyed is not available from the data; an estimated value added of $13.7 billion – equivalent to the sum of input and labour costs, or total direct spending – has instead been adopted.

When business supply and employment effects are considered, the 28 companies surveyed **generated approximately $29.9 billion in value added** ($13.7 billion in direct effects, and $16.1 billion in supply chain and consumption-induced effects) in 2018/19, and **sustained approximately 156,205 jobs** (of which 18,820 were in direct employment and 137,386 in additional employment). This means that the activity generated by these companies **contributed 4.8% of Gross State Product** ($625.4 billion) **and 3.9% of total employment** (4,027,944 persons) in New South Wales in 2018/19. Under the more conservative Type I scenario (i.e. excluding consumption-induced effects), direct spending by the companies surveyed and flow-on impacts contributed 3.8% to GSP and 2.6% of total state employment.

Over the past eight years, the New South Wales minerals and energy sector, as represented through the companies participating in the NSWMC survey, has **generated approximately $198.5 billion in value added**, including $92.8 billion in direct spending, and has supported an average workforce of approximately 141,565 jobs per annum.

Regional Impact

As specified earlier, the postcode expenditure data provided by companies was aggregated using geographical concordances at the regional (SD) and local (LGA) levels. Surveyed companies' direct expenditure, split across salaries, supplier, local government and community contribution spend, varied considerably across regional areas. The level of employment, and direct expenditure on employees and business purchases in 2018/19 is summarised for the 12 major regions in New South Wales in Table 4.

The largest proportion of direct expenditure from the 28 companies surveyed in New South Wales in 2018/19 was in the Hunter region ($5.4 billion), followed by the Sydney ($3.2 billion), Illawarra ($829.2 million) and Central West ($781.3 million) regions. With regard to employment, the largest workforce share (i.e. number of direct full-time resident employees and contract workers by place of operation) across New South Wales was also recorded in the Hunter region (13,347 FTEs, or 51.6%), followed by the Central West (3,266 FTEs, or 12.6%), Northern (2,861 FTEs, or 11.1%), North Western (2,338 FTEs, or 9.0%) and Illawarra (2,107 FTEs, or 8.2%).

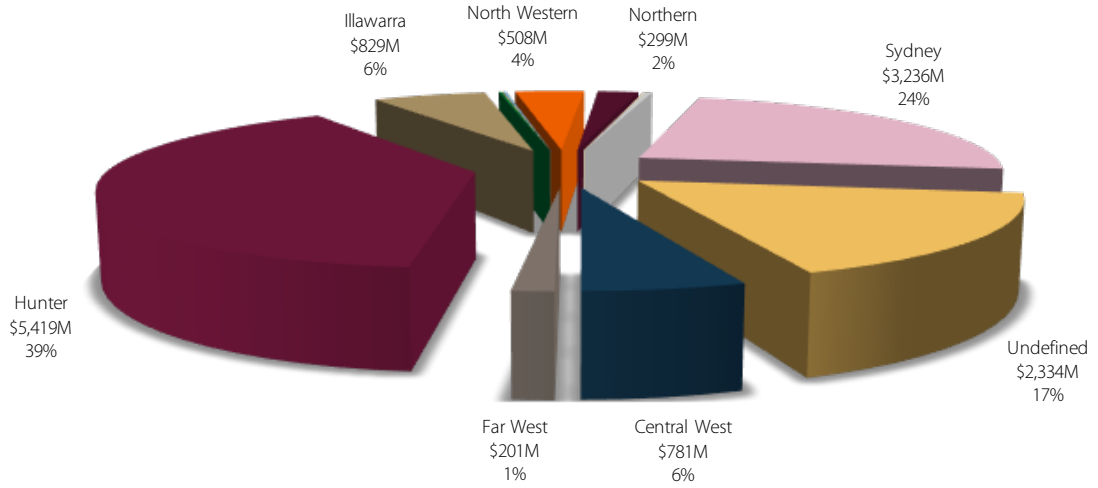
Table 4: Direct Impact of Surveyed Companies by Region, 2018/19

Region	Residing employees	Associated salaries	Total workforce[b]	Business purchases & community contributions	No. of businesses	Total direct spending	% of total direct spend, NSW
	(FTEs)	($M)	(FTEs)	($M)		($M)	
Central West	2,619	318.1	3,266	463.2	632	781.3	5.7%
Far West	490	56.9	552	144.4	186	201.2	1.5%
Hunter	10,010	1,380.7	13,347	4,038.0	3,282	5,418.6	39.5%
Illawarra	1,384	187.1	2,107	642.2	468	829.2	6.0%
Mid-North Coast	31	3.4	31	16.8	31	20.2	0.1%
Murray	20	1.9	20	5.0	32	6.9	0.1%
Murrumbidgee	21	2.2	21	18.3	36	20.5	0.1%
North Western	2,041	242.4	2,338	265.8	468	508.2	3.7%
Northern	1,499	153.3	2,861	145.3	442	298.6	2.2%
Richmond-Tweed	12	1.2	12	5.8	18	7.0	0.1%
South Eastern	22	6.1	82	43.1	108	49.1	0.4%
Sydney	654	98.7	1,189	3,137.1	2,550	3,235.7	23.6%
Unallocated[a]	15	1.8	17	4.5	-	2,344.1	17.1%
Total NSW	**18,820**	**2,453.6**	**25,844**	**8,929.1**	**7,003**	**13,720.6**	**100.0%**

Note: (a) Includes state government payments. (b) Includes full-time resident direct employees and contract workers by place of operation.

Direct Stimulus by Region of Companies Surveyed

New South Wales, 2018/19



The economic modelling conducted for this project has estimated the indirect and consumption-induced effects flowing from the two key direct impacts on the economy, i.e. those generated by business supply chain expenditure in each SD and those generated by consumption-induced spending in each region. These impacts have been modelled separately but simultaneously for each region and then aggregated to identify the level of impacts on output, incomes, employment and industry value added, the results of which are outlined in Table 5.

Table 5: Type II Indirect and Consumption-Induced Impacts of Companies Surveyed by Region, 2018/19

Region	Indirect full-time employees (FTEs)	Associated salaries ($M)	Supply of goods and services ($M)	Total indirect value added ($M)
Central West	11,545	433.3	957.9	929.7
Far West	3,626	156.9	325.9	288.2
Hunter	58,288	3,455.4	7,204.4	6,038.8
Illawarra	13,418	689.4	1,352.8	1,197.8
Mid-North Coast	401	14.5	32.6	32.1
Murray	98	4.3	8.8	7.7
Murrumbidgee	130	5.4	12.1	11.6
North Western	7,850	292.7	648.9	631.5
Northern	4,697	175.3	388.1	377.5
Richmond-Tweed	94	4.9	9.8	8.5
South Eastern	875	31.8	71.5	70.2
Sydney	21,202	1,715.1	4,701.4	3,467.2
Undefined	15,162	1,966.7	3,937.5	3,088.6
Total NSW	**137,386**	**8,945.7**	**19,651.5**	**16,149.3**

Table 6 shows that the direct expenditure of the 28 companies surveyed has the highest overall impact in the Hunter region, with estimated total value added of $11.5 billion, meaning these companies contributed 22.8% to gross regional product ($50.2 billion) in 2018/19. The impact in the Hunter region was significantly higher than other regional economies, the next highest of which was Sydney ($6.7 billion in value added) and Illawarra ($2.0 billion). The Far West region recorded the highest proportion of GRP contributed by the companies surveyed (37.2%), followed by the Hunter (22.8%), Central West (14.9%), North Western (14.7%) and Illawarra (9.8%) regions.

Table 6: Total Economic Impact of Companies Surveyed by Region, 2018/19 (Type II)

Region	Total output ($M)	Total estimated value added ($M)	Gross regional product ($M)	Total value added as % of GRP
Central West	1,739.1	1,710.9	11,497.7	14.9%
Far West	527.1	489.4	1,314.8	37.2%
Hunter	12,623.0	11,457.4	50,229.9	22.8%
Illawarra	2,182.0	2,027.0	20,766.9	9.8%
Mid-North Coast	52.8	52.2	12,741.2	0.4%
Murray	15.7	14.6	6,644.5	0.2%
Murrumbidgee	32.5	32.0	10,890.2	0.3%
North Western	1,157.1	1,139.6	7,776.1	14.7%
Northern	686.6	676.0	12,428.5	5.4%
Richmond-Tweed	16.8	15.5	12,796.0	0.1%
South Eastern	120.6	119.3	10,440.8	1.1%
Sydney	7,937.1	6,703.0	467,877.5	1.4%
Undefined	6,281.6	5,432.7	-	-
Total NSW	**33,372.0**	**29,869.9**	**625,405.0**	**4.8%**

With regard to employment, the companies surveyed again had the highest impact on jobs in the Hunter region, supporting 68,297 FTEs, comprising 17.6% of the total regional workforce. The Sydney (21,856 FTEs), Illawarra (14,802 FTEs) and Central West (14,164 FTEs) regions recorded the next highest number of employees. The Far West region recorded the greatest proportion of total jobs (44.5%) from the impact of the 28 companies surveyed.

Table 7: Total Employment Impact of Surveyed Companies by Region, 2018/19 (Type II Impact)

Region	Total direct, indirect and induced employees (FTEs)	Total regional employment (FTEs)	% of total employment
Central West	14,164	92,896	15.2%
Far West	4,116	9,240	44.5%
Hunter	68,297	357,725	19.1%
Illawarra	14,802	204,965	7.2%
Mid-North Coast	432	114,057	0.4%
Murray	118	53,897	0.2%
Murrumbidgee	151	82,785	0.2%
North Western	9,890	59,413	16.6%
Northern	6,196	83,122	7.5%
Richmond-Tweed	106	116,302	0.1%
South Eastern	897	108,773	0.8%
Sydney	21,856	2,744,185	0.8%
Undefined	15,177	-	-
Total NSW	**156,205**	**4,027,944**	**3.9%**

Central West

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $781.3 million in direct spending (representing 28.9% annual growth) through:

- Total workforce of 3,266 FTEs, including 647 contract workers whose place of work was in the region;
- $318.1 million in wages and salaries to 2,619 direct full-time employees (not including contractors);
- $445.6 million in purchases of goods and services from 632 local businesses (includes contractors);
- $1.5 million in contributions to 338 community organisations; and
- $16.1 million in local government payments.

Indirect contribution

This $781.3 million in direct spending generated:

- $957.9 million in additional supply chain goods and services purchases; and
- $433.3 million in wages and salaries associated with 11,545 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $1.4 billion in supplying business purchases;
- $751.4 million in total wages and salaries paid to workers;
- $1.7 billion in value added, or 14.9% of total GRP in this region ($11.5 billion); and
- 14,164 full-time equivalent jobs, or 15.2% of the entire workforce in this region.

Far West

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $201.2 million in direct spending (representing 36.9% annual growth) through:

- Total workforce of 552 FTEs, including 62 contract workers whose place of work was in the region;
- $56.9 million in wages and salaries to 490 direct full-time employees (not including contractors);
- $142.4 million in purchases of goods and services from 136 local businesses (includes contractors) and contributions to 11 community organisations; and
- $1.9 million in local government payments.

Indirect contribution

This $201.2 million in direct spending generated:

- $325.9 million in additional supply chain goods and services purchases; and
- $156.9 million in wages and salaries associated with 3,626 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $468.2 million in supplying business purchases;
- $213.7 million in total wages and salaries paid to workers;
- $489.4 million in value added, or 37.2% of total GRP in this region ($1.3 billion); and
- 4,116 full-time equivalent jobs, or 44.5% of the entire workforce in this region.

Hunter

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $5.4 billion in direct spending (representing 25.9% annual growth) through:

- Total workforce of 13,347 FTEs, including 3,338 contract workers whose place of work was in the region;
- $1.4 billion in wages and salaries to 10,010 direct full-time employees (not including contractors);
- $4.0 billion in purchases of goods and services from 3,282 local businesses (includes contractors);
- $4.0 million in contributions to 397 community organisations; and
- $55.0 million in local government payments.

Indirect contribution

This $5.4 billion in direct spending generated:

- $7.2 billion in additional supply chain goods and services purchases; and
- $3.5 billion in wages and salaries associated with 58,288 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $11.2 billion in supplying business purchases;
- $4.8 billion in total wages and salaries paid to workers;
- $11.5 billion in value added, or 22.8% of total GRP in this region ($50.2 billion); and
- 68,297 full-time equivalent jobs, or 19.1% of the entire workforce in this region.

Illawarra

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $829.2 million in direct spending (representing 24.4% annual growth) through:

- Total workforce of 2,107 FTEs, including 723 contract workers whose place of work was in the region;
- $187.1 million in wages and salaries to 1,384 direct full-time employees (not including contractors);
- $641.5 million in purchases of goods and services from 468 local businesses (includes contractors) and contributions to 24 community organisations; and
- $0.7 million in local government payments.

Indirect contribution

This $829.2 million in direct spending generated:

- $1.4 billion in additional supply chain goods and services purchases; and
- $689.4 million in wages and salaries associated with 13,418 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $2.0 billion in supplying business purchases;
- $876.4 million in total wages and salaries paid to workers;
- $2.0 billion in value added, or 9.8% of total GRP in this region ($20.8 billion); and
- 14,802 full-time equivalent jobs, or 7.2% of the entire workforce in this region.

Mid-North Coast

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $20.2 million in direct spending (representing 14.3% annual growth) through:

- $3.4 million in wages and salaries to 31 direct full-time employees (not including contractors); and
- $16.8 million in purchases of goods and services from 31 local businesses (includes contractors), community contributions and local government payments.

Indirect contribution

This $20.2 million in direct spending generated:

- $32.6 million in additional supply chain goods and services purchases; and
- $14.5 million in wages and salaries associated with 401 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $49.4 million in supplying business purchases;
- $17.8 million in total wages and salaries paid to workers;
- $52.2 million in value added, or 0.4% of total GRP in this region ($12.7 billion); and
- 432 full-time equivalent jobs, or 0.4% of the entire workforce in this region.

Murray

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $6.9 million in direct spending (representing 14.3% annual growth) through:

- $1.9 million in wages and salaries to 20 direct full-time employees (not including contractors); and
- $5.0 million in purchases of goods and services from 32 local businesses (includes contractors), community contributions and local government payments.

Indirect contribution

This $6.9 million in direct spending generated:

- $8.8 million in additional supply chain goods and services purchases; and
- $4.3 million in wages and salaries associated with 98 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $12.3 million in supplying business purchases;
- $6.2 million in total wages and salaries paid to workers;
- $14.6 million in value added, or 0.2% of total GRP in this region ($6.6 billion); and
- 118 full-time equivalent jobs, or 0.2% of the entire workforce in this region.

Murrumbidgee

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $20.5 million in direct spending through:

- $2.2 million in wages and salaries to 21 direct full-time employees (not including contractors); and
- $18.3 million in purchases of goods and services from 36 local businesses (includes contractors), community contributions and local government payments.

Indirect contribution

This $20.5 million in direct spending generated:

- $12.1 million in additional supply chain goods and services purchases; and
- $5.4 million in wages and salaries associated with 130 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $30.3 million in supplying business purchases;
- $7.6 million in total wages and salaries paid to workers;
- $32.0 million in value added, or 0.3% of total GRP in this region ($10.9 billion); and
- 151 full-time equivalent jobs, or 0.2% of the entire workforce in this region.

North Western

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $508.2 million in direct spending (representing 66.7% annual growth) through:

- Total workforce of 2,338 FTEs, including 297 contract workers whose place of work was in the region;
- $242.4 million in wages and salaries to 2,041 direct full-time employees (not including contractors);
- $251.8 million in purchases of goods and services from 468 local businesses (includes contractors);
- $1.0 million in contributions to 145 community organisations; and
- $13.0 million in local government payments.

Indirect contribution

This $508.2 million in direct spending generated:

- $648.9 million in additional supply chain goods and services purchases; and
- $292.7 million in wages and salaries associated with 7,850 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $900.7 million in supplying business purchases;
- $535.1 million in total wages and salaries paid to workers;
- $1.1 billion in value added, or 14.7% of total GRP in this region ($7.8 billion); and
- 9,890 full-time equivalent jobs, or 16.6% of the entire workforce in this region.

Northern

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $298.6 million in direct spending (representing 25.3% annual growth) through:

- Total workforce of 2,861 FTEs, including 1,362 contract workers whose place of work was in the region;
- $153.3 million in wages and salaries to 1,499 direct full-time employees (not including contractors);
- $138.6 million in purchases of goods and services from 442 local businesses (includes contractors);
- $0.7 million in contributions to 110 community contributions; and
- $6.0 million in local government payments.

Indirect contribution

This $298.6 million in direct spending generated:

- $388.1 million in additional supply chain goods and services purchases; and
- $175.3 million in wages and salaries associated with 4,697 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $526.7 million in supplying business purchases;
- $328.7 million in total wages and salaries paid to workers;
- $676.0 million in value added, or 5.4% of total GRP in this region ($12.4 billion); and
- 6,196 full-time equivalent jobs, or 7.5% of the entire workforce in this region.

Richmond-Tweed

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $7.0 million in direct spending (representing 151.2% annual growth) through:

- $1.2 million in wages and salaries to 12 direct full-time employees (not including contractors); and
- $5.8 million in purchases of goods and services from 18 local businesses (includes contractors), community contributions and local government payments.

Indirect contribution

This $7.0 million in direct spending generated:

- $9.8 million in additional supply chain goods and services purchases; and
- $4.9 million in wages and salaries associated with 94 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $15.6 million in supplying business purchases;
- $6.1 million in total wages and salaries paid to workers;
- $15.5 million in value added, or 0.1% of total GRP in this region ($12.8 billion); and
- 106 full-time equivalent jobs, or 0.1% of the entire workforce in this region.

South Eastern

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $49.1 million in direct spending (representing 211.7% annual growth) through:

- Total workforce of 82 FTEs, including 60 contract workers whose place of work was in the region;
- $6.1 million in wages and salaries to 22 direct full-time employees (not including contractors);
- $43.1 million in purchases of goods and services from 108 local businesses (includes contractors), community contributions and local government payments.

Indirect contribution

This $49.1 million in direct spending generated:

- $71.5 million in additional supply chain goods and services purchases; and
- $31.8 million in wages and salaries associated with 875 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $114.5 million in supplying business purchases;
- $37.9 million in total wages and salaries paid to workers;
- $119.3 million in value added, or 1.1% of total GRP in this region ($10.4 billion); and
- 897 full-time equivalent jobs, or 0.8% of the entire workforce in this region.

Sydney

Direct contribution

In this region during 2018/19, the 28 companies surveyed contributed $3.2 billion in direct spending (representing 35.9% annual growth) through:

- Total workforce of 1,189 FTEs, including 534 contract workers whose place of work was in the region;
- $98.7 million in wages and salaries to 654 direct full-time employees (not including contractors);
- $3.1 billion in purchases of goods and services from 2,550 local businesses (includes contractors);
- $1.9 million in contributions to 98 community organisations; and
- $1.2 million in local government payments.

Indirect contribution

This $3.2 billion in direct spending generated:

- $4.7 billion in additional supply chain goods and services purchases; and
- $1.7 billion in wages and salaries associated with 21,202 additional jobs supported in this region.

Total contribution

The total economic contribution in this region (direct, indirect and induced) during 2018/19 from the 28 companies surveyed amounted to:

- $7.8 billion in supplying business purchases;
- $1.8 billion in total wages and salaries paid to workers;
- $6.7 billion in value added, or 1.4% of total GRP in this region ($467.9 billion); and
- 21,856 full-time equivalent jobs, or 0.8% of the entire workforce in this region.

Local Impact

Direct Spending

Similar to SDs or regions, the expenditure data provided by the 28 companies surveyed was aggregated using geographical concordances at the local government area (LGA) level. As expected, companies' expenditures, split across salaries supplier and community contribution expenditure, varied considerably across LGAs. The level of employment, direct expenditure on employees and business supply chain purchases and community and local government contributions is summarised for the 128 LGAs in New South Wales in Appendix A.

Table 8 shows the distribution of total direct spending (i.e. salaries, business purchases, local council and community contributions) from the surveyed companies across New South Wales to the top 20 expenditure LGAs. Sydney LGA recorded the largest share of direct expenditure in 2018/19 ($1.6 billion), followed by Newcastle ($1.4 billion), Maitland ($802.6 million), Singleton ($889.6 million) and Cessnock ($593.7 million).

Total workforce associated with the 28 companies surveyed were greatest in the Hunter Valley region, specifically Singleton LGA (4,427 FTEs), followed by the Muswellbrook (2,378 FTEs), Mid-Western Regional (1,857 FTEs), Maitland (1,654 FTEs) and Wollongong (1,652 FTEs) LGAs.

Table 8: Direct Impact of Surveyed Companies, Top 20 LGAs by Expenditure, 2018/19

Local government area	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)
Sydney (C)	33	5.7	34	1,576.0	1,581.8
Newcastle (C)	810	111.0	814	1,331.6	1,442.6
Maitland (C)	1,654	256.6	1,654	802.6	1,059.2
Singleton (A)	2,231	300.2	4,427	589.5	889.6
Cessnock (C)	1,528	196.6	1,563	397.1	593.7
Muswellbrook (A)	1,296	173.2	2,378	399.8	573.0
Parramatta (C)	6	0.5	6	547.9	548.4
Wollongong (C)	929	124.8	1,652	412.3	537.1
Lake Macquarie (C)	1,249	179.5	1,254	356.2	535.8
Mid-Western Regional (A)	1,582	195.4	1,857	180.7	376.0
Orange (C)	528	71.8	953	195.7	267.5
Lithgow (C)	674	98.6	674	126.3	224.9
Broken Hill (C)	490	56.9	552	144.4	201.2
Wingecarribee (A)	34	4.7	34	193.9	198.6
Gunnedah (A)	729	76.4	1,034	64.5	140.9
Camden (A)	36	4.6	36	115.3	119.9
Central Coast (C)	207	29.6	212	86.0	115.6
Upper Hunter Shire (A)	659	86.8	676	25.6	112.4
Port Stephens (A)	283	39.2	283	67.8	107.0
Fairfield (C)	n.a.	n.a.	34	92.1	92.3

Note: (a) Includes full-time resident direct employees and contract workers by place of operation.

Indirect and Consumption-Induced Spending

The I-O modelling estimated the indirect and consumption-induced effects flowing from business supply chain expenditure and consumption spending in each LGA. These impacts have been modelled separately and then aggregated to identify the level of Type II impacts on output, incomes, employment and industry value added for each region. The I-O model allowed for spending leakages to imports in both the first and subsequent rounds of economic activity.

Modelling consumption-induced impacts is problematic for smaller shires with limited economic structures because only a subset of goods and services are available. Smaller and specialised mining LGAs tend to have larger expenditure leakages, typically to the nearest large regional centre. To incorporate this into the modelling, a further correction factor based on extensive research of retail expenditure patterns in regional areas conducted by Lawrence Consulting has been applied for LGAs, as shown in Table 9.

Table 9: Rates of Adjustment for Local Consumption Expenditure by LGA Population Size

Population of LGA	Rate of consumption expenditure in LGA
0 – 2,000	40%
2,000 – 5,000	46.7%
5,000 – 10,000	53.3%
10,000 – 30,000	73.3%
30,000 – 50,000	80%
50,000 – 100,000	86.7%
Over 100,000	100%

The total economic impact (i.e. both Type I and Type II model scenarios) of the 28 companies' direct spending for each LGA across New South Wales in 2018/19 is contained in Appendix B, with a summary of the top 20 LGAs by Type II value added provided in Table 10. The results show that the 28 surveyed companies' expenditure has the highest overall impact in the Sydney LGA, with total estimated value added of $3.3 billion, followed by Newcastle ($3.1 billion), Maitland ($2.2 billion), Singleton ($1.6 billion) and Wollongong ($1.3 billion).

With regard to employment, the surveyed companies had the greatest impact on jobs in the Newcastle LGA, with 15,398 FTEs, followed by the Maitland (12,984 FTEs) and Sydney (10,208 FTEs) LGAs, whilst the regions where the impact of the 28 companies' direct spending accounted for the largest share of employment were Muswellbrook (75.9%), Singleton (75.3%) and Mid-Western Regional (63.2%).

Table 10: Total Economic Impact of Surveyed Companies, Top 20 LGAs by Value Added, 2018/19 (Type II Impact)

Local government area	Total estimated value added ($M)	% of gross regional product (GRP)	Total employees (FTEs)	% of total employment
Sydney (C)	3,256.9	2.1%	10,208	6.2%
Newcastle (C)	3,038.3	19.0%	15,398	17.7%
Maitland (C)	2,223.4	50.8%	12,984	30.0%
Singleton (A)	1,645.4	25.3%	9,666	75.3%
Wollongong (C)	1,325.3	11.6%	9,776	9.5%
Cessnock (C)	1,263.1	56.9%	8,039	30.0%
Lake Macquarie (C)	1,132.2	13.6%	7,148	7.3%
Parramatta (C)	1,128.7	3.8%	3,526	2.7%
Muswellbrook (A)	1,053.3	32.2%	6,035	75.9%
Mid-Western Regional (A)	852.0	58.8%	7,503	63.2%
Orange (C)	553.4	19.4%	4,067	19.2%
Lithgow (C)	533.3	43.7%	4,519	48.2%
Broken Hill (C)	489.4	42.2%	4,116	49.2%
Wingecarribee (A)	452.0	20.5%	2,783	13.2%
Gunnedah (A)	314.2	44.5%	2,884	50.8%
Camden (A)	249.0	5.7%	834	1.6%
Central Coast (C) (NSW)	247.6	1.7%	1,042	0.6%
Upper Hunter Shire (A)	242.9	28.9%	2,067	27.3%
Port Stephens (A)	227.0	5.0%	1,470	4.4%
Fairfield (C)	189.8	2.0%	598	0.7%

CONCLUSION

This report contains the outcomes of two key pieces of analysis. The first is the collection of primary data by the NSW Minerals Council (NSWMC) that identifies the direct impact of 28 exploration and mining companies by local and regional areas in New South Wales. The second is the conduct of I-O modelling that identifies the flow-on effects through the economy at a State, Regional, Local Government Authority and State and Federal electoral boundary levels.

The results of the analysis demonstrate that incomes and expenditures from the 28 companies surveyed are widely distributed across the state generating significant flow-on effects, and that traditional economic techniques understate the true contribution of the mining sector as they do not attribute the output from related sectors such as construction, rail transport, utilities, professional services, manufacturing and contract workers.

The analysis identifies that the 28 companies surveyed contributed an estimated $13.7 billion in direct spending to the state economy in 2018/19, comprised of:

- Total workforce of 25,844 full-time equivalent workers (including direct resident employees and contract workers);
- **$2.5 billion in wages and salaries** to approximately **18,820 full-time equivalent residing direct employees** (not including contractors), representing an average salary level of $130,374 per annum across the sector;
- **$8.9 billion** in purchases of goods and services from approximately 7,003 local businesses, community contributions and payments to local government (including rates, developer contributions and other payments); and
- **$2.3 billion** in state government payments (including royalties, stamp duty, payroll tax and land tax).

Of the total workforce employed by the 28 companies surveyed, 18,820 were direct full-time employees, or 72.8% of the total workforce – of which 1,798 direct workers, or 9.2% were female – with another 7,024 contract workers (27.2%).

Compared to 2017/18, direct spending in NSW of the companies surveyed in 2018/19 increased by approximately $3.0 billion, or 27.9%, whilst the total number of employees, both direct and contract workers, grew annually by 2.0%.

The economic stimulus provided by the 28 mining companies in 2018/19 also extended to other states, with an additional $5.8 billion in direct spending, which combined with the impact in New South Wales for a total impact of $19.6 billion for the whole of Australia, comprised of:

- $2.5 billion in wages and salaries to approximately 19,307 full-time direct residing employees; and
- $17.0 billion in purchases of goods and services from local businesses, government (state and local) and community contributions.

The total impact of the $13.7 billion in direct spending by companies surveyed, measured through supply chain and consumption spending effects, amounted to an estimated 4.8% of Gross State Product and 3.9% of employment in New South Wales in 2018/19. If a more conservative approach excluding consumption-induced effects is adopted, direct spending by the companies surveyed and flow-on impacts would still contribute 3.8% to GSP and 2.6% of total state employment.

Over the past eight years during which the annual NSWMC survey of member companies has been conducted, the New South Wales minerals and energy sector has generated approximately $198.5 billion in value added, including $92.8 billion in direct spending, and has supported an average workforce of approximately 141,565 jobs per annum.

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APPENDIX A: DIRECT IMPACTS BY LGA

Table A1: Direct Impacts of Spending by Companies Surveyed by LGA, 2018/19

Local government area	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)	No. of businesses directly supported
Albury (C)	n.a.	n.a.	n.a.	n.a.	n.a.	8
Armidale Regional (A)	14	1.1	14	2.0	3.1	16
Ballina (A)	n.a.	n.a.	n.a.	n.a.	n.a.	6
Balranald (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Bathurst Regional (A)	201	28.1	203	35.4	63.4	65
Bayside (A)	5	0.8	5	42.4	43.2	83
Bega Valley (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Bellingen (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Berrigan (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Blacktown (C)	6	0.6	6	89.2	89.8	146
Bland (A)	278	31.6	440	5.7	37.3	12
Blayney (A)	128	16.5	129	16.3	32.8	18
Blue Mountains (C)	80	11.0	80	1.1	12.1	17
Bogan (A)	140	16.9	144	5.0	21.9	n.a.
Bourke (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Brewarrina (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Broken Hill (C)	490	56.9	552	144.4	201.2	185
Burwood (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Byron (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Cabonne (A)	98	12.5	148	27.2	39.7	32
Camden (A)	36	4.6	36	115.3	119.9	44
Campbelltown (C) (NSW)	30	4.0	540	62.0	66.0	74
Canada Bay (A)	n.a.	n.a.	n.a.	8.3	8.6	19
Canterbury-Bankstown (A)	7	0.7	7	52.6	53.4	95
Carrathool (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Central Coast (C) (NSW)	207	29.6	212	86.0	115.6	122
Central Darling (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Cessnock (C)	1,528	196.6	1,563	397.1	593.7	215
Clarence Valley (A)	6	0.8	6	n.a.	1.1	n.a.
Cobar (A)	120	15.9	121	38.4	54.3	32
Coffs Harbour (C)	n.a.	n.a.	n.a.	3.8	4.1	8
Coolamon (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Coonamble (A)	5	0.6	8	n.a.	n.a.	n.a.
Cootamundra-Gundagai (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Cowra (A)	19	2.1	19	n.a.	2.2	n.a.
Cumberland (A)	6	0.7	6	20.1	20.8	68
Dubbo Regional (A)	181	16.5	194	47.4	63.8	117
Dungog (A)	156	19.5	156	5.2	24.7	20
Edward River (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Eurobodalla (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Fairfield (C)	n.a.	n.a.	n.a.	92.1	92.3	119
Federation (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Forbes (A)	141	10.3	141	3.3	13.6	20
Georges River (A)	6	0.4	6	4.6	5.0	21
Gilgandra (A)	9	1.0	9	n.a.	1.0	n.a.
Glen Innes Severn (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Goulburn Mulwaree (A)	5	3.1	61	3.1	6.2	56
Greater Hume Shire (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Table A1: Direct Impacts of Spending by Companies Surveyed by LGA, 2018/19

Local government area	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)	No. of businesses directly supported
Griffith (C)	n.a.	n.a.	n.a.	n.a.	n.a.	5
Gunnedah (A)	729	76.4	1,034	64.5	140.9	159
Gwydir (A)	13	1.3	16	2.1	3.4	n.a.
Hawkesbury (C)	7	0.9	8	4.8	5.6	22
Hay (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Hilltops (A)	5	0.7	5	n.a.	1.1	n.a.
Hornsby (A)	7	1.1	7	4.7	5.9	55
Hunters Hill (A)	n.a.	n.a.	n.a.	1.8	4.1	9
Inner West (A)	8	1.0	8	10.9	11.9	45
Inverell (A)	9	0.9	9	6.3	7.2	5
Junee (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Kempsey (A)	n.a.	n.a.	n.a.	2.1	2.4	6
Kiama (A)	75	10.3	75	3.0	13.3	15
Ku-ring-gai (A)	11	3.8	11	11.8	15.6	31
Kyogle (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Lachlan (A)	46	4.2	49	n.a.	5.2	19
Lake Macquarie (C)	1,249	179.5	1,254	356.2	535.8	531
Lane Cove (A)	n.a.	n.a.	n.a.	9.3	10.5	23
Leeton (A)	n.a.	n.a.	n.a.	9.7	10.3	7
Lismore (C)	n.a.	n.a.	n.a.	1.1	1.4	n.a.
Lithgow (C)	674	98.6	674	126.3	224.9	171
Liverpool (C)	n.a.	n.a.	n.a.	32.1	32.5	39
Liverpool Plains (A)	86	8.9	184	3.7	12.6	31
Lockhart (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Maitland (C)	1,654	256.6	1,654	802.6	1,059.2	544
Mid-Coast (A)	142	18.0	142	62.6	80.7	100
Mid-Western Regional (A)	1,582	195.4	1,857	180.7	376.0	333
Moree Plains (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Mosman (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Murray River (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Murrumbidgee (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Muswellbrook (A)	1,296	173.2	2,378	399.8	573.0	381
Nambucca (A)	7	0.7	7	n.a.	n.a.	n.a.
Narrabri (A)	399	40.0	1,351	37.7	77.7	112
Narrandera (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Narromine (A)	32	2.2	32	n.a.	3.2	5
Newcastle (C)	810	111.0	814	1,331.6	1,442.6	809
North Sydney (A)	6	1.7	6	73.3	75.0	110
Northern Beaches (A)	15	2.5	15	15.1	17.6	109
Oberon (A)	13	1.5	13	4.7	6.2	n.a.
Orange (C)	528	71.8	953	195.7	267.5	186
Parkes (A)	363	24.8	363	35.3	60.2	59
Parramatta (C)	6	0.5	6	547.9	548.4	184
Penrith (C)	13	1.3	13	36.4	37.7	48
Port Macquarie-Hastings (A)	7	0.8	7	10.3	11.1	13
Port Stephens (A)	283	39.2	283	67.8	107.0	78
Queanbeyan-Palerang Regional (A)	n.a.	n.a.	n.a.	34.6	35.4	31
Randwick (C)	10	2.0	10	77.5	79.5	23
Richmond Valley (A)	n.a.	n.a.	n.a.	3.8	3.8	n.a.
Ryde (C)	n.a.	n.a.	n.a.	68.1	69.1	133
Shellharbour (C)	308	42.2	308	15.2	57.4	25

Table A1: Direct Impacts of Spending by Companies Surveyed by LGA, 2018/19

Local government area	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)	No. of businesses directly supported
Shoalhaven (C)	38	5.0	38	17.7	22.7	19
Singleton (A)	2,231	300.2	4,427	589.5	889.6	503
Snowy Monaro Regional (A)	n.a.	n.a.	n.a.	n.a.	1.0	n.a.
Snowy Valleys (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Strathfield (A)	n.a.	n.a.	n.a.	7.7	7.9	15
Sutherland Shire (A)	35	4.7	35	15.6	20.2	78
Sydney (C)	33	5.7	34	1,576.0	1,581.8	563
Tamworth Regional (A)	238	23.6	238	26.7	50.3	106
Temora (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Tenterfield (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
The Hills Shire (A)	7	0.9	7	17.8	18.8	82
Tweed (A)	5	0.5	5	n.a.	n.a.	n.a.
Upper Hunter Shire (A)	659	86.8	676	25.6	112.4	100
Upper Lachlan Shire (A)	n.a.	n.a.	n.a.	n.a.	n.a.	7
Uralla (A)	n.a.	n.a.	n.a.	1.6	1.8	n.a.
Wagga Wagga (C)	n.a.	n.a.	n.a.	6.4	6.9	15
Walcha (A)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Walgett (A)	13	1.5	15	n.a.	1.6	n.a.
Warren (A)	45	3.9	46	n.a.	4.0	n.a.
Warrumbungle Shire (A)	35	3.6	38	5.0	8.6	13
Waverley (A)	n.a.	n.a.	n.a.	1.1	1.8	11
Weddin (A)	7	0.6	7	n.a.	n.a.	n.a.
Wentworth (A)	17	1.7	17	2.8	4.5	15
Willoughby (C)	n.a.	n.a.	n.a.	34.8	35.5	81
Wingecarribee (A)	34	4.7	34	193.9	198.6	42
Wollondilly (A)	78	11.3	97	15.5	26.8	63
Wollongong (C)	929	124.8	1,652	412.3	537.1	367
Woollahra (A)	7	1.3	7	n.a.	1.6	9
Yass Valley (A)	n.a.	n.a.	n.a.	3.6	3.7	n.a.

Note: Data not published for LGAs with total direct spend of less than $1 million and/or less than 5 residing employees. (a) Includes full-time resident direct employees and contract workers by place of operation.

APPENDIX B: TOTAL ECONOMIC IMPACTS BY LGA

Table B1: Estimated Total Economic Impacts of Spending by Companies Surveyed by LGA (Type II Impact)

Local government area	Total estimated value added ($M)	% of gross regional product (GRP)	Total employees (FTEs)	% of total regional employment
Albury (C)	n.a.	n.a.	n.a.	n.a.
Armidale Regional (A)	7.4	0.4%	68	0.5%
Ballina (A)	1.6	0.1%	14	0.1%
Balranald (A)	n.a.	n.a.	n.a.	n.a.
Bathurst Regional (A)	144.4	5.4%	1,209	5.5%
Bayside (A)	88.6	0.4%	284	0.3%
Bega Valley (A)	1.1	0.1%	10	0.1%
Bellingen (A)	1.1	0.2%	10	0.2%
Berrigan (A)	n.a.	n.a.	n.a.	n.a.
Blacktown (C)	183.9	0.9%	590	0.3%
Bland (A)	78.3	20.9%	787	25.8%
Blayney (A)	71.0	12.5%	600	15.8%
Blue Mountains (C)	29.9	1.3%	192	0.5%
Bogan (A)	45.5	13.9%	432	30.5%
Bourke (A)	n.a.	n.a.	7	0.5%
Brewarrina (A)	n.a.	n.a.	n.a.	n.a.
Broken Hill (C)	489.4	42.2%	4,116	49.2%
Burwood (A)	n.a.	n.a.	n.a.	n.a.
Byron (A)	n.a.	n.a.	6	0.0%
Cabonne (A)	83.5	11.7%	640	8.7%
Camden (A)	249.0	5.7%	834	1.6%
Campbelltown (C)	142.0	2.0%	501	0.6%
Canada Bay (A)	17.5	0.3%	57	0.1%
Canterbury-Bankstown (A)	109.7	0.7%	351	0.2%
Carrathool (A)	n.a.	n.a.	n.a.	n.a.
Central Coast (C)	247.6	1.7%	1,042	0.6%
Central Darling (A)	n.a.	n.a.	n.a.	n.a.
Cessnock (C)	1,263.1	56.9%	8,039	30.0%
Clarence Valley (A)	2.3	0.1%	22	0.1%
Cobar (A)	116.9	16.7%	894	35.0%
Coffs Harbour (C)	10.9	0.3%	89	0.3%
Coolamon (A)	1.2	0.6%	8	0.3%
Coonamble (A)	1.6	0.7%	16	0.8%
Cootamundra-Gundagai (A)	n.a.	n.a.	n.a.	n.a.
Cowra (A)	4.6	0.7%	48	0.9%
Cumberland (A)	43.5	0.3%	146	0.1%
Dubbo Regional (A)	148.6	4.7%	1,236	4.4%
Dungog (A)	53.2	14.2%	467	9.9%
Edward River (A)	n.a.	n.a.	n.a.	n.a.
Eurobodalla (A)	1.8	0.1%	16	0.1%
Fairfield (C)	189.8	2.0%	598	0.7%
Federation (A)	n.a.	n.a.	n.a.	n.a.
Forbes (A)	29.4	5.0%	337	7.1%
Georges River (A)	10.3	0.1%	39	0.0%
Gilgandra (A)	2.1	1.0%	22	1.0%
Glen Innes Severn (A)	n.a.	n.a.	7	0.2%
Goulburn Mulwaree (A)	10.5	0.7%	58	0.4%
Greater Hume Shire (A)	n.a.	n.a.	n.a.	n.a.
Griffith (C)	n.a.	n.a.	5	0.0%
Gunnedah (A)	314.2	44.5%	2,884	50.8%
Gwydir (A)	8.3	3.2%	74	3.2%

Table B1: Estimated Total Economic Impacts of Spending by Companies Surveyed by LGA (Type II Impact)

Local government area	Total estimated value added ($M)	% of gross regional product (GRP)	Total employees (FTEs)	% of total regional employment
Hawkesbury (C)	11.8	0.3%	46	0.1%
Hay (A)	n.a.	n.a.	n.a.	n.a.
Hilltops (A)	2.5	0.3%	23	0.3%
Hornsby (A)	12.5	0.2%	48	0.1%
Hunters Hill (A)	9.5	1.3%	35	0.5%
Inner West (A)	24.7	0.2%	88	0.1%
Inverell (A)	15.5	1.9%	112	1.7%
Junee (A)	n.a.	n.a.	n.a.	n.a.
Kempsey (A)	6.4	0.5%	54	0.5%
Kiama (A)	36.9	4.3%	353	3.2%
Ku-ring-gai (A)	33.6	0.7%	123	0.2%
Kyogle (A)	n.a.	n.a.	5	0.1%
Lachlan (A)	10.8	3.1%	116	4.0%
Lake Macquarie (C)	1,132.2	13.6%	7,148	7.3%
Lane Cove (A)	22.1	0.8%	75	0.3%
Leeton (A)	16.0	2.0%	69	1.2%
Lismore (C)	3.5	0.1%	26	0.1%
Lithgow (C)	533.3	43.7%	4,519	48.2%
Liverpool (C)	67.1	0.6%	214	0.2%
Liverpool Plains (A)	27.7	5.4%	273	8.2%
Lockhart (A)	n.a.	n.a.	n.a.	n.a.
Maitland (C)	2,223.4	50.8%	12,984	30.0%
Mid-Coast (A)	166.9	4.4%	981	2.7%
Mid-Western Regional (A)	852.0	58.8%	7,503	63.2%
Moree Plains (A)	1.3	0.2%	13	0.2%
Mosman (A)	1.6	0.1%	8	0.0%
Murray River (A)	n.a.	n.a.	6	0.1%
Murrumbidgee (A)	n.a.	n.a.	n.a.	n.a.
Muswellbrook (A)	1,053.3	32.2%	6,035	75.9%
Nambucca (A)	2.1	0.3%	21	0.3%
Narrabri (A)	177.5	5.7%	1,640	26.0%
Narrandera (A)	1.0	0.3%	6	0.2%
Narromine (A)	6.5	0.9%	73	2.3%
Newcastle (C)	3,038.3	19.0%	15,398	17.7%
North Sydney (A)	154.1	1.0%	490	1.0%
Northern Beaches (A)	37.3	0.3%	137	0.1%
Oberon (A)	11.4	3.1%	78	2.9%
Orange (C)	553.4	19.4%	4,067	19.2%
Parkes (A)	136.5	16.9%	1,312	18.9%
Parramatta (C)	1,128.7	3.8%	3,526	2.7%
Penrith (C)	77.9	0.8%	258	0.2%
Port Macquarie-Hastings (A)	29.6	0.7%	239	0.7%
Port Stephens (A)	227.0	5.0%	1,470	4.4%
Queanbeyan-Palerang Regional (A)	93.0	3.4%	723	2.1%
Randwick (C)	164.3	2.2%	524	0.6%
Richmond Valley (A)	7.2	0.7%	37	0.4%
Ryde (C)	141.8	0.6%	454	0.6%
Shellharbour (C)	158.2	6.7%	1,496	4.4%
Shoalhaven (C)	54.6	1.4%	394	1.1%
Singleton (A)	1,645.4	25.3%	9,666	75.3%
Snowy Monaro Regional (A)	2.6	0.2%	21	0.2%
Snowy Valleys (A)	n.a.	n.a.	n.a.	n.a.
Strathfield (A)	16.3	0.2%	54	0.2%
Sutherland Shire (A)	43.6	0.5%	181	0.1%
Sydney (C)	3,256.9	2.1%	10,208	6.2%

Table B1: Estimated Total Economic Impacts of Spending by Companies Surveyed by LGA (Type II Impact)

Local government area	Total estimated value added ($M)	% of gross regional product (GRP)	Total employees (FTEs)	% of total regional employment
Tamworth Regional (A)	117.2	3.4%	1,072	3.8%
Temora (A)	1.1	0.3%	8	0.3%
Tenterfield (A)	n.a.	n.a.	n.a.	n.a.
The Hills Shire (A)	38.7	0.4%	132	0.1%
Tweed (A)	1.6	0.0%	18	0.0%
Upper Hunter Shire (A)	242.9	28.9%	2,067	27.3%
Upper Lachlan Shire (A)	n.a.	n.a.	n.a.	n.a.
Uralla (A)	4.8	2.0%	39	1.3%
Wagga Wagga (C)	10.5	0.2%	44	0.1%
Walcha (A)	1.3	0.6%	11	0.7%
Walgett (A)	3.3	1.1%	34	1.3%
Warren (A)	8.2	5.2%	97	7.2%
Warrumbungle Shire (A)	20.3	4.7%	181	4.3%
Waverley (A)	4.1	0.1%	18	0.0%
Weddin (A)	1.4	0.8%	15	0.9%
Wentworth (A)	11.3	2.2%	103	3.4%
Willoughby (C)	73.1	0.6%	237	0.5%
Wingecarribee (A)	452.0	20.5%	2,783	13.2%
Wollondilly (A)	58.2	0.8%	279	1.0%
Wollongong (C)	1,325.3	11.6%	9,776	9.5%
Woollahra (A)	3.9	0.1%	22	0.1%
Yass Valley (A)	7.3	1.1%	44	0.5%

Note: Data not published for LGAs with total value added of less than $1 million and/or less than 5 total employees.

APPENDIX C: DIRECT IMPACTS BY STATE ELECTORATE

Table C1: Direct Impacts of Spending by Companies Surveyed by SED

State electoral division	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)	No. of businesses directly supported
Albury	n.a.	n.a.	n.a.	n.a.	n.a.	12
Auburn	n.a.	n.a.	n.a.	33.8	34.1	86
Ballina	n.a.	n.a.	n.a.	n.a.	1.0	9
Balmain	n.a.	n.a.	n.a.	4.4	5.1	30
Bankstown	n.a.	n.a.	n.a.	30.5	30.6	27
Barwon	1,318	146.5	2,353	236.5	382.9	377
Bathurst	932	131.0	940	158.4	289.4	231
Baulkham Hills	n.a.	n.a.	n.a.	10.7	11.2	43
Bega	7	1.0	7	n.a.	1.3	n.a.
Blacktown	n.a.	n.a.	n.a.	54.2	54.2	59
Blue Mountains	80	11.1	80	n.a.	11.7	14
Cabramatta	n.a.	n.a.	n.a.	3.3	3.3	n.a.
Camden	38	4.9	38	115.5	120.4	46
Campbelltown	26	3.5	506	2.0	5.5	18
Canterbury	n.a.	n.a.	n.a.	n.a.	n.a.	8
Castle Hill	n.a.	n.a.	n.a.	7.6	8.0	39
Cessnock	1,811	234.1	1,966	476.2	710.3	325
Charlestown	364	51.7	364	132.2	183.9	186
Clarence	6	0.8	6	4.0	4.8	n.a.
Coffs Harbour	n.a.	n.a.	n.a.	3.8	4.1	8
Coogee	n.a.	n.a.	n.a.	1.4	2.2	18
Cootamundra	314	35.5	476	7.8	43.3	25
Cronulla	10	1.3	10	8.4	9.6	39
Davidson	6	1.7	6	10.4	12.1	25
Drummoyne	n.a.	n.a.	n.a.	8.2	8.5	18
Dubbo	1,614	191.5	1,883	209.1	400.6	402
East Hills	n.a.	n.a.	n.a.	16.3	16.8	46
Epping	n.a.	n.a.	n.a.	2.5	3.0	18
Fairfield	n.a.	n.a.	n.a.	67.7	67.7	54
Gosford	12	1.6	12	32.7	34.3	28
Goulburn	22	5.4	82	171.7	177.2	86
Granville	n.a.	n.a.	n.a.	38.7	38.9	25
Hawkesbury	8	0.9	8	5.5	6.4	26
Heathcote	76	7.9	217	6.2	14.1	38
Heffron	17	2.1	17	27.0	29.0	86
Holsworthy	n.a.	n.a.	n.a.	20.9	21.1	22
Hornsby	n.a.	n.a.	n.a.	2.5	3.3	36
Keira	450	62.3	483	67.0	129.4	99
Kiama	174	23.8	174	29.8	53.6	32
Kogarah	n.a.	n.a.	n.a.	3.7	3.8	17
Ku-ring-gai	6	2.3	6	5.3	7.7	23
Lake Macquarie	512	74.1	514	154.0	228.2	211
Lakemba	n.a.	n.a.	n.a.	5.7	5.8	14
Lane Cove	6	4.2	6	40.0	44.1	79
Lismore	6	0.5	6	1.3	1.8	5
Liverpool	n.a.	n.a.	n.a.	9.2	9.3	12
Londonderry	n.a.	n.a.	n.a.	3.8	4.1	17
Macquarie Fields	n.a.	n.a.	n.a.	62.0	62.4	61

Table C1: Direct Impacts of Spending by Companies Surveyed by SED

State electoral division	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)	No. of businesses directly supported
Maitland	1,648	255.8	1,648	802.6	1,058.4	544
Manly	6	1.1	6	1.0	2.2	17
Maroubra	n.a.	n.a.	n.a.	102.0	102.8	37
Miranda	9	1.4	9	4.3	5.7	20
Monaro	n.a.	n.a.	n.a.	35.4	36.4	33
Mount Druitt	n.a.	n.a.	n.a.	7.8	8.0	25
Mulgoa	5	0.6	5	9.7	10.3	14
Murray	29	2.9	29	14.1	16.9	33
Myall Lakes	46	6.1	46	45.7	51.8	28
Newcastle	381	56.1	385	1,059.1	1,115.2	584
Newtown	7	0.8	7	6.6	7.4	26
North Shore	6	1.4	6	69.6	71.0	107
Northern Tablelands	45	4.2	51	12.2	16.4	32
Oatley	n.a.	n.a.	n.a.	n.a.	1.2	8
Orange	1,131	119.6	1,605	261.7	381.3	297
Oxley	16	1.7	16	9.9	11.7	14
Parramatta	n.a.	n.a.	n.a.	481.2	481.2	88
Penrith	6	0.6	6	24.2	24.7	29
Pittwater	n.a.	n.a.	n.a.	5.2	5.4	36
Port Macquarie	9	1.2	9	2.9	4.0	8
Port Stephens	279	38.5	279	79.7	118.2	85
Prospect	n.a.	n.a.	n.a.	38.7	39.0	90
Riverstone	n.a.	n.a.	n.a.	3.0	3.1	n.a.
Rockdale	n.a.	n.a.	n.a.	n.a.	n.a.	5
Ryde	n.a.	n.a.	n.a.	48.7	49.0	98
Seven Hills	n.a.	n.a.	n.a.	18.6	18.9	64
Shellharbour	338	45.6	340	7.8	53.4	31
South Coast	24	3.0	24	n.a.	3.6	7
Strathfield	n.a.	n.a.	n.a.	7.8	8.3	20
Summer Hill	n.a.	n.a.	n.a.	4.3	4.6	13
Swansea	275	42.1	277	7.1	49.2	56
Sydney	22	4.3	23	1,560.9	1,565.1	506
Tamworth	997	102.0	1,400	92.4	194.3	273
Terrigal	29	3.6	29	10.6	14.2	17
The Entrance	31	4.1	31	34.1	38.2	37
Tweed	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Upper Hunter	4,433	589.4	7,622	1,005.4	1,594.8	1,078
Vaucluse	8	1.5	8	n.a.	2.3	9
Wagga Wagga	5	0.6	5	6.6	7.2	18
Wakehurst	6	1.0	6	5.6	6.6	42
Wallsend	425	53.6	425	289.4	343.0	234
Willoughby	n.a.	n.a.	n.a.	29.0	30.3	75
Wollondilly	96	13.8	115	45.3	59.1	86
Wollongong	304	41.5	851	339.1	380.6	238
Wyong	93	14.2	97	7.0	21.2	30

Note: Data not published for SEDs with total direct spend of less than $1 million and/or less than 5 residing employees. (a) Includes full-time resident direct employees and contract workers by place of operation.

APPENDIX D: DIRECT IMPACTS BY FEDERAL ELECTORATE

Table D1: Direct Impacts of Spending by Companies Surveyed by CED

Commonwealth electoral division	Residing employees (FTEs)	Associated salaries ($M)	Total workforce[(a)] (FTEs)	Business purchases and community contributions ($M)	Total direct spending ($M)	No. of businesses directly supported
Banks	7	0.7	7	11.7	12.3	44
Barton	n.a.	n.a.	n.a.	4.4	4.7	26
Bennelong	6	1.2	6	69.1	70.2	143
Berowra	9	1.4	9	7.2	8.6	59
Blaxland	n.a.	n.a.	n.a.	44.8	45.0	61
Bradfield	11	4.0	11	15.2	19.1	53
Calare	3,241	426.0	3,994	587.9	1,013.9	817
Chifley	n.a.	n.a.	n.a.	37.1	37.5	58
Cook	16	2.1	16	9.7	11.8	48
Cowper	17	1.8	17	6.6	8.4	21
Cunningham	785	106.0	1,499	402.0	508.0	348
Dobell	128	18.8	131	38.5	57.3	66
Eden-Monaro	9	1.7	9	39.5	41.2	42
Farrer	30	3.0	30	15.4	18.5	45
Fowler	n.a.	n.a.	n.a.	26.4	26.5	23
Gilmore	117	15.8	117	20.1	35.9	35
Grayndler	6	0.9	6	9.5	10.4	37
Greenway	n.a.	n.a.	n.a.	53.0	53.4	91
Hughes	22	2.8	22	10.4	13.2	36
Hume	119	19.2	197	111.3	130.5	167
Hunter	5,332	715.2	8,648	1,197.9	1,913.1	1,267
Kingsford Smith	13	2.5	13	119.1	121.6	96
Lindsay	10	0.9	10	27.7	28.6	42
Lyne	637	92.7	637	171.0	263.7	207
Macarthur	39	5.2	549	108.4	113.7	83
Mackellar	7	1.1	7	12.5	13.6	73
Macquarie	87	11.9	87	5.8	17.7	39
McMahon	7	0.8	7	96.1	97.0	143
Mitchell	6	0.7	6	18.9	19.5	87
Newcastle	771	106.0	775	1,152.6	1,258.6	739
New England	1,022	122.8	1,140	68.3	191.1	267
North Sydney	11	5.2	11	116.0	121.3	205
Page	13	1.5	13	5.9	7.4	10
Parkes	2,252	240.8	3,606	347.9	588.7	655
Parramatta	n.a.	n.a.	n.a.	520.6	521.0	111
Paterson	1,981	288.0	1,981	1,308.9	1,597.0	701
Reid	7	0.8	7	41.7	42.5	101
Richmond	8	0.7	8	n.a.	1.5	11
Riverina	822	71.1	984	52.6	123.7	118
Robertson	38	4.8	38	45.8	50.6	46
Shortland	677	98.5	678	192.9	291.5	286
Sydney	33	5.7	34	1,576.3	1,581.9	561
Warringah	12	2.2	12	3.0	5.3	42
Watson	n.a.	n.a.	n.a.	6.2	6.3	22
Wentworth	12	2.2	12	1.6	3.8	25
Werriwa	n.a.	n.a.	n.a.	15.5	15.8	28
Whitlam	478	64.5	487	195.5	260.0	75

Note: Data not published for CEDs with total direct spend of less than $1 million and/or less than 5 residing employees. (a) Includes full-time resident direct employees and contract workers by place of operation.

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE CERTIFICATE
DP-15

This is the Annexure marked "DP-15" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

Australian Government
Department of Foreign Affairs and Trade

STATE/TERRITORY'S MERCHANDISE EXPORTS AND IMPORTS

Trade type	Total Exports
State	NSW
Partner country	(All)
Sector	Minerals & fuels

Sum of A$'000	Column Labels										
Row Labels	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
272 Crude fertilisers	2,230	1,065	916	1,003	1,401	821	462	605	812	1,231	836
273 Stone, sand & gravel	3,422	2,619	1,721	4,617	2,911	2,536	1,545	1,108	1,948	1,945	1,565
274 Sulphur & iron pyrites	16		1			1			29		19
277 Natural abrasives	63	78	74	356	83	10	107	26	40	46	77
278 Crude minerals, nes	2,958	3,735	3,967	8,749	3,437	2,553	3,176	4,684	5,180	4,773	4,813
281 Iron ores & concentrates			0	5	2,440	3,909		0		0	
282 Ferrous waste & scrap	110,266	72,263	98,959	152,868	101,923	85,814	87,488	78,166	94,864	121,830	143,258
283 Copper ores & concentrates	1,577,425	1,939,256	2,237,692	1,943,332	2,104,238	2,325,429	2,292,163	2,296,453	2,082,971	2,980,163	3,058,451
284 Nickel ores & concentrates										1,914	1,754
285 Aluminium ores & conc (incl alumina	21	37		22	19	462	79		17	195	109
287 Other ores & concentrates	109,254	132,408	230,457	248,605	255,016	277,507	337,948	194,388	393,190	431,357	446,818
288 Non-ferrous waste & scrap	181,543	257,060	282,301	251,769	275,304	284,061	313,241	260,617	323,761	376,215	362,896
289 Precious metal ores & conc (excl gold	19,350	25,449	30,531	20,214	15,324	9,982	20,046	38,797	23,797	34,589	77,871
321 Coal	10,264,254	9,508,440	12,619,263	13,852,524	12,951,802	13,003,986	12,484,608	12,452,137	16,049,981	19,550,092	17,935,298
322 Briquettes, lignite & peat	489	507	578	383	487	550	578	483	79	40	261
325 Coke & semi-coke	145,905	102,178	190,771	282,037	187,297	179,180	67,646				
333 Crude petroleum	805	477						163		135	0
334 Refined petroleum	1,134,784	1,247,840	1,433,137	1,574,293	1,444,348	1,431,187	1,086,390	1,209,923	1,238,705	1,510,401	1,312,840
335 Residual petroleum products, nes	1,631	2,606	1,656	4,723	3,149	7,691	4,941	7,181	18,020	30,144	15,407
342 Liquefied propane & butane	28,232	9,111	11,590	10,610	17,596	22,647	22,651	26,928	15,915	12,505	687
343 Natural gas	1,694			15	35	35	6		95	4	4
344 Petroleum gases	582	783	212	85	1,614	103	577	17,859	89	29,977	459
345 Coal gas, water gas & similar gases	10		6		7		10	14	103	67	70
Grand Total	13,584,932	13,305,912	17,143,832	18,356,212	17,368,432	17,638,463	16,723,661	16,589,531	20,249,596	25,087,624	23,363,492

COMMONWEALTH OF AUSTRALIA

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Applicant:	Port of Newcastle Operations Pty Limited

ANNEXURE CERTIFICATE
DP-16

This is the Annexure marked "DP-16" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

TRADE AND INVESTMENT AT A GLANCE 2020

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All goods and services trade data is from the financial year 2018-19, investment and international data is from the calendar year 2018, unless otherwise specified.

CURRENCY

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FOREWORD

Welcome to *Trade and Investment at a Glance*, a concise summary of Australia's engagement with the global economy over 2018-19. Although 2020 is now the most difficult of years, Australian businesses will still rely on strong levels of trade and foreign investment for their future success.

An economy made stronger by trade and investment relationships that are more open means a brighter future for Australians. By strengthening our economy we can provide the essential services that all Australians rely upon. Trade as a whole is equivalent to 45 per cent of Australian GDP and is directly responsible for one in five Australian jobs. Businesses with foreign investment generate around 40 percent of Australian exports, and foreign investment supports one in ten jobs in Australia.

To build an even stronger economy, the Australian Government continues to pursue an active and ambitious open trade and investment agenda. In the past six years, we have secured duty-free or preferential access to an extra 1.7 billion consumers in other economies. In January and February 2020, new trade agreements with Hong Kong and Peru entered into force. The Indonesia-Australia Comprehensive Economic Partnership will enter into force after Indonesia has completed its domestic ratification process.

In November 2019, we reached a milestone in joining 14 other economies in agreeing to sign the Regional Comprehensive Economic Partnership in 2020. This landmark trade agreement will boost export opportunities for Australian businesses in the world's fastest growing region.

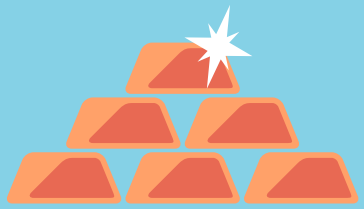
Senator the Hon Simon Birmingham
Minister for Trade, Tourism and Investment

AUSTRALIA IS A TOP 20 COUNTRY

Australia is the 2nd wealthiest nation in terms of median wealth per adult after Switzerland

(2019) (Global Wealth Report, Credit Suisse)

Australia is the 5th largest global exporter of pearls, zircon and silver and 6th largest exporter of gold (by value)



(2018) (United Nations Comtrade database)

Record exports of $470 billion in 2018-19

(2018-19) (Australian Bureau of Statistics)

Australia is the 2nd largest global exporter of beef, 3rd largest exporter of lentils, 4th largest exporter of sugar and 10th largest exporter of cereals (by value)

(2018) (United Nations Comtrade database)

Australia is the 4th largest global exporter of wine (by value)

(2018) (United Nations Comtrade database)

Australia is ranked 12th on the Global Talent Competitiveness Index

(2019) (INSEAD Global Talent Competitiveness Index Report)

Australia is the largest global exporter of wool and 4th largest exporter of cotton (by value)

(2018) (United Nations Comtrade database)

Australia has completd 28 consecutive years of annual economic growth, one of the few economies in the post WWII period to achieve this

(2018-19) (Australian Bureau of Statistics)

Australia is the number 1 global exporter of iron ore and coal, 2nd largest exporter of aluminium ores, unwrought lead and zinc ores and 3rd largest exporter of copper ores (by value)

(2018) (United Nations Comtrade database)

The Australian Stock Exchange is the 16th largest stock exchange in the world (by domestic market capitalisation)

(2018) (World Federation of Exchanges)

Australia's Key Economic Indicators 2016-17 to 2018-19

		2016-17	2017-18	2018-19
GDP and trade[a]				
Gross domestic product[b]	% change	2.4	2.9	1.9
Exports of goods & services[b]	% change	5.5	4.1	3.8
Imports of goods & services[b]	% change	4.7	7.2	-0.2
Labour force				
Population[c]	'000	24,518	24,899	25,287
Labour force[d]	'000	12,799	13,159	13,421
Employed persons[d]	'000	12,071	12,437	12,753
- Annual growth	%	1.5	3.0	2.4
Unemployment rate[d]	%	5.7	5.5	5.1
Prices and interest rates				
Consumer prices	% change	1.9	2.1	1.6
Interest rates - 90 day bills[d]	% pa	1.8	1.8	1.8

(a) Chain Volume Measures (CVM), reference year 2017-18.
(b) Derived from annual movements in original data.
(c) At end of period.
(d) Derived from original data on an annual average.
Based on ABS and Reserve Bank, various catalogues.

Australia's Industry Structure 2018-19

	Gross value added[a]		Employed persons[b]	
	$m	% share[c]	'000	% share
Agriculture, forestry & fishing	40,605	2.2	333.3	2.6
Mining	185,754	10.2	246.6	1.9
Manufacturing	109,979	6.0	905.7	7.1
Services	1,326,449	72.9	11,267.6	88.4
Electricity, gas, water & waste	48,797	2.7	153.9	1.2
Construction	146,130	8.0	1,165.5	9.1
Wholesale trade	71,353	3.9	389.9	3.1
Retail trade	79,257	4.4	1,278.2	10.0
Accommodation & food services	44,648	2.5	901.0	7.1
Transport, postal & warehousing	90,105	5.0	657.6	5.2
Information, media & telecommunications	42,883	2.4	214.9	1.7
Financial & insurance services	169,440	9.3	445.4	3.5
Rental, hiring & real estate	58,007	3.2	212.3	1.7
Professional, scientific & technical	129,360	7.1	1,104.4	8.7
Administrative & support	67,100	3.7	429.3	3.4
Public administration & safety	100,905	5.5	835.6	6.6
Education & training	91,237	5.0	1,041.7	8.2
Health care & social assistance	136,792	7.5	1,684.2	13.2
Arts & recreation	15,762	0.9	249.3	2.0
Other services	34,673	1.9	504.5	4.0
Ownership of dwellings	156,579	8.6		
Gross value added at basic prices[d]	1,819,368	100.0		
Taxes less subsidies on products and statistical discrepancy	127,878			
Total[e]	1,947,246		12,753	100.0

(a) Based on current price GDP. Industry breakdown based on ANZSIC 2006.
(b) Derived from original data on an annual average. Year ended June 2019.
(c) As a share of GDP at basic prices.
(d) Basic prices are amounts received by producers, including the value of any subsidies on products, but before any taxes on products.
(e) GDP at purchasers' (market) prices is derived by adding Taxes less subsidies on products and statistical discrepancy to Gross value added at basic prices.

Based on ABS catalogues 5206.0, 6202.0 and 6203.0.

TRADE AND INVESTMENT AT A GLANCE 2020

AUSTRALIA'S TRADE BALANCE

Australia's trade balance is the difference between what we export and what we import.

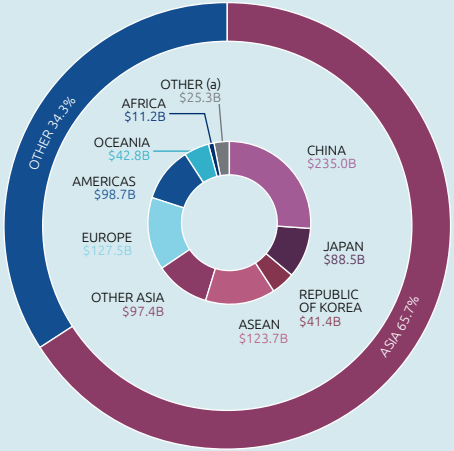
It is calculated by subtracting the value of the goods and services Australia buys from overseas from the value of the goods and services we sell to other countries.

As of December 2019, Australia's trade balance was $5,223 million (seasonally adjusted).

Two-way trade

Asian partners dominate Australia's two-way trade flows, as Australia's economy continues to complement those of a growing Asia. Dynamic changes underway in our region will continue to drive our economy and offer Australia significant opportunities. Asia overall stands to deliver nearly two-thirds of global growth to 2030.

Australia's Two-Way Trade by Region 2018-19



Regional breakdowns:

Asia includes Central Asia; Middle East; North Asia; South East Asia and Southern Asia.

Europe includes Eastern Europe; Northern Europe; South Eastern Europe, Southern Europe and Western Europe.

Americas includes North America; the Caribbean; Central America and South America.

Oceania includes Antarctica and Pacific Island countries and territories.

Africa includes Central and West Africa; North Africa and Southern and East Africa.

(a) Includes confidential items of trade.

Based on ABS catalogues 5368.0 and 5368.0.55.003 and unpublished ABS data.

Australia's Top Two-Way Trading Partners 2018-19

Australia's top ten trading partners in 2018-19 in order were China, Japan, the United States, the Republic of Korea, Singapore, New Zealand, the United Kingdom, India, Malaysia and Thailand.

China remained Australia's largest two-way trading partner in 2018-19 and was our largest export market and import source. Two-way trade with China surged past $230 billion, well over double the second ranked trading partner, Japan. Australia's top four two-way trading markets remained in the same order for a third consecutive year, with Singapore replacing India as Australia's fifth-largest two-way trading partner – up from eighth in 2017-18.

$ billion					
Goods	213.0	81.4	48.7	38.0	21.4
Services	22.0	7.1	27.7	3.4	11.3
Total	235.0	88.5	76.4	41.4	32.7
% share	26.4	9.9	8.6	4.6	3.7

Based on ABS trade data on DFAT STARS database, ABS catalogue 5368.0.55.003 and unpublished ABS data.

Australia's Top 10 Two-Way Trading Partners 2018-19

		($ billion)			
Rank	Trading partners[(a)(b)]	Goods	Services	Total	% share
1	China	213.0	22.0	235.0	26.4
2	Japan	81.4	7.1	88.5	9.9
3	United States	48.7	27.7	76.4	8.6
4	Republic of Korea	38.0	3.4	41.4	4.6
5	Singapore	21.4	11.3	32.7	3.7
6	New Zealand	17.8	12.8	30.6	3.4
7	United Kingdom	15.1	15.2	30.4	3.4
8	India	21.1	9.2	30.3	3.4
9	Malaysia	21.4	3.7	25.1	2.8
10	Thailand	20.7	4.0	24.7	2.8
	Total top 10 trading partners	498.8	116.3	615.1	69.0
	Total two-way trade[(c)]	**692.9**	**198.7**	**891.6**	**100.0**
of which:	APEC	534.1	118.3	652.4	73.2
	ASEAN	92.4	31.3	123.7	13.9
	EU28	76.8	37.5	114.3	12.8
	OECD	279.9	96.0	375.9	42.2

(a) All data is on a balance of payments basis, except for goods by country which are on a recorded trade basis.

(b) May exclude selected confidential export and import commodities. Refer to the DFAT website (https://www.dfat.gov.au/trade/resources/trade-statistics/Pages/trade-time-series-data) for more information and a list of the excluded commodities.

(c) Totals may not add due to rounding.

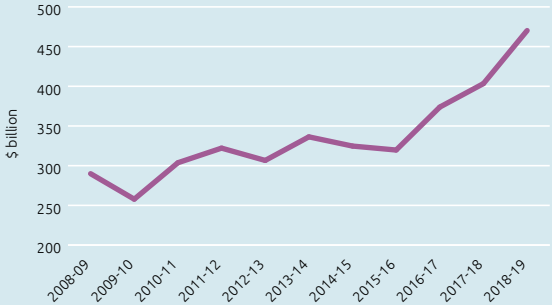
Based on ABS trade data on DFAT STARS database, ABS catalogue 5368.0.55.003 and unpublished ABS data.

Exports

Australia's more than 53,000 goods exporters have seized opportunities amidst global headwinds to export a record $373 billion worth of goods in 2018-19. This represents an increase of 18.3 per cent from the previous year and continues an expansion in exports that commenced five years ago.

The minerals and fuels sector made the greatest contribution to Australia's exports in 2018-19. Australia's second-largest export sector, services, accounts for nearly three quarters of our economy and more than four out of five Australian jobs.

Australia's Exports[(a)(b)]



(a) Balance of payments basis.

(b) By value.

Based on ABS catalogues 5302.0 & 5368.0.

Australia's Top 10 Export Markets 2018-19

($ billion)

Rank	Markets[a][b]	Goods	Services	Total	% share
1	China	134.7	18.5	153.2	32.6
2	Japan	59.1	2.6	61.7	13.1
3	Republic of Korea	25.6	2.2	27.8	5.9
4	United States	14.7	10.0	24.7	5.3
5	India	16.2	6.6	22.8	4.9
6	New Zealand	10.0	6.0	16.0	3.4
7	Singapore	10.6	5.4	16.0	3.4
8	Taiwan	12.4	1.5	13.9	2.9
9	United Kingdom	7.9	5.6	13.5	2.9
10	Malaysia	8.9	2.6	11.5	2.5
	Total top 10 markets	300.1	61.1	361.1	76.8
	Total exports[c]	**373.1**	**97.1**	**470.2**	**100.0**
	of which: APEC	311.5	60.1	371.6	79.0
	ASEAN	41.3	14.1	55.4	11.8
	EU28	20.5	12.9	33.4	7.1
	OECD	135.6	36.9	172.6	36.7

(a) All data is on a balance of payments basis, except for goods by country which are on a recorded trade basis.

(b) May exclude selected confidential export commodities. Refer to the DFAT website (https://www.dfat.gov.au/trade/resources/trade-statistics/Pages/trade-time-series-data) for more information and a list of the excluded commodities.

(c) Totals may not add due to rounding.

Based on ABS trade data on DFAT STARS database, ABS catalogue 5368.0.55.003 and unpublished ABS data.

Australia's Global Export Ranking 2018

How we compare with the rest of the world (US$ billion)

Rank	Economy	Goods[a]	Services[b]	Total exports	% share
1	China	2,487	267	2,754	10.9
2	United States	1,666	828	2,494	9.9
3	Germany	1,561	331	1,892	7.5
4	Netherlands	724	242	966	3.8
5	Japan	738	192	930	3.7
6	France	582	291	873	3.5
7	United Kingdom	487	376	863	3.4
8	Republic of Korea	605	97	701	2.8
9	Hong Kong[c]	568	114	682	2.7
10	Italy	547	122	668	2.6
11	Singapore	413	184	597	2.4
12	Belgium	467	123	590	2.3
13	Canada	451	93	543	2.1
14	India	325	205	530	2.1
15	Russia	443	65	508	2.0
24	**Australia**	**258**	**69**	**328**	**1.3**
	Total exports	**19,451**	**5,845**	**25,296**	**100.0**

(a) Goods on recorded trade basis.

(b) Services on balance of payments basis.

(c) Special Administrative Region of China.

Source: World Trade Organization (WTO) online database.

Australia's Exports by Sector[a] 2018-19

(a) Balance of payments basis.
Based on ABS catalogues 5302.0 & 5368.0.

Services and technology are embedded in all of Australia's export sectors. Land transport and electricity services used in the mining and export of resources are reflected in trade on a 'value added' basis. On a 'gross exports' basis, which is the more common statistical practice, these values are not separately identified. However, using the value added measure, Australia's domestic services industries account for over 45 per cent of the value of exports.

Australia's Top 20 Exports 2018-19

Rank	Commodity[a]	$ million	% share	% change
1	Iron ores & concentrates	77,189	16.4	25.7
2	Coal	69,592	14.8	15.3
3	Natural gas	49,731	10.6	60.9
4	Education-related travel services [b]	37,556	8.0	15.2
5	Personal travel (excl education) services	22,450	4.8	5.2
6	Gold	18,867	4.0	-2.2
7	Aluminium ores & concentrates (incl alumina)	11,358	2.4	20.2
8	Beef	9,476	2.0	19.0
9	Crude petroleum	8,491	1.8	30.5
10	Copper ores & concentrates	5,936	1.3	4.1
11	Professional services	5,626	1.2	8.3
12	Meat (excl beef)	5,152	1.1	13.8
13	Telecom, computer & information services	5,081	1.1	20.4
14	Financial services	4,933	1.0	8.0
15	Technical & other business services	4,662	1.0	5.1
16	Aluminium	4,251	0.9	3.8
17	Copper	3,968	0.8	37.3
18	Wool & other animal hair (incl tops)	3,815	0.8	-4.2
19	Wheat	3,657	0.8	-21.4
20	Other ores & concentrates	3,554	0.8	13.2
	Total exports[c]	**470,170**	**100.0**	**16.6**

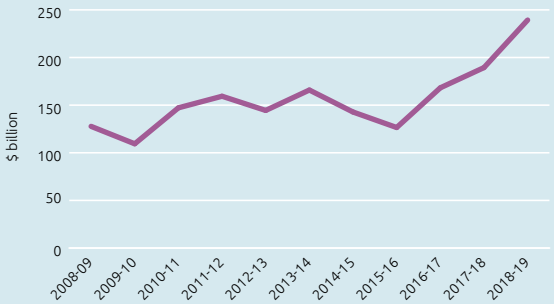
(a) Goods trade is on a recorded trade basis. Services trade is on a balance of payments basis.
(b) Includes student expenditure on tuition fees and living expenses.
(c) Total exports on a balance of payments basis.
Based on ABS trade data on DFAT STARS database and ABS catalogues 5302.0 & 5368.0.

Minerals and fuels sector

In 2018-19, Australia's minerals and fuels exports grew by 26.4 per cent. Australia's exports of iron ore, coal and natural gas were our top three exports overall and recorded strong increases over the year of 25.7 per cent, 15.3 per cent and 60.9 per cent respectively.

The Australian Government released a Critical Minerals Strategy in 2019 to position Australia as a world leader in the exploration, extraction, production and processing of critical minerals. Australia has some of the world's richest stocks of these important minerals that are considered essential for economic and industrial development.

Australia's Minerals and Fuels Exports[a][b]



(a) Balance of payments basis.
(b) By value.
Based on ABS catalogues 5302.0 & 5368.0.

Australia's Top 20 Minerals and Fuels Exports 2018-19

Rank	Commodity[a][b]	$ million	% share	% change
1	Iron ores & concentrates	77,189	32.3	25.7
2	Coal	69,597	29.1	15.3
3	Natural gas	49,731	20.8	60.9
4	Aluminium ores & concentrates (incl alumina)	11,358	4.7	20.2
5	Crude petroleum	8,491	3.5	30.5
6	Copper ores & concentrates	5,936	2.5	4.1
7	Other ores & concentrates[c]	3,554	1.5	13.2
8	Refined petroleum	3,005	1.3	14.4
9	Crude minerals	1,685	0.7	-1.3
10	Precious metal ores & conc (excl gold)	1,454	0.6	-4.3
11	Non-ferrous waste & scrap	1,357	0.6	10.9
12	Ferrous waste & scrap	1,075	0.4	20.1
13	Liquefied propane & butane	1,049	0.4	31.5
14	Nickel ores & concentrates	336	0.1	28.1
15	Stone, sand & gravel	153	0.1	2.6
16	Natural abrasives	103	0.0	4.8
17	Petroleum gases	39	0.0	181.1
18	Residual petroleum products	36	0.0	-12.5
19	Crude fertilisers	11	0.0	-18.1
20	Sulphur & iron pyrites	1	0.0	-8.8
	Total minerals and fuels exports[d]	**239,315**	**100.0**	**26.4**

(a) Recorded trade basis.
(b) Excludes confidential items of trade.
(c) Mainly Zinc ores & concentrates, Manganese ores & concentrates and Lead ores & concentrates.
(d) Total minerals and fuels exports on a balance of payments basis.
Based on ABS trade data on DFAT STARS database and ABS catalogues 5302.0 & 5368.0.

Services sector

Australia's services exports rose 10.2 per cent to $97.1 billion in 2018-19. Services exports benefitted from strong demand from overseas students seeking a high-quality education and successful tourism campaigns attracting increasing numbers of international visitors. Tourism and international education together account for over 60 per cent of total services exports.

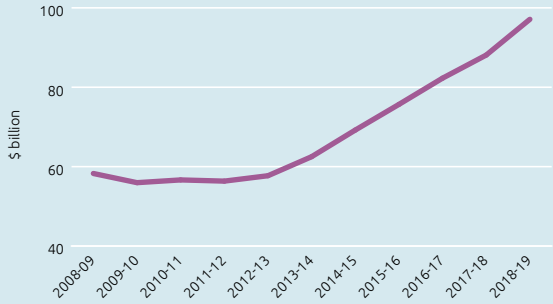
Education-related travel and personal travel services (mainly recreational travel for tourism) were Australia's fourth and fifth largest exports overall in 2018-19. They also grew over the year by 15.2 per cent and 5.2 per cent respectively.

A further boost is coming from a growing trend among Australian businesses to sell complementary services along with goods exports, such as in the mining equipment, technology and services (METS) sector.

In November 2019, the Australian Government released the Government Response to Industry's Action Plan to Boost Australian Services Exports. Through the Action Plan, the services industry proposes ambitious recommendations aimed at improving the competitiveness of Australia's services sector and boosting services exports.

The Government response addresses three primary areas of focus: supporting business to 'go global', removing barriers facing exporters abroad and simplifying regulation. The Government response, and the industry-led Services Exports Action Plan, are available on the DFAT website.

Growth of Australia's Services Exports[a][b]



(a) Balance of payments basis.

(b) By value.

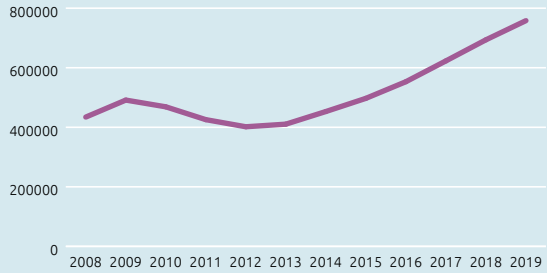
Based on ABS catalogues 5302.0 & 5368.0.

Australia's Services Exports[a] 2018-19

	$ million	% share	% change
Manufactured services on physical inputs owned by others	**0**	**0.0**	**-100.0**
Maintenance & repair	**47**	**0.0**	**6.8**
Transport	**7,729**	**8.0**	**2.5**
Passenger[b]	3,075	3.2	4.7
Freight	277	0.3	2.2
Other transport	2,898	3.0	2.5
Postal & courier services	1,479	1.5	-1.9
Travel	**62,887**	**64.8**	**11.1**
Business	2,881	3.0	8.3
Personal	60,006	61.8	11.3
Education-related	37,556	38.7	15.2
Other personal[c]	22,450	23.1	5.2
Other services	**26,454**	**27.2**	**10.6**
Construction	970	1.0	33.6
Insurance & pension	625	0.6	13.4
Financial	4,933	5.1	8.0
Intellectual property charges	1,377	1.4	18.0
Telecommunications, computer & information	5,081	5.2	20.4
Other business services	11,119	11.4	6.5
Personal, cultural and recreational	1,159	1.2	7.7
Government services	1,190	1.2	2.0
Total services exports	**97,117**	**100.0**	**10.2**

(a) Balance of payments basis.
(b) Passenger services includes air transport-related agency fees & commissions.
(c) Inbound tourism for mainly recreational purposes.
Based on ABS catalogues 5302.0 & 5368.0.

International Student Numbers



Source: Department of Education and Training International Student Data.

Trade in education creates longer-term benefits for Australia including business and people-to-people linkages. It helps to strengthen our educational institutions through greater funding and diversity.

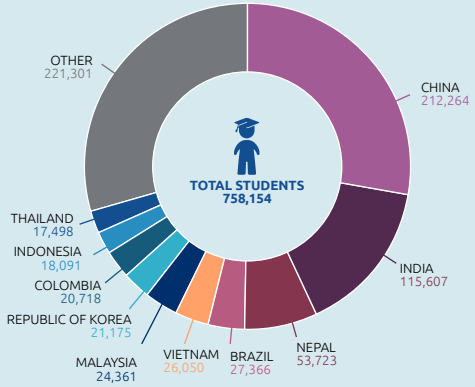
Education is Australia's largest services export. During the year to October 2019, Australian educational institutions received more than 917,000 international student enrolments.

The strong growth in exports of education-related travel services was driven by increases in student numbers from China (up 9 per cent) to $12.1 billion, India (up 44.3 per cent) to $5.5 billion and Nepal (up 60.6 per cent) to $2.6 billion.

Among short-term education visitors in 2017-18, more than 70 per cent were from Asian markets, 15 per cent had family come to visit while they were studying and 24 per cent travelled to regional Australia[1].

1 Tourism Research Australia, *State of the Industry 2017-18*.

Top 10 Country of Origin, International Students in Australia 2019



Source: Department of Education and Training International Student Data.

Australia's International Visitors 2018-19

Rank	Economy	Number of visitors ('000)	% change on 2017-18
1	China	1,433	0.8
2	New Zealand	1,407	2.6
3	United States	812	3.1
4	United Kingdom	719	-3.2
5	Japan	484	9.5
6	Singapore	465	7.4
7	Malaysia	389	-1.1
8	India	372	11.1
9	Hong Kong[(a)]	310	3.7
10	Republic of Korea	281	-7.8

(a) Special Administrative Region of China.

Source: Department of Home Affairs.

Australia's $152 billion tourism industry is our single largest services export industry. It is a vital part of our economy, directly employing 666,000 people in 2018-19, up 3.3 per cent on the previous year.

Despite the competitive global market, the number of international visitors arriving in Australia continued to increase alongside the value of tourist spend.

Top 10 Economies by Expenditure 2018-19

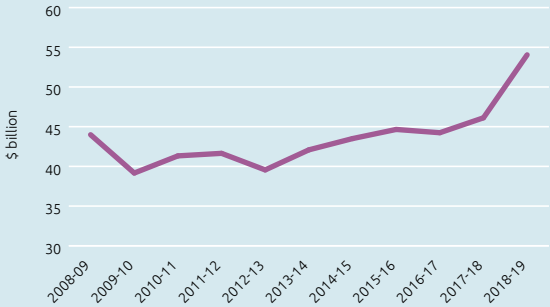
Rank	Economy	Total trip spend ($ million)	% change on 2017-18
1	China	11,918	5.9
2	United States	3,988	8.6
3	United Kingdom	3,389	-3.0
4	New Zealand	2,581	1.3
5	Japan	2,047	16.0
6	India	1,764	17.4
7	Singapore	1,547	-6.7
8	Republic of Korea	1,458	1.6
9	Hong Kong[a]	1,358	2.0
10	Malaysia	1,282	-0.4

(a) Special Administrative Region of China.
Source: Tourism Research Australia: International Visitor Survey.

Manufactures sector

Australian manufacturing businesses employ around 900,000 Australians. The manufacturing sector's future lies in embracing new technologies and developing high value-added products and services sought by the global market.

Australia's Manufactures Exports[a][b]



(a) Balance of payments basis.
(b) By value.
Based on ABS catalogues 5302.0 & 5368.0.

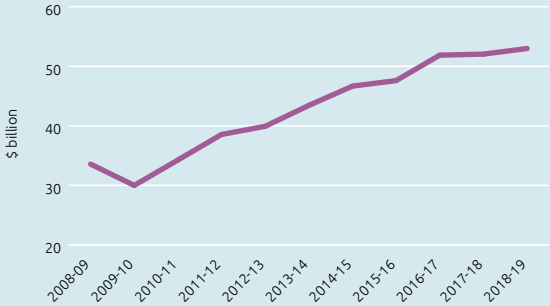
Australia's Top 20 Manufactures Exports 2018-19

Rank	Commodity[(a)(b)]	$ million	% share	% change
1	Aluminium	4,251	7.9	3.8
2	Copper	3,968	7.3	37.3
3	Pharmaceutical products (excl medicaments)	2,953	5.5	86.6
4	Medicaments (incl veterinary)	2,627	4.9	12.1
5	Aircraft, spacecraft & parts	2,548	4.7	24.7
6	Telecom equipment & parts	2,197	4.1	21.2
7	Nickel	1,695	3.1	1560.1
8	Medical instruments (incl veterinary)	1,654	3.1	12.0
9	Zinc	1,608	3.0	-5.9
10	Measuring & analysing instruments	1,514	2.8	43.0
11	Paper & paperboard	1,026	1.9	8.4
12	Pigments, paints & varnishes	984	1.8	-1.1
13	Perfumery & cosmetics (excl soap)	950	1.8	7.8
14	Lead	931	1.7	-4.8
15	Computers	912	1.7	7.7
16	Vehicle parts & accessories	881	1.6	2.2
17	Miscellaneous manufactured articles	871	1.6	-20.4
18	Specialised machinery & parts	803	1.5	-7.6
19	Civil engineering equipment & parts	728	1.3	9.1
20	Ships, boats & floating structures	712	1.3	172.2
	Total manufactures exports[(c)]	**54,048**	**100.0**	**17.2**

(a) Recorded trade basis.
(b) Excludes confidential items of trade.
(c) Total manufactures exports on a balance of payments basis.
Based on ABS trade data on DFAT STARS database and ABS catalogues 5302.0 & 5368.0.

Rural sector

Australia's Agriculture, Forestry and Fisheries Exports[(a)(b)]



(a) Definition of agriculture, forestry and fisheries includes alcoholic beverages as set out in the WTO International Trade statistics publication.
(b) By value.
Based on ABS catalogues 5302.0 & 5368.0.

Australia's reputation as a provider of clean, green, safe and high-quality produce stands our agricultural exporters in good stead. Around two-thirds of Australia's agricultural products are exported, contributing to food security in Australia and many other nations.

Exports of beef, Australia's eighth-largest export overall, grew by 19 per cent in 2018-19, while other meat exports (excluding beef) and alcoholic beverages also performed strongly in export markets.

Australia's Top 20 Agriculture, Forestry & Fisheries Exports[a] 2018-19

Rank	Commodity[b][c]	$ million	% share	% change
1	Beef	9,476	17.9	19.0
2	Meat (excl beef)	5,152	9.7	13.8
3	Wool & other animal hair (incl tops)	3,815	7.2	-4.2
4	Wheat	3,657	6.9	-21.4
5	Wine	2,950	5.6	4.4
6	Edible products & preparations	2,943	5.6	-2.1
7	Cotton	2,558	4.8	19.9
8	Fruit & nuts	2,422	4.6	28.9
9	Live animals (excl seafood)	1,956	3.7	13.7
10	Sugars, molasses & honey	1,614	3.0	-3.7
11	Wood in chips or particles	1,597	3.0	18.9
12	Barley	1,382	2.6	-30.0
13	Animal feed	1,377	2.6	8.9
14	Milk, cream, whey & yoghurt	1,371	2.6	3.4
15	Vegetables	1,194	2.3	-41.2
16	Crustaceans	1,022	1.9	-3.7
17	Oil-seeds & oleaginous fruits, soft	997	1.9	-29.1
18	Cheese & curd	989	1.9	4.5
19	Cereal preparations	929	1.8	18.7
20	Hides & skins, raw (excl furskins)	659	1.2	-19.1
	Total agriculture, forestry & fisheries exports	**52,987**	**100.0**	**1.8**

(a) Definition of agriculture, forestry and fisheries includes alcoholic beverages as set out in the WTO International Trade Statistics publication.

(b) Recorded trade basis.

(c) Excludes confidential items of trade except sugar.

Based on ABS catalogue 5368.0 and ABS special data services.

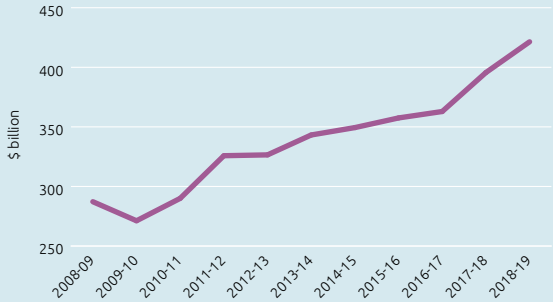
Imports

Australia imports a wide range of goods and services. Since the start of the new millennium, at least half of our total imports have come from economies in Asia. The total value of Australian imports rose by 6.5 per cent to $421.4 billion in 2018-19.

Personal travel services received by Australians abroad was the largest component, accounting for around a tenth of total import values and almost double the second-largest import, refined petroleum.

The top five favourite short-term travel destinations abroad among Australians (measured by short-term resident returns), based on local data as at the year ended September 2019, were (in order) New Zealand, Indonesia, the United States, the United Kingdom and China.

Australia's Imports[a][b]



(a) Balance of payments basis.

(b) By value.

Based on ABS catalogues 5302.0 & 5368.0.

Australia's Top 20 Imports 2018-19

Rank	Commodity[a][b]	$ million	% share	% change
1	Personal travel (excl education) services	46,343	11.0	8.6
2	Refined petroleum	25,083	6.0	15.7
3	Passenger motor vehicles	21,574	5.1	-7.4
4	Telecom equipment & parts	14,590	3.5	8.8
5	Crude petroleum	13,412	3.2	14.3
6	Goods vehicles	10,571	2.5	3.8
7	Freight transport services	10,114	2.4	7.3
8	Computers	9,763	2.3	10.5
9	Professional services	7,775	1.8	16.8
10	Passenger transport services[c]	7,534	1.8	5.5
11	Medicaments (incl veterinary)	7,481	1.8	4.4
12	Gold	5,517	1.3	-15.6
13	Technical & other business services	5,457	1.3	5.6
14	Civil engineering equipment & parts	5,085	1.2	19.8
15	Charges for intellectual property	4,996	1.2	8.0
16	Furniture, mattresses & cushions	4,990	1.2	11.0
17	Telecom, computer & information services	4,878	1.2	14.7
18	Pharm products (excl medicaments)	4,842	1.1	13.0
19	Business travel services	4,296	1.0	2.1
20	Electrical machinery & parts	3,960	0.9	7.2
	Total imports[d]	**421,394**	**100.0**	**6.5**

(a) Goods trade is on a recorded trade basis. Services trade is on a balance of payments basis.
(b) Excludes imports of large aircraft which are treated confidentially by the ABS. DFAT estimates aircraft imports would rank within Australia's top 20 imports with a value around $4.6 billion in 2018-19.
(c) Includes Related agency fees & commissions.
(d) Total imports on a balance of payments basis.

Based on ABS trade data on DFAT STARS database and ABS catalogues 5302.0 & 5368.0.

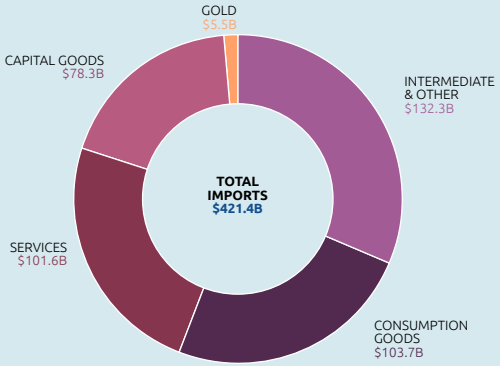
Australia's Top 10 Import Sources[a][b] 2018-19

			($ billion)			
Rank	Sources[a][b]		Goods	Services	Total	% share
1	China		78.3	3.5	81.8	19.4
2	United States		34.0	17.6	51.6	12.3
3	Japan		22.3	4.5	26.8	6.4
4	Germany		15.1	3.8	18.9	4.5
5	Thailand		14.6	2.7	17.3	4.1
6	United Kingdom		7.2	9.6	16.9	4.0
7	Singapore		10.9	5.9	16.7	4.0
8	New Zealand		7.9	6.7	14.6	3.5
9	Republic of Korea		12.4	1.2	13.6	3.2
10	Malaysia		12.4	1.1	13.6	3.2
	Total top 10 sources		215.1	56.8	271.8	64.5
	Total imports[c]		**319.8**	**101.6**	**421.4**	**100.0**
	of which:	APEC	222.6	58.2	280.8	66.6
		ASEAN	51.1	17.2	68.2	16.2
		EU28	56.3	24.6	80.8	19.2
		OECD	144.3	59.0	203.3	48.3

(a) All data is on a balance of payments basis, except for goods by country which are on a recorded trade basis.
(b) May exclude selected confidential import commodities. Refer to the DFAT website (https://www.dfat.gov.au/trade/resources/trade-statistics/Pages/trade-time-series-data) for more information and a list of the excluded commodities.
(c) Totals may not add due to rounding.

Based on ABS trade data on DFAT STARS database, ABS catalogue 5368.0.55.003 and unpublished ABS data.

Australia's Imports by Sector[a] 2018-19



(a) Balance of payments basis.
Based on ABS catalogues 5302.0 & 5368.0.

The largest share of Australia's imports by sector were intermediate goods, comprising raw materials and components used by Australian firms to make goods for domestic and export markets. All sectors grew in 2018-19, with consumption goods and services at second and third largest.

Australia's Global Import Ranking 2018

How we compare with the rest of the world (US$ billion)

Rank	Economy	Goods[a]	Services[b]	Total imports	% share
1	United States	2,612	559	3,172	12.5
2	China	2,136	525	2,661	10.4
3	Germany	1,286	351	1,637	6.4
4	Japan	748	200	949	3.7
5	France	673	257	929	3.6
6	United Kingdom	674	235	909	3.6
7	Netherlands	645	229	874	3.4
8	Hong Kong[c]	627	82	708	2.8
9	India	514	177	691	2.7
10	Republic of Korea	535	124	659	2.6
11	Italy	501	125	626	2.5
12	Canada	471	113	583	2.3
13	Belgium	450	129	579	2.3
14	Singapore	371	187	558	2.2
15	Mexico	477	37	514	2.0
22	Australia	237	73	310	1.2
	Total imports	19,867	5,604	25,471	100.0

(a) Goods on recorded trade basis.
(b) Services on balance of payments basis.
(c) Special Administrative Region of China.
Source: WTO online database.

AUSTRALIA'S INVESTMENT LANDSCAPE

Foreign investment plays an important role in the Australian economy by promoting economic activity that helps sustain and generate jobs. There are a number of types of foreign investment: portfolio, direct, financial derivatives and 'other' investment, for example loans and reserve assets.

Portfolio investment includes the purchase of securities, such as stocks or bonds, or equity and debt transactions where the investor does not gain any control over the operation of the enterprise. This is the largest type of investment overall for Australia and many other developed economies.

Foreign direct investment (FDI) occurs when a foreign individual or entity establishes a new business or acquires 10 per cent or more share of a local enterprise and, importantly, has some control over its operations.

FDI though both majority and minority ownership supported the employment of nearly 1.2 million people or 1 in 10 jobs in Australia in 2014-15. Businesses with foreign investment generated around 40 per cent of Australia's total exports, worth around $132 billion.

The global marketplace for foreign investment is highly competitive and businesses must show the potential for an attractive return. Many firms seek investment to help purchase innovative technology or to diversify their product range with the intention of expanding their market share, making savings on running costs or increasing productivity.

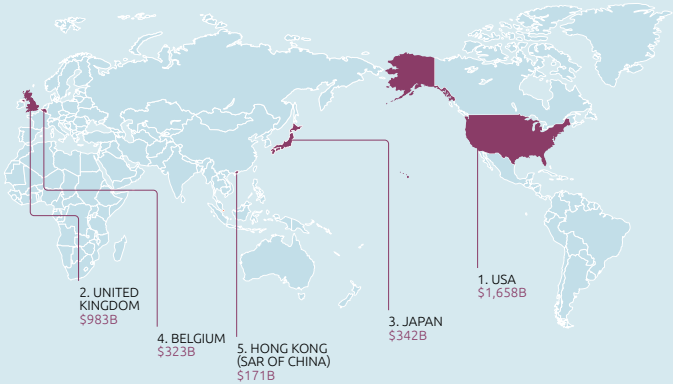
FDI is also often associated with knowledge transfers, particularly from a foreign head office to a local subsidiary. This process expands the domestic skills-base available to employers in Australia over time.

Two-way investment

Two-way Australian investment of all types amounted to $6.05 trillion dollars at the end of 2018. Of the total, $3.5 trillion was invested in Australia by foreign entities or persons, while Australians or Australian entities invested $2.5 trillion overseas.

The United States and the United Kingdom were the top two sources and destinations for Australian investment, while Japan was the third-largest destination and fourth-largest source. Neither Belgium nor Hong Kong were among Australia's top 10 destinations for investment, instead their ranking as top five two-way investment partners comes from their large investments in Australia, as our third and fifth-largest sources.

Australia's Top 5 Two-Way Investment Partners 2018



Source: ABS catalogue 5352.0

Inbound investment

The United States and United Kingdom are Australia's largest investors, followed by Belgium, Japan and Hong Kong. At the end of 2018, total foreign investment in Australia reached $3.5 trillion, a record level in this country.

The United States was Australia's largest foreign investor by a wide margin, accounting for $939.5 billion in investments in Australia at the end of 2018, up 3.7 per cent on 2017. The United States also received the largest portion of Australian investment overseas, again by a wide margin, accounting for $718.9 billion of the total at the end of 2018, up 6.2 per cent on 2017.

Australia's Top 10 Investment Sources[a] 2018

($ million)

Rank[b]	Country		Direct investment	Total investment[c]
1	United States		214,291	939,476
2	United Kingdom		98,747	574,788
3	Belgium[d]		5,380	316,902
4	Japan		105,898	229,346
5	Hong Kong[e]		16,350	118,761
6	Singapore		28,025	85,402
7	Netherlands		49,262	81,491
8	Luxembourg		8,918	78,439
9	China		40,105	63,588
10	France		28,741	50,193
	Total all countries		**967,505**	**3,514,406**
	of which:	APEC	473,200	1,602,937
		ASEAN	47,722	118,017
		EU28	225,669	1,221,301
		OECD	605,358	2,566,429

(a) Foreign investment in Australia: level of investment (stocks) as at 31 December 2018.
(b) Ranked on level of total investment in Australia.
(c) Includes portfolio investment.
(d) The majority of total investment from Belgium is portfolio investment liabilities in the form of debt securities (Belgium hosts a major clearing house and depository for euro-denominated bonds and other securities, Euroclear).
(e) Special Administrative Region of China.
Source: ABS catalogue 5352.0.

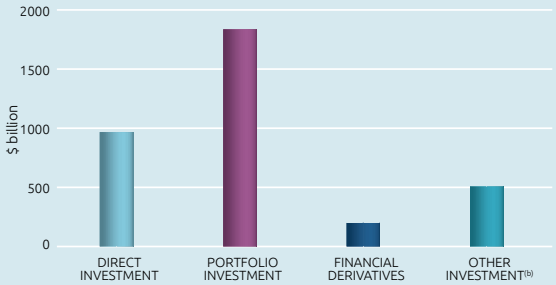
Australia's Top 10 Investment Destinations[a] 2018

($ million)

Rank[b]	Country		Direct investment	Total investment[c]
1	United States		120,659	718,934
2	United Kingdom		118,658	408,008
3	Japan		1,313	112,996
4	New Zealand		56,401	96,720
5	Cayman Islands		np	77,457
6	Germany		np	77,337
7	Canada		33,814	77,291
8	China		13,540	75,324
9	Singapore		24,437	72,693
10	France		3,156	58,541
	Total all countries		**695,644**	**2,538,756**
	of which:	APEC	288,654	1,298,100
		ASEAN	39,652	106,988
		EU28	163,579	713,043
		OECD	381,406	1,742,186

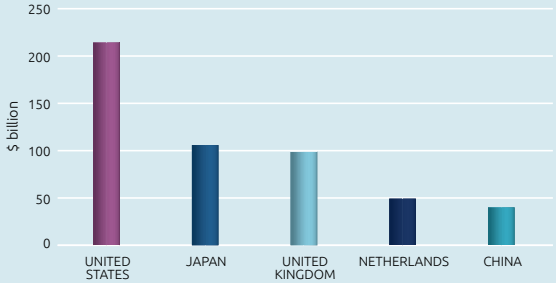
(a) Australian investment abroad: level of investment (stocks) as at 31 December 2018.
(b) Ranked on total Australian investment abroad.
(c) Includes portfolio investment.
np = not published.
Source: ABS catalogue 5352.0.

Foreign Investment in Australia by Type 2018[a]



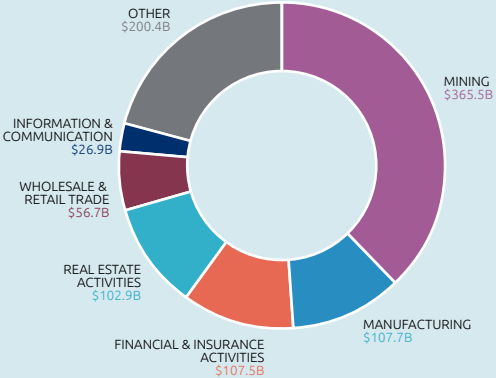
(a) Data at year end.
(b) Includes loans, trade credit, currency, deposits and reserve assets.
Based on ABS catalogue 5352.0.

Australia's Top 5 Foreign Direct Investment Sources 2018[a]



(a) Data at year end.
Based on ABS catalogue 5352.0.

Australia's Foreign Direct Investment by Industry 2018[a]



(a) Data at year end.
Based on ABS catalogue 5352.0.

The majority share of FDI went to Australia's mining industry at 37.8 per cent of the total, up by 6.4 per cent over 2017. Manufacturing, the second most popular sector for FDI, grew by 5.8 per cent, while financial and insurance activities recorded the largest increase in FDI over the year of 45.6 per cent.

Australia's Inward Foreign Direct Investment Global Ranking 2018

How we compare with the rest of the world

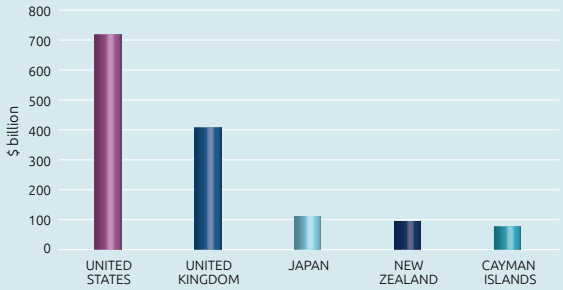
Rank	Country	US$b	% change	% share
1	United States	7,465	-4.8	23.1
2	Hong Kong[(a)]	1,997	2.7	6.2
3	United Kingdom	1,890	4.7	5.9
4	Netherlands	1,674	-0.9	5.2
5	China	1,628	9.3	5.0
6	Singapore	1,481	6.3	4.6
7	Switzerland	1,063	-8.0	3.3
8	Germany	939	-1.9	2.9
9	Ireland	910	1.9	2.8
10	Canada	894	-16.7	2.8
11	France	825	0.8	2.6
12	British Virgin Islands	745	6.3	2.3
13	Brazil	684	9.8	2.1
14	**Australia**	**683**	**-0.9**	**2.1**
15	Spain	659	2.1	2.0
	World inward stock	**32,272**	**-1.1**	

(a) Special Administrative Region of China.
Source: UNCTADstat database.

Outbound investment

The stock of Australian investment abroad rose by $180.2 billion or 7.6 per cent to $2.5 trillion at the end of 2018. The top destination for Australian direct investment abroad was the United States, followed by the United Kingdom in a narrowing margin.

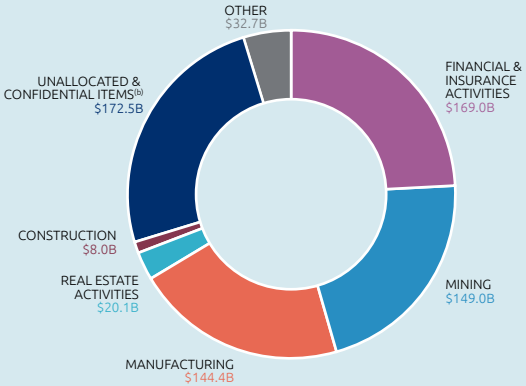
Australia's Top 5 Total Investment Abroad Destinations 2018[(a)]



(a) Data at year end.
Based on ABS catalogue 5352.0.

The most attractive industry for Australian direct investment abroad at the end of 2018 was financial and insurance activities. Although investment in this sector decreased by 3.9 per cent to $169.0 billion at the end of 2018, it accounted for 24.3 per cent of the total. Mining received the second-highest share at 21.4 per cent, with stock up 14.4 per cent to $149.0 billion. Investment in manufacturing grew by 27.0 per cent to reach $144.4 billion, or 20.8 per cent of the total.

Australia's Direct Investment Abroad by Industry 2018[a]

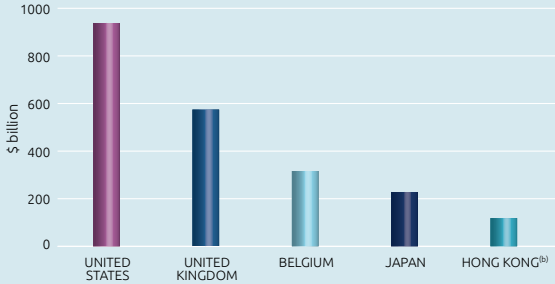


(a) Data at year end.

(b) Amounts either suppressed by confidentiality or not attributable to a specific category.

Based on ABS catalogue 5352.0.

Australia's Top 5 Total Foreign Investment Sources 2018[a]

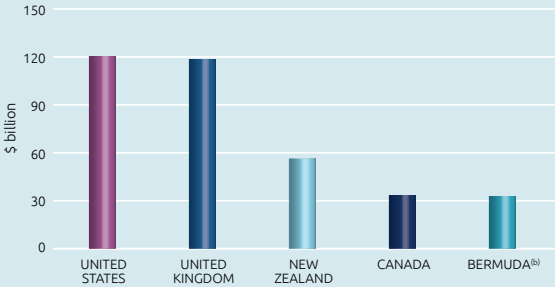


(a) Data at year end.

(b) Special Administrative Region of China.

Based on ABS catalogue 5352.0.

Australia's Top 5 Direct Investment Abroad Destinations 2018[a]



(a) Data at year end.

(b) DFAT estimate.

Based on ABS catalogue 5352.0.

Australia's Direct Investment Abroad Global Ranking 2018

How we compare with the rest of the world

Rank	Country	US$b	% change	% share
1	United States	6,475	-17.3	20.9
2	Netherlands	2,427	-3.8	7.8
3	China	1,939	7.2	6.3
4	Hong Kong[(a)]	1,870	3.1	6.0
5	United Kingdom	1,697	-4.3	5.5
6	Japan	1,665	11.4	5.4
7	Germany	1,645	0.0	5.3
8	France	1,508	2.8	4.9
9	Canada	1,325	-10.8	4.3
10	Switzerland	1,263	0.0	4.1
11	Singapore	1,021	6.1	3.3
12	Ireland	912	6.1	2.9
13	British Virgin Islands	898	6.7	2.9
14	Belgium	578	-16.2	1.9
15	Spain	563	-3.5	1.8
17	Australia	491	-1.0	1.6
	World outward stock	30,975	-4.3	

(a) Special Administrative Region of China.
Source: UNCTADstat database.

MULTILATERAL AND REGIONAL ORGANISATIONS

Australia is one of 164 members of the World Trade Organization (WTO) the sole global body responsible for the rules of trade between nations. We want to see the WTO reinvigorated with a more effective dispute settlement mechanism and a broader remit to deal with e-commerce and the opportunities created by the digital economy. This will make it stronger and more relevant to today's trade environment.

To this end, we are leading an initiative to develop international rules for e-commerce and are pushing for global agricultural reforms to address trade-distorting agricultural subsidies. At the same time, we are working to strengthen global trade in services rules and supporting the extension of rules into new areas, such as investment.

Australia is an active and effective member of the Group of Twenty or G20, the world's premier forum for international economic cooperation. The G20's geographically dispersed membership of 19 countries and the European Union represent over 85 per cent of the world economy, more than 75 per cent of global trade and almost two-thirds of the world's population. Australia hosted the G20 in 2014. We are working with Saudi Arabia as it has the 2020 Presidency.

We promote our regional trade and investment interests through our membership of the Asia-Pacific Economic Cooperation (APEC) forum. APEC is the premier economic organisation in a region with 2.9 billion people that generates around 60 per cent of world GDP. The collaborative approach to breaking down barriers to trade across our region has yielded a wide range of reforms over APEC's 30-year history. These reforms have directly benefitted Australian businesses and consumers and added to the region's prosperity.

Australia supports policies, cooperation and dialogue to facilitate trade and investment though our membership of a range of other bodies including the Organisation for Economic Cooperation and Development, the World Customs Organization and the World Intellectual Property Organization.

AUSTRALIA'S TRADE AND INVESTMENT FRAMEWORK

As part of a comprehensive trade and investment strategy, the Australian Government has an active agenda of negotiating, implementing, reviewing and advocating bilateral and regional free trade agreements (FTAs) that yield significant trade and investment opportunities, and support multilateral liberalisation efforts.

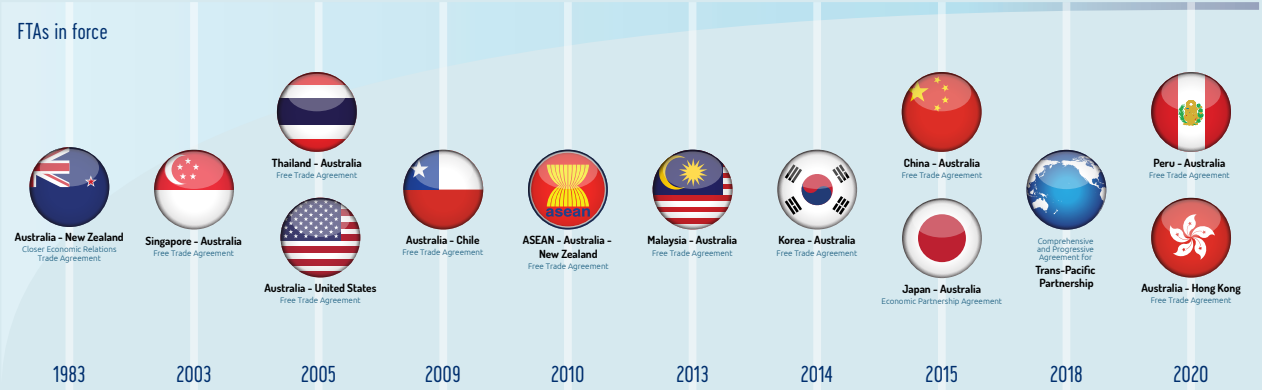
Australia currently has 13 free trade agreements with 20 partners. Most of these are bilateral and two are regional agreements. Regional free trade agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, include rules governing trade and investment between several parties. They facilitate the involvement of Australian businesses in regional value chains and more seamless trade and investment between businesses in the parties. The Government is also working hard to negotiate new free trade agreements that open up entirely new export and investment opportunities for our nation's businesses in the future. Our free trade agreement negotiations with the European Union, a bloc of 27 countries and a market of around 450 million people, is just one example of this work.

Where possible, Australia also reviews free trade agreements to upgrade the benefits business obtain from them. One example is the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), which entered into force in January 2010 for Australia and eight other countries (Laos, Cambodia and Indonesia became parties in 2011-12). AANZFTA has been upgraded since its entry into force, and Australia and other AANZFTA parties agreed to begin another upgrade in 2020.

The Government has a goal of increasing the coverage of Australia's two-way trade with free trade agreement partners to around 90 per cent of total trade by 2022.

FTAs in force

Australia had 13 regional and bilateral FTAs as at March 2020, including new agreements with Hong Kong and Peru that came into force on 17 January and 11 February 2020 respectively.



FTAs concluded but not yet in force

Indonesia-Australia Comprehensive Economic Partnership Agreement

Australia completed its domestic treaty-making processes for the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) on 18 December 2019 and the Indonesian parliament passed the IA-CEPA legislation in early February 2020. The agreement will enter into force 60 days after Indonesia notifies Australia that it has completed its remaining domestic treaty making procedures.

Pacific Agreement on Closer Economic Relations Plus

Australia, New Zealand, Samoa and Kiribati have ratified the Pacific Agreement on Closer Economic Relations Plus (PACER Plus). PACER Plus will come into force 60 days after the eighth signatory notifies the Depositary in Tonga that their domestic ratification processes are complete.

Free Trade Agreements under negotiation

Australia's active free trade agreement negotiating agenda includes the following:

- Australia-European Union Free Trade Agreement
- Pacific Alliance Free Trade Agreement
- Regional Comprehensive Economic Partnership
- Australia-United Kingdom Free Trade Agreement negotiations are expected to commence when the United Kingdom is ready.

FTA Portal

DFAT's FTA Portal helps businesses explore the benefits of FTAs. Goods and services exporters and importers can find comprehensive information on tariffs and services commitments, guidance on rules of origin to determine whether goods qualify for FTA concessions, and market data for prospective exporters.

The Portal is updated to include information on new agreements as they come into force. Find it at ftaportal.dfat.gov.au

Trade and development assistance

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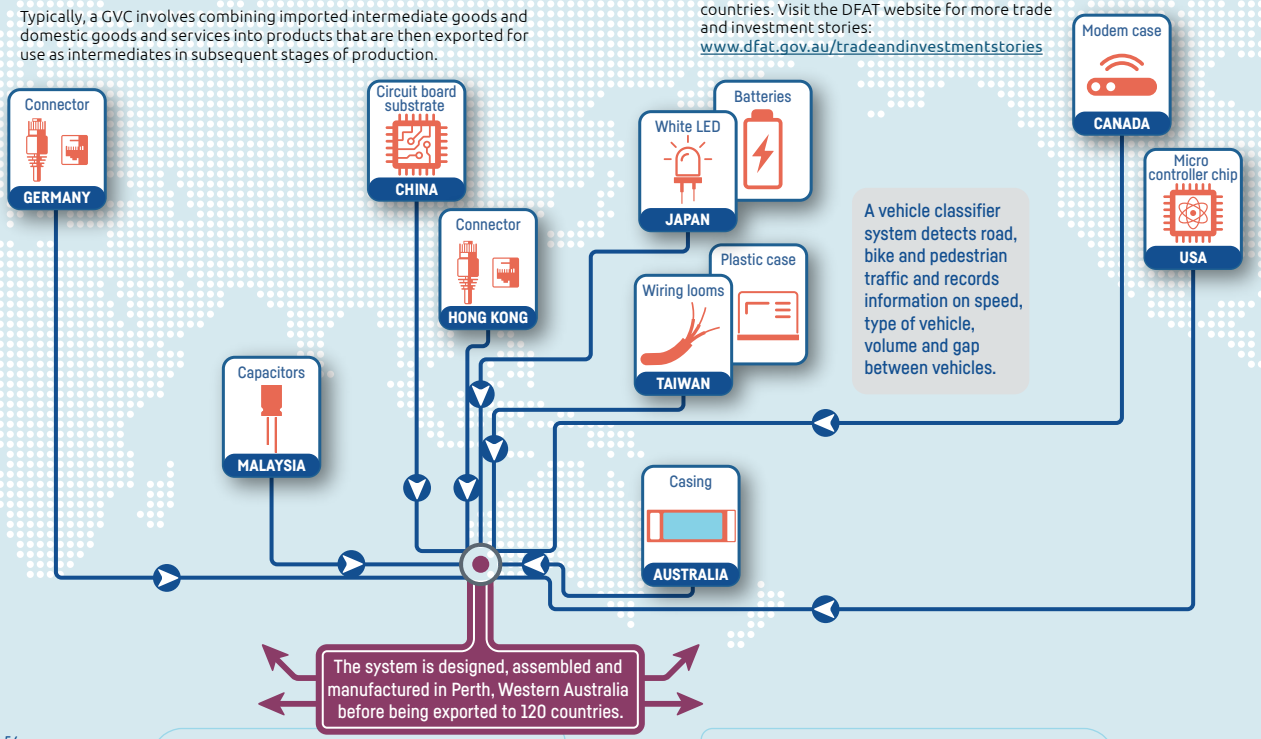

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COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE CERTIFICATE
DP-17

This is the Annexure marked "DP-17" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Determination

Application for authorisation lodged by
Dalrymple Bay Coal Terminal Access Holders and Access Seekers

in respect of collective negotiation and collective arbitration with Dalrymple Bay Infrastructure Management Pty Ltd, for access to Dalrymple Bay Coal Terminal

Authorisation number: AA1000541

Date: 17 June 2021

Commissioners: Rickard
Brakey
Ridgeway

Summary

The ACCC has decided to grant authorisation with a reporting condition to enable mining companies that are current access holders and current and future access seekers to the Dalrymple Bay Coal Terminal (the **Terminal**), and which use the coal handling services provided at the Terminal, to collectively negotiate and participate collectively in any arbitration of access terms and conditions (principally price) with the terminal access provider, Dalrymple Bay Infrastructure Management Pty Ltd (**DBIM**).

The applicants are required to notify the ACCC of any additional parties that seek to engage in the conduct, the subject of the authorisation, in the future.

Regulatory changes are likely to result in a change to the way access prices at the Terminal are determined. Access holders and access seekers wishing to export coal through the Terminal will need to negotiate access prices with DBIM. Previously, the regulator determined a reference tariff, which was accepted and used as the access price.

Access holders and access seekers are likely to be at a disadvantage when negotiating with DBIM because there are no close substitutes for the export facilities at the Terminal. The applicants have sought authorisation on behalf of current and future access holders and access seekers to collectively negotiate and, where necessary, collectively arbitrate access terms and conditions to mitigate any difficulties in negotiating access.

DBIM does not support collective negotiation and does not consider collective negotiations will result in public benefits because it does not intend to engage in collective negotiations. DBIM prefers bilateral negotiations on terms and conditions of access, however, regulatory changes are likely to require DBIM to engage in collective negotiations, where lawful, and where requested by access holders and access seekers.

The ACCC considers that the proposed collective negotiations are likely to result in public benefits by creating transaction cost savings and increased efficiency from improving input into access negotiations. These outcomes will enhance the international competitiveness of users of the Dalrymple Bay Coal Terminal, with employment and investment benefits in Australia.

The ACCC considers the proposed conduct is unlikely to result in significant public detriment.

The ACCC has decided to grant authorisation, with a reporting condition, until 30 June 2031.

On 5 March 2021, the ACCC granted interim authorisation to enable Terminal access holders and access seekers to commence collective negotiations with DBIM while the ACCC considered the substantive application for authorisation.

Interim authorisation remains in place until the date this determination comes into effect or interim authorisation is revoked.

This determination is made on 17 June 2021. If no application for review of the determination is made to the Australian Competition Tribunal, the determination will come into force on 9 July 2021.

1. The application for authorisation

1.1. On 21 December 2020, a group of 13 coal miners who are current access holders and current access seekers to the Dalrymple Bay Coal Terminal (the **Terminal**), lodged an application for authorisation with the ACCC, to collectively negotiate the terms and conditions of access (principally price) to the Terminal and to potentially participate collectively in any arbitration with the access provider, Dalrymple Bay Infrastructure Management Pty Ltd (**DBIM**)[1].

1.2. Authorisation was sought until 30 June 2031.

1.3. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the *Competition and Consumer Act 20*10 (the **Act**) specified in the authorisation for arrangements that may otherwise risk breaching those provisions, but are not harmful to competition and/or are likely to result in overall public benefits.

The Applicants

1.4. The application for authorisation was lodged on behalf of the following named parties, which are current access holders and current access seekers to the Terminal:

- Anglo American Metallurgical Coal Pty Ltd
- BHP Billiton Mitsui Coal Pty Ltd
- BM Alliance Coal Operations Pty Limited
- Glencore Coal Assets Australia Pty Limited
- Clermont Access Pty Ltd
- Fitzroy Australia Resources Pty Ltd
- Foxleigh Management Pty Ltd
- Peabody Energy Australia PCI (C&M Management) Pty Ltd
- Peabody Energy Australia Pty Ltd
- Pembroke Olive Downs Pty Ltd
- Stanmore IP Coal Pty Ltd
- South32 Eagle Downs Pty Ltd
- Whitehaven Coal Mining Limited

(together, the **Applicants**).

1.5. The Applicants also sought authorisation for:

- their respective successors and assignees
- their respective related bodies corporate and associated entities, and
- joint venture participants in the joint ventures which the named Applicants are participants in or operators of

[1] The application for authorisation identified the access provider as Dalrymple Bay Coal Terminal Management Pty Ltd (**DBCTM**). On 19 October 2020, DBCTM changed its name to Dalrymple Bay Infrastructure Management Pty Ltd (**DBIM**). Accordingly, the ACCC refers to DBIM as the access provider in this Draft Determination.

(together, the **Other Parties**).

1.6. Authorisation is also sought for future access seekers to the Terminal (**Future Access Seekers**) to have the benefit of the authorisation if they subsequently choose to participate in the collective negotiation and/or collective arbitration.

1.7. The Applicants have not sought to engage in collective boycott activity.

The Proposed Conduct

1.8. The Applicants sought authorisation to enable the Applicants, Other Parties and Future Access Seekers to engage in:[2]

(a) the collective negotiation with the access provider DBIM, of the terms and conditions of access (principally pricing) relating to use of the Terminal's coal handling service; and

(b) potential collective arbitration if those negotiations fail to resolve the terms of access

(the **Proposed Conduct**).

1.9. The Applicants submitted that the Proposed Conduct would involve:[3]

(a) joint discussions between DBIM and multiple users of and access seekers to the Terminal;

(b) discussions between the users of the Terminal and access seekers to the Terminal about those negotiations and the positions they should take in them;

(c) joint engagement of economic, legal and other advisers to assist in such joint negotiations;

(d) the entering into and giving effect to user agreements with terms, including pricing, resulting from those collective negotiations; and

(e) collective arbitration of access terms where access terms are not able to be agreed with DBIM.

2. Interim Authorisation

2.1. On 5 March 2021, the ACCC granted interim authorisation, with a condition, to enable the Applicants, the Other Parties, and Future Access Seekers, to commence engaging in the Proposed Conduct.[4]

2.2. Interim authorisation was granted with a condition that the Applicants notify the ACCC of the names of each of the Other Parties, and Future Access Seekers that seek to engage in the Proposed Conduct that they wish to be covered by the interim authorisation before they engage in the Proposed Conduct.

2.3. Interim authorisation remains in place until the date the ACCC's final determination comes into effect or until interim authorisation is revoked.

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[2] Application for authorisation, 21 December 2020, p. 2, Available: Public Register for DBCT

[3] Application for authorisation, 21 December 2020, p. 5, Available: Public Register for DBCT

[4] ACCC, Interim authorisation decision, 5 March 2021, Available: Public Register for DBCT

3. Background

3.1. The Terminal is a common user coal terminal located in the Port of Hay Point and is at the end of the Dalrymple Bay Coal Chain. It provides a coal handling service facilitating exports of coal produced from the central Bowen Basin and transported to Dalrymple Bay by rail.

3.2. The Applicants submitted that it has been well established through previous regulatory assessments that the Terminal has a natural monopoly position, with significant market power and no close substitutes or competitive constraints; mines in the central part of the Bowen Basin are effectively economically captive to using the Terminal. Given that coal producers are price takers in global thermal and metallurgical coal markets, infrastructure charges (including the costs of accessing the Terminal) have a material impact on the competitiveness of coal producers, dependent markets and the economics and incentives of coal producers investing in future coal projects in the region.

Regulatory and access arrangements

3.3. The coal handling services provided at the Terminal have been a declared service under the Queensland Competition Authority (**QCA**) Act since privatisation in 2001. Following a recent declaration review, the Queensland Treasurer decided to declare the Terminal's coal handling service for a further 10 years, until 2030.

3.4. DBIM applied for judicial review of the Queensland Treasurer's decision to declare the service for a further 10 years. The appeal was heard in late November 2020 but a decision is yet to be released.

3.5. DBIM is currently subject to an access undertaking until 30 June 2021 and in 2019 it lodged a draft access undertaking (the **2019 DAU**) with the QCA to apply from 1 July 2021. In the 2019 DAU, DBIM proposed that the undertaking no longer include a QCA approved reference tariff to determine the price of coal handling services for access holders (as it has done in the past) and instead rely on a negotiate-arbitrate model to set the price for the declared service.

3.6. In its Draft Decision on DBIM's 2019 DAU, released on 26 August 2020, the QCA stated that DBIM's pricing model, as proposed in its 2019 DAU, could be appropriate to approve, with amendments as outlined in the QCA Draft Decision.

3.7. At the time of the application, the Applicants submitted that it appeared likely that the outcome of the 2019 DAU process would be an access undertaking that would not include a QCA approved reference tariff, and existing users and access seekers would be exposed to uncertainty in relation to future pricing and would need to negotiate prices with DBIM, which the Applicants consider, has significant market power.

3.8. On 30 March 2021, the QCA released its final decision (**Final Decision**) refusing to approve the 2019 DAU.[5] The QCA requested DBIM to amend the 2019 DAU in a number of ways, and to give the QCA a copy of the amended 2019 DAU within 60 days of issuing the Final Decision. If DBIM did not comply with this request, the QCA may prepare and approve an access undertaking for the declared service.

3.9. In the Final Decision, the QCA decided that it is appropriate for DBIM to amend the 2019 DAU such that DBIM is required to collectively negotiate with access seekers

[5] QCA, Final Decision, DBCT 2019 Draft Access Undertaking, March 2021, available: https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2019-draft-access-undertaking/

and/or existing users, where lawful, and where requested to do so by access seekers and/or existing users, subject to certain minimum requirements (including that the group can establish sufficient commonality in the issues to be negotiated).[6]

3.10. On 12 May 2021, DBIM lodged an amended Access Undertaking (the **2021 AU**) with the QCA. The 2021 AU provides for collective negotiations with access holders and access seekers in relation to access charges, non-price access and the terms of any conditional access agreement.[7]

3.11. At the time of making this determination, the QCA has not completed its assessment of DBIM's 2021 AU.

Rationale for the Proposed Conduct

3.12. The Applicants submitted that imminent potential changes to the regulatory regime applying to the Terminal service have fundamentally changed the position of existing access holders and future access seekers in relation to pricing for access to the Terminal. The Applicants submitted that submissions made by DBIM during the 2019 DAU process indicate that DBIM believes it should be entitled to materially higher prices under a negotiate-arbitrate model.

3.13. The Applicants submitted that they sought authorisation to mitigate the serious difficulties presented by negotiating pricing with DBIM in the absence of an independently determined reference tariff.

4. Consultation

4.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.

4.2. The ACCC invited submissions on the application for authorisation from a range of potentially interested parties including DBIM, each of the Applicants, infrastructure owners in the Dalrymple Bay Coal Chain and relevant government departments.

4.3. All submissions on the application for authorisation were made before the QCA published its Final Decision on the 2019 DAU on 30 March 2021.

Submissions before the draft determination

4.4. While DBIM made several submissions before 30 March 2021 stating that they do not intend to engage in collective arbitrations, the QCA's Final Decision currently requires collective negotiation in certain circumstances.

4.5. DBIM opposed authorisation. Prior to the QCA's Final Decision on the 2019 DAU, DBIM submitted that:

(a) Authorisation would result in harm by allowing the Applicants to form a cartel, share information on price expectations and agree a maximum price, above which the participants would collectively refer the matter to arbitration, resulting in potentially multiple arbitrations. This would undermine the negotiate-arbitrate regime set out in DBIM's 2019 DAU.

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6 QCA, Final Decision, DBCT 2019 Draft Access Undertaking, March 2021, available: https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2019-draft-access-undertaking/

7 DBCT, 2021 Access Undertaking, 12 May 2021, available: https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2019-draft-access-undertaking/

(b) Any market power held by DBIM is constrained by QCA regulation.

(c) The Terminal users are already protected under existing user agreements.

(d) The Proposed Conduct will not result in public benefits because DBIM will not collectively negotiate with users and access seekers.[8]

4.6. BHP Billiton Mitsui Coal Pty Ltd and BM Alliance Coal Operations Pty Limited (both applicants) supported the application for authorisation, for the reasons set out in the application.

4.7. Foxleigh Management Pty Ltd, also an applicant, supported authorisation, submitting that changes in the Queensland access regulation framework that apply to the Terminal would remove the independently determined reference tariff. Foxleigh submitted that DBIM holds a monopoly position which limits the negotiation power of smaller existing access holders and access seekers.

4.8. The Applicants responded to DBIM's submissions re-stating their rationale for authorisation and the likely public benefits of the Proposed Conduct.

Submissions after the draft determination

4.9. The ACCC invited submissions on the draft determination, which was released on 6 May 2021, also in light of the QCA Final Determination, but did not receive any.

4.10. Public submissions are available on the ACCC Public Register for the Terminal.

5. ACCC assessment

5.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.

5.2. The application for authorisation was made under section 88 of the Act because the Proposed Conduct would or might:

(a) include a cartel provision within the meaning of Division 1 of Part IV of the Act; or

(b) result in a substantial lessening of competition within the meaning of section 45 of the Act.

5.3. Consistent with subsection 90(7) and 90(8) of the Act as they apply to this application for authorisation, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the conduct (**authorisation test**).

Relevant areas of competition

5.4. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.

5.5. The ACCC considers that the most relevant area of competition affected by the Proposed Conduct is competition by coal exporters for access to port services at the Terminal, provided by DBIM.

[8] DBIM's submissions were made before the QCA released its Final Decision requiring DBIM to collectively negotiate with users and access seekers where lawful to do so.

Future with and without the Proposed Conduct

5.6. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.

5.7. In its Final Decision, the QCA has indicated that adoption of a pricing model without a reference tariff, if properly designed, is appropriate for the declared service at Dalrymple Bay. On this basis, the ACCC considers that, should the Terminal service remain declared, access pricing is likely to be determined via a negotiate-arbitrate regime. If the service does not remain declared, the ACCC anticipates that Terminal users and access seekers are still likely to need to negotiate the terms and conditions of Terminal access with DBIM.

Future with the Proposed Conduct

5.8. The Applicants submitted that if the Proposed Conduct is authorised, the existing access holders and future access seekers will be able to collectively negotiate access pricing with DBIM.

5.9. Before the QCA made its Final Decision on the 2019 DAU, DBIM submitted that in the future with the Proposed Conduct, the Applicants would form a buy side cartel and DBIM does not intend to engage in collective negotiations with them. DBIM submitted that the Proposed Conduct would not result in public benefits and there would be public detriments arising from authorisation, resulting in a net public detriment.[9]

5.10. The ACCC's role is to assess the public benefits and detriments that are likely to arise in the future with and without the Proposed Conduct. It is not the ACCC's role to attempt to predict whether the Proposed Conduct will be engaged in by the parties.

5.11. The ACCC considers that, in the future with the Proposed Conduct there will be joint discussions between the Applicants about collective negotiations and the positions they will take and then the Applicants will seek to collectively negotiate with DBIM. The Applicants are likely to jointly engage economic, legal and other advisers to assist in collective negotiations. The Applicants would enter into and give effect to user agreements with terms, including pricing, and where agreements cannot be achieved collectively participate in arbitration of access terms.

Future without the Proposed Conduct

5.12. The Applicants submitted that if the Proposed Conduct is not authorised, each individual access holder and access seeker will engage in individual bilateral negotiations of pricing with DBIM.

5.13. DBIM submitted that without the Proposed Conduct:[10]

(a) DBIM will still be subject to regulation by the QCA under the QCA Act. It will be subject to the legislative negotiate-arbitrate regime, as well as a QCA approved access undertaking which will take effect on 1 July 2021. Based on the QCA's draft decision on DBIM's 2019 DAU (as the QCA's Final Decision was not available at the time DBIM provided the submission), it is likely that the QCA will approve the DAU without a reference tariff. Accordingly, DBIM submitted that access seekers will negotiate with DBIM on a bilateral basis, in the knowledge

[9] DBIM submissions on the application for authorisation, available: ACCC Public Register for DBCT

[10] DBIM submission on the substantive application for authorisation, 12 February 2021, available: ACCC Public Register for DBCT

that if DBIM does not act reasonably, they have recourse to the QCA to arbitrate access disputes. They also benefit from the extensive non-price related protections in the 2019 DAU, including both broad and prescriptive information requirements, detailed capital expenditure approval processes and non-discrimination obligations.

(b) Existing users who already have access to DBIM will continue to receive the benefits of their access agreements, including the ability to refer pricing disputes to arbitration. DBIM has committed publicly to providing substantively similar information to existing users as it will to access seekers under its access undertaking, including a cost of service model.

(c) DBIM anticipates that it will be able to reach negotiated outcomes with the majority of the Applicants.

5.14. The ACCC considers that without the Proposed Conduct, each existing access holder and each future access seeker will negotiate the terms and conditions of access to the Terminal with DBIM individually. Each existing access holder and each future access seeker may engage its own economic, legal and other advisors for these bilateral negotiations with DBIM.

Public benefits

5.15. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

> *…anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.*[11]

5.16. DBIM submitted that it has no incentive to collectively negotiate with users, meaning that any purported benefits flowing from collective negotiations are purely speculative, as they would not arise in practice.[12] DBIM further submitted that neither the 2019 DAU, nor the existing users' access agreements, make provision for collective arbitrations. Accordingly, any purported cost savings related to collective arbitrations are purely speculative and cannot be taken into account as a public benefit.[13] DBIM has not reviewed its position since the QCA's Final Decision.

5.17. The ACCC notes that upfront statements from 'targets' of proposed collective negotiation, such as DBIM, that they will not engage with a bargaining group does not mean there can be no public benefits from the proposed conduct. The ACCC notes, however, that the QCA Final Decision would require DBIM to engage in collective negotiation, where lawful, in certain circumstances.

5.18. A collective bargaining authorisation granted by the ACCC, when it does not include a collective boycott, does not compel the target to deal with the group. It is not uncommon in these circumstances for the target to submit that they will not engage with the group. However, the ACCC's role is to assess the public benefits that are

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[11] Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

[12] DBIM 12 February, Submission on substantive application, pp. 3-4, available: ACCC Public Register for DBCT

[13] Ibid, p.27

likely to result from the proposed collective negotiation conduct if it is engaged in by the parties in the future.

5.19. In addition, the ACCC considers that public benefits result from providing the opportunity for the group to form and attempt to collectively negotiate, even when the target advises that it will not deal with the group.

5.20. Generally, the ACCC considers that collective negotiation can result in public benefits by improving the efficiency of contracting between the 'target' and members of the group - for example, generating mutual benefits by reducing transaction costs or reducing information asymmetries between negotiating parties.

5.21. In assessing the current application for authorisation, the ACCC has assessed the public benefits and public detriments that are likely to arise if the Applicants have the opportunity to collectively negotiate with DBIM, including any public detriments resulting from a lessening of competition.

Transaction cost saving for future negotiations

Applicants' submission

5.22. The Applicants submitted that the Proposed Conduct will result in more efficient negotiation of future access pricing with DBIM, particularly considering:[14]

(a) The new pricing regime is scheduled to commence on 1 July 2021;

(b) negotiations are anticipated to be complex given it will be the first time the parties will experience such a negotiate-arbitrate pricing regime in respect of the Terminal since its privatisation in 2001, and based on past regulatory submissions, DBIM and users have highly divergent views on appropriate pricing;

(c) there is a relatively large number of users of the Terminal, such that the cost savings of a single collective negotiation (rather than a series of bilateral negotiations) will be significant.

5.23. The Applicants submitted that the Proposed Conduct would significantly reduce negotiating costs through:[15]

(a) users being able to engage a common external legal adviser and a common economic advisor, and share the costs of doing so;

(b) significantly less meetings being required with DBIM relative to a series of bilateral negotiations between DBIM and individual users under the future without the Proposed Conduct.

5.24. The Applicants submitted that they do not anticipate that there will be issues specific to individual access holders relevant to the negotiations which would detract from the identified cost savings. This is due to the common nature of the service provided and the common infrastructure by which it is provided, the near identical terms on which all existing users have contracted (and future users are likely to contract given the standard access agreement terms), and the indications based on the QCA Draft

[14] Application for authorisation, 21 December 2020, p. 23. : Available: ACCC Public Register for DBCT

[15] Application for authorisation, 21 December 2020, pp. 23-24, : Available: ACCC Public Register for DBCT

Decision that the anticipated foundation for the pricing is a 'building blocks' type approach. [16]

5.25. The Applicants submitted that, in the event arbitration is required, additional cost savings would arise for DBIM, users and access seekers (and the arbitrator) if arbitration were conducted collectively compared to a situation where multiple bilateral arbitrations are required.

DBIM submission

5.26. DBIM submitted that the Applicants have provided no evidence that collective negotiations would lead to reduced negotiation or arbitration costs. The coordination of a negotiating position amongst the many Applicants, along with the additional costs associated with the appointment of legal and economic representatives to negotiate with DBIM, is likely to result in increased and unnecessary negotiation costs with no corresponding benefit. [17]

5.27. DBIM submitted that neither the 2019 DAU, nor the existing users' access agreements, make provision for collective arbitrations. Accordingly, any purported cost savings related to collective arbitrations are purely speculative and cannot be taken into account as a public benefit. Even if collective arbitrations were permitted, any cost savings are likely to be immaterial or non-existent as:[18]

(a) the parties to the arbitration and the arbitrator would still have to deal with user specific factors;

(b) the practical difficulties of managing a huge collective arbitration and coordinating not two, but many parties, is likely to result in inefficiencies resulting in increased costs; and

(c) overall the cost of arbitration is likely to increase as there is likely to be an increased number of users unnecessarily proceeding to arbitration with authorisation, because users are likely to adopt the most aggressive bargaining position of the participants.

ACCC view

5.28. The ACCC receives and considers many applications for authorisation for collective negotiation/bargaining. The ACCC accepts that generally, collective negotiation/bargaining results in increased efficiency including from transaction cost savings.

5.29. The ACCC accepts that each of the Applicants, Other Parties and Future Access Seekers individually negotiating with DBIM will incur transaction costs, such as the time taken to negotiate and legal or other expert advice costs. Collective negotiation and engaging legal and economic advisors to assist the group is likely to result in efficiencies including transaction cost savings for the Applicants, Other Parties and Future Access Seekers, and DBIM. Given the number of parties involved, these efficiencies are likely to be significant.

5.30. The ACCC also notes the QCA has clarified that no amendments to the 2019 DAU are required to implement collective arbitration because the existing legislative regime in

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[16] Application for authorisation, 21 December 2020, p. 24, : Available: ACCC Public Register for DBCT

[17] DBIM submission 12 February 2021, p. 4, Available: ACCC Public Register for DBCT

[18] DBIM submission 12 February 2021, p.27, Available: ACCC Public Register for DBCT

Queensland already provides for collective arbitration of disputes in certain circumstances.[19]

Increased efficiency from improving input into negotiations for access to the Terminal

Improving transparency and reducing information asymmetry

Applicants' submission

5.31. The Applicants submitted that a core concern that users of the Terminal have raised in the 2019 DAU process is the lack of transparency and the information asymmetry that will exist between DBIM and users, particularly in relation to:[20]

(a) large costs associated with items such as proposed expansions, significant capital expenditure on major terminal plant and equipment and remediation at the end of DBIM's useful life;

(b) useful life of the terminal;

(c) DBIM's efficient costs of debt and equity;

(d) DBIM's efficient corporate overhead and tax costs.

5.32. The Applicants submitted that the previous regulatory approach, where the QCA determined a reference tariff, provided users and access seekers with an independent assessment of the prudency of costs and the appropriateness and efficiency of the weighted average cost of capital and building blocks used to calculate the price.

5.33. In the absence of a reference tariff, the Applicants consider a collective negotiation provides the greatest potential for mitigating that information asymmetry by allowing:

(a) more informed users sharing information (whether obtained through experiences of costs and pricing with other coal terminals and infrastructure, information obtained as a shareholder in the user owned operator, or greater internal resources); and

(b) greater access to professional advisers through the ability to share costs.

5.34. The Applicants submitted that given the reliance of a negotiate-arbitrate model on negotiating parties having sufficient information to resolve efficient and appropriate terms of access, there is a clear public benefit.

DBIM submission

5.35. DBIM submitted that this issue has been considered in great detail by the QCA, and DBIM has proposed extensive amendments to the 2019 DAU to eliminate any concerns regarding information asymmetry. The 2019 DAU submitted by DBIM to the QCA provided for:[21]

(a) extensive prescriptive information requirements, including two comprehensive schedules of information requirements;

(b) an ability request a broad range of information from DBIM;

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[19] QCA, Final Decision, 30 March 2021, p. 110, available: https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2019-draft-access-undertaking/

[20] Application for authorisation, 21 December 2020, p. 25, : Available: ACCC Public Register for DBCT

[21] DBIM submission 12 February 2021, p. 23, Available: ACCC Public Register for DBCT

(c) a proposal to introduce an evidentiary limit.

5.36. DBIM submitted that the Applicant's position that collective negotiations are needed to address information asymmetry contradicts the findings of the QCA that with appropriate amendments information asymmetry can be dealt with under the 2019 DAU. The Applicants rely on the proposition that the QCA's Final Decision will leave unresolved a bona-fide issue regarding information asymmetry and transparency, which it has considered in detail.[22]

Applicants' response to DBIM submission

5.37. The Applicants submitted Authorisation can (and will) act as a complement and enhancement to the QCA's regulatory arrangements, in a way that the QCA is not empowered to provide – through enabling a reduction in costs, increasing the information that users will have access to, and improving the bargaining position of users and access seekers.[23]

5.38. The Applicants submitted that the fact that the QCA regime may provide some degree of assistance with those matters does not mean that the Proposed Conduct cannot provide further benefits. The QCA has, in fact, expressly indicated that it does not consider its role is to only approve the most appropriate possible undertaking or consider whether other variations would have been preferable.[24]

ACCC view

5.39. In its Draft Decision and Final Decision, the QCA noted that the provision of sufficient information is likely to result in successful and efficient negotiations. The QCA stated that given DBIM proposed to remove the reference tariff and replace it with a negotiate-arbitrate pricing regime, information provision requirements must reduce information asymmetry so as to encourage and facilitate effective negotiation. Accordingly, in its Final Decision the QCA required DBIM to provide Terminal users and access seekers with certain specific information.

5.40. The QCA also stated that an overly prescriptive approach to information provision risks limiting the scope for parties to negotiate on pricing terms of access. Where there is scope for commercial judgement and flexibility around elements of a pricing proposal, there may be an opportunity for the parties to negotiate without regulatory intervention.[25]

5.41. The ACCC considers that the Proposed Conduct is likely to provide some opportunity for the parties to identify common contractual issues and then negotiate contractual terms in a way that better reflects the circumstances of the parties. The proposed collective negotiations will also likely mean that members of the bargaining group become better informed about relevant market conditions. These factors should facilitate improved input into contract negotiations.

5.42. The ACCC considers that the Proposed Conduct complements the QCA's regulatory arrangements in this aspect and on this basis is likely to result in some public benefit.

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[22] DBIM submission 12 February 2021, pp. 23-24, Available: ACCC Public Register for DBCT

[23] The Applicants second submission to the ACCC, 25 February 2021, p. 7, Available: ACCC Public Register for DBCT

[24] The Applicants second submission to the ACCC, 25 February 2021, p. 7, Available: ACCC Public Register for DBCT

[25] QCA, Final Decision, p.60, available: https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2019-draft-access-undertaking/

Facilitating more efficient prices

Applicants' submission

5.43. The Applicants submitted that while there are a number of coal terminals in Queensland, it has been well established through previous regulatory assessments that the Terminal has a natural monopoly position, with significant market power and no close substitutes or constraints from competition. Mines in the central part of the Bowen Basin are economically captive to the Terminal.

5.44. The Applicants submitted that users and access seekers' dependence on the Terminal as bottleneck essential infrastructure in the coal supply chain, creates an inequality of bargaining power between individual users and access seekers and DBIM. This inequality of bargaining position will be exacerbated where users are required to engage in bilateral negotiations with DBIM on an individual basis.

5.45. The Applicants submitted that the long term nature of their existing access agreements and sunk capital investments in major mining projects, means they cannot cease contracting access until the end of life of their mining projects, and the lack of competition means that the Terminal is their only choice of access. The vast majority of existing users are completely economically captive to the Terminal.

5.46. The Applicants submitted that the findings of the ACCC in its assessment of Brookfield's acquisition of Asciano and the QCA in its declaration review of the Terminal coal handling service indicate that there is a separate market for the supply of coal handling services by the Terminal.[26] The Applicants submitted that other Queensland coal terminals are not close substitutes because:[27]

(a) rail access and haulage costs from coal mines to the Terminal are significantly cheaper compared to transportation costs to other terminals;

(b) capacity constraints both on Aurizon Network's rail network and at the other coal terminals practically prevent users switching to other terminals;

(c) the long term 'take or pay' nature of below rail, above rail and port access contracts makes it uneconomic to switch terminals;

(d) transporting coal through the Newlands system to Abbot Point involves utilising diesel locomotives, which provides another barrier to switching where a user's haulage provider uses electric locomotives;

(e) some mines require infrastructure changes for coal to be transported to other terminals;

(f) a high proportion of coal shipped from the Terminal is metallurgical coal and coal producers can co-ship with other producers (and this is particularly attractive for smaller producers);

(g) the Terminal infrastructure enables the shipping of homogenous blends of coal and this creates marketing opportunities for coal producers using the Terminal.

5.47. The Applicants submitted that the position is not materially different for access seekers. Access seekers are highly dependent on DBIM to obtain access in order to enable economic development of their future coal project, and will likely have material

[26] Application for authorisation, 21 December 2020, p. 15 Available: ACCC Public Register for DBCT

[27] Application for authorisation, 21 December 2020, pp. 15-16 Available: ACCC Public Register for DBCT

time pressure to reach agreement on access terms in a window in which they can also align other elements necessary for a final investment decision (such as rail haulage and rail access, funding and financing, and government approvals). Whereas DBIM has no similar dependence on an individual access seeker, where they have indicated their last expansion was oversubscribed and there is additional remaining demand.

5.48. The Applicants submitted that a collective negotiation has the potential to go some way to mitigating that significant imbalance of bargaining power. That is partly the case because, while certainty of price in relation to a single user is not particularly important to DBIM, certainty of price to the vast majority of users is anticipated to have some importance – such that a collective negotiation will create some degree of co-dependency that will not exist in individual bilateral negotiations.

5.49. The Applicants submitted that at a minimum, it will make it significantly harder for DBIM to engage in 'divide and conquer' tactics where price discrimination occurs not on the basis of efficiency, but on the basis of differences in experience, resources, and information levels of the counterparty. The Applicants submitted that it is also likely to provide some assistance in resolving information asymmetry and support for those users or access seekers with the least bargaining power, resources and experience.

5.50. At the time of the application, the Applicants submitted that while participation in the collective negotiation is voluntary and there is no guarantee that DBIM will agree to make any concessions on price, a collective negotiation in those circumstances has a better prospect of resulting in a price closer to that which is efficient. A series of bilateral negotiations will, by contrast, exacerbate those problems and are highly likely to result in many users and access seekers paying inefficient prices.

5.51. The Applicants submitted that a collective negotiation is far more likely to produce an efficient outcome in the environment where:

(a) as concluded by the QCA in the 2019 DAU process, there is no material differentiation between the service provided to each user which are all part of the same core coal handling service – with the same infrastructure used to service all customers; and

(b) based on the QCA's position in the Draft Decision, access prices are likely to be based on a building blocks type methodology with socialisation.

5.52. The Applicants submitted that a more efficient price has a large range of public benefits including:

(a) increasing the international competitiveness of coal mines utilising the Terminal;

(b) improving their profitability during a time of a significant downturn in coal prices and thereby retaining and supporting future employment, exports, Queensland coal royalties and other indirect economic contributions;

(c) incentivising efficient future investment in the coal industry and dependent industries; and

(d) preventing the distortion in competition and markets that would arise from bilateral negotiations resulting in a series of inefficient price discrimination outcomes.

5.53. The Applicants submitted that some of the Applicants are independent, single mine access holders or access seekers. Where these users or access seekers have to negotiate on their own, they will be far more likely to settle for an inefficient access

price – both due to having greater difficulty in determining what constitutes an efficient price, and not having the resources for arbitration to be a credible alternative or backstop. This creates the potential for inefficient price discrimination, based on differences in bargaining power and resources rather than the costs or risks of providing the service, which distorts investment incentives and competition in dependent markets.

5.54. The Applicants submitted that the Proposed Conduct will provide public benefits by:

(a) allowing smaller users to collectively negotiate with larger users, resulting in a common price rather than price discrimination against smaller or less well-resourced users or access seekers,

(b) in turn, promoting efficient outcomes in coal markets and dependent markets which would otherwise be distorted.

DBIM submission

5.55. DBIM submitted that throughout the application, the Applicants rely on the fact that the QCA has previously found that DBIM possesses some market power. DBIM acknowledges that the QCA has found that DBIM does possess some market power without regulation. However, this is the QCA's assessment of the state of the market without regulation.

5.56. DBIM submitted that the Terminal service is declared and therefore regulated under the QCA Act by the QCA, who is empowered to ensure that DBIM cannot exercise any market power.

5.57. DBIM submitted that it will be unable to exert any market power under the 2019 DAU as:

(a) if DBIM attempts to exert market power, the Applicants will have the ability to refer the matter to be determined by an independent arbitrator, most likely the QCA (whether under the 2019 DAU or existing user agreements),

(b) any changes to the regulatory regime will be the result of a thorough analysis by the QCA, including extensive public consultation, over a period of 20 months. The final decision of the QCA will be on the basis that the approved Access Undertaking will appropriately constrain DBIM's market power.

5.58. DBIM submitted that irrespective of whether the ACCC considers the 2019 DAU to be an effective constraint on DBIM's market power, the QCA has undertaken a thorough analysis of the 2019 DAU and will determine the outcome that it considers appropriate in light of this. All concerns raised by the Applicants in the application for authorisation have also been raised with the QCA, which has had the time and opportunity to thoroughly consider these concerns. Given the robustness of this process it is reasonable for the ACCC to adopt an assumption that the QCA understands and is across the issues raised by the Applicants. Ultimately, if the QCA decided to approve the 2019 DAU without a reference tariff, it would be because it determined that the access undertaking would adequately constrain any market power on the part of DBIM (the QCA has expressly identified that the access undertaking must constrain DBIM's market power in order to be appropriate to approve). If the QCA determined that DBIM's market power is not constrained under the 2019 DAU, the QCA would require DBIM to make amendments to the 2019 DAU such that its market power would be constrained.

5.59. DBIM submitted that the Terminal is currently fully contracted for the foreseeable future. The only negotiations currently on foot relate to the price for existing users, who already have access to the Terminal. These negotiations are governed by the existing rights and obligations contained in existing users' access agreements. These negotiations are subject to binding arbitration by the QCA or a commercial arbitrator, which is a constraint on DBIM's ability to exercise any market power.

5.60. DBIM submitted that there is no evidence that the Proposed Conduct would result in efficient prices. DBIM is regulated by the QCA and users and access seekers can refer disputes to the QCA for arbitration if DBIM pursues an inefficient price.

5.61. DBIM submitted that in the future without the Proposed Conduct, each party will agree to price and other terms that are reasonable and efficient, taking into account each users individual needs. If DBIM offers an inefficient price, the user can refer the dispute to arbitration.

5.62. DBIM submitted that in the future with the Proposed Conduct the group is likely to adopt the most aggressive bargaining position of its participants, which may be below the efficient cost of providing the service, leading to increased risk to future investment and increased likelihood of unnecessary arbitrations.

5.63. Regarding the position of smaller users and access seekers, DBIM submitted that its customers are large, sophisticated, mining companies who deal with significant uncertainty on a day-to-day basis. The need to negotiate charges with DBIM is no different from other (unregulated) negotiations that small miners face on a day-to-day basis. Many existing users of the terminal have successfully negotiated charges at other unregulated terminals, and most have a very long history at the Terminal and are familiar with the regime.[28]

5.64. DBIM submitted that small and less experienced producers will have the same recourse to arbitration as large suppliers (either under their access agreements or the 2021 access undertaking) where the arbitrator can ensure that these producers are not exploited.[29]

ACCC view

5.65. The ACCC accepts the Applicants' submissions that the coal handling services at other Queensland coal terminals, such as Abbot Point and Gladstone are not close substitutes for the services provided at the Terminal. The ACCC considered this issue in its assessment of Brookfield Consortium's proposed acquisition of Asciano Limited.[30]

5.66. The ACCC considers that the Proposed Conduct is likely to enable individual members of the group to be more informed and engaged in negotiations. This is likely to result in more comprehensive terms and conditions of access, resulting in more efficient outcomes, including more efficient prices. The ACCC considers that the ability for access holders and access seekers to engage in both collective negotiation and collective arbitration (in the event collective negotiation does not result in efficient outcomes) is likely to result in public benefits.

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[28] DBIM submission 12 February pp. 22-23, available: ACCC Public Register for DBCT

[29] DBIM submission 12 February pp. 22-23, available: ACCC Public Register for DBCT

[30] See ACCC, 2015, *Statement of Issues*, pp13-14., available: https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/brookfield-consortium-proposed-acquisition-of-asciano-limited

5.67. More efficient outcomes, including more efficient access prices, are likely to result in the coal producers that compete with other producers in a global market being more competitive.

5.68. Coal producers contribute to the local communities in which they operate by, amongst other things, employing people in the local community and contracting with local businesses for services.

5.69. The ACCC considers that smaller, resource constrained businesses benefit from collective negotiations. In this case, the ACCC notes that while some of the users are significantly smaller than others, they are still reasonably large businesses. However, the ACCC accepts that there is a risk that these businesses, negotiating bilaterally with DBIM may settle for inefficient prices rather than pursue prolonged negotiations and potentially arbitration. Accordingly, the Proposed Conduct is likely to result in some public benefit by improving the negotiating position of smaller, less well-resourced access holders and access seekers. The ACCC notes that, further to the reasoning above, the QCA Final Decision requires DBIM to engage in lawful collective negotiation in certain circumstances.

5.70. A more efficient price will likely result in public benefits by improving the competitiveness of coal producers; retaining and supporting future employment, increased exports, Queensland coal royalties and other indirect economic contributions; and incentivising more efficient future investment in the coal industry and dependent industries.

Summary of likely public benefits

5.71. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of:

- Transaction cost savings, and
- Increased efficiency from improving input into negotiations for access to the Terminal.

5.72. The ACCC considers these outcomes will enhance the international competitiveness of users of the Dalrymple Bay Coal Terminal, with investment and employment benefits in Australia.

Public detriments

5.73. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

> *…any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*[31]

5.74. The Applicants submitted that there is limited, if any, potential public detriment caused by allowing users of the Terminal to engage in the Proposed Conduct.

5.75. The Applicants submitted that is the case because:[32]

(a) The Proposed Conduct is voluntary - DBIM (and individual access holders or access seekers) would not be compelled to collectively negotiate (unless, in

[31] Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

[32] DBCT, 21 December 2021, Application for authorisation, p.27, available: ACCC Public Register for DBCT

DBIM's case, the QCA determines that it would be appropriate for the Terminal access undertaking to compel DBIM to engage in collective negotiations which had been authorised by the ACCC).[33]

(b) The Proposed Conduct does not include collective boycott activity by the users of the Terminal.

(c) The exchange of information between the Applicants and the reaching of any arrangements or understandings is only related to the Proposed Conduct. The Applicants would not be allowed to share commercially sensitive information in relation to coal markets (such as downstream customers, customer pricing, volume projections or marketing strategies) or any other markets in which they may be competitors, if authorisation were granted.

(d) There is no actual competition for access to the Terminal between the entities that have already contracted capacity that can be lessened by the collective negotiation, or any potential for allocative efficiency that will be diminished by the collective negotiation – as the capacity is already allocated under evergreen contracts.

(e) Given the existing user agreement (for existing users) or standard access agreement (for access seekers) provide non-pricing terms and the Terminal provides a common multi-user service utilising common infrastructure, there is very limited practical scope for customised or tailored terms which would theoretically be foregone by collective negotiations.

(f) If resolution is not reached through collective negotiation, then all parties are no worse off, and it appears likely that there will be some form of arbitration that applies at that point to determine the terms of access.

(g) DBIM has a strong bargaining position and is able to protect its interest in any collective negotiation (and will have the same right to resort to arbitration as the Applicants).

5.76. The ACCC has considered the following possible public detriments.

Potential for authorisation to undermine the access regime

DBIM and QCA submissions

5.77. DBIM submitted that Authorisation would undermine the certified Queensland access regime and the Queensland regulator, the QCA. In particular, the regulatory regime likely to apply to DBIM from July 2021 is designed to promote tailored, bilaterally negotiated pricing outcomes, outcomes which the QCA has recognised will deliver real public benefits. The authorisation would undermine these bilateral negotiations, and the associated benefits, resulting in unnecessary arbitrations and increased costs.

5.78. DBIM submitted that the application for authorisation is merely forum shopping and as acknowledged by the Applicants, the Application is made because the Applicants consider that they are not going to get a favourable outcome from the QCA under the certified access regime applying to the Terminal service. DBIM submitted that the Applicants are seeking authorisation to subvert the likely outcomes of the QCA's

[33] The QCA Final Decision, released on 30 March 2021 states: *It is appropriate for DBIM to amend the 2019 DBCT DAU such that: DBIM is required to collectively negotiate with access seekers and/or existing users, where lawful, and where requested to do so by access seekers and/or existing users, subject to certain minimum requirements (including that the group can establish sufficient commonality in the issues to be negotiated)*.

regulatory process in which it has thoroughly considered the issues raised by the Applicants, over a period of over 20 months. Such forum shopping and regulatory gaming undermines confidence in the national access framework, and creates cost and uncertainty which is unnecessary given the terminal is already fully regulated under an access regime which is certified to be effective.

5.79. Before releasing its Final Decision on the 2019 DAU, the QCA submitted that it does not consider any decision the ACCC makes on the application would interfere with its consideration of the 2019 DAU, or with the development and release of its Final Decision on the 2019 DAU. As a result, the QCA submitted that the ACCC should consider the application on its merits.

ACCC view

5.80. The ACCC does not consider that the Proposed Conduct has or will undermine the Queensland access regime. The ACCC notes the QCA's views set out above and that in its Final Decision the QCA:[34]

(a) has decided to require DBIM to collectively negotiate with existing access holders and access seekers, where lawful and where requested to do so by existing access holders and access seekers;

(b) considers that no amendments to the 2019 DAU are required to implement collective arbitration because the existing legislative regime in Queensland already provides for collective arbitration of disputes in certain circumstances.

Potential for collective activity beyond that authorised

DBIM submissions

5.81. DBIM submitted that there is a real risk that the Proposed Conduct would lead to the Applicants sharing competitively sensitive information relevant to other markets in the supply chain, which could lead to the risk of anticompetitive collusion and coordination in those markets.

Applicants' submission

5.82. The Applicants submitted that the exchange of information amongst them and the reaching of any arrangements or understandings would only be related to the Proposed Conduct (i.e. the terms of access to the Terminal).

ACCC view

5.83. Authorisation raises the potential for anticompetitive coordination beyond the scope of the conduct for which authorisation is sought. However, any such conduct would not be protected under the proposed authorisation, and would likely breach the Act. The ACCC notes that the Applicants' submission in support of their application for authorisation indicates that they are aware of their responsibilities under the Act. The Applicants will be aware that there is an increased risk of detection if they engage in unauthorised conduct. On this basis, the ACCC considers that this detriment is unlikely to arise.

[34] QCA, Final Decision, 30 March 2021, pp100-110, available: https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2019-draft-access-undertaking/

Prejudice future access seekers

DBIM submission

5.84. DBIM submitted that authorisation would provide the opportunity for groups of users to collaborate in a way that could prejudice the interests of other users or, in particular, access seekers. DBIM submitted that, for example, without an expansion to the terminal it is unlikely that access seekers would be able to gain access to the terminal. However, the cost of an expansion, if socialised amongst all users, is likely to incrementally increase the access charges at the terminal for all users. Accordingly, the interests of access seekers and existing users are not aligned with respect to the socialisation of an expansion.

5.85. Given that collective negotiations are voluntary and all users and access seekers do not need to participate, there is a risk that a group of users use the threat of multiple arbitrations to seek terms from DBIM that prejudice the position of other users or access seekers.

Applicants' submission

5.86. The Applicants submitted that they have sought authorisation on behalf of all future users and access seekers and there is no intention to exclude or prejudice any entity. The Applicants submitted that an existing user can also be an access seeker; it is unlikely that existing users would agree to a collective position to damage access seekers.[35]

ACCC view

5.87. The ACCC does not consider that it is in the interests of the Applicants to exclude future members from seeking to join the group and notes they have sought authorisation to extend to future parties. It therefore considers the potential for such public detriment to arise unlikely.

The risk of multiple threats of arbitration

DBIM submissions

5.88. DBIM submitted that the Proposed Conduct would enable the Applicants to use the threat of multiple arbitrations to circumvent the negotiation process.[36]

5.89. DBIM submitted that authorising the formation of what would otherwise be considered a cartel is likely to result in the Applicants collectively adopting an unreasonable pricing position in negotiations with DBIM, which may not allow DBIM to recover the efficient costs of providing the service. This in turn, would result in a greater number of unnecessary arbitrations than would otherwise be the case. [37]

5.90. DBIM submitted that without authorisation, the Applicants would be required to negotiate individually. This would enable DBIM to reach mutually agreeable negotiated outcomes with the majority of reasonable users. On occasion there may be a dispute, which would be referred to arbitration where it could be dealt with efficiently and expediently by the QCA.

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[35] DBCT, 25 February 2021, 2nd submission to the ACCC, p-5-6, available: ACCC Public Register for DBCT

[36] DBIM, 12 February 2021, p.5, available: ACCC Public Register for DBCT

[37] DBIM, 12 February p. 30, Available: ACCC Public Register for DBCT

5.91. DBIM submitted that authorising the Applicants to form a buy-side cartel means that a greater number of users are likely to adopt an unreasonable negotiating position and refuse to accept a reasonable offer by DBIM. This would lead to unnecessary arbitrations and increased arbitration costs.

Applicants' submission

5.92. The Applicants submitted that DBIM's submission relies on the assumption that a collective negotiation would automatically result in the Applicants' collectively adopting an unreasonable pricing position in negotiations with DBIM by following the most 'aggressive' and 'unreasonable' price advocated for by any user.

5.93. The Applicants submitted that DBIM's underlying assumption:

(a) is inconsistent with the Applicants' stated purpose for seeking authorisation – namely to collectively negotiate an appropriate price (and if needed to pursue a single collective arbitration) to avoid the need and cost for multiple arbitrations;

(b) is inconsistent with all of DBIM's own submissions that the QCA arbitrations will provide an appropriate price (such that, based on their own submissions, DBIM would clearly not regard multiple arbitrations as a credible threat in response to which they would accept a price below the efficient costs of providing the service and it would be irrational for the Applicants to consider they would achieve such a price through such threats);

(c) does not acknowledge that participation by a user in a collective negotiation would be voluntary and where DBIM can convince an existing user that there are benefits in negotiating separately that avenue remains equally available with authorisation – such that they are not locked into pursuing an unreasonable common outcome; and

(d) requires the ACCC to assume that the Applicants will act contrary to the rational and economic incentives they will face – as they will be highly incentivised to not to be dragged into unnecessary arbitrations (involving significant costs and on DBIM's theory presumably a higher 'reasonable' price being found by the QCA) by being part of a collective pursuing unreasonable outcomes in negotiations. In DBIM's unrealistic hypothetical environment where the collective negotiating position was an unreasonable price cap, users would be incentivised to seek bilateral negotiations.

5.94. The Applicants submitted that they are not seeking to circumvent the negotiation process, but to enhance it by seeking to engage in the negotiation collectively, so as to lower transaction costs and make the negotiations more informed and effective.

ACCC view

5.95. As outlined in the interim authorisation decision, the ACCC notes DBIM's concerns that, if authorisation is granted and the parties engaging in collective negotiation collectively decide on a maximum price for the service, which DBIM rejects, the parties to the conduct may refer the matter to collective arbitration, potentially resulting in multiple arbitrations.

5.96. The ACCC does not share this concern. Collective arbitration is likely to reduce the number of arbitrations compared to a future with bilateral negotiation/arbitration. Further, the ACCC considers that any arbitration would likely determine a price based on the efficient cost of supply, rather than a price agreed between coal producers. Once one arbitration had determined an efficient price, there would be little incentive

for other producers to try to hold out for their previously agreed price. On this basis, the ACCC considers that this detriment is unlikely to arise.

Summary of likely public detriment

5.97. The ACCC considers that there are limited public detriments from:

- Potential for authorisation to undermine the access regime.
- Potential for collective activity beyond that authorised.
- Prejudice future access seekers.
- The risk of multiple threats of arbitration.

5.98. For the reasons outlined above, the ACCC concludes that the Proposed Conduct is unlikely to result in significant public detriment.

Proposed reporting condition

5.99. The Applicants seek authorisation for themselves, Other Parties, defined in paragraph 1.5 and Future Access Seekers, described in paragraph 1.6. The primary participants in the Proposed Conduct will be the 13 parties named in the application and the Other Parties and Future Access Seekers would be other parties with an interest in exporting coal via the terminal now or in the future, including entities with a minority interest based overseas.

5.100. The ACCC has decided to impose a reporting condition requiring the Applicants to notify the ACCC of the names of additional parties before they engage in the Proposed Conduct. The ACCC considers it should be aware of the entities that have the benefit of authorisation. The condition set out below will achieve this.

5.101. The ACCC imposed this reporting condition in the interim authorisation.

Balance of public benefit and detriment

5.102. For the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

5.103. The Act allows the ACCC to grant authorisation for a limited period of time.[38] This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

5.104. In this instance, the Applicants sought authorisation until 30 June 2031, approximately 10 years.

5.105. DBIM submitted that the proposed period of authorisation is excessive as regulation applying to DBIM beyond the next five years is completely uncertain. In the event the ACCC determines authorisation is appropriate, DBIM submits that authorisation should apply only for the duration of the upcoming five year pricing period, at the most. The Applicants could then reapply for authorisation after this period and the ACCC could

[38] Subsection 91(1).

assess the application in view of the factual circumstances that will apply to that period. [39]

5.106. The Applicants submitted that the proposed authorisation period of 10 years would ensure that the negotiations for the next pricing period are properly covered within the scope of the authorisation. The Applicants submitted that this is important because under the terms of the existing user agreements, where prices are not determined by the start of the next pricing period, the agreed or arbitrated prices are backdated.[40]

5.107. The Applicants submitted that where authorisation is only granted for the limited period that DBIM proposes, that there would be no protection if negotiations or an arbitration continued past 30 June 2026. Where (as is the case currently) price is not resolved near the end of the pricing period, the limited period proposed by DBIM would practically force the Applicants to reapply for authorisation to ensure that if negotiations or arbitrations continued after 1 July 2026 there would still be an authorisation in place, despite the fact that there has been no change in circumstances.[41]

5.108. In light of the ACCC's net public benefit assessment and the possibility that pricing negotiation/arbitration for the next five-year pricing period may extend beyond 30 June 2026, the ACCC has decided to authorise the Proposed Conduct until 30 June 2031.

6. Determination

The application

6.1. On 21 December 2020, a group of 13 coal miners who are current access holders and current access seekers to the Terminal lodged an application for authorisation (AA1000541) with the ACCC to collectively negotiate the terms and conditions of access (principally price) to the Terminal and to potentially participate collectively in any arbitration with the access provider, DBIM. The application for authorisation AA1000541 was made under subsection 88 of the Act.

6.2. The Applicants sought authorisation on behalf of themselves (as defined in paragraph 1.4), the Other Parties (as defined in paragraph 1.5) and Future Access Seekers (as described in paragraph 1.6) to engage in the Proposed Conduct, as outlined in paragraph 1.8 and paragraph 1.9.

The authorisation test

6.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the conduct.

6.4. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

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[39] DBIM 12 February 2021, Submission on the substantive application for authorisation, p.5, Available: ACCC Public Register for DBCT

[40] DBCT 2 March 2021, 3rd Submission to the ACCC, p. 12, available: ACCC Public Register for DBCT

[41] ibid

6.5. Accordingly, the ACCC grants authorisation.

Conduct authorised

6.6. The ACCC has decided to grant authorisation AA1000541 with a condition. Authorisation is granted to enable the Applicants, as defined in paragraph 1.4, the Other Parties, as defined in paragraph 1.5 and Future Access Seekers, as described in paragraph 1.6, to engage in the Proposed Conduct, as outlined in paragraphs 1.8 and 1.9.

6.7. The Proposed Conduct does not include the sharing of commercially sensitive information in relation to coal markets (such as downstream customers, customer pricing, volume projections or marketing strategies) or any other markets in which the Applicants, the Other Parties and Future Access Seekers are or may be competitors.

6.8. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act, or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

6.9. The ACCC has decided to grant authorisation AA1000541 with the following condition, until 30 June 2031.

Condition of authorisation

6.10. The ACCC has decided to grant authorisation with a condition that the Applicants, as defined in paragraph 1.4, notify the ACCC of the names of each of the Other Parties, as described in paragraph 1.5, and Future Access Seekers, as described in paragraph 1.6, that seek to engage in the Proposed Conduct by sending an email to exemptions@accc.gov.au with the subject *'AA1000451 – Dalrymple Bay Coal Producers - Notification of entity'* identifying the entity(ies) that they wish to be covered by this authorisation, such a notification to be sent to the ACCC before the entity(ies) engage in the Proposed Conduct.

6.11. The ACCC may publish on its public register a list of the notified parties.

7. Date authorisation comes into effect

7.1. This determination is made on 17 June 2021. If no application for review of the determination is made to the Australian Competition Tribunal, this authorisation will come into force on 9 July 2021.

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Nos:	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

ANNEXURE
CERTIFICATE DP-18

This is the Annexure marked "DP-18" referred to in the affidavit of Dave Poddar affirmed at Sydney in New South Wales on 25 June 2021.

Before me:

Signature of witness

Ryan Draper

Solicitor of the Supreme Court of New South Wales

Australian Competition & Consumer Commission

Determination

Applications for authorisation

lodged by

Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group and the Newcastle Port Corporation

in respect of

the Capacity Framework Arrangements at the Port of Newcastle

Date: **9 December 2009**

Commissioners: Samuel, Kell, Court, Dimasi, Walker

Authorisation no.:
A91147–A91149 and A91168–A91169

Public Register no.: C2009/1252

Summary

The Australian Competition and Consumer Commission (ACCC) has decided to grant authorisation to the proposed Capacity Framework Arrangements until 31 December 2024 to enable a long term solution to the ongoing capacity constraints in the Hunter Valley coal chain to be introduced at the Port of Newcastle.

On 29 June 2009 Port Waratah Coal Services, Newcastle Coal Infrastructure Group and the Newcastle Port Corporation (the Applicants) sought authorisation of certain aspects of a long term solution to the ongoing capacity constraints in the Hunter Valley – the 'Capacity Framework Arrangements'. The Capacity Framework Arrangements have been phased in during the second half of 2009, to be fully implemented by 1 January 2010.

On 14 September 2009 the Applicants amended the Capacity Framework Arrangements for which authorisation is sought. Further revisions were made by the Applicants on 26 October 2009 in order to specify more precisely the proposed 'contractual alignment conduct' for which authorisation is sought.

Authorisation is sought to make and give effect to a provision of a contract, arrangement or understanding which involves the proposed conduct set out in the Capacity Framework Arrangements (provided at Attachment A to this determination). The Capacity Framework Arrangements include:

- the allocation of port capacity to access seekers at the PWCS terminals under long term contracts in accordance with certain nomination and allocation procedures
- the allocation of up to 12 million tonnes per annum of port capacity to access seekers (initially exclusively to non-NCIG producers) at NCIG Stage 2 under long term contracts and in accordance with certain nomination and allocation procedures
- the ability of terminal operators to impose (at their election) an industry levy payable by all users of the terminals in specified circumstances to facilitate expansions of capacity at the PWCS and NCIG coal loading terminals
- certain agreed triggers and processes for determining whether and when expansions of the PWCS coal loading terminals are required (including the construction of a new terminal where necessary)
- the 'compression' and 'decompression' of certain capacity allocations in circumstances where there is a delay or shortfall in any expansion of the PWCS terminals (including the construction of a new terminal) or in the completion of NCIG Stage 2
- a limitation on the maximum fees for transferring unused capacity allocations and the introduction of a transparent and efficient Capacity Transfer System to limit the commercial incentives to hoard coal chain capacity and
- proposed principles to facilitate the alignment of commercial contracts with service providers across the coal chain, including above and below rail.

The development of a long term solution

Prior to this application, the ACCC was asked to authorise various transitional measures designed to balance the demand for coal loading services at the Port of Newcastle with the volume of coal that could be exported from the Hunter Valley. Due to an upsurge in global demand for coal in 2004, producers were trying to export more coal than the coal chain could deliver.

The primary benefit of the previous 'capacity balancing systems' was to reduce the large vessel queues that formed offshore. Australian coal producers incurred significant demurrage costs due to delays from queues of up to 70 vessels waiting to be loaded with coal.

Over time the ACCC became increasingly concerned that the industry was not addressing the underlying issues contributing to the capacity imbalance in the Hunter Valley – including the common user provision in PWCS' lease, which was restricting its ability to enter into long term binding contracts to underpin investment, and service providers were contracting based on assessments of individual capacity without reference to the capacity of the coal chain as a whole.

In the absence of a long term solution to the underlying problems, the ACCC questioned whether authorisation of short term capacity balancing systems remained in the public interest.

Industry negotiations for a long term solution started in 2008 with the 'Greiner Review' of the Hunter Valley coal chain. In December, the NSW Minister for Ports and Waterways announced that government and industry had reached agreement on a long term terminal access framework for the Port of Newcastle. Key features of this framework included triggers requiring terminals to build new capacity on demand, long term contracts to underpin investment in terminal capacity, an industry levy to help fund new terminal infrastructure where required, guaranteed access for new entrants and expanding producers and a proposal for a fourth coal loading terminal in Newcastle.

In 2009, discussions about the implementation of the long term solution continued. The Applicants then sign a detailed 'Implementation Memorandum' in April. Further work was still required, prior to the current applications for authorisation being lodged with the ACCC at the end of June.

Implementation

The proposed Capacity Framework Arrangements appear to facilitate, and are a critical part of, the implementation of a long term solution across the Hunter Valley coal chain. However, the ACCC notes that the port-based Capacity Framework Arrangements are only one part of the solution for the Hunter Valley coal chain.

By early December 2009, PWCS executed its long term ship or pay contracts with producers. NCIG advises that it is currently in the process of finalising its contracts with producers for Stage 2 of its new terminal, the first stage of which is expected to commence operating around the end of March 2009.

Having said this, there is still some work to be carried out by the industry in order for the Capacity Framework Arrangements to be implemented by the 1 January 2010 target date. For instance, the Capacity Transfer System Working Group continues to finalise the design of a centralised Capacity Transfer System proposed to operate under the arrangements. Further, the ACCC understands that discussions between the terminal operators and the Australian Rail Track Corporation (ARTC) continue in relation to the operational implementation of contractual alignment across the coal chain.

ARTC's proposed Hunter Valley rail network access undertaking is currently being considered by the ACCC under Part IIIA of *Trade Practices Act* (1974). The proposed access undertaking also forms a critical component of the long term solution in the Hunter Valley coal chain. Interested parties have identified some outstanding issues in relation to contractual alignment which are more appropriately addressed through the access undertaking process.

Interim authorisation

At the time of lodging the application, the Applicants requested urgent interim authorisation to allow the phased-in implementation of the Capacity Framework Arrangements to commence.

The ACCC originally granted interim authorisation on 22 July 2009, subject to a condition that the Applicants execute their respective 'Capacity Framework Documents' by their 31 August 2009 deadline.

One Applicant did not comply with the condition of interim authorisation and on 1 September 2009 the ACCC revoked interim authorisation.

The remaining Capacity Framework Documents were executed on 17 September 2009. On 23 September 2009 the ACCC granted interim authorisation to the Capacity Framework Arrangements, as amended on 14 September.

In its draft determination, the ACCC granted interim authorisation to the further revised Capacity Framework Arrangements received on 26 October 2009.

Interim authorisation will remain in place until the date the ACCC's final determination comes into effect.

The Capacity Framework Arrangements – balance of public benefits and detriments

The ACCC considers the proposed Capacity Framework Arrangements are likely to result in significant public benefits, including:

- the terminal operators and existing and new producers being able to make more accurate and timely investment decisions
- facilitating the alignment of contractual obligations and incentives across the Hunter Valley coal chain, thereby creating an environment more conducive to optimal operation of the coal chain and efficient investment
- demurrage savings to Australian coal producers
- reducing the environmental and safety risks associated with vessel queues waiting offshore and
- maintaining or improving the international reputation of the Hunter Valley coal industry.

The ACCC considers that any delays in the implementation of the long term solution in the Hunter Valley, including components of the Capacity Framework Arrangements, beyond 1 January 2010, will delay the full realisation of the likely public benefits, and therefore potentially reduce the magnitude of the public benefits generated by the Capacity Framework Arrangements over the life of the authorisation period. Nevertheless, the ACCC considers the Capacity Framework Arrangements are likely to generate significant public benefits.

The ACCC considers there are likely to be some public detriments arising from the exclusive and restrictive nature of the Capacity Framework Arrangements. Further, the extensive information sharing and detailed co-ordination of the operation and expansion of the various components of the Hunter Valley coal chain is likely to result in some detriment by creating a less competitive environment.

The ACCC also considers that certain aspects of the Capacity Framework Arrangements are likely to generate some public detriment from distortions to efficient business decisions. Having said this, the ACCC considers that overall, the likely public detriments will not be substantial.

Therefore, the ACCC considers the public benefit that is likely to result from the proposed Capacity Framework Arrangements is likely to outweigh the public detriment.

Length of authorisation

Given that certain producers' 10 year load point allocations may commence up to 5 years from now, the ACCC has decided to grant authorisation to the Capacity Framework Arrangements for 15 years until 31 December 2024.

The ACCC considers this will provide greater certainty to producers and service providers, given significant infrastructure investments involved.

The Capacity Framework Arrangements are a complex set of arrangements that require a number of parties to work together to ensure the Hunter Valley coal chain operates efficiently and effectively. The ACCC is granting authorisation for an extended period of time on the basis of the information before it and the commitments made by the Applicants in the Capacity Framework Arrangements.

The ACCC notes that NCIG's terminal will be operated on a fundamentally different basis than PWCS' terminals, and this is reflected in the more detailed arrangements that PWCS has in place to ensure contractual alignment. Nevertheless, the ACCC is granting authorisation on the basis that if contractual alignment issues arise in the operation of NCIG's terminal that have broader operational impacts in the Hunter Valley coal chain, NCIG will work the Hunter Valley Coal Chain Coordinator and other coal chain participants to resolve those issues and to ensure that contracts are aligned, including engaging in the conduct described in the Capacity Framework Arrangements.

If the Capacity Framework Arrangements do not operate in the way described or deliver the benefits claimed, the ACCC has the power to review this authorisation at any time.

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List of abbreviations

ACCC	Australian Competition and Consumer Commission
The Act	*Trade Practices Act 1974*
AHA	Indicative Access Holder Agreement – in relation to ARTC's proposed Hunter Valley Rail Network Access Undertaking.
ARTC	Australian Rail Track Corporation
HV Access Undertaking	Proposed Hunter Valley Rail Network Access Undertaking lodged with the ACCC by the Australian Rail Track Corporation on 23 April 2009.
HVCCC	Hunter Valley Coal Chain Coordinator
HVCCLT	Hunter Valley Coal Chain Logistics Team
mtpa	Million tonnes per annum
NCIG	Newcastle Coal Infrastructure Group
NPC	Newcastle Port Corporation
OSA	Indicative Operator Sub-Agreement – in relation to ARTC's proposed Hunter Valley Rail Network Access Undertaking.
PWCS	Port Waratah Coal Services Limited
T4	Proposed new coal loading terminal ('terminal 4') at the Port of Newcastle.

1. The applications for authorisation

1.1. On 29 June 2009 Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group and Newcastle Port Corporation (the 'Applicants') lodged applications for authorisation A91147–A91149 under section 88(1) of the *Trade Practices Act 1974* (the Act) for certain aspects of a long term solution to the ongoing capacity constraints of the Hunter Valley coal chain. The Applicants subsequently provided a public submission in support of the applications for authorisation on 30 June 2009.

1.2. On 24 July 2009 the Applicants lodged further applications for authorisation A91168–A91169 under section 88(1A) of the Act in relation to a contract, arrangement or understanding which may contain a cartel provision. The additional applications were lodged with the Australian Competition and Consumer Commission (ACCC) as a result of the amendments introduced by the *Trade Practices Amendment (Cartel Conduct and Other Measures)* Act 2009, which commenced on 24 July 2009.

1.3. The conduct under the additional applications A91168–A91169 is the same conduct and is in the same terms as the Applicants' original applications for authorisation lodged with the ACCC on 29 June 2009.

1.4. In particular, authorisation is sought to make or give effect to a provision of a contract, arrangement or understanding which involves the proposed conduct set out in the 'Capacity Framework Arrangements'.

1.5. On 14 September 2009 the Applicants requested to vary the existing applications for authorisation (A91147–A91149 and A91168–A91169). The Applicants submitted that since lodging the applications in June 2009, they agreed that changes were required to the Capacity Framework Arrangements to clarify the proposed conduct and to address certain practical issues identified by the Applicants during ongoing negotiations.[1]

1.6. On 26 October 2009 the Applicants lodged further revisions to the proposed Capacity Framework Arrangements. The primary purpose of these revisions was to provide greater clarity in relation to the proposed 'contractual alignment conduct' for which authorisation is sought.

1.7. The proposed Capacity Framework Arrangements for which authorisation is sought are provided at Attachment A to this determination.[2]

1.8. Authorisation is a transparent process where the ACCC may grant immunity from legal action for conduct that might otherwise breach the Act. The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not.

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[1] Application to amend applications (A91147–A91149 and A91168–A91169), 14 September 2009, page 2.

[2] Attachment 1 to the Applicants' letter requesting to amend existing applications for authorisation (A91447–A91149 and A91168–A91169), 26 October 2009.

1.9. Further information about the authorisation process is contained in Attachment B. A chronology of the significant dates in the ACCC's consideration of these applications is contained in Attachment C.

1.10. Application A91147 was made under section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.

1.11. Application A91148 was made under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

1.12. Application A91149 was made under section 88(7) of the Act to engage in conduct to which sections 45D, 45DA or 45DB of the Act might apply. That is, to engage in conduct with other persons which may hinder or prevent a third person supplying or acquiring goods and services to, or from, a fourth person. Also, to engage in conduct with other persons that may hinder or prevent a third person from engaging in trade or commerce involving the movement of goods from Australia to places outside Australia.

1.13. Application A91168 was made under section 88(1A) of the Act to make or give effect to a contract, arrangement or understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the Act, and which would also be, or might be, an exclusionary provision within the meaning of section 45 of the Act.

1.14. Application A91169 was made under section 88(1A) of the Act to make or give effect to a contract, arrangement or understanding, a provision of which would be, or may be a cartel provision within the meaning of Division 1 of Part IV of the Act, or which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

1.15. The Capacity Framework Arrangements set out a very broad and detailed description of the proposed conduct for which authorisation is sought. An overview of the Capacity Framework Arrangements is provided in Chapter 2 of this determination. The Applicants advise that the proposed Capacity Framework Arrangements have been divided into two sections – Parts A and B – to reflect the phasing-in of the long term solution in the Hunter Valley by 1 January 2010.

1.16. The Applicants' original supporting submission to the application requested authorisation of the proposed Capacity Framework Arrangements for 15 years until 30 June 2024.[3]

1.17. In response to the draft determination proposing to grant authorisation until 30 June 2020, the Applicants submitted that the duration of authorisation should be at least 15 years and expire on 31 December to better match contracting periods.

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[3] The Applicants' supporting submission to the applications (A91147–A91149 and A91168–A91169), 30 June 2009, page 11.

Other parties

1.18. The Applicants seek authorisation to extend to other parties, namely:

- any exporter of coal through the terminals at the Port of Newcastle
- any above or below rail service provider in the Hunter Valley and
- the Hunter Valley Coal Chain Coordinator.

1.19. Under section 88(6) of the Act, any authorisation granted by the ACCC is automatically extended to cover any person named in the authorisation as being a party or proposed party to the conduct.

Interim authorisation

1.20. At the time of lodging the original applications, the Applicants also requested urgent interim authorisation of the proposed Capacity Framework Arrangements so that: [4]

- the long term solution can start to be implemented – namely, PWCS can give effect to the 2009 Base Tonnage Offer for the period 1 July 2009 to 31 December 2009, as well as the respective nomination and allocation procedures at the terminals and contractual alignment principles
- NCIG and PWCS can enter into long term ship or pay contracts with producers, and therefore obtain sufficient certainty to undertake planning in relation to investment and expansion decisions, and in the case of producers, sales decisions and other commercial arrangements with other Hunter Valley service providers.

1.21. On 22 July 2009 the ACCC granted conditional interim authorisation to allow the Applicants to commence the phased-in implementation of the Capacity Framework Arrangements.

1.22. In reaching this decision, the ACCC had regard to the following:

- there is sufficient urgency for the Applicants to need to be able to commence implementing key aspects of the proposed Capacity Framework Arrangements at the Port of Newcastle for the remainder of 2009, in order to facilitate the long term solution being able to commence across the Hunter Valley coal chain by 1 January 2010
- the operation of the 2009 Base Tonnage Offer is unlikely to delay the implementation of the long term solution in the Hunter Valley
- the significant public benefit arising from the implementation of a long term commercial framework, namely, sufficient certainty for industry participants regarding coal volumes to underpin efficient investment across the entire coal chain.

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[4] The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 28.

1.23. Interim authorisation was subject to a condition that the Applicants execute their respective Capacity Framework Documents by 31 August 2009. This was in accordance with the timeframes set out within the applications for authorisation. The ACCC's decision indicated that it would revoke the interim authorisation should any of the Applicants fail to execute the Capacity Framework Documents by 31 August 2009.

1.24. As noted above, on 24 July 2009 the Applicants lodged further applications for authorisation in relation to a contract, arrangement or understanding which may contain a cartel provision. The additional 'cartel applications' also included a request for interim authorisation.

1.25. Given the ACCC granted conditional interim authorisation on 22 July 2009 for the same conduct, and for the reasons set out in that decision, the ACCC granted conditional interim authorisation to the 'cartel applications' on 29 July 2009.

1.26. On 31 August 2009 the Applicants advised that NCIG had not executed its Capacity Framework Documents. Accordingly, on 1 September 2009 the ACCC revoked the conditional interim authorisation which had previously been granted to the in relation to the Capacity Framework Arrangements.

1.27. On 17 September 2009 the Applicants advised that NCIG had now executed the Capacity Framework Documents. At that time, the Applicants also requested that the ACCC grant interim authorisation to the Capacity Framework Arrangements, as amended on 14 September 2009.

1.28. On 23 September 2009 the ACCC granted interim authorisation to the Capacity Framework Arrangements, as amended on 14 September 2009. The amendments included the removal of the previous section 11 of Part B of the arrangements.

1.29. The ACCC reconsidered interim authorisation as part of its draft determination and decided to grant interim authorisation to the further revised Capacity Framework Arrangements received on 26 October 2009 (provided at Attachment A).

1.30. Copies of the ACCC's interim authorisation decision documents are available from the ACCC's website **www.accc.gov.au/AuthorisationsRegister**.

The draft determination

1.31. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

1.32. On 28 October 2009 the ACCC issued a draft determination proposing to grant authorisation to the proposed Capacity Framework Arrangements until 30 June 2020.

1.33. A conference was not requested in relation to the draft determination.

2. The conduct

2.1 Authorisation is sought to make and give effect to a provision of a contract, arrangement or understanding which involves the proposed conduct set out in the Capacity Framework Arrangements. The proposed Capacity Framework Arrangements for which authorisation is sought are provided at Attachment A to this determination. Please refer to Attachment A for a full description of the conduct for which authorisation is sought.

2.2 The proposed Capacity Framework Arrangements (and the provisions of the contracts, arrangements and understandings which give effect to or implement the relevant aspects of the Capacity Framework Arrangements) are necessary to give binding legal effect to the non-binding principles set out in the Implementation Memorandum signed by the Applicants in April 2009.

2.3 The proposed Capacity Framework Arrangements include:[5]

- nomination and allocation procedures for coal loading capacity at the port:
  - the allocation of capacity to access seekers at the PWCS terminals under long term contracts in accordance with the 'PWCS Nomination and Allocation Procedure'
  - the allocation of up to 12 million tonnes per annum of capacity to access seekers (initially exclusively to non-NCIG producers) at NCIG Stage 2 under long term contracts and in accordance with the 'NCIG Nomination and Allocation Procedure'
- expansion arrangements at the port to facilitate usage of terminal capacity:
  - the ability of terminal operators to impose (at their election) an industry levy payable by all users of the terminals in specified circumstances to facilitate expansions of capacity at their respective terminals
  - certain agreed triggers and processes for determining whether and when expansions of the PWCS coal loading terminals are required (including the construction of a new terminal where necessary)
  - the 'compression' and 'decompression' of certain capacity allocations in circumstances where there is a delay or shortfall in any expansion of the PWCS terminals (including the construction of a new terminal) or in the completion of NCIG Stage 2
  - a limitation on the maximum fees for transferring unused capacity allocations and the introduction of a transparent and efficient Capacity Transfer System to limit the commercial incentives to hoard coal chain capacity, and
- contractual alignment:
  - proposed principles to facilitate the alignment of commercial contracts with service providers across the coal chain, including above and below rail.

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5 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 2.

2.4 It is proposed that the Capacity Framework Arrangements will be reflected in a range of agreements and other documents, including:

- a formal Capacity Framework Agreement between the Applicants which gives effect to the relevant provisions of the Capacity Framework Arrangements
- long term ship or pay contracts for PWCS coal loading terminals and NCIG Stage 2
- Deed of Variation which amends the leases for the land on which the PWCS terminals are located
- Deed of Variation which amends the lease for the land on which NCIG Stage 2 will be located to include the NCIG Nomination and Allocation Procedures for 12 million tonnes per annum of capacity at NCIG Stage 2
- Deed of Undertaking between NPC and NCIG
- an agreement for the lease of the new 'Terminal 4' (T4) between PWCS and NPC, and
- levy protocols for the calculation, charging and collection of an industry levy by NCIG and PWCS to assist with meeting the cost of any Unallocated Expansion Capacity.

2.5 At the time of lodging the applications for authorisation, the Applicants advised that they proposed to provide the ACCC with copies of the relevant contracts and documents (or relevant parts of those documents) in which the Capacity Framework Arrangements are reflected as soon as is practicable.[6]

2.6 The Applicants advised that while authorisation is not being sought separately for those documents, this would, as a practical matter, enable the ACCC to see how those documents give effect to the Capacity Framework Arrangements (that is, the conduct for which authorisation is sought).[7]

2.7 The Applicants submit it was not possible for all aspects of the long term solution to be implemented and operational by 1 July 2009, when the ACCC's previous authorisation of the PWCS Stage 1 Allocation system expired. As such, it is proposed that the long term solution will be phased-in over the last six months of 2009.

2.8 The proposed 'phased-in' approach involves the following steps:[8]

- Phase 1 – involves PWCS offering capacity allocations to existing producers that use the PWCS terminal based on the '2009 Base Tonnage Offer' for the period between 1 July 2009 and 31 December 2009 under a modified PWCS Coal Handling Services Agreement, which will incorporate the 'PWCS Terminal Access Protocols'.
- Phase 2 – involves PWCS implementing and giving effect to the PWCS Nomination and Allocation Procedure. Pursuant to that procedure, PWCS will offer capacity allocations to existing producers that use the PWCS terminals based on the '2010 Base Tonnage Offer' for the period from 1 January 2010

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6 Ibid, page 4.
7 Ibid.
8 Ibid, page 6.

onwards, and invite demand nominations for additional capacity allocations under the terms of new long term ship or pay contracts to commence on 1 January 2010.

2.9 The proposed Capacity Framework Arrangements have been divided into two parts – Parts A and B – to reflect the above phased-in approach. They are described in further detail in the following pages.

Part A – proposed Capacity Framework Arrangements

2.10 Part A covers the phasing-in period for implementation of the long term solution between 1 July 2009 to 31 December 2009, and any offer by PWCS and any acceptance of that offer by a producer of the '2009 PWCS Base Tonnage' for that period.[9]

2009 Base Tonnage Offer[10]

2.11 This section of Part A of the proposed Capacity Framework Arrangements involves any offer by PWCS, and any acceptance of that offer by a producer (in whole or in part), of 2009 PWCS Base Tonnage for the period 1 July 2009 to 31 December 2009.

2.12 The aggregate 2009 PWCS Base Tonnage available for offer is 96.7 million tonnes per annum.

2.13 The amount of the 2009 PWCS Base Tonnage to be offered to each producer will be equal to:

- a producer's 2008 binding nominations for capacity allocation at the PWCS terminal proportionally reduced to 95 million tonnes (the '2008 Tonnage') and
- if a producer's 2008 Tonnage is less than the producer's highest allocation usage between 2004 and 2007, the producer will also receive an agreed share of an additional 1.7 million tonnes.

2.14 Before a producer can accept a 2009 PWCS Base Tonnage Offer they will be required to provide a break down of tonnes at each load point (at their mines) and provide PWCS with relevant information required for PWCS System Assumptions and contractual alignment.

2.15 PWCS System Assumptions are the assumptions for the Hunter Valley coal chain that underpin the calculation of PWCS capacity in the relevant period including:[11]

- interface and live run losses between each element in the Hunter Valley export coal chain
- agreed operating mode of the Hunter Valley export coal chain
- surge and tolerance requirements
- capacities of fixed infrastructure
- rolling stock requirements and

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9 Ibid, page 3.

10 Information appearing under this heading is obtained from Clause 1, Part A of the Capacity Framework Arrangements.

11 Part C of the Capacity Framework Arrangements, page 51.

- vessel requirements.

Contractual alignment and the vessel queue[12]

2.16 Under Part A of the proposed Capacity Framework Arrangements, PWCS will refuse to supply coal handling services if a producer has inadequate track or train delivery entitlements in respect of an application for a vessel to be loaded.

2.17 In addition, PWCS proposes to revise flexibility limits or reduce allocations on a pro-rata basis should an excessive queue develop or be forecast to develop.

Transfer fee cap

2.18 Clause 3 of Part A of the proposed Capacity Framework Arrangements outlines the following conduct:

- capping the fee that a producer with a contracted allocation at the PWCS terminals may charge another to use a portion of its contracted allocation (the 'relevant portion') at no more than 5 per cent of the fee charged by PWCS for the 'relevant portion'.

Part B – proposed Capacity Framework Arrangements

2.19 At the time of lodging the original applications for authorisation, the Applicants advised that Part B (or 'phase 2') of the proposed Capacity Framework Arrangements will only commence if the 'PWCS Capacity Framework Documents'[13] and 'NCIG Capacity Framework Documents'[14] are executed in full by no later than 31 August 2009, 'or such other date as may be agreed by the Applicants.'[15]

2.20 Subject to the relevant documents being executed, PWCS anticipated being able to obtain acceptance of the '2010 Base Tonnage Offers' and binding nominations for expansion capacity under long term ship or pay contracts from producers in September/October 2009.[16]

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12 Information appearing under this heading is obtained from Clause 2, Part A of the Capacity Framework Arrangements.

13 PWCS Capacity Framework Documents: each Deed of Variation to PWCS and NPC amending respective PWCS leases; the Agreement for Lease of T4 between PWCS and NPC; and the Capacity Framework Agreement between PWCS, NCIG and NPC.

14 NCIG Capacity Framework Documents: The Deed of Variation between NCIG and NPC amending the terms of the Agreement for Lease for the land on which NCIG Stage 1 and 2 is to be constructed; the Capacity Framework Agreement between PWS, NCIG and NPC; and the Deed of Undertaking.

15 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, pages 3 and 6.

16 Ibid, page 9.

2.21 The 'PWCS Capacity Framework Documents' were signed by PWCS and NPC on 31 August 2009. The 'NCIG Capacity Framework Documents' were signed by NCIG and NPC on 17 September 2009. There were additional NCIG documents which were not originally contemplated as 'NCIG Capacity Framework Documents'.[17]

2.22 Following the draft determination, NPC and PWCS advised that signed long term ship or pay contracts, including acceptance of base tonnages and nominations, were submitted by producers to PWCS by the due date of 30 October 2009. Under its terminal access protocols, PWCS provided contracted load point allocations to producers on 1 December 2009 and will then issue a final updated allocation schedule to each producer with the producers' load point allocation commitments by 15 December 2009.[18]

2.23 NCIG advises that it is currently in the process of finalising Stage 2 contracts with 'T Class Shippers' (or non-NCIG producers).[19]

2.24 Further, PWCS and NPC advised that significant progress has been made in the development of the proposed Capacity Transfer System under Part B of the arrangements. Phase 1 of the implementation of the Capacity Transfer System is planned to be delivered in mid to late December 2009. The ACCC is advised that the Capacity Transfer System Working Group will continue to develop the mechanics of the system 'so that it may be implemented before 1 January 2010'.[20]

PWCS Base Tonnage for 2010[21]

2.25 The proposed conduct under this section of Part B of the Capacity Framework Arrangements involves any offer by PWCS, and any acceptance of that offer by a producer (in whole or in part), of the 2010 PWCS Base Tonnage on an annual basis for a period of up to 10 years commencing on 1 January 2010.

2.26 The aggregate '2010 PWCS Base Tonnage Offer' is 97.4 million tonnes per annum. The aggregate '2010 PWCS Base Tonnage' of the NCIG producers (other than excluded NCIG producers) is, at 31 August 2009, 24.413 million tonnes per annum.

2.27 The amount of the 2010 PWCS Base Tonnage to be offered to each producer will be equal to the higher of:

- the producer's 2008 Tonnage and
- the producer's highest actual allocation usage between 2004 and 2007.

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17 Additional NCIG Capacity Framework Documents: a letter from NPC stating the circumstances in which it will approve the final form of NCIG long term ship or pay contracts; a side deed which clarifies the basis on which the NPC may withhold its approval of the plans and specifications for the expansion of the NCIG terminal, as well as what the NPC will consider to be the 'full expansion' of the NCIG terminal; and a Deed Poll signed by NCIG and NPC in relation to Stage 2 shortfall or delay.

18 Submission from PWCS and NPC, *Submission responding to ACCC information request dated 16 November 2009*, 24 November 2009, page iv.

19 Submission from NCIG, 26 November 2009, page ii.

20 Ibid, pages i and ii.

21 Information appearing under this heading is obtained from Clause 1, Part B of the Capacity Framework Arrangements.

2.28 PWCS will make this offer to producers on an annual basis under the terms of new long term 'ship or pay' contracts. Producers will be entitled to contract for any tonnage up to their PWCS Base Tonnage offer and for any length of contract up to 10 years.

2.29 Before a producer can accept any offer of 2010 PWCS Base Tonnage, a producer must, among other things:

- advise PWCS of a constant annual tonnage for each load point allocation
- provide PWCS with a JORC Code compliant statement of marketable coal reserves for the relevant mines which supports that coal production is feasible with respect to load point allocations for the term
- provide PWCS with relevant information required for PWCS System Assumptions and
- provide PWCS with a signed long term ship or pay contract.

PWCS Nomination and Allocation[22]

2.30 Authorisation is sought for the nomination of capacity allocations at PWCS' terminals by any producer and PWCS' allocation of capacity allocations to producers.

2.31 PWCS may elect to offer existing producers any additional PWCS capacity (above the aggregate Base Allocations) on a pro rata basis that is available:

- between 1 October 2009 and 31 December 2009 and
- 1 January 2010 and 30 June 2010.

2.32 From 1 July 2010 and beyond, allocation of capacity at PWCS' terminals will be conducted in accordance with the 'PWCS annual capacity and nomination and allocation process' (outlined immediately below).

PWCS annual capacity nomination and allocation process[23]

2.33 Each year, PWCS will review its capacity, PWCS System Assumptions and expansion plans. To enable this review, PWCS will provide relevant information to, and obtain relevant information from the Hunter Valley Coal Chain Coordinator (HVCCC), producers and other service providers in the Hunter Valley. In undertaking this review, PWCS will have regard to Coal Chain Master Planning conducted by the HVCCC and information received from producers and other service providers.

2.34 PWCS will also undertake an annual demand assessment process with producers. This process will include submission of nominations for 10 year load point allocations, notice of renewals or extensions of existing load point allocations (that is, 'rolling evergreen allocation') and notice of any offers of voluntary load point allocation reductions.

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22 Information appearing under this heading is obtained from Clause 2, Part B of the Capacity Framework Arrangements.

23 Information appearing under this heading is obtained from Clauses 2A, 2B and 2C, Part B of the Capacity Framework Arrangements.

2.35 PWCS will contract load point allocations with producers. Contracted allocations which cannot be satisfied by existing capacity at PWCS coal loading terminals, will commence within certain timeframes outlined within the Capacity Framework Arrangements.

2.36 Expansion capacity at PWCS existing coal loading terminals will be available exclusively to non-NCIG producers until the later of the following to occur:

- 1 January 2010 and
- the date on which the each of the following has occurred:
  - NCIG Stage 2 is committed and
  - either of the following:
    - i) NPC notifies PWCS that it has unconditionally approved the specification and construction program for NCIG Stage 2 on the basis that it provides for the construction of the NCIG terminal to the full extent that has been approved in the Project Approvals (as defined in the NCIG Agreement for Lease) on one expansion tranche or
    - ii) NPC (in its absolute discretion) notifies PWCS that NCIG producers may submit nominations on the basis that it will be subject to any limits and conditions imposed by NPC.

2.37 The intention of these requirements (at paragraph 2.36) is to ensure that NCIG is committed to the full expansion of its terminal before NCIG producers are entitled to access expansion capacity at PWCS terminals. NCIG producers will also not be entitled to access expansion capacity at PWCS' terminals while there is still available existing or potential capacity at the NCIG terminal.

2.38 A producer's nomination for expansion capacity at PWCS terminals must include, among other things:

- a constant annual tonnage for each load point allocation
- a commencement date (up to 5 years from when the nomination is submitted)
- a JORC Code compliant statement of marketable coal reserves for the relevant mines which supports that coal production is feasible with respect to load point allocations for the term
- information relating to the development status of the source mine, including development consent and other approvals to operate
- a timeline for first coal production
- relevant information required for PWCS System Assumptions and
- a duly executed and binding long term ship or pay contract for the nominated allocation, if the producer has not already done so.

2.39 The PWCS Nomination and Allocation Procedures also include certain rules which prioritise the order in which nominations for expansion capacity and any excess capacity at PWCS' coal loading terminals will be satisfied. However, existing load point allocations will not be diluted.

2.40 Every year producers may submit a one year renewal of their existing 10 year load point allocation (that is, rolling evergreen allocation). If an annual rolling renewal is not taken up by the producer, the specific load point allocation loses its evergreen renewal right.

2.41 A producer's load point allocation will be broken down into periodic load point allocations for use in particular periods. A producer may use its periodic load point allocation and any tolerance amounts determined by PWCS for that period. A producer's entitlement in relation to the period ceases when it no longer has unused load point allocations for that 'allocation period'.

2.42 For the period 1 January 2010 to 31 December 2011, where a producer has an aggregate load point allocation greater than 5 million tonnes per annum, the allocation period for that producer will be a month (that is, 'large producers'). If a producer has aggregate load point allocations less than or equal to 5 million tonnes per annum, they will have a quarterly allocation period (that is, 'small producers').

2.43 From 1 January 2012, small producers, and therefore those that receive a quarterly allocation period, will be those producers with an aggregate load point allocation of 3 million tonnes per annum or less. Large producers (with an aggregate load point allocation greater than 3 million tonnes per annum) will have a monthly allocation period.

NCIG Nomination and Allocation Procedures[24]

2.44 Authorisation is sought for the nomination of capacity allocations of 12 million tonnes per annum at NCIG Stage 2 by a producer and NCIG's allocation of that capacity.

2.45 This capacity offer in relation to NCIG Stage 2 will initially be made exclusively to non-NCIG producers.[25] Capacity of 'NCIG Stage 1' (that is, 30 million tonnes per annum) has been fully allocated to NCIG producers only.[26]

2.46 In particular, NCIG will offer a total of 12 million tonnes of capacity at NCIG Stage 2 in accordance with the following steps:

- Step 1 – invite expressions of interest from all non-NCIG producers. NCIG will consult with PWCS as to the timing of the nomination and allocation process
- Step 2 – provide information package and form of ship or pay contract to non-NCIG producers
- Step 3 – NCIG will receive nominations from producers, which must include:
  - a commitment to ship a minimum of 3 million tonnes per annum when Stage 2 of the terminal is operating at full capacity
  - a nominated source mine(s) for which registered mining title is held
  - development consent for the source mine(s)

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24 Unless stated otherwise, information appearing under this heading is obtained from Clause 3, Part B of the Capacity Framework Arrangements.

25 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168-–A91169), 30 June 2009, page 2.

26 Ibid, page 14.

- a JORC Code compliant statement of marketable coal reserves for the source mine(s) showing total marketable coal reserves, as well as demonstrating 11 years of coal production for exporting through NCIG
- consent by the applicant to participate in the due diligence enquiries to be conducted on behalf of the financiers for NCIG Stage 2 and
- lodgement of cash or a bond.

▪ Step 4 – NCIG will assess nominations against certain criteria, including those applicants that facilitate the most efficient and effective operation of the coal loading terminal and the outcome of the due diligence process.

▪ Step 5 – if NCIG receives aggregate complying nominations from producers in excess of 12 million tonnes per annum, PWCS will (on behalf of NCIG) allocate capacity to the relevant nominating non-NCIG producers.

▪ Step 6 – if NCIG receives aggregate complying nominations from producers' which are less than 12 million tonnes per annum, it will confirm nominations with producers. These producers will sign ship or pay contracts with NCIG, subject to the occurrence of Financial Close. The balance of any non-allocated tonnes will be made available for nomination by all producers (including NCIG producers), in accordance with steps 1 to 6.

▪ Step 7 – At Financial Close, producers sign binding ship or pay contracts with NCIG. The terms of ship or pay contracts signed by non-NCIG producers will generally be the same as the terms signed by NCIG producers for allocations at NCIG Stage 2.

Dual nomination process[27]

2.47 Dual nomination refers to the situation where a non-NCIG producer has nominated for capacity at the PWCS terminals as well as submitting a corresponding nomination to NCIG for the same annual tonnage in Stage 2 of NCIG's terminal.

2.48 Among other things, at the time of submitting a nomination for capacity with PWCS, a non-NCIG producer must inform PWCS that it is a Dual Nomination.

2.49 A producer which submits a valid Dual Nomination for capacity at PWCS' terminals will receive a load point allocation which:

▪ has a suspended start date

▪ has an annual tonnage equal to the nominated amount and

▪ is contingent on whether NCIG Stage 2 is committed.

2.50 If PWCS receives a notice from NCIG that Stage 2 is committed:

▪ the dual portion of the load point allocation at PWCS will immediately terminate and

▪ any remaining contingent excess portion will cease to be contingent and become an operative load point allocation.

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[27] Information appearing under this heading is obtained from Clause 2A(l), Part B of the Capacity Framework Arrangements.

2.51 If PWCS receives notice from NCIG advising that the NCIG process for allocating non-NCIG Stage 2 contracted allocations has terminated, any contingent portion of the load point allocation at PWCS will immediately cease to be contingent and become an operative load point allocation at PWCS.

Conduct where NCIG is in breach of Deed of Undertaking or Capacity Framework Agreement[28]

2.52 In the event of a breach of the Deed of Undertaking or the Capacity Framework Agreement by an NCIG Party (that is, NCIG and each NCIG producer who is a party to, or is otherwise bound by, the Deed of Undertaking), NPC will issue a breach notice to all of the NCIG parties. The NCIG parties will have 30 days (or shorter if another breach has occurred in the immediately preceding 12 months) to rectify the breach.

2.53 During the 30 day period, NCIG producers will not be entitled to nominate for any capacity allocations at PWCS terminals in excess of their PWCS Base Tonnage.

2.54 If the breach is not rectified within 30 days to the satisfaction of the NPC, then:

- until the breach is rectified, PWCS will be entitled to terminate any unfulfilled PWCS contracted allocations of NCIG producers for capacity at PWCS which exceeds their PWCS Base Tonnage and
- PWCS will be entitled, on receiving a direction from the NPC, to reduce the PWCS contracted allocations of NCIG producers by up to 1 million tonnes each month for a period of not less than 2 years, determined by NPC, until the breach is rectified to the satisfaction of NPC or the PWCS contracted allocations of NCIG have been reduced to zero.

2.55 If PWCS receives a notice from NPC to restore any load point allocation of any NCIG producers, then PWCS will restore those load point allocations in accordance with the notice to the extent that any excess capacity is available.

2.56 Authorisation is also sought for any conduct, agreement, arrangement or understanding between the NCIG producers to set the proportion of the tonnage reduction that each of them will bear.

Compression and decompression of contracted allocation[29]

2.57 Authorisation is sought for any compression or decompression of a producer's PWCS contracted allocation due to a delay or shortfall in expanding the capacity of the terminals at the Port of Newcastle.

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28 Information under this heading is obtained from Clause 2D, Part B of the Capacity Framework Arrangements.

29 Information appearing under this heading is obtained from Clause 5, Part B of the Capacity Framework Arrangements.

2.58 In particular, PWCS will compress PWCS contracted allocations when: [30]

- there is a PWCS expansion delay or an expansion shortfall which gives rise to a capacity shortfall and
- there is a NCIG Stage 2 delay or NCIG Stage 2 shortfall.

2.59 When there are delays or shortfalls in expansion capacity at PWCS terminals, PWCS will compress contracted allocations to accommodate the capacity shortfall in the following order:[31]

- first, producers may voluntarily elect for a portion of their contracted allocation to be compressed
- next, producers who have failed to meet the Utilisation Threshold of 95 per cent for the previous 18 month period will be compressed on a pro rata basis in the proportion that their unutilised allocation bears to the aggregate unutilised allocations of producers (referred to as 'anti-hoarding compression')
- last, if there is still a capacity shortfall, all producers will be compressed pro rata in the proportion that their contracted allocation bears to the aggregate contracted allocation.

2.60 If a producer has more than one load point allocation, PWCS will consult with the producer on the application of the adjustment to the load point allocations. If agreement is not reached, the adjustment will be applied pro rata across all of the producer's load point allocations.

2.61 When there is a NCIG Stage 2 delay or NCIG Stage 2 shortfall, PWCS aggregate load point allocations of producers will be compressed in the following order to accommodate all or part of the non-NCIG Stage 2 allocations at the PWCS terminals:[32]

- first, producers may voluntarily elect for a portion of their PWCS contracted allocation to be compressed
- next, each producer that has failed to meet the Utilisation Threshold of 95 per cent for the previous 18 month period will be compressed pro rata in the proportion that their unutilised allocation bears to the aggregate unutilised allocation (referred to as 'anti-hoarding compression') and
- last, if there is still an NCIG capacity deficit, NCIG producers will be required to transfer to non-NCIG producers with Stage 2 allocations such amount of their contracted allocation as is necessary to satisfy the NCIG capacity deficit in accordance with the following timetable:

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30 Clause 5(a), Part B of the Capacity Framework Arrangements.
31 Clause 5(b), Part B of the Capacity Framework Arrangements.
32 Clause 5(c), Part B of the Capacity Framework Arrangements.

Period of delay or shortfall	Amount of contracted allocations to be transferred (million tonnes per annum) until NCIG capacity deficit is satisfied	Date of transfer
Up to 6 months	3 mtpa	Target completion date of NCIG Stage 2
Up to 9 months	6 mtpa	The date that is 6 months after the target completion date of Stage 2.
Up to 12 months	9 mtpa	The date that is 9 months after the target completion date of Stage 2.
Over 12 months	12 mtpa	The date that is 12 months after the target completion date of Stage 2.

2.62 There are certain exceptions to compression, including for producers that have failed to meet their utilisation threshold for reasons outside their control.[33]

2.63 Compression will come to an end when the relevant expansion delay or shortfall which triggered the compression comes to an end.

2.64 A Reviewer will be responsible for calculating the extent to which each producer is required to compress and decompress under Clause 5 of the Capacity Framework Arrangements.[34] The Reviewer will be the NPC, or an independent expert appointed by the NPC.

2.65 Each terminal operator is required to provide the Reviewer with all relevant information (subject to confidentiality requirements) that is required to accurately calculate compression and decompression volumes. A producer or the NPC (if the NPC is not the Reviewer) may seek a review of the Reviewer's compression and decompression calculations by notifying the other party and the Minister.

Coordination of expansion activities[35]

2.66 Authorisation is sought for the coordination of expansion of terminal facilities and services. In particular, the Capacity Framework Arrangements provide that PWCS must expand its existing coal loading terminals to provide additional capacity if:

- the aggregate PWCS contracted allocations from time to time exceeds the aggregate PWCS available capacity (that is, Capacity Shortfall) and
- the Capacity Shortfall cannot be fulfilled though voluntary contracted allocation reductions.

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33 Clause 5(d), Part B of the Capacity Framework Documents.

34 Clause 5(h), Part B of the Capacity Framework Documents.

35 Information appearing under this heading is obtained from Clause 6, Part B of the Capacity Framework Arrangements.

2.67 At a minimum, PWCS' capacity expansion must satisfy the Capacity Shortfall. However, PWCS is not required to expand to meet any nominations for expansion capacity at its terminals which seek allocations of less than ten years.

2.68 If the existing PWCS coal loading terminals are not capable of being expanded further to provide the additional capacity to satisfy the Capacity Shortfall, then PWCS must build a new terminal ('T4'). Clause 6 also states that nothing in this section of the Capacity Framework Arrangements prevents any person other than PWCS from constructing a new terminal at the Port of Newcastle.

2.69 If PWCS is required to expand an existing coal loading terminal, the expansion must be completed in accordance with the following timeframes:

- in the case of Master Plan Completion Phase 1 – two years after the date on which the Capacity Shortfall which triggered the expansion arises
- in the case of Master Plan Completion Phase 2 – two years after the later of:
  - the date on which the Capacity Shortfall which triggered the expansion arises and
  - the date on which that part of the Hunter River to which PWCS requires access is validated by the relevant authority as clean following the completion of he relevant part of the BHP Billiton Hunter River Remediation Project
- in any other case, within 2 years after the date on which the Capacity Shortfall which triggered the expansion arises.

2.70 If PWCS is required to build T4, it must be capable of meeting the Capacity Shortfall which triggered the construction of the new terminal within 4 years of that Capacity Shortfall arising.

2.71 PWCS must advise NPC and affected producers if a PWCS expansion delay or expansion shortfall is expected, including the date on which the expansion delay or capacity shortfall is expected to commence and end.

2.72 The Capacity Framework Arrangements provide that NCIG must not commence construction of NCIG Stage 2 unless it has first offered to allocate 12 million tonnes per annum of capacity to non-NCIG producers under long term ship or pay contracts (in accordance with the NCIG Nomination and Allocations Procedure outlined above).

2.73 Prior to NCIG Stage 2 being committed, NCIG must:

- take all reasonable steps to ensure that the design and construction of NCIG Stage 2 does not interfere with the ability of PWCS to construct and efficiently operate T4
- where there is such interference, use its best endeavours to minimise the interference and
- consult with PWCS regarding any potential interference.

2.74 NCIG Stage 2 must be capable of delivering the contracted capacity to non-NCIG producers within the following time periods:

- if NCIG Stage 2 is committed on or before 31 December 2009, within four years after the date the commitment is made and
- otherwise, within two years after the date NCIG Stage 2 is committed.

2.75 NCIG must advise NPC, PWCS and affected producers if an NCIG Stage 2 delay or capacity shortfall is expected, including the date on which the Stage 2 delay or shortfall is expected to commence and end.

2.76 The Capacity Framework Arrangements also outline circumstances where the Reviewer may decide to suspend the terminal operators' obligations to expand (for example, PWCS has failed to obtain the relevant development consents despite best efforts), or agree to an extension of the period to complete the expansion following a Force Majeure event.[36]

Capacity transfers[37]

2.77 Authorisation is sought under Part B of the proposed Capacity Framework Arrangements for the conduct of PWCS and NCIG capping the fee that a producer with contracted allocations at any terminal can charge another producer to use a portion of its contracted allocation to no more than 5 per cent of the fee charged by PWCS or NCIG for the relevant portion.

2.78 Authorisation is also sought for the following conduct in relation to capacity transfers:

- sharing information and coordination between the Applicants (and other participants in the Hunter Valley coal industry) for the purpose of developing and implementing a transparent and centralised system to facilitate and manage the offering and allocation of unused allocation (the 'Capacity Transfer System'), including the appointment of a Capacity Transfer System Working Group and Administrator
- any requirement that producers use the Capacity Transfer System
- producers that do not use best efforts to transfer unused allocations (including by making a bona fide attempt to transfer unused allocation in accordance with the Capacity Transfer System) will not be entitled to claim relief from 'anti-hoarding compression'
- for producers to pay a fee for using or registering with the Capacity Transfer System for the purpose of covering the cost of establishing, administering, operating and maintaining the system
- the conduct of PWCS declining to accept a transfer of contracted allocation having regard to the recommendations of the HVCCC, PWCS System Assumptions and operating protocols, and alignment of contractual entitlements and

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36 Clause 6(e), Part B of the Capacity Framework Arrangements.

37 Information appearing under this heading is obtained from Clause 7, Part B of the Capacity Framework Arrangements.

- the conduct of PWCS in adjusting transferred allocations to account for any variation in the PWCS System Assumptions of the 'transferring producer' and the 'transferee producer'.

Assignment of capacity[38]

2.79 Authorisation is sought for PWCS to:

- decline to accept an assignment of contracted allocation having regard to the recommendations of the HVCCC, PWCS System Assumptions and operating protocols, and alignment of contractual entitlements or
- adjust assigned contracted allocations to account for any variation of the PWCS System Assumptions of the 'assigning producer' and the 'assignee producer'.

2.80 Authorisation is also sought for PWCS and NCIG to cap the fee that a producer may charge to assign or novate its entire load point allocation at no more than 5 per cent of the fee charged by PWCS or NCIG for the use of that load point allocation in the year in which the assignment or novation becomes effective.

Industry levy[39]

2.81 Authorisation is sought for the setting, making, varying and giving effect to any industry levy that may be applied by PWCS or NCIG to assist with meeting the cost of any unallocated expansion capacity at their terminals, in accordance with the Levy Protocols provided at Annexure A to the Capacity Framework Arrangements. Such an industry levy is to be applied to all terminal users that contract to use the terminals under a long term ship or pay contract or short term contract (including those that do not utilise the proposed expansion).

2.82 In addition, authorisation is sought for the establishment of a Levy Working Group and the sharing of information and coordination between the Applicants, the Levy Working Group and the Administrator (to be established) for the purpose of:

- developing and implementing protocols for the calculation, charging and collection of the levy and
- calculating the amount of, and period, for charging the levy, in accordance with the Levy Protocols.

2.83 Any industry levy will be applied on a per tonne basis across all coal exported from the terminals. The Levy Protocols govern the imposition of any levy, including that:

- PWCS or NCIG may elect to apply the levy whenever:
  - they complete an expansion and
  - the Administrator determines that the contracted allocation for that expansion is less than the capacity that is made available from the expansion and

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38 Information appearing under this heading is obtained from Clause 7A, Part B of the Capacity Framework Arrangements.

39 Information appearing under this heading is obtained from Clause 8, Part B of the Capacity Framework Arrangements.

- the Administrator has been established.

- NCIG must not apply the levy to any 'Excluded NCIG Stage 2 Capacity', being that portion of capacity which is *not* required to be offered for allocation to non-NCIG producers
- while NCIG has not committed to Stage 2, NCIG producers will only be entitled to nominate for allocations of unallocated expansion capacity at PWCS coal loading terminals under fixed term contractual arrangements for the maximum term then available not exceeding 2 years
- if the levy is applied in respect of any unallocated expansion capacity, the levy will cease to apply when the Administrator determines:
  - the total expansion cost of unallocated expansion capacity has been recovered or
  - all expansion capacity is contracted under long term ship or pay contracts or
  - the costs of the levy administration would exceed all remaining total expansion costs to be otherwise recovered though the levy, or

  until PWCS and NCIG agree that the levy should cease to apply.

Contractual alignment and access to services[40]

2.84 Authorisation is sought for the conduct of PWCS and NCIG:

- requiring producers to have adequate entitlements to track and train haulage upon lodging any application under their contracts for the provision of coal handling services in respect of each vessel to be loaded and
- refusing to supply coal handling services if a producer has inadequate track or train delivery entitlements in respect of the application for a vessel to be loaded.

2.85 Authorisation is sought for PWCS to refuse to supply coal handling services to an NCIG producer if it has not provided a notice from NPC that NPC is satisfied that the producer is bound by the terms and conditions of both the Deed of Undertaking and the NCIG Producer Deed Poll.

2.86 Authorisation is also sought for PWCS to make one or more downward adjustments to producers load point allocations if, at any time:

- the capacity of a terminal is affected by the construction or integration of any expansion to the terminal
- PWCS has not met the assumptions relating to the PWCS terminals as set out in the System Assumptions
- the capacity of a terminal is affected by the weather or
- there is a Force Majeure Event.

2.87 Any such adjustment by PWCS will generally be on a pro rata basis unless there are specific circumstances which only affect certain producers, in which the adjustment

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40 Information appearing under this heading is obtained from Clause 9, Part B of the Capacity Framework Arrangements.

will be on a pro rata basis for only those affected producers. In deciding the amount of any adjustment, PWCS may have regard to the PWCS System Assumptions and any recommendations made by the HVCCC.

2.88 Similarly, authorisation is sought for PWCS to make one or more pro rata downward adjustments to the load point allocations of producers utilising the 'turn of arrival' vessel system if an excessive vessel queue arises or is forecast to arise.

2.89 Further, authorisation is sought for the following conduct:

- Sharing information and coordination between the Applicants, producers, HVCCC and above and below rail service providers for the purpose of:
  - determining and reviewing system capacity for any period
  - developing and reviewing system assumptions (including the PWCS System Assumptions) and
  - developing, measuring and reviewing producer performance standards (such as load point standards, train standards, unloading standards, cargo assembly standards and vessel standards)
  - determining and coordinating flexibility and tolerance limits in relation to capacity allocations during any period
  - developing and reviewing a Capacity Transfer System and
  - facilitating and reviewing the operational coordination and efficient operation of different parts of the coal chain.
- Making or giving effect to contracts with producers based on any agreed system capacity, system assumptions, performance standards, flexibility and tolerance limits, for the purpose of facilitating contractual and operational alignment across the coal chain.
- Making or giving effect to any adjustment or variation to contracted allocations or determination of capacity losses due to a producer deviating from system assumptions or performance standards.

Terminal 4[41]

2.90 Authorisation is sought for any requirement in relation to the structure, ownership or operation of T4 that:

- Part B of the Capacity Framework Arrangements will apply to the provision of capacity at T4
- access to capacity will be open to all producers on a non-discriminatory basis, except to the extent discriminatory treatment is contemplated in Part B of the Capacity Framework Arrangements.

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41 Information appearing under this heading is obtained from Clause 10, Part B of the Capacity Framework Arrangements.

2.91 Prior to undertaking the construction of T4, PWCS must:

- take all reasonable steps to ensure that the design and construction of T4 does not interfere with the ability of NCIG to construct and efficiently operate NCIG Stage 2
- where there is such interference, use its best endeavours to minimise the interference and
- consult with NCIG regarding any potential interference.

Common charges at PWCS terminals[42]

2.92 Authorisation is sought for any requirement for PWCS to ensure that the:

- charges applicable to services provided at a PWCS terminal are the same as charges applicable to like services provided at each other PWCS terminal or
- the quantum of the fees it charges to a person for particular services are the same quantum as the fees that it charges to any other person for the same services (although this will not prevent PWCS from applying a different charging method for those fees).

[42] Information obtained under this heading is obtained from Clause 11, Part B of the Capacity Framework Arrangements.

3. Background to the application

The Applicants

3.1. **Port Waratah Coal Services Limited** (PWCS) owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle and has also signed an Agreement for Lease in relation to the proposed new Terminal 4 ('T4') with the NSW Government.

3.2. PWCS is an incorporated joint venture between a number of coal producers and other participants in the Hunter Valley coal industry, including exporters and importers of coal from the Hunter Valley. Attachment D to this determination lists the current shareholders of PWCS.

3.3. PWCS provides coal handling services to Hunter Valley coal exporters, including the receiving and unloading of coal, stockpiling coal and loading coal into vessels for export.

3.4. The operation of PWCS' terminals is based on a 'cargo assembly' system. PWCS' terminals consist of rail receival infrastructure, stockpiling areas, coal reclaimers and a dedicated conveyor system which carries the coal to shiploaders. PWCS currently has five shipping berths (two at Carrington and three at the Kooragang Island). Around 99 per cent of all coal received at PWCS' terminals is transported via rail. The shiploaders at the Kooragang Island terminal can operate at a peak rate of 10 500 tonnes per hour, while the shiploaders at the Carrington terminal have a capacity of 2500 tonnes per hour.[43]

3.5. Part of the land on which PWCS' terminals are situated is owned by the NSW Government and leased to PWCS. When the current applications for authorisation were lodged with the ACCC, the lease regarding the Kooragang Island terminal required PWCS to operate the terminal as a 'common user facility' – which required PWCS to provide access to the Kooragang Island terminal on a non-discriminatory basis to all producers who wish to ship coal.

3.6. The proposed Capacity Framework Arrangements for which authorisation is sought are intended to substitute the common user provisions in PWCS' previous lease.[44]

3.7. PWCS' total 'nameplate' coal loading capacity at the end of 2009 is 113 million tonnes per annum.[45] PWCS' System Capacity for 2010, which is set according to track and other coal chain factors, has been determined at 106.7 million tonnes per annum.[46] PWCS has development approval to complete construction of its Kooragang Terminal Master Plan and to operate at 145 million tonnes per annum.[47]

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43 Information provided at paragraph 3.4 was obtained from PWCS' website, **www.pwcs.com.au**, viewed on 10 September 2009.

44 Submission from the Applicants, 13 July 2009, page 7.

45 PWCS media release, *Long-term Newcastle coal export plan advances towards commencement on January 1, 2010*, 3 December 2009.

46 Ibid.

47 Previous applications for authorisation (A91110–A91112) lodged by PWCS and NCIG on 19 November 2008, page 7.

3.8. **Newcastle Coal Infrastructure Group** (NCIG) is an incorporated joint venture between six Hunter Valley Coal producers – namely, BHP Billiton (though Hunter Valley Energy Coal), Centennial Coal Company Limited, Peabody Energy Coal (Excel Coal Limited), Whitehaven Coal and Felix Resources. Attachment E to this determination lists the members' shares of NCIG.

3.9. NCIG was formed in 2004 following the NSW Government's invitation for submissions to develop an additional coal loading terminal at the Port of Newcastle.

3.10. NCIG does not currently operate a terminal at the Port of Newcastle. The first stage of NCIG's terminal, with a capacity to load 30 million tonnes of coal per annum, is currently under construction and is expected to be operational around the end of the first quarter of 2010. All capacity for this first stage has been contracted to NCIG shareholders. NCIG-member producers currently export coal though PWCS' terminals.

3.11. The NCIG terminal will consist of rail infrastructure, a coal storage area, wharf facilities and shiploaders. There will be two shipping berths constructed as part of NCIG's first stage of development. A third shipping berth is proposed to be built in the second stage of development (with capacity up to 66 million tonnes per annum).[48]

3.12. NCIG advises that its terminal will operate based on a dedicated stockpile model. Under this model, NCIG allocates a dedicated stockpile to each NCIG shipper based on its percentage of total throughput.[49]

3.13. As a result, NCIG shippers will operate on an even and regular train schedule to fill these dedicated stockpiles (for instance, run the same number of trains per week). NCIG producers receive an annual throughput entitlement based on its ship or pay commitment. Its monthly shipping allocation is one twelfth of its annual entitlement, subject to agreed tolerances.[50]

3.14. Each NCIG shipper manages its own train schedule and will be able to deliver coal to the terminal until its dedicated stockpile area is full. NCIG advises that it is the responsibility of the NCIG shipper to ensure that vessels arrive with sufficient frequency so as to prevent the stockyard from becoming full.

3.15. **Newcastle Port Corporation** (NPC) is a statutory State-owned corporation constituted under the *Ports and Maritime Administration Act 1995 (NSW).* NPC's principal functions are to establish, manage and operate the port facilities and services in the Port of Newcastle and to exercise the port safety functions set out under its legislation and operating licence.

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48 Previous applications for authorisation A91110–A91112 from PWCS and NCIG, 19 November 2008, page 8.

49 Submission from NCIG, 3 December 2009, page ii.

50 Ibid.

The Hunter Valley coal chain

An overview

3.16. The Hunter Valley coal chain is a complex export system comprising:[51]

- 35 coal mines owned by 14 individual coal producers
- 24 points at various mines for loading coal onto trains
- approximately 28 trains (owned by two above rail operators), making an average of two trips per day
- more than 80 different export blends of coal
- five berths and shiploaders at the port and
- total stockpile capacity of 3.4 million tonnes at the Port of Newcastle, which allows approximately 1.5 million tonnes of workable stockpile space for port operations.

3.17. In 2009, approximately 95 million tonnes of coal chain export capacity was made available to the Hunter Valley export industry.[52]

3.18. The Hunter Valley coal chain is located near Newcastle in NSW and is spread over a 350 km area from around Gunnedah in the north, Ulan in the west and Newstan in the south. A map of the Hunter Valley coal network is provided at Figure 3.1 below.

3.19. Around 80 per cent of coal exported from the Hunter Valley is thermal (or steaming) coal primarily used for electricity generation. The remaining 20 per cent of exports is coking (or metallurgical) coal which is used to manufacture steel.[53]

3.20. The majority of coal from the Hunter Valley is exported to Japan (approximately 55 per cent), South Korea (approximately 17 per cent) and Taiwan (approximately 10 per cent).[54]

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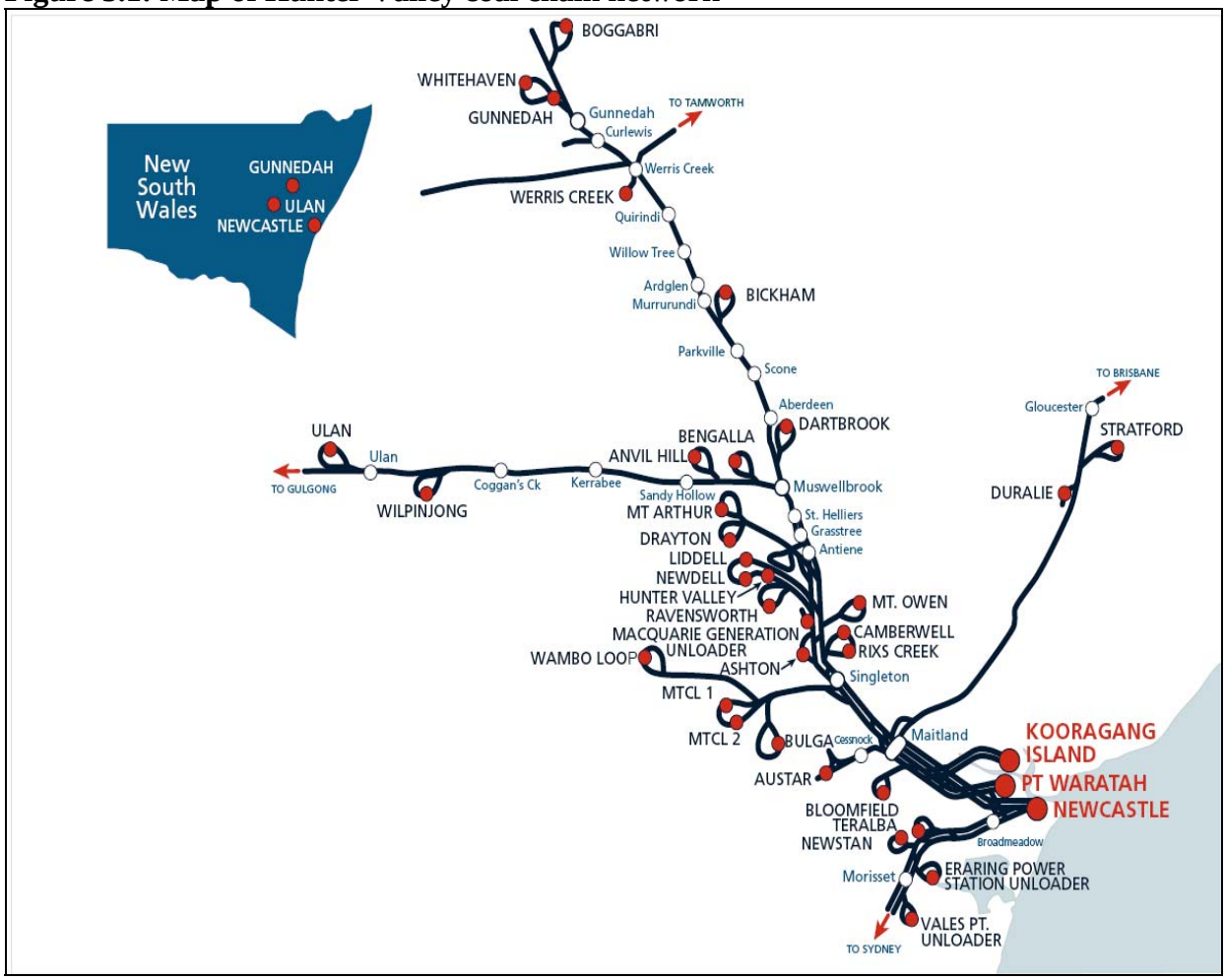
51 Information obtained from the Hunter Valley Coal Chain Logistics Team's website, **www.hvcclt.com.au**, viewed on 17 September 2009.

52 Ibid.

53 PWCS, August 2009 *End of Month Charts*, **www.pwcs.com.au**, viewed on 17 September 2009.

54 Ibid.

Figure 3.1: Map of Hunter Valley coal chain network[55]



Hunter Valley coal exports

3.21. Table 3.1 shows that between 2004 and 2007, annual coal exports through PWCS increased by approximately 7 million tonnes (9 per cent) from 77.81 million tonnes of coal in 2004 to 84.80 million tonnes of coal in 2007. In 2008, a record 91.4 million tonnes of coal was exported from the Port of Newcastle. This was an increase of 6.6 million tonnes of coal (approximately 8 per cent) from 2007 volumes.

55 Figure 3.1 was sourced from the Hunter Valley Coal Chain Logistics Team's website, **www.hvcclt.com.au**, viewed on 17 September 2009.

Table 3.1: Annual throughput at PWCS from 2004 to 2008[56]

Year	Volume (million of tonnes)
2004	77.81
2005	80.33
2006	79.92
2007	84.80
2008	91.40

3.22. The current (annualised) shiploading rate at PWCS for 2009 is 91.3 million tonnes per annum.[57]

The Hunter Valley Coal Chain Logistics Team[58]

3.23. Since 2003, the Hunter Valley Coal Chain Logistics Team (HVCCLT) has been operating as a cooperative organisation responsible for planning all coal exports from the Hunter Valley. Membership of the HVCCLT was open to any future operators of transport and port infrastructure in the Hunter Valley coal chain. The current members are:

- Asciano and QR National – the above rail providers
- Australian Rail Track Corporation (ARTC), Rail Infrastructure Corporation and Railcorp – the track owners
- Port Waratah Coal Services – current terminal operator
- NPC.

3.24. The objectives of the HVCCLT are two-fold – to maximise daily coal export volumes and to coordinate planning for the provision of future coal chain infrastructure. A minimum of 14 days notice is received for the arrival of a vessel at the Port of Newcastle. The HVCCLT coordinates vessel berthing, stockpile layouts and train sequencing with the aim of fulfilling customers' orders in the shortest possible timeframe.

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56 Table compiled by the ACCC from PWCS', *Annual Report 2007*. page 11; and PWCS' *December 2008 end of month report* viewed at **www.pwcs.com.au** on 6 February 2009.

57 PWCS' *November 2009 End of Month Report*, viewed at **www.pwcs.com.au** on 2 December 2009.

58 Unless otherwise stated, information provided under this heading was obtained from the Hunter Valley Coal Chain Logistics Team's website, **www.hvcclt.com.au**, viewed on 17 September 2009.

The establishment of the Hunter Valley Coal Chain Coordinator

3.25. As part of the 2008 Greiner Review of the Hunter Valley coal chain, it was identified that the HVCCLT required greater access to information in order to effectively perform its planning and coordination functions. It was proposed that the HVCCLT be incorporated as an independent entity.

3.26. The Hunter Valley Coal Chain Coordinator (HVCCC) was incorporated on 27 August 2009 and will take over the work of the HVCCLT in the coming months. The major change between the HCCCLT and the HVCCC is that the HVCCC is a legal entity with representation from coal producers and service providers. An objective of the HVCCC will be to plan and coordinate the daily operation of the coal chain in order to maximise the volume of coal transported, in accordance with the proposed new contractual arrangements. The HVCCC will also provide a centralised and coordinated forward delivery plan and an annual coal chain capacity plan.[59]

3.27. Further, the HVCCC will also perform a key role in monitoring and recording system performance against the performance standards that form the basis of contracts across the coal chain.[60]

Above rail operators

3.28. As previously mentioned, there are two operators currently providing rail haulage services to Hunter Valley coal producers – QR National and Pacific National (owned by the Asciano Group).

QR National[61]

3.29. QR National commenced operations in the Hunter Valley in 2005. It currently operates 6 trains and has a 20 per cent share of the Hunter Valley rail haulage market, delivering 19.8 million tonnes of coal in 2007–08.

3.30. QR National currently has rail haulage contracts with 5 coal producers (covering 11 mines) for coal exports from the Hunter Valley. Table 3.2 lists QR National's contracts and the rail haulage distances for each mine.

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59 Announcement, *CEO appointed to Hunter Valley Coal Chain Coordinator*, 11 September 2009, viewed on **www.hvcclt.com.au** on 17 September 2009.

60 *Attachment 2 – Contractual Alignment Principles*, supporting submission to the applications for authorisation (A91147-A91149), 30 June 2009.

61 Information provided under this heading was obtained from QR National's website, **www.qrnational.com.au**, *Hunter Valley system*, viewed on 17 September 2009.

Table 3.2: QR National's contracted mines in the Hunter Valley coal chain[62]

Contracted mine (exports)	Haul (km)	Customer
Warkworth (MTCL 1)	83	Rio Tinto Coal Australia Pty Ltd
Mount Thorley (MTCL 2)	83	Rio Tinto Coal Australia Pty Ltd
Bulga	87	Xstrata Coal Pty Ltd
Mount Owen	99	Xstrata Coal Pty Ltd
Newpac (Ravensworth)	104	Xstrata Coal Pty Ltd
Muswellbrook (Ravensworth)	104	Muswellbrook Coal Co Ltd
Hunter Valley	108	Rio Tinto Coal Australia Pty Ltd
Ashton	113	Felix Resources Pty Ltd
Mount Arthur	120	BHP Billiton Ltd
Bengalla	134	Rio Tinto Coal Australia Pty Ltd
Ulan	275	Xstrata Coal Pty Ltd

Pacific National

3.31. Pacific National is fully owned by the Asciano Group and hauls around 88 per cent of coal in NSW, representing approximately 90 million tonnes of coal per annum.[63] Pacific National moves coal from 17 customers in the Hunter Valley across distances generally ranging from 20km to 320km.[64]

Australian Rail Track Corporation

3.32. ARTC was established in 1998 under the *Corporations Act 2001*, whose shares are owned by the Australian Government. In September 2004, ARTC commenced a 60 year lease of certain parts of the NSW rail network, including the Hunter Valley coal network. ARTC is responsible for managing the network and granting access to the network.[65]

3.33. ARTC's stated objectives in the Hunter Valley are to:

- actively cooperate with and support industry arrangements and forums seeking to optimise coal supply chain capacity

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62 Extract of table obtained from QR National's website, **www.qrnational.com.au**, *Hunter Valley system*, viewed on 17 September 2009.

63 Previous applications for authorisation (A91068–A91070) lodged by Pacific National, QR Limited and PWCS, 16 November 2007, Attachment A to the supporting submission to the applications.

64 Information obtained from Pacific National Brochure, **www.pacificnational.com.au**, viewed on 17 September 2009.

65 ARTC access undertaking application, 23 April 2009, *Hunter Valley Coal Network Access Undertaking*, page 3.

- deliver rail capacity to meet industry demand.[66]

3.34. ARTC's responsibilities in relation to the network include:

- selling rail access
- pricing access
- capital investment
- operational management and
- management of infrastructure maintenance.[67]

3.35. As at November 2007, the theoretical capacity of the Hunter Valley rail network was around 124 million tonnes per annum. At this time, ARTC also reported that the largest coal volumes were in the lower end of the Hunter Valley, but noted expected growth over the next few years in coal mining along the Ulan line and in the Gunnedah Basin. Apart from being a longer distance from the port, the rail corridor between Muswellbrook and the Gunnedah Basin is only rated for 100 tonne coal wagons, as opposed to 120 tonne wagons in most other parts of the Hunter Valley network.[68]

Hunter Valley Rail Network Access Undertaking

3.36. On 23 April 2009 ARTC lodged a voluntary access undertaking application for the Hunter Valley rail network (HV Access Undertaking) with the ACCC for assessment under Part IIIA of the Act. The proposed HV Access Undertaking sets out the terms and conditions on which ARTC proposes to provide access to the Hunter Valley rail network.

3.32 Some of the features proposed by ARTC's Hunter Valley Access Undertaking include:

- that coal producers may contract directly with ARTC for track access rights, as opposed to a model where access rights are held by above rail service providers; and
- that applicants seeking coal access rights demonstrate capability to offload the anticipated coal at the port (referred to as 'Network Exit Capability').

3.33 ARTC submits that the principle objective in contracting directly with producers is for ARTC to obtain greater commitment to the long term investments in capacity that will be needed to meet demand, as well as to provide coal producers with a greater degree of control over the transportation of their coal and the alignment of their contracts across the coal chain.[69]

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66 Submission from ARTC in relation to previous applications for authorisation A91110–A91112, 5 December 2008, page 3.

67 Ibid, page 2.

68 ARTC, *Hunter Valley Corridor, 2007-2012 capacity strategy - consultation document,* 29 November 2007, page 3.

69 Submission from ARTC, 10 July 2009, page 2.

3.34 The ACCC notes that the HV Access Undertaking also forms part of the long term solution to the capacity constraints in the Hunter Valley coal chain. ARTC advised the ACCC that it is proposing to put in place long term track access agreements with coal producers and other access seekers, to commence on 1 January 2010.[70]

3.35 The ACCC is currently considering submissions received from interested parties in relation to the HV Access Undertaking. Due to delays in receiving information from ARTC, the ACCC has extended the period for making a decision on the undertaking application. The day by which the ACCC must now use its best endeavours to make a final decision is 22 April 2010.

3.36 In a submission to the ACCC's HV Access Undertaking process, the NSW Minerals Council stated that:

> - …ARTC must be committed to obtaining ACCC acceptance of the amended HVAU (including the AHA and OSA) regardless of whether individual coal producers decide to enter into Proposed New AHA's before 1 January 2010 or not.
> - ARTC should not require any coal producer to enter a Proposed New AHA until it has obtained ACCC acceptance of the amended HVAU (including the AHA or OSA)…
> - Until ARTC obtains ACCC acceptance of its HVAU, it should:
> - Extend the PN and QRN access contracts to provide track access for the coal of all producers who have not entered into Proposed New AHAs
> - Provide track access capacity commitments (conditional on subsequent execution of an AHA under an amended HVAU accepted by the ACCC) to all coal producers to match their port terminal capacity commitments and domestic network exit capabilities…[71]

3.37 The ACCC recognises that ARTC's track access arrangements and the arrangements at the port are related. However, this application for authorisation relates to the port-based Capacity Framework Arrangements only. ARTC's track access arrangements are being considered separately by the ACCC under its access undertaking process.

3.38 The ACCC's assessment of the proposed Capacity Framework Arrangements is separate from and should not be taken to be indicative of its assessment of ARTC's proposed HV Access Undertaking under Part IIIA of the Act.

Previous ACCC authorisations

3.37. As outlined in Chapter 2 of this determination, the current application seeks authorisation for very broad and detailed arrangements which form part of the long term solution to the ongoing capacity constraints in the Hunter Valley coal chain. Prior to the current application, the ACCC was requested to authorise various transitional measures to manage the vessel queues at the Port of Newcastle (or 'capacity balancing systems').

3.38. An ACCC authorised capacity balancing system has essentially been in operation at the Port of Newcastle since interim authorisation was first granted by the ACCC to the short term 'Capacity Distribution System' in March 2004.

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70 Submission from ARTC, 17 November 2009, page 1.

71 Submission to the ACCC's HV Access Undertaking process from the NSW Minerals Council, 1 December 2009, page 3.

3.39. The most recent authorised capacity balancing system – called 'PWCS Tonnage Allocation Stage 1' – operated at the Port of Newcastle during the first six months of 2009.

3.40. In previous authorisation decisions, the ACCC noted that the underlying coal chain issues in the Hunter Valley were not being addressed and that infrastructure capacity expansions alone would not solve the problem. In particular, structural, regulatory and contractual issues in the Hunter Valley were contributing to the ongoing capacity imbalance.

3.41. Table 3.3 summarises the history of previous applications for authorisation for capacity balancing systems at the Port of Newcastle. Copies of all of the ACCC's previous decisions are available from its website: **www.accc.gov.au/AuthorisationsRegister**.

Table 3.3: History of applications for authorisation of capacity balancing systems

Authorisation	Date lodged	Authorisation	Date authorisation expired
Applications for authorisation of a 'Short Term Capacity Distribution System' Lodged by PWCS (A90906 – A90908)	5 February 2004	Interim authorisation granted on 6 March 2004 Final authorisation granted on 9 July 2004	31 December 2004 The ACCC was reluctant to extend authorisation beyond this date because of the lack of certainty whether a vessel queue was likely to persist during 2005.
Applications for authorisation of a 'Medium Term Capacity Distribution System' Lodged by PWCS (A30236 – A30238)	1 October 2004	Interim authorisation granted on 3 November 2004 Final authorisation granted on 15 April 2005	31 December 2007 The ACCC noted there was greater likelihood of potential public detriment resulting from the Medium Term Capacity Distribution System the longer the authorisation ran. Under the terms of the Medium Term Capacity Distribution System, the scheme would only operate during the period of authorisation if the demand for coal loading services exceeded the capacity of the coal chain by 3 million tonnes, as well as receiving the support of the industry. In September 2006, the industry voted to discontinue the system. PWCS subsequently sought authorisation to reinstate a modified version of this scheme for the balance of the original period of authorisation.

Applications for authorisation to reinstate a modified 'Medium Term Capacity Balancing System'. Lodged by PWCS (Applications for revocation of authorisations A30236 – A30238 and substitution of authorisations A91033-A91035)	27 February 2007	Interim authorisation granted on 14 March 2007 Final authorisation granted on 23 May 2007	31 December 2007
Applications for authorisation of a 'Vessel Queue Management System'. Lodged by Pacific National, QR Limited and PWCS. (A91068-A91070)	16 November 2007	ACCC decided not to grant interim authorisation on 13 December 2007	This application was withdrawn on 22 January 2008.
Two separate applications for authorisation effectively seeking to extend the operation of the 'Medium Term Capacity Balancing System'. Lodged by NPC (A91072-A91074) and Donaldson Coal Pty Limited (A91075-A91077).	NPC: 4 December 2007 Donaldson: 7 December 2007	Interim authorisation granted on 20 December 2007 Final authorisation granted on 23 April 2008	Authorisation granted until 31 December 2008 to provide a transition period that would allow for the development of a longer term solution to address the ongoing capacity constraints in the Hunter Valley coal chain.

Applications for authorisation of 'PWCS Tonnage Allocation Stage 1'. Lodged by PWCS and NCIG (A91110-A91112).	19 November 2008	Interim authorisation granted 17 December 2008. Final authorisation granted on 13 May 2009.	30 June 2009 The ACCC considered that the industry had continued to make sufficient progress and appeared to be close to finalising a long term solution to the capacity constraints in the Hunter Valley. The ACCC considered the industry had had sufficient time to develop and finalise an appropriate long term commercial framework, which should remove the need for transitional 'capacity balancing systems' to operate at the Port of Newcastle beyond 30 June 2009.

The history of the development of a long term solution

The 2008 Greiner Review[72]

3.42. In January 2008, the Hon. Nick Greiner AC was appointed by the NSW Government to conduct a review of the Hunter Valley coal chain.

3.43. Following initial meetings with producers and service providers, Mr Greiner's brief was expanded in February to develop a long term framework for the expansion and management of the Hunter Valley coal chain.

3.44. In June 2008, coal producers developed a proposal for access to the coal terminals at the Port of Newcastle which was submitted to Mr Greiner. In July 2008, Mr Greiner provided his report to the NSW Minister for Ports and Waterways. The report identified the following key requirements to achieve a major expansion of the capacity of the Hunter Valley coal chain:

- improve information sharing with the logistics coordinator
- enhance coordination of the coal chain
- develop a long term framework for export terminal access to ensure access to capacity and
- develop a framework for track access to ensure expansion of track capacity.

3.45. The initial proposal developed by coal producers in relation to the issue of access to the PWCS and NCIG coal loading terminals, formed part of Mr Greiner's Report to the NSW Government.[73]

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72 Unless otherwise stated, the information contained under this heading was sourced from the previous applications for authorisation (A91110–A91112) from PWCS and NCIG, 19 November 2008, pages 9, 15 and 16.

3.46. The NSW Government indicated that it required the long term solution to contain a mechanism that catered more expressly for new entrants to the Hunter Valley to access export capacity.

NSW Government's long term terminal access proposal

3.47. On 12 December 2008 the former NSW Minister for Ports and Waterways, the Hon. Joe Tripodi MP, announced a proposed terminal access framework to resolve outstanding issues in the negotiations between the coal industry and the NSW Government in response to the Greiner Review.

3.48. As announced by the NSW Government, the key elements of the proposal were:

- triggers requiring terminals to build new capacity on demand
- long term contracts to underpin investment in terminal capacity
- an industry levy to help fund new terminal infrastructure where required
- guaranteed access for new entrants and expanding producers
- business and planning certainty for existing producers
- protection for small producers and
- a proposal for a fourth coal terminal.[74]

3.49. PWCS responded to the announcement in December 2008, noting that the framework included:

- the opportunity for PWCS to lease additional government land and build a fourth coal loading terminal on Kooragang Island
- an ability for all producers to commit to long term terminal contracts, creating export certainty and security and a solid foundation for future infrastructure investment along the entire coal chain
- a trigger whereby new producers and existing producers wanting to expand give between two and four years' notice, enabling infrastructure to be built for them
- an ability for a pro rata levy on all coal exports to cover the cost of any terminal expansion shortfalls (e.g. when contracts do not align exactly with construction needs)
- a mechanism enabling larger producers to have their contracts compressed up to a maximum of five per cent per annum if PWCS expansions are delayed or fall short of targeted capacity. Smaller producers (exporting less than 5 million tonnes annually) would not be subjected to compression.[75]

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73 Submission in relation to previous applications for authorisation (A91110–A91112) from Coal and Allied, 5 December 2008, page 2.

74 The Hon. Joe Tripodi, Minister for Port and Waterways, Media Release, *Plan to end coal supply chain deadlock*, 12 December 2008.

75 PWCS, Media Release, *PWCS welcomes new Hunter Terminal Access Proposal*, 12 December 2008.

Ongoing industry discussions in 2009

3.50. Following the completion of the Greiner Review and the NSW Minister for Ports and Waterway's announcement in December 2008, the industry and government continued to progress the development of a long term solution to the ongoing capacity constraints in the Hunter Valley coal chain.

3.51. The industry discussions were largely being led by NPC, on behalf of the NSW Government, with input from PWCS, NCIG and a Producers' Steering Committee. Among other things, the parties were seeking to clarify and develop some areas of the terminal access framework, and to provide greater detail to allow for the implementation of a long term solution based on that framework.

3.52. A number of industry working groups were formed to consider specific issues and to facilitate implementation of the long term solution. A summary of the work being carried out in early 2009 follows:

- **Implementation** – NPC was progressing the drafting of an Implementation Memorandum, with input from PWCS and NCIG, which would set out the details of how the long term framework will be implemented. This included details of the nomination and allocation process for the implementation of a long term contractual framework at the terminals, commitments to expand capacity for producers which is supported by long term 'ship or pay' contracts, and access arrangements that ensure new and expanding coal producers will have access to export terminal capacity. The industry initially anticipated the Implementation Memorandum would be finalised by mid-late March 2009.

- **Growth** – The NSW Government, PWCS and NCIG determining any amendments which would be required to their individual leases with the NSW Government, as well as governance issues surrounding the proposed new coal loading terminal (T4) at the Port of Newcastle.

- **Contractual alignment** – A contractual alignment working group was established to develop a contractual alignment mechanism considering issues relating to rail access (including the ARTC HV Access Undertaking) and the coal loading terminals at the port.

The Implementation Memorandum

3.53. In early April 2009, PWCS, NCIG and NPC signed the Implementation Memorandum. A copy of the Implementation Memorandum is provided at Attachment 4 to the current applications for authorisation, which is available from the ACCC's website **www.accc.gov.au/AuthorisationsRegister**.

3.54. The Implementation Memorandum included a commitment from the parties to comply with an implementation procedure. In particular, relevant contracts and other documents that implemented the long term solution were to be completed by 15 June 2009. These documents included:

- deeds of amendment to PWCS' and NCIG's lease with the NSW Government
- long term ship or pay contracts for PWCS and NCIG terminals
- capacity nomination and allocation procedures at PWCS and NCIG

- terminal access protocols at PWCS and NCIG
- coal chain access protocols – addressing contractual alignment between terminal access, track access and above rail
- the lease between NSW Government and PWCS for a new terminal (T4) at the Port of Newcastle.

The current application – phased implementation of the Capacity Framework Arrangements

3.55. On 29 June 2009 the ACCC received a new application for authorisation in relation to for certain aspects of a long term solution to the ongoing capacity constraints in the Hunter Valley – namely, the Capacity Framework Arrangements.

3.56. The Applicants submitted that it was not possible for all aspects of the long term solution to be implemented and operational by 1 July 2009, when the ACCC's authorisation of the previous PWCS Stage 1 Allocation system expired.

3.57. Further, the Applicants submitted that the proposed Capacity Framework Arrangements represented a fundamental shift in the way that the industry has operated for a large number of years. Accordingly, at the request of the industry, it was proposed that the long term solution be phased-in over the last six months of 2009, to be fully operational by 1 January 2010.

3.58. In the current applications for authorisation, the Applicants now committed to finalise relevant legal documentation – called Capacity Framework Documents – by 31 August 2009. PWCS and NPC executed their documentation by this deadline. NCIG executed their Capacity Framework Documents on 17 September 2009.

3.59. The ACCC considers the finalisation of the long term Capacity Framework Documents was a significant milestone for the Hunter Valley coal industry. Having said this, the ACCC notes there is some work to be carried out by the industry in order to fully implement the long term solution, including ongoing work between the terminal operators and ARTC to ensure their contractual arrangements are aligned, as well as finalising the details of a Capacity Transfer System.

4. Submissions received by the ACCC

Prior to the draft determination

4.1. The ACCC tests the claims made by an applicant in support of an application for authorisation through an open and transparent public consultation process. To this end, the ACCC aims to consult extensively with interested parties that may be affected by the proposed conduct to provide them with the opportunity to comment on the application.

4.2. The Applicants provided a supporting submission with their applications for authorisation and subsequently provided four[76] submissions in response to issues raised by interested parties and other issues.

4.3. Broadly, the Applicants submit that the proposed Capacity Framework Arrangements are part of a larger and integrated long term solution that has been developed by the industry, the components of which provide the basis for capacity expansions at the Port of Newcastle and long term alignment of capacity at other levels of the Hunter Valley coal chain. This will result in substantial benefits for the Hunter Valley, NSW and Australian economies.

4.4. The ACCC sought submissions from around 40 interested parties potentially affected by the application including, coal producers, rail providers, the rail track owner and government.

4.5. An overview of the public submissions received from interested parties follows:

- **Coal and Allied Industries –** supports the long term goals that the applications for authorisation are seeking to achieve, and supports the progress made by the Applicants in developing the Capacity Framework Arrangements. However, Coal and Allied notes certain features of the arrangements which may not result in an optimal outcome for the industry.

  Further, if remaining contractual alignment issues are not effectively resolved, Coal and Allied considers it unlikely that the size of the vessel queue at the Port of Newcastle can be effectively managed. In particular, the provision of long term contracts in the various components of the coal chain is insufficient alone to ensure reduced queue size, as evidence by the long vessel queues observed at the Dalrymple Bay Coal Terminal in Queensland.

- **Xstrata –** believes the industry has made substantial progress over the last two years in developing a new commercial framework which governs access to, and efficient operation of, the coal chain and therefore supports authorisation of the proposed Capacity Framework Arrangements. However, Xstrata's submission notes that the interface of the contractual alignment arrangements under the Capacity Framework Arrangements with the proposed ARTC HV Access Undertaking is a critical component of the long term solution.

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[76] A supplementary submission (dated 27 August 2009) in response to issues raised by interested parties and the ACCC was provided by PWCS only. A second supplementary submission (dated 22 September 2009) provided in response to issues raised by interested parties in relation to the amended application was provided by PWCS only.

- **Gloucester Coal –** expressed strong support for, and commitment to, the long term solution as described in the applications for authorisation.
- **Bloomfield Collieries –** supports a transition from the status quo to the long term solution as it requires the management of considerable change for producers, including their contractual arrangements with Hunter Valley service providers. However, Bloomfield expressed concerns in relation to certain amendments to the Capacity Framework Arrangements.
- **Peabody –** considers the proposed phasing in period is an essential step in delivering a lasting long term solution for the industry and supports the applications for authorisation.
- **Idemitsu Australia Resources –** believes there has been considerable work done by all the parties in the development of a long term solution, which it supports.
- **ARTC –** recognises and supports the need for contractual alignment across the Hunter Valley coal chain, which will assist in increasing certainty of access for coal users and promote efficient investment in capacity expansions. However, ARTC identified some areas of its proposed HV Access Undertaking and the Capacity Framework Arrangements which required further work to obtain the necessary level of contractual alignment.
- **Asciano –** supported interim authorisation to allow the phased implementation of the long term solution to commence, while recognising that there is more work to be completed to finalise the details of the long term coal chain solution.
- **Anglo Coal –** supported interim authorisation of the proposed Capacity Framework Arrangements.
- **Felix Resources –** supports the general thrust and overarching philosophy of long term ship or pay contracts. However, Felix Resources expressed concerns in relation to two operational changes under the amended Capacity Framework Arrangements.
- **Austar Coal Mine** – expressed concerns in relation to two operational changes under the amended Capacity Framework Arrangements.
- **Integra Coal Operations Pty Ltd –** supports the introduction of the Capacity Framework Arrangements overall. However, Integra Coal submits that certain features of the amended arrangements may have detriments to small producers.

Following the draft determination

4.6. On 28 October 2009 the ACCC issued a draft determination in relation to the applications for authorisation. The draft determination proposed to grant authorisation.

4.7. A conference was not requested in relation to the draft determination.

4.8. The ACCC received one public submission from ARTC in response to the draft determination. On 24 November 2009 PWCS and NPC also provided a written submission in response to the draft determination and request for further information from the ACCC. NCIG provided separate submissions on 26 November 2009 and 3 December 2009.

4.9. The views of the Applicants and interested parties are outlined where relevant in the ACCC's evaluation of the Capacity Framework Arrangements in Chapter 5 of this determination. Copies of public submissions are available from the ACCC's website **www.accc.gov.au/AuthorisationsRegister**.

5. ACCC evaluation

5.1. The ACCC's evaluation of the Capacity Framework Arrangements is in accordance with tests found in:

- section 90(8) of the Act which states that the ACCC shall not authorise a proposed exclusionary provision of a contract, arrangement or understanding, unless it is satisfied in all the circumstances that the proposed provision would result or be likely to result in such a benefit to the public that the proposed contract, arrangement or understanding should be authorised
- sections 90(6) and 90(7) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
  - the provision of the proposed contract, arrangement or understanding in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public and
  - that benefit, in the case of section 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of section 90(7) has resulted or is likely to result from giving effect to the provision
- section 90(8) of the Act which states that the ACCC shall not authorise proposed conduct to which sections 45D, 45DA or 45DB apply, unless it is satisfied in all the circumstances that such conduct would result or be likely to result in such a benefit to the public that the proposed conduct should be authorised
- sections 90(5A) and 90(5B) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:
  - the provision, in the case of section 90(5A) would result, or be likely to result, or in the case of section 90(5B) has resulted or is likely to result, in a benefit to the public and
  - that benefit, in the case of section 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of section 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

5.2. For more information about the tests for authorisation and relevant provisions of the Act, please see Attachment F to this determination.

The market

5.3. The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant area of competition affected by that conduct.

5.4. The Applicants submit the relevant market is the provision of coal handling services for coal exported from the Hunter Valley.

5.5. The ACCC did not receive any submissions from interested parties directly commenting on the relevant market.

5.6. The ACCC considers the relevant areas of competition affected by the proposed Capacity Framework Arrangements include:

- the global market for coal (or at least the Asian coal market) and
- the provision of coal handling services for coal exported from the Hunter Valley, including the provision of services at the coal loading terminals at the Port of Newcastle and above and below rail services.

5.7. For the purpose of assessing the current applications, the ACCC considers it is not necessary to precisely define the market affected by the proposed Capacity Framework Arrangements.

The counterfactual

5.8. The ACCC applies the 'future with-and-without test' established by the Tribunal to identify and weigh the public benefit and public detriment generated by conduct for which authorisation has been sought.[77]

5.9. Under this test, the ACCC compares the likely public benefit and public detriment generated by arrangements in the future if the authorisation *is* granted with those generated if the authorisation *is not* granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the 'counterfactual'.

5.10. The Applicants submit that absent authorisation of the proposed Capacity Framework Arrangements, the Hunter Valley coal industry would be without:[78]

- an agreed terminal expansion framework
- agreed capacity nomination and allocation processes
- agreed basis for coal producers and other service providers to facilitate and enable contractual alignment
- increased investment certainty for terminal operators, producers and other service providers which arises from long term ship or pay contracts and clear parameters around terminal capacity expansion and compression of entitlements and

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77 *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; Re *Media Council of Australia (No.2)* (1987) ATPR 40-774 at 48,419.

78 The Applicants supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 9.

- the wide-spread industry agreement represented by the Implementation Memorandum and long term solution.

5.11. The Applicants also submit that without authorisation of the proposed Capacity Framework Arrangements the vessel queue could increase to peak at levels in excess of 70 vessels, which would generate significant demurrage costs for Australian coal producers.[79]

5.12. Similarly, Coal and Allied submits that in the absence of authorisation:

> …a substantial queue of vessels will develop off the port of Newcastle.[80]

5.13. Peabody considers that demand for thermal coal from the Hunter Valley remains strong. It submits that without a system in place which enables PWCS to manage capacity, a significant vessel queue is likely to reform.[81]

ACCC's view

5.14. The ACCC has previously stated that a number of underlying structural, regulatory and contractual issues in the Hunter Valley appeared to be contributing to the ongoing capacity imbalance, including:

- common user provisions of PWCS lease which, in effect, required it to accommodate every shipper of coal, restricting its ability to enter into long term, binding contracts to underpin investment and
- service providers contracting based on assessments of individual capacity without reference to the coal chain as a whole.

5.15. The proposed Capacity Framework Arrangements seek to establish an appropriate long term commercial framework within the Hunter Valley coal chain to address the ongoing capacity imbalance. The proposed arrangements have been developed and negotiated by the industry and NSW Government since the beginning of 2008.

5.16. Broadly, the arrangements seek to allocate coal chain capacity to producers in accordance with long term ship or pay contracts, align commercial incentives for infrastructure investment across the coal chain and facilitate the efficient operation of the coal chain.

5.17. The ACCC considers that without authorisation of the proposed Capacity Framework Arrangements, the implementation of a long term solution to the ongoing capacity constraints in the Hunter Valley would be highly uncertain. At the very least, the implementation of a long term solution is likely to be significantly delayed.

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79 The Applicant' supporting submission to applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 22.

80 Submission from Coal and Allied Industries Limited, 8 July 2009, page 2.

81 Submission from Peabody, 8 July 2009, page 1.

5.18. Among other things, this would mean that producers would not be required to demonstrate that they have sufficient available coal loading capacity across the coal chain before coal could be loaded at the port for export. As such, producers are likely to send ships to port at an earlier stage to ensure their coal gets loaded on a 'turn of arrival' basis. This is likely to result in a larger vessel queue off the Port of Newcastle than would otherwise by the case, causing producers to incur substantial demurrage charges.

5.19. The ACCC notes that a large vessel queue would be an obvious symptom of the absence of a long term solution to allocate coal chain capacity. However, the ACCC consider there are likely to be more significant, broader implications for the Hunter Valley coal chain, including delayed infrastructure investment and operational inefficiencies.

Public benefit

5.20. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

> …anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements … the achievement of the economic goals of efficiency and progress.[82]

5.21. The Applicants submit the Capacity Framework Arrangements will deliver public benefits, including:[83]

- the provision of greater contractual certainty to PWCS and NCIG, to other service providers in the Hunter Valley and to both existing and new producers though the entry into long term contracts
- facilitating greater alignment of contracted capacity across the Hunter Valley coal chain
- increased contractual certainty will facilitate major capacity expansions in the Hunter Valley, and therefore increase coal exports, export revenue and royalties payable to the NSW Government
- increased employment, particularly during major construction phases of capacity expansions and
- the management of the vessel queue off the port of Newcastle by requiring producers to have sufficient access to both terminal and track capacity before coal can be accepted for export.

5.22. In considering public benefits, the ACCC considers the extent to which the benefit has an impact on members of the community and the weight that should be given to it, having regard to its nature, characterisation and the identity of the beneficiaries. In relation to cost savings the ACCC will consider who is likely to take advantage of them and the time period over which the benefits are likely to be received.

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82 *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

83 The Applicants supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, pages 6–8.

5.23. In its draft determination of 28 October 2009 the ACCC concluded that the Capacity Framework Arrangements are likely to result in the following public benefits:

- greater contractual certainty at the port is likely to result in the terminal operators and existing and new producers being able to make more accurate and timely investment decisions
- facilitating the alignment of contractual obligations and incentives across the coal chain, thereby creating an environment more conducive to optimal operation of the coal chain and efficient investment decisions
- increased employment in the Hunter Valley region during any period of expansion activity, as well as considerable increased coal export revenue and royalties
- reduced vessel queues and associated demurrage costs
- reduced environmental and safety risks associated with vessel queues waiting offshore and
- maintaining or improving the international reputation of the Hunter Valley coal industry.

5.24. The ACCC's draft determination invited the Applicants and interested parties to provide further information about the progress of ongoing operational discussions in relation to contractual alignment, including any outstanding operational concerns.

5.25. In response to the draft determination, the ACCC received one interested party submission from ARTC and separate submissions from the Applicants.

5.26. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

Increased contractual certainty for service providers and producers

5.27. The Applicants submit that the long term solution (of which the proposed Capacity Framework Arrangements form a critical part) will provide significantly greater contractual certainty in relation to coal loading entitlements at the terminals as a result of producers entering long term ship or pay contracts with the terminal operators.[84]

5.28. In addition, the Applicants submit that the contractual alignment elements of the Capacity Framework Arrangements will provide further certainty to producers and above and below rail providers in the Hunter Valley.

5.29. The Applicants submit that increased contractual certainty will have flow on benefits in the Hunter Valley, including:[85]

- fostering efficiency which will improve the international competitiveness of Hunter Valley coal and Australian coal exports

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84 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 20.

85 Ibid.

- facilitating efficient infrastructure investment and expansion decisions by participants in the Hunter Valley coal chain (that is, terminal operators, above and below rail providers and coal producers)
- facilitating increases in employment within the Hunter Valley and surrounding areas and
- increasing incentives for coal producers to invest in the Hunter Valley coal production and handling industry.

5.30. In particular, the Applicants submit that from a terminal operator's perspective, securing binding long term take or pay commitments from coal producers will be a key consideration for management and Boards in approving and undertaking any major capacity investment and expansion in the Hunter Valley. The Applicants expect this would be the same for rail service providers.[86]

5.31. Similarly, the Applicants submit that security of access to the Hunter Valley coal chain (both at the port and rail) for producers is likely to be a key consideration for any decisions to invest in mine expansion projects.[87]

5.32. Regarding the likely level of investment, the Applicants submit that increased contractual certainty will facilitate major terminal capacity expansions at the Port of Newcastle, which is also likely to provide the foundation for other major capacity expansions across the entire Hunter Valley coal chain by producers and other service providers.[88] In this regard, the Applicants estimate that approximately $1.2 billion will be spent on track and $500 million on additional train sets in the Hunter Valley over the next four years.[89]

5.33. Regarding port capacity, the Applicants submit that the proposed Capacity Framework Arrangements will enable coal loading capacity at the Port of Newcastle to be increased from the current 102 million tonnes per annum to 211 million tonnes per annum, and potentially 300 million tonnes per annum beyond that. This would potentially involve incremental expansions at PWCS' terminals in excess of $1.8 billion, $2 billion at NCIG's terminal (to Stage 2) and approximately $2–3 billion at new terminal developments at the Port of Newcastle.[90]

5.34. Further, the Applicants submit that terminal capacity expansion will be facilitated by the proposed industry levy arrangements under the Capacity Framework Arrangements. In particular, the terminal operators may impose an industry levy payable by all users of the terminals on a per tonne basis to assist them to meet the costs of any uncontracted expansion capacity.[91]

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86 Ibid.
87 Ibid.
88 Ibid, page 23.
89 Ibid, page 7.
90 Ibid.
91 Ibid, page 23.

5.35. The Applicants note that the industry levy formed part of the Minister for Ports and Waterway's long term terminal access framework announced in December 2008. They consider it will assist terminal operators fund necessary expansions, at the same time ensuring that such expansion is funded by all users, rather than the burden falling solely or disproportionately on new entrants and expanding producers in the Hunter Valley.[92]

5.36. A number of interested parties share the Applicants' view in relation to increased contractual certainty. In particular, Coal and Allied submits the proposed nomination and allocation processes under the long term Capacity Framework Arrangements will provide certainty to producers about the volume of coal they will be able to export. In turn, this will facilitate business planning for producers and service providers in order to align investment in mines and infrastructure in a timely manner.[93]

5.37. Xstrata also considers that:

> …the binding nomination and allocation process, together with the requirement to enter into long term ship-or-pay contracts with PWCS, will facilitate necessary planning and investment required for expansion of existing terminal and above and below rail capacity.[94]

5.38. Under its proposed HV Access Undertaking, ARTC is seeking to put in place long term track access agreements with coal producers and other access seekers. ARTC considers that these agreements will underwrite long term investment in track capacity and 'will depend on coal producers having in place long term capacity commitments with terminal operators.'[95]

5.39. ARTC submits that:

> …long term capacity commitments at the terminal are essential for the expansion of the Hunter Valley coal chain.[96]

ACCC's view

5.40. The ACCC considers that the ability of producers to enter into 10 year ship or pay contracts with the terminal operators under the proposed Capacity Framework Arrangements will provide greater contractual certainty at the port. In turn, this is likely to result in the terminal operators and producers being able to make more accurate and timely investment decisions, which is a public benefit.

5.41. The ACCC understands that PWCS' contracting processes are well advanced and are due for completion around mid December 2009. More specifically, PWCS and NPC advise that signed long term ship or pay contracts were submitted by producers to PWCS by the due date of 30 October 2009.[97] This was in accordance with original timeframes proposed in the applications for authorisation.

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92 Ibid.
93 Submission from Coal and Allied Industries, 8 July 2009, page 1.
94 Submission from Xstrata, 31 July 2009, page 1.
95 Submission from ARTC, 10 July, page 1.
96 Ibid, page 2.
97 Submission from PWCS and NPC, *Submission responding to ACCC information request dated 16 November 2009*, 24 November 2009, page iii.

5.42. Further, the ACCC is advised that HVCCC capacity modelling is underway based on load point demand and assumptions advised by producers. Under its terminal access protocol, PWCS contracted load point allocations by 1 December 2009 and will then issue an updated load point allocation schedule to each producer by 15 December 2009.[98]

5.43. The ACCC also understands that NCIG is in the process of finalising Stage 2 contracts with non-NCIG producers.[99] NCIG had previously entered into its Stage 1 long term ship or pay contracts with its shareholders.

5.44. NCIG also advises that it has provided the HVCCC with relevant terminal system assumptions and performance standards to enable it to develop its system modelling for Stage 1. It proposes to provide similar information to the HVCCC for Stage 2 of its terminal once it has finalised its plans for Stage 2.[100]

5.45. Absent the ability to enter into long term contracts with producers, PWCS was previously required to make investment decisions based on non-binding demand forecasts from producers. While the ACCC acknowledges there have been a number of expansion activities in the Hunter Valley over the last few years, including at the port, the ACCC has previously concluded that if an appropriate long term commercial framework had previously existed in the Hunter Valley, more timely investment is likely to have occurred across the coal chain.

5.46. In this regard, the ACCC notes that producers' signing long term contracts at the ports is considered by the industry to be the starting point from which to align commercial incentives across the entire Hunter Valley coal chain. However, the ACCC considers the extent to which the Capacity Framework Arrangements provide the foundation for efficient investment decisions across the coal chain depends on the effective alignment of contracts with other service providers. Contractual alignment is discussed separately from paragraph 5.52 below.

5.47. The ACCC also considers that increased certainty regarding coal export volumes should allow coal producers to more accurately forecast production levels and maintain optimal stockpiling, which is an additional public benefit provided by the proposed Capacity Framework Arrangements. Having said this, in the event the compression clauses within the Capacity Framework Arrangements are activated, due to a delay or shortfall in capacity expansion at the terminals, the ACCC considers this is likely to reduce producer certainty about contracted volumes.

5.48. The ACCC considers that the proposed Capacity Framework Arrangements facilitate entry to the Hunter Valley for new producers. In particular, expansion by PWCS will be triggered upon receipt of binding 10 year ship or pay commitments from new producers.

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98 Ibid, pages iii and iv.

99 Submission from NCIG, 26 November 2009, page ii.

100 Submission from NCIG, 3 December 2009, page iii.

5.49. Together with the ability to underpin capacity expansions with long term contracts, the ACCC considers that the industry levy should allow the next increment of expansion to be constructed, rather than the terminal operators delaying construction until the increment is fully contracted. This is particularly important where increments of capacity expansion are 'lumpy'. The ACCC believes this should provide greater certainty to producers that capacity should be available, which is likely to provide confidence to existing producers to expand and new producers to enter the Hunter Valley.

5.50. Having said this, the ACCC notes the additional cost of the industry levy will be borne by all producers, even those that are not seeking to expand. This issue is discussed in further detail in the 'Public detriments' section of this determination.

5.51. The ACCC considers there are likely to be flow-on employment benefits in the Hunter Valley region during any period of expansion activities, as well as considerable increased coal export revenue and royalties.

Contractual alignment

Submissions received prior to the draft determination

5.52. The Applicants submitted that the proposed Capacity Framework Arrangements will facilitate greater alignment of contracted capacity across the Hunter Valley coal chain.[101] The Applicants consider contractual alignment will deliver the following public benefits:[102]

- optimisation of the use of coal chain infrastructure in order to best meet contractual commitments and
- reducing inefficient demurrage payments by producers as a result of preventing large vessel queues from forming off the Port of Newcastle.

5.53. Broadly, the Applicants submitted that the key features of the contractual alignment solution for the Hunter Valley coal chain include:[103]

- In association with entry into long term ship or pay contracts for terminal access, producers will be required to commit to long term track access with ARTC and long term contracts with rail operators for each of their respective load points (at their mines).
- 'System Assumptions' will underpin the determination of track and terminal capacity and be distilled into contractual performance standards which will be monitored and reported on by the Hunter Valley Coal Chain Coordinator (HVCCC). Deviations from the system assumptions and performance standards will be directly incurred by individual service providers and producers as applicable.
- Access to the Hunter Valley coal chain will be based on aligned contractual rights.

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101 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 7.

102 Ibid, pages 21 and 22.

103 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91169–A91169), 30 June 2009, page 7.

5.54. By way of further background, the ACCC notes that the 'guiding principles' in relation to contractual alignment were developed by the Contractual Alignment Working group under the Implementation Memorandum, which was signed by the Applicants in April 2009. The guiding principles (as outlined at Schedule 5 to the Implementation Memorandum) include:[104]

- the onus is on coal producers to secure commercial arrangements to transport coal from the mine to the ship
- the onus is on the track and terminal service providers to ensure that they calculate their individual contractable capacities taking into account agreed 'System Assumptions'
- track and terminal service providers will ensure that access rights to their respective infrastructure are not triggered in excess of the lesser of the track and terminal system capacity
- producers can choose to hold non-aligned track and terminal access contracts, however, they will only be able to access system capacity based on the lesser of their contracted track or terminal capacity
- the responsibility of track and terminal service providers to jointly operate in accordance with System Assumptions is best achieved by planning and operating the system in a coordinated and co-operative manner (through the HVCCC)
- track and terminal access contracts will provide for actual and forecast excessive vessel queues to be addressed by ensuring, among other things, that:
  - contracted access rights to individual elements of the coal chain do not exceed the lesser of the track system capacity or terminal system capacity
  - capacity increases or decreases as a result of deviation from producers' and service providers' agreed System Assumptions will be attributable to those responsible and customers of the relevant service provider
- new and expanding producers will be provided for by track and terminal service providers operating an orderly access queue and coordinating infrastructure and investment planning via a Coal Chain Master Plan (managed by the HVCCC).

5.55. Returning to the arrangements for which authorisation is sought, the Applicants submit that the proposed Capacity Framework Arrangements involve a number of significant steps that facilitate the achievement of alignment of contracts and capacity across the coal chain, namely:[105]

- Discussions and developments in relation to System Assumptions and system standards. The Applicants submit this is the first time a comprehensive body of work has been undertaken across the coal chain to understand System Assumptions and capacity and operational constraints.
- Basing contractual entitlements on Load Point allocations which provides greater certainty in relation to the impact of coal delivered to the terminals on other parts of the coal chain.
- The introduction of long term ship or pay contracts.

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104 Ibid, Attachment 4, the *Implementation Memorandum.*

105 Submission from the Applicants, 21 September 2009, page 3.

5.56. Further, prior to the draft determination PWCS noted that it has already incorporated various measures into its long term ship or pay contracts with producers and its Terminal Access Protocols to further facilitate contractual alignment. These measures include:[106]

- each producer is required to have sufficient (rail haulage) contractual entitlements for the delivery of coal to the PWCS terminals prior to access to services being granted by PWCS
- producers will have performance standards. Lost capacity at the Terminals due to a producer not meeting its performance standards will be treated as 'quarantined allocation', meaning that producer will bear the loss of that capacity
- System Assumptions will be taken into consideration in transfers and assignments so that the impact on the capacity of the Terminals is captured and the transferred or assigned allocation appropriately adjusted and
- the development status of the relevant mine is one of the priority rules for determining the ranking of nominations at the time of issue of load point allocations.

5.57. At the time the current applications for authorisation were lodged with the ACCC, the Applicants acknowledged that further work was still required in relation to contractual alignment – including the establishment of the HVCCC, finalisation of system assumptions by the terminal operators and ARTC, and the development of a Capacity Transfer System. The ACCC understands that these activities are now all in advanced stages of completion or have been finalised.

5.58. Prior to the draft determination a number of interested parties stressed the importance of contractual alignment in achieving an effective long term solution to the ongoing capacity constraints in the Hunter Valley coal chain.

5.59. Coal and Allied considered that contractual alignment is required in order for coal chain participants to:[107]

- ensure that contractual commitment drives coal chain investment behaviours
- contractual terms drive system efficiency, and at the same time minimise potential system losses and
- effectively manage the vessel queue.

5.60. ARTC submitted that it:

> …recognises and supports the need for contractual alignment across the Hunter Valley coal chain which will assist in increasing certainty of access for coal users and promote efficient investment in capacity expansion.[108]

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106 Ibid, pages 3 and 4.
107 Submission from Coal and Allied, 22 September 2009, pages 6 and 7.
108 Submission from ARTC, 24 July 2009, page 2.

5.61. Similarly, Xstrata submitted that it:

> …is particularly supportive of the incorporation of principles that will facilitate the alignment of producers' contracted volumes across all elements of the coal chain, based on an agreed set of system assumptions…it is critical for the terms and conditions of the respective contracts to work in symmetry with one another…[109]

5.62. Xstrata believes the key requirements to ensure contractual alignment in the Hunter Valley and provide certainty for coal producers are:[110]

- a contract for a specific volume of capacity on track and at the port is based on a common understanding of capacity which reflects a realistic set of operating arrangements such that the specific volume of capacity can be hauled through the system and loaded onto vessels over the life of the contract
- producers are able to vary, swap or trade their entitlement via a mechanism which enables track and port capacity to be re-allocated. This mechanism must ensure that capacity is not lost as a result of the trade, and that entities who are not party to the trade do not have their capacity rights impacted
- the operation of contracts and consumption of capacity over time is monitored such that contractual rights are enforced and parties are held accountable for their consumption of system capacity without infringing on the contractual rights of others and
- producers wishing to gain access to future coal chain capacity have a clearly defined process through which they may trigger capacity expansions (if required) and obtain access, such that they can coordinate their start-up of new mining operations with coordinated delivery of coal chain capacity (namely, track, train and port).

5.63. While supportive of the direction of the industry in relation to contractual alignment, some interested parties considered that further coordinated work was still needed to be done by the terminal operators, ARTC and producers in order to ensure a practicable and workable level of contractual alignment is achieved across the coal chain.

5.64. Xstrata considered progress had been made towards contractual alignment by:

- creating a contractual framework which provides for producers to hold long term access agreements to track and port capacity
- the HVCCC being responsible for modelling to determine coal chain capacity and
- requiring producers to hold port and track contracts in alignment.

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109 Submission from Xstrata, 31 July 2009, page 1.

110 Submission from Xstrata, 2 October 2009, page 3.

5.65. However, Xstrata was concerned about the interface between the contractual alignment elements of the port-based Capacity Framework Arrangements and ARTC's proposed HV Access Undertaking. In particular, prior to the draft determination Xstrata expressed concern that:[111]

- there is no commitment to ensure capacity is calculated based on a common set of System Assumptions – for example, if the port service providers assume the coal chain will incur 10 days of losses due to maintenance in a year, and the track provider assumes 20 days, then it is likely that the port will be unable to deliver its committed capacity obligation if in fact it turns out that there were 20 days of losses due to maintenance.
- allocation of capacity to time periods may not align between the track and port – if parties do not receive aligned capacity each month or quarter they will need to rely on trading or flexibility provisions to ensure their basic contractual rights can be utilised
- the mechanism for trading track capacity needs to be aligned with the port mechanisms
- flexibility and tolerance limits are not aligned between the port and track, thus reducing the ability of producers to manage their entitlements across the coal chain
- PWCS' arrangements provide for coal chain capacity adjustments to be allocated to the party responsible for impacts on capacity. ARTC's track arrangements need to be consistent with this approach
- there is no obligation to maintain and develop the coordinated approach to coal chain planning, and to ensure that a producer holds aligned train, track and port contracts for every train planned through the system
- contracting periods are not aligned – the terminal agreement provides for a rolling 10 year evergreen contract, while the proposed ARTC agreement is effectively a 15 year commitment (10 years plus a 5 year notice period)
- there is no obligation on ARTC to coordinate its investment planning or time the delivery of new track capacity, to the extent possible, with the port operators and
- ARTC proposes to sell rail paths to producers but charge on a per tonne basis – this provides no incentive for producers to consume their rail paths efficiently.

5.66. Coal and Allied also considered that there were some outstanding issues that could cause producers to hold terminal contracts misaligned to other coal chain components, including:[112]

- The severity of ARTC's proposed track resumption clause in its proposed HV Access Undertaking – allowing it to remove train paths from producers if actual usage over a three month period has been less than 90 per cent.
- The proposed HV Access Undertaking provides insufficient accountability for performance on ARTC and incentives to improve – capacity allocation and charging at the port and track should incentivise the most efficient use of port and

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111 Submission from Xstrata, 2 October 2009, pages 3–6.

112 Submission from Coal and Allied, 22 September 2009, pages 4–6.

track services, and those responsible for a delay in the coal chain should bear the cost of that delay.

- Lack of certainty for producers' receiving track capacity – for instance, the interface of the relevant contracting provisions between the port and track suggest that port terminal services are contracted by producers first, and then track services. There is some risk that producers could receive 10 year ship or pay commitments at the port and only then be able to receive confirmation of the availability of track capacity.
- Many provisions in the proposed HV Access Undertaking confer discretions on ARTC, including how it will distribute capacity in the event of short term delays. In industry discussions to date, ARTC has provided verbal indications about how it proposes to exercise those discretions. However, Coal and Allied notes that these verbal indications are not binding on ARTC.

5.67. Regarding the interface between port and track contractual alignment arrangements, ARTC submitted that:

> Achieving contractual alignment does not necessarily mean the contractual arrangements need to be uniform across agreements with different service providers.[113]

5.68. ARTC also recognised there were certain areas in the port and track arrangements that required further work but that it did 'not consider these concerns to be insurmountable.'[114]

5.69. The Applicants also considered that 'it is not necessary for the track and terminal arrangements to have identical capacity balancing mechanisms (which is not possible given the different nature of the infrastructure) provided that the two regimes have sufficient flexibility and transparency so that they can operate consistently and provide for practical outcomes.' The Applicants also submitted that ARTC and PWCS consider the proposed track and port arrangements already provide a large degree of working alignment.[115]

5.70. Prior to the draft determination, the Applicants advised that during August 2009, PWCS and ARTC held constructive discussions about the development and operational implementation of contractual alignment – including in relation to system assumptions, PWCS' proposed contracting arrangements and operating protocols and the proposed centralised Capacity Transfer System.[116] The ACCC notes that NCIG did not participate in the August discussions.

5.71. However, the Applicants submitted that:

> As work progresses between all parties on System Assumptions and standards between service providers and producers, contractual alignment will be further progressed and refined.[117]

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113 Submission from ARTC, 24 July 2009, page 7.
114 Ibid, page 6.
115 Submission from the Applicants, 21 September 2009, Schedule B.
116 Submission from PWCS, 27 August 2009, pages 4 and 5.
117 Submission from the Applicants, 21 September 2009, page 3.

5.72. Further, the Applicants considered that 'the majority of changes to current procedures to cater for contractual and operational alignment will be implemented through the ongoing development and refining of operating protocols',[118] rather than there being a requirement to amend the contractual alignment framework established under the proposed Capacity Framework Arrangements.

5.73. More specifically, the ACCC was advised that the key outcomes from the August contractual alignment discussions between PWCS and ARTC included:[119]

- the preparation of the Hunter Valley Coal Chain Master Plans, as well as ARTC's involvement in the HVCCC, should provide ARTC with sufficient details to maintain adequate track capacity to meet terminal capacity
- a producer cannot obtain track access rights with ARTC without corresponding evidence of 'network exit capability' (at the port). ARTC will liaise with PWCS to confirm viability of a producer's nomination.
- ARTC acknowledges the HVCCC's input into its daily planning processes
- ARTC will determine its annual maintenance schedule in consultation with the HVCCC and PWCS
- PWCS and ARTC consider that tolerance and capacity trading mechanisms should be sufficient to allow producers to manage their take or pay obligations around mine maintenance periods
- prior to receiving an application for track access, ARTC is obligated to review system requirements with HVCCC, producers and other services providers
- ARTC's contracts with producers include track related system assumptions
- regarding monthly versus quarterly allocation periods, ARTC's arrangements allow for operational tolerance, trading and utilisation of ad-hoc paths, if available and
- under the proposed HV Access Undertaking, the contract term can be negotiated by producers. In the event this does not occur, ARTC and PWCS consider there are other mechanisms which can be used to manage the different port and track contract terms – for example, the proposed HV Access Undertaking provides for long term trades to be undertaken, if track capacity is not being utilised then ARTC can resume the capacity and the producer's take or pay obligations will be relieved (subject to another producer taking on the take or pay commitment for that volume of capacity).

Submissions received following the draft determination

5.74 In response to the draft determination, ARTC reiterated its support for achieving contractual alignment across the Hunter Valley coal chain, in order to increase certainty of access to coal chain capacity for coal producers and to promote efficient investment in capacity expansion.[120]

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118 Ibid.

119 Schedule B, *Summary of contractual alignment discussions*, to the Applicants' submission, 21 October 2009.

120 Submission from ARTC, 17 November 2009, page 2.

5.75 Following the August contractual alignment discussions between PWCS and ARTC, ARTC submits that the parties have sought to address certain areas that still needed refinement. To this end, ARTC submits that it has made 'a number of adjustments to certain parts of its HV Access Undertaking, and specifically the proposed Indicative Access Agreement.'[121] Further, ARTC submits these revisions have recently been put to the industry and include the following key provisions:[122]

- Recognition and incorporation of coal chain system assumptions in definition of capacity on the network.
- Broad alignment of the term of access holder agreements with PWCS agreements.
- Recognition of the quarterly capacity allocation needs of small producers.
- Involvement of the HVCCC and terminals in the monthly path allocation process with the objective of aligning terminals and track entitlements.
- Incorporation of elective rights for ARTC to deal with persistent breaches of Service Assumptions.
- Stronger commitment to participate in the Capacity Transfer System Working Group.
- Reduction in period of notice for safe harbour trading of capacity.

5.76 PWCS and NPC also submit that since August, further constructive discussions have been held by the industry, including between ARTC and PWCS, in relation to the development and operational implementation of contractual alignment.[123]

5.77 In particular, PWCS' discussions with ARTC have focused on four key areas:[124]

- consistency in allocations
- accountability for performance
- certainty of capacity entitlements
- consistency in contractual terms.

5.78 PWCS and NPC submit that the latest revisions made by ARTC are significant steps in resolving a number of areas for potential misalignment and these discussions are continuing.[125]

5.79 NCIG advises that it met with ARTC in May 2009 to discuss contractual alignment issues. NCIG submits that:

> Producers have ship or pay agreements with NCIG that set out monthly allocations with tolerance levels. This permits alignment with the ARTC's HVAU.[126]

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121 Ibid, page 3.
122 Ibid.
123 Submission from PWCS and NPC, *Submission responding to ACCC information request dated 16 November 2009*, 24 November 2009, page ii.
124 Ibid.
125 Ibid.
126 Submission from NCIG, 26 November 2009, page i.

5.80 NCIG considers that there is a 'natural' alignment between the way in which its terminal will eventually operate and the way in which above and below rail service providers operate.[127] Therefore, NCIG consider its system – namely, a 'dedicated stockpile' terminal – provides for regular and even rail deliveries to the terminal allowing overall natural alignment of track and port for NCIG shippers. As such, the need to match day to day deliveries with vessel arrivals at the port (like at PWCS' terminals) is not as critical. [128]

5.81 NCIG also considers that:

> …NCIG shippers have a powerful incentive (because of their obligations under the long term ship or pay agreements) to ensure that their above and below rail contracts are capable of delivering the coal to the NCIG terminal.[129]

5.82 Further, NCIG notes that under the Capacity Framework Arrangements it is required to allocate 12 million tonnes of capacity from Stage 2 of its terminal to non-NCIG producers. In considering such applications from producers, NCIG submits that its nomination processes require that:

> …the Applicant must have a reasonable expectation of securing access to track infrastructure in order to transport the contracted tonnage by rail from its source mine to the NCIG terminal. That includes any necessary track access agreement to be negotiated with the rail track infrastructure provider or providers.
>
> …If an Applicant does not meet this (and other) criterion then its tender will not be successful.[130]

5.83 Regarding other ongoing work, PWCS and NPC advise that the Capacity Transfer System Working Group has made significant progress towards finalising the design of the proposed Capacity Transfer System. It is still proposed to be implemented before 1 January 2010.

5.84 The ACCC is advised that the Capacity Transfer System will take the form of an online clearing house hosted by the HVCCC (which will also be the Administrator of the system), to be implemented in two phases. Producers will have two ways to transfer capacity under the Capacity Transfer System:[131]

- producers can publish available or wanted allocation on the system on a confidential basis. The HVCCC will then put the relevant producers in contact to enable them to give effect to the transfer or
- producers can arrange bi-lateral transfers which they must register on the Capacity Transfer System.

5.85 The HVCCC will review all transfers and make recommendations with respect to the impact that the transfer will have on other producers, system capacity, planning and contractual alignment.[132]

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127 Submission from NCIG, 3 December 2009, page i.
128 Ibid, page ii.
129 Ibid, page i.
130 Ibid, page ii.
131 Submission from PWCS and NPC, *Submission responding to ACCC information request dated 16 November 2009*, 24 November 2009, page i.
132 Ibid.

5.86 The ACCC did not receive any other submissions from interested parties in relation to the operational implementation of contractual alignment in direct response to its draft determination.

5.87 In a recent submission to the ACCC's HV Access Undertaking process, the NSW Minerals Council submitted that all 14 producers support the application for authorisation in relation to the long term access to, and expansion of, the port terminals at Newcastle. As required under the arrangements for which authorisation is sought, the coal producers have now committed to long term 'take or pay port terminal access agreements' commencing on 1 January 2010.[133]

5.88 The NSW Minerals Council submits further that:

> …a suitably amended HVAU is an essential element of an aligned whole-off-coal-chain long term solution for the Hunter Valley Coal Chain.[134]

ACCC's view

5.89 The ACCC considers the achievement of contractual alignment is a key public benefit consideration in relation to the proposed Capacity Framework Arrangements. In particular, the ACCC is of the view that achieving contractual alignment in the Hunter Valley will result in a substantial benefit to the public by ensuring that producers align contracted volumes with different service providers across the coal chain. In turn, this should align service providers' commercial incentives for efficient investment across the coal chain and should facilitate the efficient operation of the coal chain.

5.90 Achieving contractual alignment should also prevent individual service providers contracting volumes which in aggregate exceed the capacity that the Hunter Valley coal chain can deliver, and hence, prevent excessive vessel queues from forming offshore. The ACCC considers this would also result in a benefit to the public. This issue is discussed in further detail later in this chapter.

5.91 The ACCC considers the proposed Capacity Framework Arrangements appear to establish an appropriate framework to incentivise producers to align contracts with other service providers in the Hunter Valley. In particular, the proposed Capacity Framework Arrangements contain the following key elements:

- producers can enter long term ship or pay contracts with terminal operators and will receive load point allocations
- producers are required to demonstrate that they have adequate entitlements to track and train haulage in relation to each vessel to be loaded at the port
- terminal operators may refuse to supply coal handling services in the event that producers have insufficient track or rail haulage entitlements and
- PWCS and NCIG will determine contractable capacity based on Hunter Valley System Assumptions prepared by the HVCCC.

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133 Submission to the ACCC's HV Access Undertaking process from NSW Minerals Council, 1 December 2009, page 1.

134 Ibid.

5.92 In this regard, the ACCC notes that NCIG will operate its terminal on a fundamentally different basis to PWCS' terminals. NCIG will have dedicated stockpiles for producers, enabling regular railing of coal to the terminal by producers all year round. PWCS operates on a cargo assembly model, whereby stockpiles are allocated to construct a cargo for nominated vessels – effectively a 'just in time' model.

5.93 As a result, NCIG submits that it is not critical for it to manage the day to day operational alignment of coal being delivered to its terminal with the loading of coal onto vessels.

5.94 Nevertheless, both NCIG and PWCS have sought authorisation to be able to refuse to supply coal handling services if a producer has inadequate track or train delivery entitlements in respect of the application for a vessel to be loaded.

5.95 The ACCC understands that due to the operational differences between the terminal operators, as described above, this conduct is more likely to be relevant for PWCS than NCIG.

5.96 The ACCC considers the extent to which contractual alignment will actually be achieved, and therefore the above mentioned public benefits realised, also depends on the successful implementation of contractual alignment principles across the entire Hunter Valley coal chain.

5.97 In this regard, the ACCC recognises that the port-based Capacity Framework Arrangements for which authorisation is sought are only one part of the long term solution for the Hunter Valley coal chain. In particular, ARTC is currently undergoing a separate process in relation to its proposed HV Access Undertaking. The ACCC notes that interested parties consider that outstanding operational contractual alignment issues primarily relate to ARTC's HV Access Undertaking and as such, are more appropriately addressed through the ACCC's access undertaking process.

5.98 The ACCC notes that the achievement of contractual alignment across the Hunter Valley coal chain is still a work in progress for the industry, with operational discussions between PWCS and ARTC continuing, as well as the negotiation of track contracts between producers and ARTC. While appearing to be at an advanced stage, the Capacity Transfer System Working Group (comprising one representative from PWCS, NCIG, NPC, ARTC, HVCCC and around five producer representatives) also needs to finalise the mechanics of a centralised Capacity Transfer System before the end of 2009.

5.99 Due to delays in the provision of certain information to the ACCC by ARTC, the ACCC was required to extend its assessment of the proposed HV Access Undertaking. In this regard, the day by which the ACCC must now use its best endeavours to make a final decision is 22 April 2010.

5.100 NCIG understands that producers are unlikely to have a contract with ARTC in place by 1 January 2010.[135] The ACCC also notes the NSW Minerals Council's submission (at paragraph 3.36) which expressed uncertainty about the timing of the execution of ARTC's track contracts. The ACCC considers the absence of parallel track contracts as at 1 January 2010 may postpone the full realisation of the benefits generated by the

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135 Submission from NCIG, 26 November 2009, page ii.

successful implementation of contractual alignment principles across the entire coal chain beyond the immediate term.

5.101 Nevertheless, the ACCC considers the proposed Capacity Framework Arrangements appear to establish an appropriate contractual alignment framework at the port. This is likely to result in a public benefit by facilitating the alignment of port, track and above rail contractual arrangements in respect of existing and additional system capacity resulting in the efficient use of and investment in coal chain infrastructure.

Management of the vessel queue and minimising associated demurrage costs

5.102 The Applicants submit that the demand for coal loading services for thermal coal in the Hunter Valley is anticipated to increase towards the second half of 2009. If the Capacity Framework Arrangements are not in place, the Applicants estimate a large vessel queue is likely to re-form off the Port of Newcastle, potentially peaking at levels in excess of 70 vessels. [136]

5.103 In this regard, the Applicants submit that giving effect to the Capacity Framework Arrangements from 1 July 2009 (when the previous authorisation of the Stage 1 Allocation system expired), will ensure that the vessel queue can be managed to a level of around 20–25 vessels. The Applicants submit this represents a saving of over US$150 million.[137]

5.104 The ACCC received submissions from certain interested parties in relation to the management of the vessel queue under a long term commercial framework. In particular, Coal and Allied submits that:

> The provision of long term contracts for the various components of the coal chain is insufficient alone to ensure reduced queue size, as evidenced by the long vessel queues observed off Dalrymple Bay Coal Terminal in Queensland.[138]

5.105 Similarly, Xstrata submits that:

> The current situation in Dalrymple Bay highlights the risks of entering into long term take or pay agreements which are not aligned.[139]

5.106 Xstrata submits that if producers enter into contracts with service providers which are based on inconsistent system assumptions, even though a producer may hold a contract for the same volumes with the track owner, rail operator and terminal operator, the reality is that the system as a whole will not be capable of transporting the capacity which has been contracted.[140]

ACCC's view

5.107 The ACCC has previously authorised transitional 'capacity balancing systems' at the Port of Newcastle which involved producers receiving pro rata allocations of the available coal export capacity in the Hunter Valley.

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136 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 22.

137 Ibid.

138 Submission from Coal and Allied, 22 September 2009, page 6.

139 Submission from Xstrata, 2 October 2009, page 1.

140 Ibid, page 2.

5.108 The ACCC considers that without authorisation of the proposed Capacity Framework Arrangements, the size of the vessel queue at the Port of Newcastle is likely to be larger than would otherwise be the case. That is, producers are likely to 'stack the queue' by sending ships to port at an earlier stage to ensure their coal gets loaded on a 'turn of arrival' basis.

5.109 From 1 January 2010, at PWCS' terminal the proposed Capacity Framework Arrangements seek to allocate coal chain capacity to producers under long term ship or pay contracts. Under these arrangements, producers are required to demonstrate that they have sufficient available coal loading capacity across the coal chain before coal can be loaded at the port for export. At Stage 2 of NCIG's new terminal, producers will also be required to demonstrate that they have sufficient track and above rail capacity entitlements. As such, producers will only be able to access coal chain capacity based on the lesser of their contracted track or terminal capacity.

5.110 Regarding the management of the vessel queue at an optimal level, the proposed Capacity Framework Arrangements also allow PWCS to revise flexibility provisions or reduce contracted load point allocations on a pro rata basis from time to time should an excessive vessel queue be forecast to develop. The arrangements also provide that PWCS may refuse to accept a transfer or assignment of contracted allocations or adjust the transferred allocations taking into account the recommendations of the HVCCC, variation in PWCS System Assumptions and alignment of contractual entitlements.

5.111 The ACCC also notes that the historic optimal level of the vessel queue (around 20–25 vessels) may increase as additional coal chain capacity is delivered, including the possible construction of T4 in response to producer demand and when the new NCIG terminal commences operation. In this regard, PWCS is currently examining the possible introduction of a new 'vessel sequencing system' which aims to provide greater certainty around vessel loading times. If successful, this will decrease the size of the vessel queue from what it would otherwise be.

5.112 The Capacity Framework Arrangements provide that terminal operators will also determine contractable capacity based on defined system assumptions. The ACCC considers this should prevent 'over contracting' at the port. However, the ACCC notes that the effective management of the vessel queue also depends on other service providers having reference to consistent Hunter Valley system assumptions, which is outside the current applications for authorisation.

5.113 The ACCC considers that the proposed Capacity Framework Arrangements are likely to result in a benefit to the public by significantly reducing the likelihood of excessive vessel queues from forming off the Port of Newcastle, and hence reducing deadweight demurrage charges incurred by Australian coal producers.

Environmental and safety benefits

5.114 The Applicants submit that management of the vessel queue will reduce the safety and environmental risks associated with a large number of vessels queued off the Port of Newcastle and assist in protecting the unique reefs and historic shipwrecks surrounding Newcastle Harbour.[141]

5.115 In support of this claim, the Applicants referred to the Australian Transport Safety Bureau's report following the Pasha Bulker incident in 2007. That report stated:

> …the queue of 57 ships off Newcastle on 7 June 2007 increased the risks of collisions, groundings and other difficulties in the subsequent heavy weather.[142]

ACCC's view

5.116 The ACCC considers that to the extent the proposed Capacity Framework Arrangements result in smaller vessel queues at the Port of Newcastle, this is likely to generate a public benefit by reducing the environmental and safety risks associated with large vessel queues offshore.

Improving the international reputation of the Hunter Valley coal industry

5.117 The Applicants submit that the long term solution (of which the Capacity Framework Arrangements form a critical part) will contribute significantly to the improvement of the international reputation of the Port of Newcastle and the Hunter Valley coal industry as a reliable, efficient and competitive supplier of export coal.[143]

5.118 Without authorisation of the Capacity Framework Arrangements, the Applicants contend that any significant increase in the vessel queue and consequent delays in deliveries to international customers is likely to have a negative impact on the international reputation of Hunter Valley coal producers. International buyers, faced with uncertainty about how long it will take for their coal to be loaded at the Port of Newcastle because of a long vessel queue (and coal chain capacity constraints), may lose confidence and consider alternative sources of supply, including from other countries such as Russia and Indonesia.[144]

ACCC's view

5.119 The ACCC has previously concluded (in relation to the operation of capacity balancing systems at the port) that there are a number of factors which potentially influence the purchasing decision of coal buyers, including certainty and timeliness of delivery.

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141 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 24.

142 Ibid.

143 Ibid, page 26.

144 Ibid.

5.120 The ACCC considers that, to the extent that a large vessel queue at the Port of Newcastle discourages customers from purchasing coal from the Hunter Valley coal industry, the proposed Capacity Framework Arrangements have the potential to improve the international reputation of the Hunter Valley coal industry and the Port of Newcastle, and to maintain or increase coal sales, by managing the size of the vessel queue.

5.121 Therefore, the ACCC considers that maintaining or improving the international reputation of the Hunter Valley coal industry constitutes a public benefit arising from the Capacity Framework Arrangements.

ACCC conclusion on public benefits

5.122 The ACCC considers the proposed Capacity Framework Arrangements are likely to result in the following public benefits:

- greater contractual certainty at the port is likely to result in the terminal operators and existing and new producers being able to make more accurate and timely investment decisions
- facilitating the alignment of contractual obligations and incentives across the coal chain, thereby creating an environment more conducive to optimal operation of the coal chain and efficient investment decisions
- increased employment in the Hunter Valley region during any period of expansion activity, as well as considerable increased coal export revenue and royalties
- reduced vessel queues and associated demurrage costs
- reduced environmental and safety risks associated with vessel queues waiting offshore and
- maintaining or improving the international reputation of the Hunter Valley coal industry.

Public detriment

5.123 Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

> …any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.[145]

5.124 Since 2004, the Hunter Valley coal industry has developed a number of short term schemes to manage an excessive vessel queue – more recently as transitional measures while a long term solution to ongoing capacity constraints is developed.

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[145] Re *7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

5.125 In assessing applications for authorisation of these schemes, the ACCC has considered the key potential public detriments to be forgone coal exports arising from ongoing delays to the resolution of the underlying causes of capacity constraints in the Hunter Valley coal chain and reduced incentives to invest in efficient expansions of capacity for service providers – the terminal operators and above and below rail providers.

5.126 The current applications relate to the long term solution itself, with the phased introduction of the port-based Capacity Framework Arrangements to be completed by 1 January 2010. At their heart, the proposed Capacity Framework Arrangements involve agreements between Hunter Valley coal chain service providers to share information and to co-ordinate the provision of services. While these agreements have some anti-competitive components, the clear intention is to seek to increase the efficiency of the operation of the coal chain and to ensure that existing and new Hunter Valley producers will be able to contract for and have access to the capacity they require to export coal. The Capacity Framework Arrangements explicitly do not prevent a new entrant constructing a coal loading terminal at the Port of Newcastle to meet demand.

5.127 For the current applications, the Applicants submit that the proposed Capacity Framework Arrangements will have a very limited, if indeed any, impact on competition in any relevant market:

- it will not limit the total volume of coal actually shipped through the Port of Newcastle. The coal chain will continue to operate at its full capacity;
- the long term solution and Capacity Framework Arrangements will provide clear triggers for terminal capacity expansions and, by enabling entry into long term ship or pay contracts and setting out agreed contractual alignment mechanisms, facilitate increases in entire coal chain capacity; and
- coal exporters will continue to compete against each other in relation to the production of coal and sales to overseas customers, as they do now and did before the previous authorisations in respect of the PWCS Terminal.[146]

5.128 Further, the Applicants submit that the arrangements will not give rise to any discernible public detriments because any exclusionary effect that the long term arrangements may have is mitigated through:

- measures to discourage the hoarding of capacity – including a capacity transfer mechanism and a limitation on the maximum fees for transfers of unused capacity allocations
- an industry levy which may be applied to fund expansion at PWCS or 12 million tonnes per annum at NCIG Stage 2 (where that capacity is not fully contracted), which will ensure new entrants are not unduly burdened with costs not payable by existing competitors.[147]

5.129 The ACCC notes that very few potential detriments from the proposed conduct have been raised in submissions by interested parties.

5.130 An assessment of the public detriment likely to result from the proposed Capacity Framework Arrangements follows.

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146 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 21.

147 Ibid, pages 9 and 10.

Distortions to efficient decision making

5.131 The ACCC considers there are certain aspects of the Capacity Framework Arrangements that are likely to distort the decisions of industry participants and may cause detriment by resulting in less efficient outcomes. This concern is raised by Coal and Allied, for example, submitting that:

> During the development of the long term Capacity Framework proposals, trade-offs were made which resulted in some terms that may not prove to be the best outcome for the industry. These include an obligation on PWCS to expand, regardless of the cost and financial feasibility of the outcome (which could result in significant increases in port charges which would have harsh consequences for all producers), and the decision that compression would only apply to producers whose contracted allocation exceeds 5 mtpa (as this results in an artificial and arbitrary market distortion and deters small producers from growing their operations through expansion or acquisition). However, C&A does not object to the application for authorisation on this basis, as it understands that these provisions were essential for the Applicants to arrive at an agreement on the Capacity Framework Documents.[148]

Imposition of an industry levy to fund expansions which are not fully contracted

5.132 The proposed Capacity Framework Arrangements contain an 'unallocated expansion capacity levy protocol'. This protocol provides for the imposition of a levy to assist terminal operators meet the cost of Unallocated Expansion Capacity at NCIG Stage 2, PWCS terminals and/or T4 through the application of a per tonne levy on all coal exported by terminal users.[149]

5.133 Regarding the objective of the industry levy, the Applicants submit that:

> The levy arrangements reflect the terms set out in Minister Tripodi's terminal access framework and are intended to ensure that terminal operators have sufficient contractual and financial certainty to expand capacity at their respective terminals. Moreover, the levy, in the limited circumstances in which it may come into effect, will apply equally to all users of the Port of Newcastle, thereby reflecting the intent that the industry as a whole funds capacity expansion, rather than this burden falling on only new entrants and expanding producers.[150]

5.134 The ACCC acknowledges that increments of capacity expansion at coal terminals can be 'lumpy' and that the imposition of the levy enables producers (including new entrants) to access expansion capacity without having to pay for the whole next increment of expansion. Nevertheless, the imposition of a levy on existing producers for an expansion of capacity that they do not seek or require will impose additional cost upon them and may cause public detriment by distorting production decisions away from efficient levels.

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148 Submission from Coal and Allied, 22 September 2009, page 1.

149 Schedule A – Levy Protocols, to the Capacity Framework Arrangements, page 1.

150 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 17.

5.135 The ACCC notes that the calculation and imposition of any levy will be in accordance with the Levy Protocol and overseen by the Administrator. The ACCC considers that the impact of the imposition of any levy is likely to be minor in terms of the overall cost of business for coal producers and as such is unlikely to result in significant detriment.

Limit on fees for capacity transfers

5.136 The Capacity Framework Arrangements propose to limit the fees a producer with contracted allocation at the PWCS and NCIG terminals may charge to another producer to use a portion of its contracted allocation. The fees are capped at no more than 5 per cent of the fee charged by the terminal operator for the relevant portion.

5.137 The Applicants submit that:

> The Implementation Memorandum provides for a maximum fee for transfers of Contracted Allocations. This maximum fee reflects the requirement set out in Minister Tripodi's terminal access framework and is intended to limit commercial incentives to hoard capacity, and limit any distortion of investment signals in relation to the need for further expansion capacity.[151]

5.138 The ACCC recognises the underlying intention of the transfer fee limit is to avoid hoarding of capacity. However, it considers that this restriction will prevent those producers that most value additional capacity from being able to bid for unused capacity in a way that reflects their valuation of it, which may result in an inefficient outcome.

5.139 Further, the ACCC considers that in an environment where producers are contracting for capacity on a ship or pay basis and where terminal operators are obliged to expand to meet additional demand, the ACCC questions the need for this anti-hoarding measure.

5.140 Having said this, the ACCC considers that any detriment that is likely to arise from the proposed capacity transfer fee cap will be mitigated in the medium term by the ability of producers that desire additional capacity to contract for it and be able to access spare or expansion capacity if required.

Issues affecting smaller producers

5.141 A number of smaller coal producers have raised concerns with the ACCC about two proposed changes to PWCS' operations contained in the Capacity Framework Arrangements. In particular:

- reducing the volumetric threshold in the definition of a 'small producer' and
- issues arising from the potential introduction of a new vessel sequencing system.

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151 Ibid, page 16.

Definition of smaller producer

5.142 PWCS has previously acknowledged that it is likely to be easier for large producers to smooth their vessel arrival requirements and manage their production and exports across multiple mines than it is for smaller producers. This has been reflected in PWCS' operating protocol, which has required large producers (effectively the four largest companies) to use their loading allocation in monthly increments. Small producers have been able to operate on a quarterly basis.

5.143 In developing the new Capacity Framework Arrangements, PWCS has included a requirement in its long term ship or pay contracts that producers use their allocations within a particular allocation period. Large producers receive a monthly allocation period and small producers receive a quarterly allocation period. PWCS initially sought to define 'small producers' as those who export less than 3 million tonnes per annum of coal through the PWCS Terminals.

5.144 Following concerns raised by some producers through a consultation process conducted by PWCS, the ACCC is advised that PWCS subsequently agreed to provide a two year transition period so that producers who export between 3 and 5 million tonnes per annum will have quarterly allocation periods from 1 January 2010 and monthly allocation periods from 1 January 2012.[152]

5.145 Certain interested parties have expressed concern that 3 million tonnes per annum is too low a threshold to force producers to use their periodic loading allocations and that 5 million tonnes per annum is a more appropriate level.

5.146 For example, Integra Coal submits that reducing the threshold to 3 million tonnes per annum will:

> …raise significant logistical issues for small producers because of their small volumes and their exposure to risks of production interruption such as long-wall movements.
>
> This change also threatens the competitiveness of smaller producers in the long term because this tighter requirement (to use allocation within a month period or lose it and face penalties) raises a significant barrier to expansion for new entrants and expanding small producers.
>
> The outcome of the PWCS change may be to simply favour the larger producers over the smaller in the longer term, which will be against system equity and efficiency.
>
> This change could also result in a reduction in the total volume of coal being shipped through the coal chain because of the smaller producers' difficulties meeting the one month allocation usage requirement.[153]

5.147 Similar concerns were also raised by Bloomfield Collieries and Felix Resources.

5.148 In response, PWCS submits that the purpose of this requirement is to:

> …reduce the risk that Producers may seek to use their entire Loading Allocation (or a large proportion of their Loading Allocation) within a short period of time which cannot be efficiently serviced by PWCS or which would result in the creation of a vessel queue and ultimately lost capacity.

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152 Submission from PWCS, 22 September 2009, page 2.

153 Submission from Integra Coal, 21 September 2009, page 3.

> …lowering the threshold of coal shipped through the PWCS Terminals from 5Mtpa to 3Mtpa from 1 January 2012 will ensure that a greater number of medium-sized Producers (involving a significant aggregate number of tonnes on an annual basis) are required to provide increased certainty to PWCS by working on the basis of monthly, rather than quarterly, Allocation Periods. This will, in turn, improve the operational efficiency of the PWCS Terminals, reduce the risk of spike in the vessel queue and, ultimately, the risk of lost export capacity.[154]

5.149 Further, PWCS considers that 3 million tonnes per annum to be the appropriate measure of a small producer and that if there is a concern that all producers should be treated equally, monthly allocation periods provide a more efficient solution.

5.150 The ACCC recognises there is a tension between reducing flexibility for smaller producers and seeking to ensure greater efficiency in the operation of the terminals and hence the Hunter Valley coal chain. There is some potential for market distortions to arise as producers' volumes approach the threshold – for example, the loss of flexibility is likely to act as a disincentive for a producer to increase its production from 2.9 million tonnes per annum to just over 3 million tonnes per annum and may impact on otherwise efficient merger or acquisition activity. The ACCC notes, however, that such a distortion will occur whether the threshold is set at 3 or 5 million tonnes per annum under the proposed Capacity Framework Arrangements.

5.151 On balance, the ACCC considers there is likely to be little detriment arising from the 3 million tonne per annum threshold, given the overriding efficiency drivers and the two year transition period provided to enable producers that fall within the 3–5 million tonne per annum band to adjust. Should it prove over time that the lower threshold is causing additional costs on producers that outweigh any efficiency benefits, the ACCC expects the producers will raise this with PWCS and the level of the threshold could be reviewed.

Vessel sequencing system

5.152 PWCS currently loads all vessels on a 'turn of arrival' basis. PWCS advises that over the last six months, it has been discussing with the industry the possible introduction of a new 'vessel sequencing system':

> …which is designed to reduce vessel waiting times, reduce demurrage and further facilitate contractual and operation alignment across the coal chain by providing greater certainty in relation to vessel load times.[155]

5.153 A number of smaller producers have expressed concern that the proposed Capacity Framework Arrangements propose to differentiate vessel nominations between 'vessel sequencing' and 'turn of arrival' applications.

5.154 In particular, clause 9(e) of the Capacity Framework Arrangements provides that if a producer is utilising the turn of arrival system for vessels, then if at any time an excessive vessel queue arises which PWCS reasonably determines is due to unutilised PWCS capacity arising from the random nature of vessel arrivals under the turn of arrival system during the relevant period, PWCS may make downward adjustments on a pro rata basis to the load point allocations of the producer, and any other relevant customers who are utilising the turn of arrival system for that period.

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154 Submission from PWCS, 22 September 2009, page 4.

155 Submission from PWCS, 22 September 2009, page 2.

5.155 Some producers are concerned that they are currently unable to form a view of the new vessel sequencing system until further modelling has been undertaken and do not want future users of the turn of arrival system to be penalised.

5.156 Specifically, Austar submits that:

> The clause, as drafted, suggests that there may be circumstances where Producers using the "turn of arrival" system will be compressed while Producers using a yet to be defined system will not.
>
> An alternative model for sequencing vessels could potentially discriminate against those producers (those with allocation periods of less than or equal to 5Mtpa) that are unable to nominate vessels early and thus could be expected to suffer the brunt of demurrage costs.[156]

5.157 Similarly, Integra Coal submits that:

> …the consequence of the change is to expose those producers, who are unable or unwilling to take up the yet to be defined Contracted Sequencing System, to the risks of Allocation reductions, with no appeal rights and no alternatives to ship their coal. These risks are likely to be greatest for the smaller producers as larger producers with consistent and larger production have less production risk in meeting a vessel nominated in advance.[157]

5.158 In response to these concerns, PWCS advised the ACCC that it had indicated to the producers that it would defer the implementation of any new vessel sequencing system and undertake further modelling. In addition, a limited trial of the new system is proposed to be carried out in the second half of 2010. PWCS intends to potentially introduce the new vessel sequencing system following the conclusion of that trial, subject to further consultation with producers.[158]

5.159 PWCS notes that as capacity increases at its terminals, the size of the optimal vessel queue will also need to increase to ensure efficient operation of the terminals, unless a new system for vessel arrivals is introduced. Further, it submits that:

> Section 9(e) of Attachment 1 to the applications for authorisation reflects that, if a new system is introduced, then it may be appropriate that capacity losses which arise solely from the random nature of vessel arrivals under the turn of arrival system (ie not under the vessel sequencing system), are borne by Producers who continue to use the turn of arrival system. Whether or not this is ultimately implemented will depend on a range of factors…[159]

5.160 The ACCC recognises that the introduction of a new vessel sequencing system, coupled with clause 9(e) of the proposed Capacity Framework Arrangements, has the potential to impose additional cost on smaller producers for the reasons described above.

5.161 The ACCC does not, however, consider this to be a public detriment, as any additional cost borne by a producer would appear to reflect the additional cost it is imposing on the operation of the terminal by being unwilling or unable to present ships in a consistent and predictable way to facilitate its more efficient operation.

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156 Submission from Austar, 21 September 2009, page 2.
157 Submission from Integra Coal, 21 September 2009, page 2.
158 Submission from PWCS, 22 September 2009, page 2.
159 Submission from PWCS, 22 September 2009, page 3.

ACCC conclusion on public detriments

5.162 The ACCC considers there is likely to be some public detriment arising from the exclusive and restrictive nature of the Capacity Framework Arrangements. Further, the extensive information sharing and detailed co-ordination of the operation and expansion of the various components of the Hunter Valley coal chain is likely to result in some detriment by creating a less competitive environment.

5.163 As described above, there is also likely to be some detriment from distortions to efficient business decisions resulting from certain aspects of the arrangements. Overall, however, the ACCC considers the likely detriments will not be substantial.

Balance of public benefit and detriment

5.164 In general, the ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the proposed Capacity Framework Arrangements are likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.

5.165 In the context of applying the net public benefit test at section 90(8)[160] of the Act, the Tribunal commented that:

> …something more than a negligible benefit is required before the power to grant authorisation can be exercised.[161]

5.166 For the reasons outlined in this chapter, the ACCC considers the proposed Capacity Arrangements are likely to result in significant public benefits, including:

- the terminal operators and (new and existing) producers being able to make more accurate and timely investment decisions
- facilitating the alignment of contractual obligations and incentives across the Hunter Valley coal chain, thereby creating an environment more conducive to optimal operation of the coal chain and efficient investment
- demurrage savings to Australian coal producers
- reducing the environmental and safety risks associated with vessel queues waiting offshore and
- maintaining or improving the international reputation of the Hunter Valley coal industry.

5.167 The ACCC considers that any delays in the implementation of the long term solution in the Hunter Valley, including components of the Capacity Framework Arrangements, beyond 1 January 2010, will delay the full realisation of the likely public benefits, and therefore potentially reduce the magnitude of the public benefits generated by the Capacity Framework Arrangements over the life of the authorisation period. Nevertheless, the ACCC considers the Capacity Framework Arrangements are likely to generate significant public benefits.

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160 The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

161 Re *Application by Michael Jools, President of the NSW Taxi Drivers Association* [2006] ACompT 5 at paragraph 22.

5.168 The ACCC considers there is likely to be some public detriment arising from the exclusive and restrictive nature of the Capacity Framework Arrangements. Further, the extensive information sharing and detailed co-ordination of the operation and expansion of the various components of the Hunter Valley coal chain is likely to result in some detriment by creating a less competitive environment.

5.169 The ACCC also considers that certain aspects of the Capacity Framework Arrangements are likely to generate some public detriment from distortions to efficient business decisions. Overall, however, the ACCC considers the likely detriments will not be substantial.

5.170 On balance, the ACCC considers the public benefit that is likely to result from the proposed Capacity Framework Arrangements is likely to outweigh the public detriment. The ACCC is therefore satisfied that the tests in sections 90(6), 90(7), 90(8), 90(5A) and 90(5B) are met.

Length of authorisation

5.171 The Act allows the ACCC to grant authorisation for a limited period of time.[162] The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.

5.172 In this instance, the Applicants originally requested authorisation of the proposed Capacity Framework Arrangements for 15 years until 30 June 2024.[163]

Submissions received prior to the draft determination

5.173 Prior to the draft determination, the Applicants submitted the 15 year period is proposed to facilitate the entry into, and giving effect to, long term contracts, the industry levy and capacity allocation transfer arrangements required by the NSW Government.

5.174 The Applicants also submitted that a 15 year period reflects the rolling 10 year or 'evergreen' nature of nominations under the proposed long term contracts, and the requirement for regulatory certainty given the substantial level of investment in infrastructure expansion that is proposed.

5.175 The ACCC did not receive any interested party submissions specifically in relation to the length of authorisation sought before it released its draft determination.

5.176 In its draft determination the ACCC noted that under the Capacity Framework Arrangements, producers are 'entitled to contract for any tonnages up to their PWCS Base Tonnage offer and any length of contracts up to ten years.' Every year, producers may then submit a one year renewal of their existing 10 year load point allocation.

5.177 Given that producers' ship or pay contracts at the port are initially for 10 years, the ACCC considered it appropriate that the proposed authorisation at least cover the giving effect to these contracts for the full initial term of the contracts.

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162 Section 91(1).

163 The Applicants' supporting submission to the applications for authorisation (A91147–A91149 and A91168–A91169), 30 June 2009, page 11.

5.178 The ACCC therefore proposed to grant authorisation to the proposed Capacity Framework Arrangements until 30 June 2020.

Submissions received in response to the draft determination

5.179 In response to the draft determination PWCS and NPC requested:

> …that the ACCC grant authorisation for a term of at least 15 years, if not 20 years, from 1 July 2009.[164]

5.180 PWCS and NPC also now submit that as PWCS' long term ship or pay contracts are based on a calendar year, a 31 December expiry date would be preferable.[165]

5.181 PWCS and NPC further submit that under the Capacity Framework Arrangements producers can nominate for long term ship or pay contracts with 10 year load point allocations commencing up to four years from the date of nomination, or five years with approval from NPC.[166]

5.182 Therefore, PWCS and NPC submit that:

> …duration for the authorisations of at least 15 years would provide substantially greater certainty for producers who elect to submit nominations to commence in 2011 or later and whose initial 10 year terms would otherwise extend beyond the duration of the authorisation. In light of the very significant investment by producers and service providers in the Hunter Valley, this additional certainty will give rise to greater public benefits which outweigh any public detriment associated with the proposed conduct.[167]

5.183 PWCS and NPC consider that an authorisation duration of at least 15 years strikes an appropriate balance between providing sufficient certainty for producers and recognising that the ACCC will wish to review the authorisation.

5.184 Similarly, NCIG considers the duration of authorisation should be at least 15 years. In this regard, NCIG submits:

> The NCIG long term ship or pay agreements have an initial term that expires at the end of the financial year 10 years after mechanical completion date. The mechanical completion date is expected to be some 2+ years after financial close, and if it falls early in a financial year, the expiry of the initial term could be 13+ years from financial close.[168]

5.185 Further, NCIG considers that, having regard to the need for certainty for the bankability of expansion projects and the long term nature of the arrangements, a compelling case can be made for the authorisation to be for 20 years.

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164 Submission from PWCS and NPC, *Submission responding to the draft determination issued on 28 October 2009*, 24 November 2009, page ii.

165 Ibid, page iii.

166 Ibid.

167 Ibid.

168 Submission from NCIG, 26 November 2009, page ii.

ACCC view

5.186 Given that currently expanding producers or new entrants in the Hunter Valley may delay the commencement of 10 year load point commitments for up to 5 years, the ACCC considers a 15 year period of authorisation is appropriate in this instance. That is, a 15 year period of authorisation would cover the giving effect to these contracts for the full initial term of the contracts. The ACCC is of the view that this would also deliver greater certainty to producers and service providers given the significant investments involved.

5.187 The ACCC notes that 15 years is a significant period, in which the circumstances in the Hunter Valley may change.

5.188 The Capacity Framework Arrangements are a complex set of arrangements that require a number of parties to work together to ensure the Hunter Valley coal chain operates efficiently and effectively. The ACCC is granting authorisation for an extended period of time on the basis of the information before it and the commitments made by the Applicants in the Capacity Framework Arrangements.

5.189 The ACCC notes that NCIG's terminal will be operated on a fundamentally different basis than PWCS' terminals, and this is reflected in the more detailed arrangements that PWCS has in place to ensure contractual alignment. Nevertheless, the ACCC is granting authorisation on the basis that if contractual alignment issues arise in the operation of NCIG's terminal that have broader operational impacts in the Hunter Valley coal chain, NCIG will work the Hunter Valley Coal Chain Coordinator and other coal chain participants to resolve those issues and to ensure that contracts are aligned, including engaging in the conduct described in the Capacity Framework Arrangements – namely, NCIG sought authorisation to be able to refuse to supply coal handling services if a producer has inadequate track or train delivery entitlements.

5.190 If the Capacity Framework Arrangements do not operate in the way described or deliver the benefits claimed, the ACCC has the power to review this authorisation at any time.

5.191 In particular, the Act provides that if at any time after granting an authorisation, it appears to the ACCC that:

- the authorisation was granted on the basis of evidence or information that was false or misleading or
- a condition to which the authorisation was expressed to be subject has not been complied with or
- there has been a material change in circumstances since the authorisation was granted,

the ACCC may consider revoking the authorisation.[169]

5.192 The ACCC therefore grants authorisation in relation to the Capacity Framework Arrangements until 31 December 2024.

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[169] Section 91B(3).

Variations to the Capacity Framework Arrangements

5.193 The ACCC notes that any amendments to the proposed Capacity Framework Arrangements during the term of this authorisation are not covered by the authorisation.

6. Determination

The application

6.1. On 29 June 2009 Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group and Newcastle Port Corporation (the 'Applicants') lodged applications for authorisation A91147–A91149 in relation to certain aspects of a long term solution to the ongoing capacity constraints of the Hunter Valley coal chain.

6.2. On 24 July 2009 the Applicants lodged further applications for authorisation A91168–A91169 in relation to a contract, arrangement or understanding which may contain a cartel provision. The additional applications were lodged with the Australian Competition and Consumer Commission (ACCC) as a result of the amendments introduced by the *Trade Practices Amendment (Cartel Conduct and Other Measures)* Act 2009, which commenced on 24 July 2009.

6.3. The conduct under the additional applications A91168–A91169 is the same conduct and is in the same terms as the Applicants' original applications for authorisation lodged with the ACCC on 29 June 2009.

6.4. On 14 September 2009 the Applicants amended the Capacity Framework Arrangements for which authorisation is sought. On 26 October 2009 the Applicants lodged further revisions to the proposed Capacity Framework Arrangements.

6.5. Application A91447 was made using Form A, Schedule 1, of the Trade Practices Regulations 1974. The application was made under subsection 88(1) of the *Trade Practices Act 1974* (the Act) to make and give effect to a contract, arrangement or understanding, where a provision would or might be an exclusionary provision within the meaning of section 45 of the Act.

6.6. Application A91148 was made using Form B, Schedule 1 of the Trade Practices regulations 1974. The application was made under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

6.7. Application A91149 was made using Form D, Schedule 1 of the Trade Practices Regulations 1974. The application was made under section 88(7) of the Act to engage in conduct to which sections 45D, 45DA or 45DB of the Act might apply. That is, to engage in conduct with other persons which may hinder or prevent a third person supplying or acquiring goods and services to, or from, a fourth person. Also, to engage in conduct with other persons that may hinder or prevent a third person from engaging in trade or commerce involving the movement of goods from Australia to places outside Australia.

6.8. Application A91168 was made under section 88(1A) of the Act to make or give effect to a contract, arrangement or understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the Act, and which would also be, or might be, an exclusionary provision within the meaning of section 45 of the Act.

6.9. Application A91169 was made under section 88(1A) of the Act to make or give effect to a contract, arrangement or understanding, a provision of which would be, or may be a cartel provision within the meaning of Division 1 of Part IV of the Act, or which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

6.10. In particular, authorisation is sought to make and give effect to a contract, arrangement or understanding which involves the proposed conduct set out in the Capacity Framework Arrangements.

The net public benefit test

6.11. For the reasons outlined in Chapter 5 of this determination the ACCC considers that in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

6.12. The ACCC is also satisfied that the conduct for which authorisation is sought is likely to result in such a benefit to the public that the conduct should be allowed to take place.

6.13. The ACCC therefore **grants** authorisation to applications A91447–A91149 and A91168–A91169.

Conduct for which the ACCC proposes to grant authorisation

6.14. Authorisation extends to the Applicants for the proposed Capacity Framework Arrangements (at Attachment A to this determination) until 31 December 2024.

6.15. Authorisation is in respect of the Capacity Framework Arrangements as they stand at the time authorisation is granted. In particular, authorisation extends to the conduct currently described at Clause 7 of the Capacity Framework Arrangements in relation to capacity transfers. Authorisation does not extend to any conduct within the Capacity Transfer System (once finalised) that is not described in Clause 7 of the Capacity Framework Arrangements.

6.16. Further, any changes to the Capacity Framework Arrangements during the term of the authorisation will not be covered by the authorisation.

6.17. This determination is made on 9 December 2009.

6.18. Section 90(4) requires that the ACCC state in writing its reasons for a determination. The attachments to this document form part of the written reasons for this determination.

Interim authorisation

6.19. At the time of lodging the application, the Applicants requested interim authorisation of the proposed Capacity Framework Arrangements. The ACCC granted interim authorisation on 22 July 2009, subject to a condition that the Applicants execute their respective Capacity Framework Documents by 31 August 2009.

6.20. One Applicant did not comply with the condition of interim authorisation and on 1 September 2009 the ACCC revoked interim authorisation.

6.21. The remaining Capacity Framework Documents were executed on 17 September 2009. On 23 September 2009 the ACCC granted interim authorisation to the Capacity Framework Arrangements, as amended on 14 September 2009.

6.22. In its draft determination, the ACCC granted interim authorisation to the further revised Capacity Framework Arrangements received on 26 October 2009.

6.23. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect.

Date authorisation comes into effect

6.24. This determination is made on 9 December 2009. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 31 December 2009.

<u>Attachment A</u> – the Capacity Framework Arrangements

Capacity Framework Arrangements

Introduction

This Attachment describes the conduct for which the Applicants are seeking authorisation, which may be implemented in various provisions of contracts, arrangements or understandings between:

(a) any or all of PWCS, NPC and NCIG;

(b) any or all of PWCS, NCIG, NPC and any Hunter Valley coal chain participant, including any producer of coal for export through the Terminals, or exporters of coal through the Terminals; or

(c) PWCS, NCIG, NPC, any coal producer or exporter, Hunter Valley Coal Chain Coordinator Limited (or equivalent body) and any above or below rail service provider in the Hunter Valley.

The conduct for which the Applicants seek authorisation is referred to as the "Capacity Framework Arrangements".

The Capacity Framework Arrangements (and the provisions of the contracts, arrangements and understandings which give effect to or implement the relevant aspects of the Capacity Framework Arrangements) are necessary to give binding legal effect to the non-binding principles set out in the Implementation Memorandum signed by PWCS, NCIG and NPC and provided to the Commission in April 2009.

The Capacity Framework Arrangements form a critical component of the proposed long term solution to capacity constraints in the Hunter Valley coal chain.

The Capacity Framework Arrangements do not apply to coal that is delivered by road transport to the Carrington Terminal operated by PWCS.

The Capacity Framework Arrangements

Any word or expression that is used in this Attachment 1 which begins with a capital letter has the meaning given in Part C.

PART A - Conduct between date of authorisation and 31 December 2009

The Applicants seek authorisation to make a contract or arrangement or arrive at an understanding, or give effect to a provision of a contract, arrangement or understanding, which involves the following conduct being undertaken between 1 July 2009 and 31 December 2009:

1. Offer and acceptance of PWCS Base Tonnage for 2009

Any offer by PWCS, and any acceptance of that offer (in whole or in part) by any Producer, of the 2009 PWCS Base Tonnage for the period 1 July 2009 to 31 December 2009.

The aggregate 2009 PWCS Base Tonnage available for offer is 96.7 Mt.

The amount of the 2009 PWCS Base Tonnage to be offered to each Producer will be equal to:

(i) that Producer's 2008 binding Nomination for capacity allocation at the PWCS Terminals (inclusive of new mines) proportionally reduced to 95Mt ("**2008 Tonnage**"); and

(ii) if that Producer's 2008 Tonnage is less than that Producer's highest actual allocation usage between 2004 and 2007 (inclusive), that Producer will also receive an agreed share of an additional 1.7Mt determined in accordance with clause 7.3 of the PWCS Tonnage Allocation Stage 1.

The offer will be made on the terms of that Producer's existing coal handling services agreement which will be modified to give effect to the 2009 Base Tonnage Offer and the transfer fee cap under the Terminal Access Protocols.

Producers will be entitled to contract for any tonnage up to their 2009 PWCS Base Tonnage offer. Before a Producer can accept any 2009 PWCS Base Tonnage offer that Producer must satisfy the requirements set out in section (b) below.

(b) Acceptance requirements

Before a Producer can accept any offer of a 2009 PWCS Base Tonnage, that Producer must:

(i) advise PWCS of a constant tonnage for each Load Point; and

(ii) provide PWCS with relevant information required for PWCS System Assumptions and contractual alignment.

(c) Lapse of offer

If a Producer does not accept all or any part of a 2009 PWCS Base Tonnage offer by the due date for acceptance then:

(i) the offer or part of that offer (as applicable) will lapse; and

(ii) the relevant capacity allocation which was offered but not accepted will be made available in accordance with the nomination and allocation process described in section 1 of Part B.

2. Contractual alignment and vessel queue

The conduct of PWCS:

(a) requiring Producers to have adequate entitlements to track and train haulage upon lodging any application under the Coal Handling Services Agreement for the provision of coal handling services in respect of each vessel to be loaded;

(b) refusing to supply coal handling services if a Producer has inadequate track or train delivery entitlements in respect of the application for a vessel to be loaded;

(c) in revising flexibility limits or reducing allocations on a pro rata basis should an excessive vessel queue develop or be forecast to develop due to impacts at PWCS. Where excess queuing is due to an impact external to the Terminals, PWCS may, but is under no obligation to, apply adjustments to allocations in a manner that reasonably reflects that impact; and

(d) if HVCCC determines that there is unutilised train capacity, offering this unused Capacity to Producers who have the ability to use it, to the extent allowed by contracts between each relevant Producer and its train haulage provider.

3. Transfer fee cap

The conduct of capping the fee that a Producer with a Contracted Allocation at the PWCS Terminals may charge another to use a portion of its Contracted Allocation ("**Relevant Proportion**") at no more than 5% of the fee charged by PWCS for the Relevant Portion.

PART B – Conduct if long form documents executed by all parties by 31 August 2009 (or such other date as may be agreed by the Applicants)

The Applicants seek authorisation to make a contract or arrangement or arrive at an understanding, or give effect to a provision of a contract, arrangement or understanding, if by no later than 31 August 2009 (or such other date as may be agreed by NPC, NCIG and PWCS):

(a) the PWCS Capacity Framework Documents are executed in full by PWCS and NPC; and

(b) the NCIG Capacity Framework Documents are executed in full by NCIG and NPC.

1. Offer and acceptance of PWCS Base Tonnage for 2010

(a) PWCS Base Tonnage for 2010

Any offer by PWCS, and any acceptance of that offer (in whole or in part) by any Producer, of the 2010 PWCS Base Tonnage on an annual basis for a period of up to 10 years commencing on 1 January 2010.

The aggregate 2010 PWCS Base Tonnage available for offer is 97.4 Mtpa.

The aggregate 2010 PWCS Base Tonnage of the NCIG Producers (other than the Excluded NCIG Producers) is, as at 31 August 2009, 24.413 Mtpa.

The amount of the 2010 PWCS Base Tonnage to be offered to each Producer will be equal to the higher of:

(i) that Producer's 2008 Tonnage; and

(ii) that Producer's highest actual allocation usage between 2004 and 2007 (inclusive).

The offer will be made on the terms of a new long term ship or pay contract.

Producers will be entitled to contract for any tonnage up to their PWCS Base Tonnage offer and for any length of contract up to 10 years. Before a Producer can accept any 2010 PWCS Base Tonnage offer that Producer must satisfy the requirements set out in section 1(b).

(b) Acceptance requirements

Before a Producer can accept any offer of a 2010 PWCS Base Tonnage, that Producer must:

(i) advise PWCS of a constant annual tonnage for each Load Point Allocation, unless there is a ramp down in respect of the Load Point;

(ii) provide PWCS with reasonable security as required by PWCS;

(iii) provide PWCS with either:

(A) a JORC Code statement; or

(B) a statement generally prepared in accordance with the JORC Code,

of Marketable Coal Reserves for the relevant Mines which supports coal production is feasible with respect to the Load Point Allocations for the term and a written undertaking by the Producer that the same coal reserves are greater than the sum of the Producer's Base Tonnage Offer, any Nominations, NCIG Contracted Allocations and any domestic coal supply contracts;

(iv) provide PWCS with relevant information required for the PWCS System Assumptions and contractual alignment; and

(v) provide PWCS with a signed Long Term Ship or Pay Contract.

(c) Lapse of offer

If a Producer does not accept all or any part of a 2010 PWCS Base Tonnage offer by the due date for acceptance then:

(i) the offer or part of that offer (as applicable) will lapse; and

(ii) the relevant capacity allocation which was offered but not accepted will be made available in accordance with the nomination and allocation process described in section 2 and 2A.

2. PWCS Nomination and Allocation

The nomination for capacity allocations at the PWCS Terminals by any Producer, and the allocation of capacity allocations at the PWCS Terminals to any Producer, in accordance with the principles set out in this section 2 and in sections 2A, 2B, 2C and 2D:

(aa) Allocation of Capacity for 1 October 2009 to 31 December 2009

PWCS may elect to offer to Producers any additional PWCS Capacity that is available between 1 October 2009 and 31 December 2009 above the aggregate Base Allocations. If PWCS elects to make this pro rata offer, it will be made to all Producers as follows:

(i) first, up to the Producer's 2010 Base Tonnage Offer; and

(ii) then, on a pro rata basis based on their respective 2009 load point allocations.

(a) Allocation of Capacity for 1 January 2010 to 30 June 2010

Any additional capacity above that required to satisfy the capacity allocations which have been offered and accepted in accordance with section 1 will be offered for allocation in the period 1 January 2010 to 30 June 2010 only to all existing Producers at PWCS on a pro rata basis based on their respective Base Allocations.

Unless otherwise agreed by PWCS and the Producer, the division of the pro-rata additional allocation will be on a proportional basis across all of the Producer's Load Point Allocations.

If any pro rata offer is not taken up by an existing Producer at PWCS, it will lapse and PWCS will offer it to all Producers that have accepted the pro rata offer by re-applying the process set out in this Section 2(a).

(b) Allocation of Capacity for 1 July 2010 and beyond

Allocation of capacity above that required to satisfy the capacity allocations which have been offered and accepted in accordance with section 1 will be offered for allocation from 1 July 2010 and beyond in accordance with the PWCS Annual Capacity Nomination and Allocation Process set out in section 2A below.

2A. PWCS Annual Capacity Nomination and Allocation Process

(a) Expansion Planning

PWCS will review its Capacity, the PWCS System Assumptions and its expansion plans each year. To enable this review, PWCS will provide relevant information to, and obtain relevant information from, HVCCC, Producers and other coal chain service providers. In undertaking its review, PWCS will have regard to the Coal Chain master planning conducted by HVCCC and information provided by Producers and other coal chain service providers.

(b) Demand Assessment

(i) PWCS will undertake an annual demand assessment process with Producers each year. This process will include submission of nominations for 10 year Load Point Allocations, notice of renewals or extensions of existing 10 year Load Point Allocations and notice of any offers of voluntary Load Point Allocation reductions.

(ii) In the year in which NCIG intends to Commit to NCIG Stage 2, the timing of the annual demand assessment process will be coordinated with NCIG, such that the NCIG Nomination and Allocation process is conducted before or in conjunction with the PWCS Nomination and Allocation Procedure where reasonably possible.

(c) Nominations

Expansion Capacity at PWCS Terminals will be available for nomination to Non-NCIG Producers exclusively until 1 January 2010.

NCIG Producers will only be able to submit nominations for Expansion Capacity when all of the pre-conditions set out in section 2C have been met.

Nominations for Load Point Allocations must:

(i) Advise a constant annual tonnage for each Load Point Allocation;

(ii) Nominate a commencement date which:

(A) is 1 January in either the 1st, 2nd, 3rd or 4th year after the nomination is submitted; or

(B) with the approval of NPC, is 1 January in the 5th year after the nomination is submitted, provided that NPC is satisfied that:

(I) the Producer nominating for that capacity establishes that the nomination is for a planned mine with infrastructure that has extended lead times for delivery; and

(II) the nomination will not have any adverse effect on nominations for allocations which may commence earlier,

provided that nominations to commence in 2010 will commence on 1 July for a term of 10.5 years.

(iii) Provide reasonable security as required by PWCS;

(iv) provide PWCS with either:

(A) a JORC Code statement; or

(B) a statement prepared generally in accordance with the JORC Code,

of Marketable Coal Reserves for the relevant Mines which supports coal production is feasible with respect to the Load Point Allocations for the term and a written undertaking by the Producer that the same coal reserves are greater than the sum of the Producer's Load Point Allocations (or the Base Tonnage Offer), any Nominations, NCIG Contracted Allocations and any domestic coal supply contracts for those mines;

(v) Provide information relating to the development status of the source mine, including development consent and other approvals to operate;

(vi) Provide a timeline for first coal production, where the nomination relates to a new or expansion project;

(vii) Provide relevant information required for PWCS System Assumptions and contractual alignment; and

(viii) Provide a duly executed and binding Long Term Ship or Pay Contract for the nominated allocation, if the Producer has not already done so.

If the Nomination is a Dual Nomination, then to be valid, the Nomination must comply with the requirements of section 2A(l) below in addition to the requirements in this section 2A(c).

If for any reason a nomination does not result in a contract through the nomination and allocation process then that nomination shall have no continuing effect including having any priority under the Priority Rules set out in section 2A(h) below.

(d) Renewal and Extension

Every year Producers may submit a one year renewal of their existing 10 year Load Point Allocation (i.e. rolling evergreen allocation). If an annual rolling renewal is not taken up by the Producer, the Load Point Allocation loses its evergreen renewal right.

An end of Load Point Allocation extension of up to 3 years may be exercised by Producers with 5 years remaining on their Load Point Allocation.

(e) Voluntary Reduction Offer

A Producer may offer to PWCS a voluntary reduction to a Load Point Allocation. PWCS may reallocate the Load Point Allocation (up to the amount volunteered) to another Producer in accordance with this nomination and allocation process. If any or all of the voluntary reduction is reallocated, PWCS will reduce the Producer's Load Point Allocation by the amount reallocated and the Producer will retain any portion of the voluntary reduction that is not reallocated as a Load Point Allocation.

(f) Capacity Assessment and Review

PWCS will assess its Capacity availability and its ability to meet aggregate nominations and existing Contracted Allocations. If necessary, PWCS will finalise its detailed expansion plan to fulfil the nominations. If necessary, a review of the time in which an expansion of the PWCS Terminals (including the construction of a new terminal) is required to be completed will be conducted in accordance with section 6(e).

(g) Allocation

PWCS will contract Load Point Allocations with Producers. Contracted Allocations which cannot be satisfied by existing Capacity at the PWCS Terminals, will commence within the time required under section 6(b) unless a review of that time has been undertaken in accordance with section 6(e) and either an alternative date for the delivery of capacity is established or the start date is suspended (due to the obligation to expand being suspended). If PWCS cannot satisfy the nominations in full, priority rules will apply.

If the year is a year in which Dual Nominations are submitted, then Producers which submit nominations with a nominated commencement date that is the same year as the nominated commencement year of the Dual Nominations or later, will receive Load Point Allocations with a suspended start date. The suspension of the start date will cease at the conclusion of the Dual Nomination process.

(h) Priority Rules

Existing Load Point Allocations will not be diluted.

(i) Where nominations are made in the same year, nominations starting sooner will be prioritised over nominations starting later provided that:

(A) where there is no available PWCS capacity in 1st year after the nomination is submitted then, nominations in 1st and 2nd year will have equal priority; and

(B) where there is no available PWCS capacity in 1st or 2nd year after the nomination is submitted then, nominations in 1st, 2nd and 3rd year will have equal priority.

(ii) Where nominations are made in the same year to start at the same time, nominations will be prioritised into 4 categories by the relevant mine's development status at the time of nomination. The categories in descending order of priority are:

(A) the mine has all approvals to operate and has commenced or is able to demonstrate it can commence production by the nominated commencement date;

(B) the mine has been granted a Mining Lease;

(C) the mines has lodged an Environmental Assessment Report with the Department of Planning; and

(D) all other mines.

(iii) Nominations submitted in the same year that become contracts take priority over nominations submitted in later years.

(iv) Each priority group is satisfied in full before the next priority group.

(v) If nominations within a priority group cannot be satisfied at the one time, each Producer will be offered their pro-rated share.

(i) Capacity Delivery

(i) PWCS will deliver Capacity within the contracted timeframe.

(ii) If necessary, a review of the contracted timeframe for delivery of Capacity will be conducted in accordance with section 6(e). If the contracted timeframe is suspended or extended by that review then the start dates for the relevant Load Point Allocations will similarly be suspended or extended.

(iii) If capacity is delivered part way through a year the Load Point Allocation will reflect the partial year. For the purposes of any compression allocation, if a Load Point Allocation has been phased in with a staggered start date, the start date of the first phase of the Load Point Allocation is the start date of the entire tonnage amount.

(iv) If PWCS Capacity is available prior to the start date for next ranking Load Point Allocations, then the applicable Producers will be offered the opportunity to bring forward their start date. If the applicable Producers do not accept the offer within 2 weeks of the date of the offer, the available capacity will be treated as Excess

Capacity and will be available for allocation until the start date of the next ranking Load Point Allocations.

(v) If required in accordance with section 5, PWCS Contracted Allocations will be compressed as set out in section 5.

(vi) Compressed Allocations will be reallocated to Producers who have Load Point Allocations impacted by the relevant event which triggered the requirement to compress.

(vii) Where the Compressed Allocation is insufficient to satisfy the impacted Producers, the following priority rules will apply:

(A) Load Point Allocations commencing in a particular year will take priority over Load Point Allocations starting in a later year;

(B) Where Load Point Allocations commence in a particular year, Load Point Allocations where the source mine has all approvals to operate and sufficient track access will take priority;

(C) Each priority group is satisfied in full before the next priority group; and

(D) If Load Point Allocations within a priority group cannot be satisfied at the one time, each Producer will be offered their pro-rated share.

(viii) PWCS may adjust the Compressed Allocation to account for any variation in the PWCS System Assumptions between the transferor Producer and the transferee Producer.

(j) Load Point Allocation variance

(i) If as a result of the application of the allocation process including the priority rules set out in Section 2A(h), a Producer's Load Point Allocation:

(A) is initially satisfied in part only and, as a consequence, the tonnage allocated to that Producer is less than 80% of that Producer's nominated annual tonnage for that load point allocation for more than 1 year; or

(B) has a start date that is one or more years later than the nominated commencement date (for the avoidance of doubt, this applies to the start date of the first phase of a load point allocation if there is a staggered start date),

then the Producer may withdraw the nomination by written notice to PWCS within two weeks of the date that PWCS issues the load point allocation to the Producer.

(ii) If the Producer does not withdraw the nomination by the due date then the load point allocation is binding on the Producer and PWCS.

(iii) If the Producer withdraws the nomination, then the nomination will be void and the Producer will have no continued priority in respect of that nomination. PWCS will return to the Producer any security relating to that nomination.

(iv) Any capacity that becomes available due to the withdrawal of the nomination will be applied to the nominations of other Producers in accordance with the priority rules.

(v) If a Producer has a Load Point Allocation with a suspended start date and more than 2 years has elapsed since the start date was suspended, the Producer may terminate that Load Point Allocation by providing at least 1 months written notice to PWCS.

(k) Periodic Load Point Allocation and Tolerance

(i) Each Load Point Allocation will be broken down into periodic Load Point Allocations for use in particular Allocation Periods during each year. During an Allocation Period, each Producer may use its periodic Load Point Allocations and any tolerance amounts determined by PWCS for that Allocation Period. A Producer's entitlement in respect of an Allocation Period ceases when it has no further unused Load Point Allocations, excluding any Quarantined Allocation, for that Allocation Period.

(l) Dual Nominations

(i) A Non-NCIG Producer who wishes to submit a valid Dual Nomination:

(A) must, at the time the nomination is submitted, inform PWCS that it is a Dual Nomination;

(B) must nominate a commencement year which is no earlier than the year following the expected year of completion of NCIG Stage 2, as advised by NCIG at the time NCIG seeks expressions of interest for NCIG Contracted Allocations. For the avoidance of doubt, if the Dual Nomination is submitted in 2009, the earliest possible nominated commencement year is 2013; and

is relieved of its obligation to provide security interests in relation to the Dual Nomination at the time the Dual Nomination is submitted to PWCS.

(ii) Each Producer who submits a valid Dual Nomination will receive a Load Point Allocation which:

(A) has a suspended Start Date. The Start Date will remain suspended until that Dual Nomination process has concluded;

(B) has an annual tonnage equal to the nominated amount; and

(C) is contingent on whether or not NCIG Stage 2 is Committed.

(iii) If PWCS receives an Escrow Notice, each Load Point Allocation based on a Dual Nomination will in respect of:

(A) the annual tonnage equal to that Producer's NCIG Contracted Allocation ("Dual Portion") continue to be contingent on the Commitment of NCIG Stage 2; and

(B) any annual tonnage of the Producer's Load Point Allocation that is in excess of the Dual Portion (the "Excess Portion") cease to be contingent and become an operative Load Point Allocation unless the Producer confirms in writing to PWCS that the Excess Portion is to remain contingent within 10 business days of receiving a notice from PWCS requesting such confirmation.

(iv) If PWCS receives a notice from NCIG that NCIG Stage 2 is Committed:

(A) the Dual Portion of the Load Point Allocation will immediately terminate and the Producer will have no continued priority in respect of that Dual Portion; and

(B) any remaining contingent Excess Portion will cease to be contingent and become an operative Load Point Allocation.

(v) If PWCS receives notice from NCIG advising that the NCIG process for allocating Non-NCIG Stage 2 Contracted Allocations has terminated any contingent portion of the Load Point Allocation will immediately cease to be contingent and become an operative Load Point Allocation, unless the Producer confirms in writing to PWCS that the contingent portion is withdrawn within 10 Business Days of receiving a notice from PWCS requesting such confirmation.

(vi) The suspension of the Start Date of any operative Load Point Allocations will cease upon the earlier of:

(A) the date NCIG advises PWCS that NCIG Stage 2 is Committed;

(B) the date NCIG advises PWCS that the current NCIG process for allocating Non-NCIG Stage 2 Contracted Allocations has terminated; or

(C) the Sunset Date.

(m) Cessation of Suspension of Start Dates

(i) If a Load Point Allocation has a Start Date that is suspended (whether due to a review or the Dual Nomination process) then when the suspension ceases the Load Point Allocation will be given a Start Date in accordance with clauses 2A(g) and 2A(h) based on the nomination from which the Load Point Allocation was contracted.

2B Allocation of Excess Capacity

(i) PWCS will make an announcement when it has any Excess Capacity and invite nominations for that Excess Capacity. Nominations must not exceed the amount of Excess Capacity or any time period stated in the announcement.

(ii) If NCIG has not committed to NCIG Stage 2, NCIG Producers may only nominate for Load Point Allocations for capacity contracts for the maximum available period not to exceed 2 years in length. If NCIG Stage 2 has been Committed, all Producer's nominations will be treated the same as all other Producers.

(iii) In allocating the Excess Capacity, the following priority rules will apply unless the Excess Capacity is due to the operation of clause 2D:

(A) Nominations commencing sooner will take priority over nominations commencing later;

(B) Nominations for a longer time period will be prioritised ahead of nominations for shorter time periods;

(C) Nominations will be ranked by the categories set out in clause 2A(h)(ii); and

(D) If nominations within a priority group cannot be satisfied:

(I) If the date in section 2C(b) has not been reached, nominations by Non-NCIG Producers and Excluded NCIG Producers (for their mines as at 31 August 2009, including any expansion of those mines) within a priority group will be prioritised ahead of nominations by NCIG Producers within that priority group;

(II) All else being equal, each Producer will be offered their pro-rated share.

(iv) If the Excess Capacity is due to the operation of clause 2D then the following priority rules will apply to the allocation of that Excess Capacity:

(A) Nominations by Non-NCIG Producers and Excluded NCIG Producers will be prioritised ahead of nominations by NCIG Producers;

(B) Nominations commencing sooner will take priority over nominations commencing later;

(C) Nominations for a longer time period will be prioritised ahead of nominations for shorter time periods;

(D) Nominations will be ranked by the categories set out in clause 2A(h)(ii); and

(E) All else being equal, each Producer will be offered their pro-rated share.

(v) If, after the allocation of capacity to all Nominations for Excess Capacity there is remaining Excess Capacity, PWCS will give notice to all Producers and accept Nominations for Excess Capacity on a first come first served basis.

2C Nominations by NCIG Producers

(a) Application of this section 2C

(i) Nothing in this section 2C limits the entitlement of an NCIG Producer to nominate for Unallocated Expansion Capacity at the PWCS Terminals in accordance with section 2B.

(ii) If a Producer becomes an "NCIG Producer" after 1 January 2009 because:

(A) a Non-NCIG Producer acquires a NCIG Producer after that date;

(B) a Non-NCIG Producer acquires a source mine identified in an NCIG ship or pay agreement after that date; or

(C) an NCIG Producer, or an entity that controls an NCIG Producer, acquires control of a Non-NCIG Producer after that date,

for the purposes of this section 2C, any mine or mines ("**The Specified Mine or Mines**") of that Producer for which it was entitled to submit nominations at PWCS immediately prior to the date it becomes an NCIG Producer will be treated as if it continued to be owned by a Non-NCIG Producer and that Producer may nominate for capacity allocations at the PWCS Terminals in excess of its Base Allocation in respect of the Specified Mine or Mines, including expansion of the Specified Mine.

(iii) If at any time after 1 January 2009 a NCIG Producer or an entity that controls a NCIG Producer acquires a source mine of a Non-NCIG Producer and the output of that Mine was shipped through the PWCS Terminals before the date of the acquisition ("**the Specified Mine**") then the Specified Mine will be treated as if it continued to be owned by a Non-NCIG Producer and that Producer may nominate for capacity allocations at the PWCS Terminals in excess of its Base Allocation in respect of the Specified Mine, including expansion of the Specified Mine.

(iv) A Producer who is entitled to continue to nominate for expansion capacity at the PWCS Terminals under section 2C(a)(ii) or (iii) must not do so for the purposes of increasing the capacity allocations available to any mines other than the Specified Mine or Mines referred to in paragraph 2C(a)(ii) or (iii).

(b) Nominations by NCIG Producers

Each NCIG Producer will not be entitled to nominate for any capacity allocations at the PWCS Terminals in excess of its PWCS Base Tonnage (as may be reduced in accordance with section 2D or section 5) until the later to occur of the following:

(i) 1 January 2010; and

(ii) the date on which each of the following has occurred:

(A) NCIG Stage 2 is Committed; and

(B) either of the following:

(aa) NPC notifies PWCS that it has unconditionally approved the specification and construction program for NCIG Stage 2 on the basis that it provides for the construction of the NCIG Terminal to the full extent that has been approved in the Project Approvals (as defined in the NCIG Agreement for Lease) ("**Full Expansion**") in one expansion tranche; or

(bb) NPC (in its absolute discretion) notifies PWCS that NCIG Producers may submit nominations on the basis that it will be subject to any limits and conditions imposed by NPC in accordance with section (iii) below because:

(AA) NPC has conditionally approved the specification and construction program for NCIG Stage 2 on the basis that it provides for the Full Expansion in more than one expansion tranche; and

(BB) NPC considers that the conditions imposed on its approval will ensure that the Full Expansion will be achieved; and

(CC) the first phase of the proposed expansion is the largest expansion practicable at that time having regard to physical and operational constraints to a Full Expansion.

(iii) If section 2C(b)(ii)(B)(bb) applies, nominations submitted by NCIG Producers (and any resulting Load Point Allocations) will be subject to any limits and conditions that are notified by NPC to PWCS at the time the notice referred to in that section is provided by NPC to PWCS.

(iv) The intention of this section 2C(b) is to operate to ensure that:

(A) NCIG is committed to the Full Expansion of its terminal before NCIG Producers are entitled to access expansion capacity at the PWCS Terminals; and

(B) NCIG Producers are not entitled to access expansion capacity at the PWCS Terminals whilst there is available existing or potential capacity at the NCIG Terminal,

except where access by NCIG Producers is specifically contemplated in section 2C(a) and section 2B(ii).

(c) While Excluded Stage 1 Allocation is excluded from anti-hoarding calculations

(i) Further to section 2C(b) and 2C(d), an NCIG Producer (other than an Excluded NCIG Producer) will not be entitled to nominate for any capacity allocations at the PWCS Terminals in excess of its PWCS Base Tonnage (as may be reduced in accordance with section 2D or section 5) until that NCIG Producer has made an election in accordance with section 2C(c)(ii).

(ii) An NCIG Producer may, by written notice to PWCS and the Reviewer, elect to include its Excluded Stage 1 Allocation when determining that NCIG Producer's Utilisation Threshold, in which case the NCIG Producer must nominate a date on which the election will become effective ("**Stage 1 Election Trigger Date**").

(iii) If an NCIG Producer makes an election under section 2C(c)(ii) and is not otherwise prevented from nominating for expansion capacity under the provisions of this section 2C then:

(A) subject to section 2C(c)(iii)(B), that NCIG Producer may nominate for capacity allocations at the PWCS Terminals in excess of its PWCS Base Tonnage (as may be reduced in accordance with section 2D or section 5); and

(B) the nomination referred to in section 2C(c)(iii)(A) must not nominate a start date for delivery date of such capacity allocations which is earlier than the Stage 1 Election Trigger Date.

(d) Period during Nominated Deferral Period

(i) Further to sections 2C(b) and 2C(c), if an NCIG Producer has specified a Nominated Deferral Period in accordance with section 5(d)(i)(B)(II), then:

(A) subject to section 2C(d)(i)(B), that NCIG Producer will not be entitled to nominate for any capacity allocations at the PWCS Terminals in excess of its PWCS Base Tonnage (as may be reduced in accordance with section 2D or section 5) until the expiry of the Nominated Deferral Period; and

(B) at any time during the Nominated Deferral Period that NCIG Producer may, by written notice to PWCS and the Reviewer, elect to surrender its right to extend the Nominated Deferral Period in accordance with that section, in which case the NCIG Producer must nominate a date on which the election will become effective ("**Stage 2 Election Trigger Date**").

(ii) If an NCIG Producer makes an election in accordance with section 2C(d)(i)(B) and is not otherwise prevented from nominating for expansion capacity under the provisions of this section 2C then:

(A) subject to section 2C(d)(ii)(B), that NCIG Producer may nominate for capacity allocations at the PWCS Terminals in excess of its PWCS Base Tonnage (as may be reduced in accordance with section 2D or section 5); and

(B) the nomination referred to in section 2C(d)(ii)(A) must not nominate a start date for delivery of such capacity allocations which is earlier than the Stage 2 Election Trigger Date.

2D. ***Conduct where NCIG is in breach of Deed of Undertaking or Capacity Framework Agreement***

Any conduct that is in accordance with the following principles:

(i) In the event of a breach of the Deed of Undertaking or the Capacity Framework Agreement by an NCIG Party, NPC will issue a breach notice to the NCIG Parties detailing the nature of the breach.

(ii) The NCIG Parties will have 30 days to rectify the breach. During this time, and until the breach is rectified to the satisfaction of NPC (acting reasonably), NCIG Producers will not be entitled to nominate for any capacity allocations at the PWCS Terminals in excess of their PWCS Base Tonnage. For clarity, nothing in this section 2D(ii) limits the conduct described in section 2C regarding the entitlement of NCIG Producers to nominate for any capacity allocations at the PWCS Terminals in excess of their PWCS Base Tonnage.

(iii) Section 2D(ii) will not apply to prevent any Excluded NCIG Producer from submitting nominations during the period of the breach (as advised by NPC) for any capacity allocations at the PWCS Terminals in excess of their PWCS Base Tonnage for the mine (or mines) which it operates as at 31 August 2009 (including any expansion or further development of that mine or mines).

(iv) If the breach has not been rectified to the satisfaction of NPC (acting reasonably) within 30 days then:

(A) until the breach is rectified to the satisfaction of NPC (acting reasonably), PWCS will be entitled to terminate any unfulfilled PWCS Contracted Allocations of NCIG Producers (other than an Excluded NCIG Producer) for capacity at PWCS which exceeds their PWCS Base Tonnage; and

(B) PWCS will be entitled, on receiving a direction from NPC, to reduce the PWCS Contracted Allocations of NCIG Producers by up to 1 Mtpa per month for a period of not less than 2 years determined by NPC (in its absolute discretion) until the breach is rectified to the satisfaction of NPC (acting reasonably) or the PWCS Contracted Allocations of NCIG Producers has been reduced to zero. For clarity, the first tonnage reduction may be made on expiry of the 30 day rectification period.

(v) NPC will be entitled to reduce the rectification period referred to section 2D(ii) and section 2D(iv) for a breach as follows:

(A) if one other breach has been notified to the NCIG Parties in the 12 months immediately preceding the date on which that breach occurred, the rectification period may be reduced by up to 15 days;

(B) if two or more other breaches have been notified to the NCIG Parties in the 12 months immediately preceding the date on which that breach occurred, the rectification period for that breach may be reduced by up to 30 days (which, for the avoidance of doubt, means that there is no rectification for that breach).

(vi) Any conduct, agreement, arrangement or understanding between the NCIG Producers to set the proportion of the tonnage reduction that each of them will bear as set out in the Deed of Undertaking.

(vii) Nothing in this section 2D will preclude, limit or otherwise restrict the ability of PWCS to compress or reduce the Contracted Allocations of NCIG Producers in accordance with section 5.

(viii) If PWCS receives a notice from NPC to restore any Load Point Allocations of any NCIG Producers that have been reduced under this section 2D, then PWCS will restore those Load Point Allocations in accordance with the notice to the extent that any Excess Capacity is available.

3. NCIG Nomination and Allocation

The nomination of capacity allocations of 12 Mtpa at NCIG Stage 2 by any Producer, and the allocation of capacity allocations of 12 Mtpa at NCIG Stage 2 to any Producer, in accordance with the following principles:

Step 1: EOI Process: Invite Expressions of Interest (inclusive of an NCIG standard-form Confidentiality Deed) from all Non-NCIG Producers. NCIG will consult with PWCS as to the timing of the nomination and allocation process in accordance with the Implementation Memorandum.

Step 2: Provide Information Package and form of ship or pay contract ("**SoP**") to Non-NCIG Producers who have signed the Confidentiality Deed ("**Nominating Non-NCIG Producers**"); initiate independent due diligence on Nominating Non-NCIG Producers.

Step 3: Receive nominations. Nominations must include:

(i) a commitment to ship a minimum of 3 Mtpa (throughput) when Stage 2 of the terminal is operating at full capacity on the terms of the SoP;

(ii) a nominated source mine(s) for which registered mining title is held;

(iii) development consent for the source mine(s), subject only to conditions of a formal nature;

(iv) a JORC Code compliant Statement of Marketable Coal Reserves for the source mine(s) showing total Marketable Coal Reserves; and which demonstrates 11 years of coal production for exporting through NCIG CET;

(v) consent by the applicant to participate in the due diligence enquiries to be conducted on behalf of the financiers for NCIG Stage 2;

(vi) lodgement of cash or a bond.

Step 4: Assess nominations against the criteria and requirements established for the financing of NCIG Stage 2 and those applicants that facilitate the most efficient and effective operation of the terminal, including on the basis of the information provided by Nominating Non-NCIG Producers in Step 3 and the outcome of the due diligence process ("**complying nominations**"). If complying nominations for less than or equal to 12 Mtpa, go to Step 6. If complying nominations for more than 12 Mtpa, go to Step 5.

Step 5: If NCIG receives complying nominations which in aggregate exceed 12 Mtpa, PWCS will (on behalf of NCIG) allocate capacity to the relevant Nominating Non-NCIG Producers in accordance with a transparent process that:

(i) is consistent with the principle that allocations of capacity are provided to as many of those Nominating Non-NCIG Producers as possible (including by reducing nominated allocations where appropriate, subject to the relevant Nominating Non-NCIG Producers confirming such reduction); and

(ii) takes account of the views of HVCCC regarding the optimisation of coal chain utilisation.

If PWCS reduces the nominated allocation of an applicant and that applicant gives notice in accordance with the NCIG Nomination and Allocation Procedure that the reduction is not acceptable, PWCS must (in accordance with this Step 5) allocate the capacity that was to be allocated to that applicant to other applicants who have provided a complying nomination up to their nominated tonnage.

Step 6: Confirm indications with successful applicants. Applicants sign provisional SoPs, subject only to the occurrence of Financial Close and submit Bid Bond (the terms of provisional SoPs will be the same as the terms signed by NCIG Producers for allocations at NCIG Stage 2 in excess of the 12 Mtpa except for changes reflecting the fact that NCIG Producers hold shares in NCIG and in one case also contribute its share of the project finance). Any non-allocated tonnes remaining from the 12 Mtpa will be available for further nomination by all Producers (including NCIG Producers) by re-applying Steps 1-6 (with changes as necessary to acknowledge that NCIG Producers may participate in the process).

Step 7: At Financial Close, applicants sign a binding SoPs. The terms of SoPs signed by Non-NCIG Producers will be the same as the terms signed by NCIG Producers for allocations at NCIG Stage 2 except for changes reflecting the fact that NCIG Producers hold shares in NCIG and in one case also contribute its share of the project finance.

4. Coordination of Nomination and Allocation

(a) The provision of any information by NCIG to PWCS and NPC in January and July of each year for the purpose of updating those parties of its progress for Commitment of NCIG Stage 2 and advising whether it intends or reasonably expects to commence the NCIG Nomination and Allocation Procedure within the next 6 months.

(b) The provision of any notice by NCIG to PWCS and NPC before it commences the NCIG Nomination and Allocation Procedure and any coordination between NCIG, PWCS and NPC to ensure that, in the year that the NCIG Nomination and Allocation Procedure is conducted, the NCIG Nomination and Allocation Procedure is conducted before or in conjunction with the PWCS Nomination and Allocation Procedure where reasonably possible.

(c) The provision by NCIG to PWCS of any:

(i) Escrow Notice; or

(ii) notice advising that the NCIG process for allocating Non-NCIG Stage 2 Contracted Allocations has terminated,

for the purpose of enabling PWCS to manage Dual Nominations and determine which (if any) parts of a Dual Nomination will be exported through PWCS and which (if any) parts will not be exported through PWCS because they are or will be Contracted Allocations in respect of NCIG Stage 2 in accordance with clause 3.

4A. Long term ship or pay contracts

(a) Form of contract

Any requirement for PWCS to offer capacity at the PWCS Terminals in accordance with the principles set out in sections 2, 2A, 2B, 2C and 2D on the terms of the agreed form of long term ship or pay contract.

Any requirement for NCIG to offer capacity at the NCIG Terminal in accordance with the principles set out in section 3 on the terms of each agreed form of long term ship or pay contract.

(b) Terminal Operators to be party to long term ship or pay contracts

Any requirement for PWCS to ensure that it is a party to each long term ship or pay contract for capacity at the PWCS Terminals.

Any requirement for NCIG to ensure that it is a party to each long term ship or pay contract for capacity at the NCIG Terminal.

(c) Implementation of long term ship or pay contracts

Any requirement for the Terminal Operators to comply with, implement, enforce and otherwise observe (including by not waiving) and give effect to the provisions of the long term ship or pay contracts which give effect to the conduct described in this Part B.

(d) Access to terminals by NCIG Producers

Any exclusion, or any requirement to exclude, a Producer from accessing capacity or services at the NCIG Terminal or the PWCS Terminals on the basis that the Producer is an NCIG Producer and has not executed or acceded to the Deed of Undertaking and the NCIG Producer Deed Poll.

5. Compression and decompression

Any compression and/or decompression of any Producer's PWCS Contracted Allocation in accordance with the following:

(a) When does compression apply?

PWCS will compress PWCS Contracted Allocations when:

(i) there is a PWCS Expansion Delay or a PWCS Expansion Shortfall at any time giving rise to a Capacity Shortfall; and

(ii) there is a NCIG Stage 2 Delay or NCIG Stage 2 Shortfall.

(b) Compression waterfall for delays or shortfall at PWCS

When compression applies under section 5(a)(i), PWCS Contracted Allocations of the Producers will be compressed in the following order:

(i) first, if one or more Producers elect for a portion of their PWCS Contracted Allocation to be compressed ("**Voluntary Compressed Allocation**"), the PWCS Contracted Allocation of those Producers will be compressed as follows:

(A) if the aggregate Voluntary Compressed Allocation exceeds the relevant Capacity Shortfall, the Voluntary Compressed Allocation of each Producer will be reduced pro rata in the proportion that their Qualified Contracted Allocation bears to the aggregate Qualified Contracted Allocation of all such Producers until the aggregate Voluntary Compressed Allocation equals the relevant Capacity Shortfall; and

(B) if the aggregate Voluntary Compressed Allocation is less than or equal to the relevant Capacity Shortfall, the PWCS Load Point Allocations of those Producers will be compressed by the amount that each of them have elected to compress;

(ii) second, if the compression referred to in section 5(b)(i) does not satisfy the Capacity Shortfall then, subject to section 5(d)(i), the PWCS Contracted Allocation of each Producer that has failed to meet the Utilisation Threshold for the 18 month period immediately prior to that time will be compressed pro rata in the proportion that their Unutilised Allocation bears to the aggregate Unutilised Allocation of all such Producers as follows:

(A) if that Producer's Voluntary Compressed Allocation equals or exceeds that Producer's Unutilised Allocation, the Producer will not be subject to further compression under this section 5(b)(ii);

(B) if that Producer's Voluntary Compressed Allocation is less than that Producer's Unutilised Allocation then the PWCS Contracted Allocation of that Producer will be compressed until the earlier to occur of the following:

(I) the aggregate Compressed Allocation of that Producer equals the Unutilised Allocation of that Producer during that 18 month period; and

(II) the aggregate Compressed Allocation of all Producers to whom section 5(b)(i) and this section 5(b)(ii) applies equals the relevant Capacity Shortfall; and

(iii) third, if the compression referred to in sections 5(b)(i) and 5(b)(ii) does not satisfy the Capacity Shortfall, the PWCS Contracted Allocation of each Producer (including Producers who have compressed under sections 5(b)(i) and 5(b)(ii)) will be compressed pro rata in the proportion that their Qualified Contracted Allocation bears to the aggregate Qualified Contracted Allocation of all such Producers until the earlier to occur of the following:

(A) the aggregate Compressed Allocation of all Producers is equal to the relevant Capacity Shortfall; and

(B) the Compressed Allocation of that Producer under section 5(b)(i) and this section 5(b)(iii) (but not under section 5(b)(ii)) is equal to the General Compression Limit of that Producer.

If a Producer has more than one Load Point Allocation, PWCS will consult with the Producer on the application of the adjustment to the Load Point Allocations. If the Producer and PWCS cannot agree on the application of the adjustment, the adjustment will be applied pro rata across all of the Producer's Load Point Allocations.

(ba) Residual Capacity Shortfall

If the relevant Capacity Shortfall referred to in section 5(b) above cannot be satisfied in full by the aggregate of the Compressed Allocation of Producers in accordance with section 5(b) the PWCS Contracted Allocation of the relevant Producer (or Producers) who are seeking allocations of Capacity to be made available by the relevant PWCS Expansion will be compressed by the residual Capacity Shortfall until such time as additional PWCS Capacity becomes available to satisfy those PWCS Contracted Allocations.

(c) Compression waterfall for delays or shortfall at NCIG Stage 2

When compression applies under section 5(a)(ii), PWCS aggregate Load Point Allocations of Producers will be compressed in the following order to accommodate all or part of the Non-NCIG Stage 2 Allocations at the PWCS Terminals:

(i) first, if one or more Producers elect for a portion of their PWCS Contracted Allocation to be compressed ("**Voluntary Compressed Allocation**"), the PWCS Contracted Allocation of those Producers will be compressed as follows:

(A) if the aggregate Voluntary Compressed Allocation exceeds the Non-NCIG Stage 2 Allocations, the Voluntary Compressed Allocation of each Producer will be reduced pro rata in the proportion that their Qualified Contracted Allocation bears to the aggregate Qualified Contracted Allocation of all such Producers until the aggregate Voluntary Compressed Allocation equals the relevant NCIG Capacity Deficit; and

(B) if the aggregate Voluntary Compressed Allocation is less than or equal to the relevant NCIG Capacity Deficit, the PWCS Contracted Allocation of those Producers will be compressed by the amount that each of them have elected to compress; and

(ii) second, if the compression referred to in section 5(c)(i) does not satisfy the NCIG Capacity Deficit, subject to section 5(d)(i), the PWCS Contracted Allocation of each Producer that has failed to meet the Utilisation Threshold for the 18 month period immediately prior to that time will be compressed pro rata in the proportion that their Unutilised Allocation bears to the aggregate Unutilised Allocation of all such Producers as follows:

(A) if that Producer's Voluntary Compressed Allocation equals or exceeds that Producer's Unutilised Allocation, the Producer will not be subject to further compression under this section 5(c)(ii);

(B) if that Producer's Voluntary Compressed Allocation is less than that Producer's Unutilised Allocation then the PWCS Contracted Allocation of that Producer will be compressed until the earlier to occur of the following:

(I) the aggregate Compressed Allocation of that Producer equals the Unutilised Allocation of that Producer during that 18 month period; and

(II) the aggregate Compressed Allocation of all Producers to whom section 5(c)(i) and this section 5(c)(ii) applies equals the NCIG Capacity Deficit.

(iii) If the NCIG Capacity Deficit cannot be satisfied in full by the aggregate of the Compressed Allocation of Producers in accordance with sections 5(c)(i) and 5(c)(ii) the NCIG Producers must acknowledge that each of them is required to transfer to Non-NCIG Producers with Non-NCIG Stage 2 Allocations such amount of their Contracted Allocation as is necessary to satisfy the NCIG Capacity Deficit in accordance with the following timetable:

Period of delay or shortfall	Amount of Contract Allocations to be transferred until NCIG Capacity Deficit satisfied	Date of transfer
Up to 6 months	3 Mtpa	Target Completion Date
Up to 9 months	6 Mtpa	The date that is 6 months after the Target Completion Date
Up to 12 months	9 Mtpa	The date that is 9 months after the Target Completion Date
Over 12 months	12 Mtpa	The date that is 12 months after the Target Completion Date

The obligation of the NCIG Producers (other than Excluded NCIG Producers) to transfer Contracted Allocations to Non-NCIG Producers will be borne by NCIG Producers in the proportions set out in the NCIG Producer Deed Poll (which is calculated by reference to combined Contracted Allocations at NCIG Stage 1 and PWCS Base Tonnage as at the date of the deed).

If the transfer is at PWCS, then PWCS may adjust the Compressed Allocation to account for any variation in the PWCS System Assumptions between the transferor Producer and the transferee Producer.

If NCIG Producers do not transfer to Non-NCIG Producers the relevant amount of Contracted Allocations that is required under the above paragraph within the time that is required, the PWCS Contracted Allocation of the NCIG Producers (other than Excluded NCIG Producers) will be reduced to cover the shortfall on a pro rata basis in the proportion the PWCS Contracted Allocation of each NCIG Producer (other than Excluded NCIG Producers) bears to the aggregate PWCS Contracted Allocation of all NCIG Producers (other than Excluded NCIG Producers).

If a Producer has more than one Load Point Allocation, PWCS will consult with the Producer on the application of the adjustment to the Load Point Allocations. If the Producer and PWCS cannot agree on the application of the adjustment, the adjustment will be applied pro rata across all of the Producer's Load Point Allocations.

(d) Exceptions to compression

(i) The Contracted Allocation of a Producer will not be compressed under section 5(b)(ii) or section 5(c)(ii) if the Reviewer (acting reasonably and in good faith) is satisfied that:

(A) **delays:** the failure of that Producer to meet the Utilisation Threshold in the relevant period is caused by a delay:

(I) in the development of a new project of that Producer;

(II) in the expansion of an existing project of that Producer;

(III) in the expansion of associated track facilities or channel works; or

(IV) resulting from adverse geological and/or mining conditions affecting mine production,

which is outside the reasonable control of that Producer; or

(B) **NCIG Excluded Stage 2 Capacity:** in respect of any NCIG Producer (other than an Excluded NCIG Producer):

(I) the Contracted Allocation of that NCIG Producer is no greater than the projected maximum production of that NCIG Producer from new and existing mines;

(II) within 5 business days after the date on which NCIG Stage 2 is Committed, that NCIG Producer has specified (by written notice to PWCS and the Reviewer) a period ("**Nominated Deferral Period**") during which any part of its Contracted Allocation which comprises allocations of Excluded Stage 2 Capacity ("**Relevant Allocation**") will not be used by that NCIG Producer, provided that the Nominated Deferral Period may be extended by up to 3 years if that NCIG Producer gives notice to PWCS and the Reviewer of the extension 2 years prior to the end of the initial Nominated Deferral Period; and

(III) during the Nominated Deferral Period, the NCIG Producer has used its best efforts to transfer the Relevant Allocation for the duration of the Nominated Deferral Period, including by making a bona fide open offer to the market to transfer the Relevant Allocation on customary terms, including by offering to transfer the Relevant Allocation in accordance with the Capacity Transfer System,

and those sections will also not apply to a Producer that has otherwise offered to transfer all Unused Allocations of that Producer in accordance with section 7(iv), but only to the extent that so much of the Unused Allocations as are not actually transferred.

(ii) Section 5(b)(iii) only applies to a Producer whose Group Contracted Allocation at the time the relevant Capacity Shortfall arises is 5 Mtpa or more.

(iii) If:

(A) there is a PWCS Expansion Shortfall; and

(B) that PWCS Expansion Shortfall was caused or contributed to by failure in the design of the Expansion to deliver the required Capacity,

then the Contracted Allocation of NCIG Producers that is contracted pursuant to an offer of that NCIG Producer's PWCS Base Allocation will not be subject to compression under section 5(b)(iii) in respect of that PWCS Expansion Shortfall.

(e) Exceptions to calculations for NCIG Producers

(i) If a Producer is an NCIG Producer (other than an Excluded NCIG Producer) then, for the purposes of calculating:

(A) the pro rata proportion of the aggregate PWCS Contracted Allocation of that Producer to be compressed under section 5(b)(iii);

(B) the extent to which the compression of that Producer's aggregate PWCS Contracted Allocation will be reduced under section 5(f)(i)(D)(I); and

(C) the amount which represents that Producer's General Compression Limit,

the Excluded Contracted Allocation of that Producer will be subtracted from that Producer's Contracted Allocation.

(ii) Unless and until an election is made by an NCIG Producer (other than an Excluded NCIG Producer) in accordance with section 2C(c)(ii) (if any) and that election becomes effective, the Excluded Stage 1 Allocation of that NCIG Producer (including any Contracted Allocation Usage applicable to that Excluded Stage 1 Allocation) will not apply when determining the Utilisation Threshold of that NCIG Producer, provided that:

(A) the NCIG Producer has developed a proposal (including terms and conditions) for transferring the Excluded Stage 1 Allocation which optimises the potential transfer of that Excluded Stage 1 Allocation; and

(B) the Reviewer has agreed with that proposal.

(f) Decompression

(i) If:

(A) in the case of Contracted Allocations compressed under section 5(b), the relevant Capacity Shortfall is reduced; and

(B) in the case of Contracted Allocations compressed or transferred under section 5(c), Capacity becomes available at NCIG Stage 2 for Non-NCIG Producers,

then compression (and in the case of section 5(c)(iii), the obligation of NCIG Producers to transfer Contracted Allocations) will reduce accordingly such that:

(C) first, if a Producer has elected to compress an amount of its PWCS Contracted Allocation under section 5(b)(i) or section 5(c)(i) and at any time that Producer wishes to decompress that amount, the amount compressed will be reduced pro rata amongst the Producers who have elected to decompress under this section 5(f)(i)(C) in the proportion that their Voluntary Compressed Allocation (as may be reduced under section 5(f)(iii)) bears to the aggregate Voluntary Compressed Allocation of all such Producers;

(D) second:

(I) with respect to compression under section 5(b)(iii), the amount of any PWCS Contracted Allocation that is compressed under that section will be reduced pro rata amongst the Producers to whom that clause applies in the proportion that their Qualified Contracted Allocation bears to the aggregate Qualified Contracted Allocation of all such Producers; and

(II) with respect to the obligation of NCIG Producers referred to in section 5(c)(iii) to transfer Contracted Allocations to the relevant Non-NCIG Producers, that obligation will be reduced pro rata amongst those NCIG Producers in the same proportion that the NCIG Producers initially transferred their Contracted Allocations; and

(E) third, the amount of any Contracted Allocation that is compressed under section 5(b)(ii) or section 5(c)(ii) (as applicable) will be reduced pro rata amongst the Producers to whom the relevant section applies in the proportion that their Unutilised Allocation bears to the aggregate Unutilised Allocations of all such Producers.

(iii) For the purposes section 5(f)(i)(C), the Voluntary Compressed Allocation of a Producer will be reduced by any portion of that Producer's PWCS Contracted Allocation which would have been compressed under section 5(b)(ii) or section 5(c)(ii) (as applicable) had that Producer not elected to compress under section 5(b)(i) or section 5(c)(i) (as applicable).

(g) Cessation of compression

Compression (and in the case of section 5(c)(iii), the obligation of NCIG Producers to transfer Contracted Allocations) will come to an end at the same time that the relevant Expansion Delay or Expansion Shortfall which triggered that compression (and in the case of section 5(c)(iii), the obligation of NCIG Producers to transfer Contracted Allocations) comes to an end.

(h) Calculation of compression and decompression

(i) The Reviewer will be responsible for calculating the extent to which each Producer is required to compress and decompress under this section 5.

(ii) Subject to relevant confidentiality requirements, each Terminal Operator must:

(A) promptly provide the Reviewer with all relevant information that is needed for the Reviewer to accurately calculate the extent to which each Producer is required to compress and decompress under this section 5 and, in any event, provide the Reviewer with a report on the 1st business day of each month setting out such information as is reasonably specified by NPC for that purpose; and

(B) meet all of the reasonable costs and expenses incurred by the Reviewer in calculating the extent to which each Producer is required to compress or decompress under this section 5 where that compression was the result of an Expansion Shortfall or Expansion Delay of that Terminal Operator.

(iii) A Producer or NPC (where NPC is not the Reviewer) may seek a review of the Reviewer's decision under this section 5(h) by notifying the other party and the Minister. Upon receipt of such notice the Minister will:

(A) identify the appropriate professional body having regard to the nature of the review and ask the president (or relevant equivalent) of that body to nominate a number of experts qualified to review the decision of the Reviewer; and

(B) appoint one of those persons to review the decision of the Reviewer.

The provisions of this section 5(h) will apply to the review to be conducted by that person (with such changes as are necessary).

(iv) Subject section 5(h)(v), the determination of an expert appointed to review the decision of the Reviewer will be final except in circumstances of manifest error.

(v) If a review that is conducted under section 5(h)(iii) is not finalised and a determination made within 2 months of the date on which the Reviewer made its initial determination, the determination of the Reviewer will be final. If the Reviewer or NPC fails to respond to requests for information from the appointed expert within the required time or otherwise delays the review process the 2 month period referred to in this section 5(h)(v) will be extended by the period of the delay.

6. Co-ordination of Expansion

Any co-ordination of expansion of terminal facilities or services in accordance with the following:

(a) Expansion by PWCS - When is obligation to expand triggered?

(i) Subject to section 6(a)(ii) and section 6(e), if:

(A) the Aggregate PWCS Contracted Allocations from time to time exceeds the Aggregate PWCS Available Capacity at that time ("**Capacity Shortfall**"); and

(B) the Capacity Shortfall cannot be fulfilled through voluntary Contracted Allocation Reductions,

PWCS must expand the PWCS Terminals to provide additional Capacity which, at a minimum, satisfies the Capacity Shortfall. However, PWCS will not be required to expand to meet any nominations for expansion capacity at the PWCS Terminals which nominate for allocations of less than 10 years.

(ii) Subject to section 6(e), if the existing PWCS Terminals are not capable of being expanded further to provide the additional Capacity that is necessary to satisfy the Capacity Shortfall, PWCS must build a new terminal to provide that additional Capacity. However, for the avoidance of doubt, nothing in this section 6 precludes any person other than PWCS from undertaking a project to construct a new terminal.

(iii) If at any time PWCS is required to build a new terminal under section 6(a)(ii) (other than Terminal 4, which is specifically addressed in section 10), then:

(A) PWCS must use its best endeavours to identify and acquire appropriate sites for that new terminal; and

(B) before commencing any work to undertake the construction of that new terminal PWCS must first use its best endeavours to expand the PWCS Terminals that exist at that time to satisfy the relevant Capacity Shortfall.

(b) Expansion by PWCS - Time for completion

(i) If PWCS is required to expand a PWCS Terminal under section 6(a)(i) then, subject to section 6(e), that expansion must be Completed:

(A) in the case of Master Plan Completion Phase 1, two years after the date on which the relevant Capacity Shortfall which triggered that Expansion in accordance with section 6(a)(i) arises;

(B) in the case of Master Plan Completion Phase 2, two years after the later of:

(I) the date on which the relevant Capacity Shortfall which triggered that Expansion in accordance with section 6(a)(i) arises; and

(II) the date on which that part of the Hunter River to which PWCS requires access is validated by the relevant authority as clean following completion of the relevant part of the BHP Billiton Hunter River Remediation project; and

(C) in any other case, within 2 years after the date on which the relevant Capacity Shortfall which triggered that Expansion in accordance with section 6(a)(i) arises.

(ii) If PWCS is required to build a new terminal under section 6(a)(ii) then, subject to section 6(e), that terminal must be capable of meeting the Capacity Shortfall in respect of which the obligation to build the terminal was triggered within 4 years after the date on which that Capacity Shortfall arises.

(iii) PWCS must advise NPC and affected Producers if a PWCS Expansion Delay or PWCS Expansion Shortfall is expected, including the date on which the PWCS Expansion Delay or PWCS Expansion Shortfall is expected to come into existence and come to an end. PWCS must also advise NPC and affected Producers of any changes to that information.

(c) Development of NCIG Stage 2

NCIG must not commence construction of NCIG Stage 2 unless it has first offered to allocate 12 Mtpa of Capacity at NCIG Stage 2 to Non-NCIG Producers under Long Term Ship or Pay Contracts in accordance with the NCIG Nomination and Allocation Procedure.

NCIG must, prior to NCIG Stage 2 being Committed:

(i) take all reasonable steps to ensure that the design and construction of NCIG Stage 2 does not interfere with the ability of PWCS to construct and efficiently operate Terminal 4;

(ii) where there is such interference, use its best endeavours to minimise that interference; and

(iii) consult with PWCS regarding any potential interference.

(d) Time for completion of NCIG Stage 2

(i) NCIG Stage 2 must be capable of delivering the Capacity that is contracted by Non-NCIG Producers at NCIG Stage 2 within the following time periods:

(A) if NCIG Stage 2 is Committed on or before 31 December 2009, within 4 years after the date on which NCIG Stage 2 is Committed; and

(B) otherwise, within 2 years (or such other time period determined in accordance with section 6(e)) after the date on which NCIG Stage 2 is Committed.

(ii) For the purposes of section 6(d)(i), NCIG must notify each of NPC and PWCS of the date on which NCIG Stage 2 is Committed within 5 Business Days after that date.

(iii) NCIG must advise NPC, PWCS and affected Producers if a NCIG Stage 2 Delay or NCIG Stage 2 Shortfall is expected, including the date on which the NCIG Stage 2 Delay or NCIG Stage 2 Shortfall is expected to come into existence and come to an end. NCIG must also advise NPC, PWCS and affected Producers of any changes to that information.

(e) Process for review

(i) Subject to paragraph (iii):

(A) in the case of PWCS, if the Reviewer (acting reasonably and in good faith) notifies PWCS that it is satisfied that

(aa) PWCS has taken all reasonable and prudent steps to obtain all Development Consents necessary to undertake that Expansion in a timely manner (including by taking steps to identify ways of redesigning the Expansion in a manner that would assist in obtaining the Development Consents); and

(bb) notwithstanding PWCS' efforts, the Lessee has been unable to obtain, or is unlikely to obtain, the relevant Development Consents,

the obligation for PWCS to undertake an Expansion under clause 6(a) will be suspended and will recommence at a time determined in accordance with paragraph (iii);

(B) in the case of either Terminal Operator, if a Force Majeure Event prevents an Expansion being undertaken, the obligation to undertake that Expansion under clause 6(a) or clause 6(d) (as applicable) will be suspended and will recommence at a time determined in accordance with paragraph (iii);

(C) in the case of either Terminal Operator, if a Force Majeure Event will delay Completion of an Expansion beyond the date by which that Expansion is required to be Completed under clause 6(b) or clause 6(d)(i), the time for Completion of that Expansion will be extended in accordance with paragraph (v); and

(D) in the case of PWCS, if having used its best efforts to obtain finance for the purposes of undertaking a particular PWCS Expansion, PWCS is unable to obtain such finance then:

(aa) PWCS may submit a request to the Minister to be relieved of its obligation to undertake that PWCS Expansion; and

(bb) having considered the request, the Minister may (in the Minister's absolute discretion) agree to relieve or suspend PWCS of its obligation to undertake that PWCS Expansion.

(ii) The relevant Terminal Operator must give NPC a notice setting out the full particulars of a Force Majeure Event as soon as reasonably practicable and, if a notice is delayed, any extension of time to which that Terminal Operator is entitled under 6(e) will be reduced by the period of that delay.

(iii) If the obligation to undertake an Expansion under clause 6(a) is relieved or suspended under paragraph 6(e)(i), then that obligation will recommence at a time determined by the Reviewer or:

(i) in the case of paragraph (i)(A), when the relevant Development Consents are subsequently obtained, in which case the time for meeting the requirements of clause 6(b) will be extended by the period commencing on the date the Reviewer gives notice in accordance with paragraph (i)(A) and ending on the date that the obligation recommences;

(ii) in the case of paragraph (i)(B), when the relevant Force Majeure Event ceases to prevent the Lessee from undertaking the Expansion, in which case the time for meeting the requirements of clause 6(b) will be extended by the period commencing on the date the Force Majeure Event was first notified in accordance with paragraph (i)(B) and ending on the date that the obligation recommences; and

(iii) in the case of paragraph (i)(D), when PWCS obtains finance for the purposes of undertaking the relevant Expansion, in which case the time for meeting the requirements of clause 6(b) will be extended by the period commencing on the date the Minister gives notice in accordance with paragraph (i)(D) and ending on the date that the obligation recommences.

(iv) The time for Completion of an Expansion under clauses 6(b)(i)(C) or 6(d)(i)(B) will be extended if:

(A) the Reviewer (acting reasonably and in good faith) is satisfied that:

(I) there are Engineering Limitations that will delay Completion of that Expansion beyond the scheduled time of Completion; or

(II) notwithstanding that the relevant Terminal Operator undertaking that Expansion has taken all reasonable and prudent steps to obtain all Development Consents necessary to undertake that Expansion in a timely manner (including by taking steps to identify ways of redesigning the Expansion in a manner that would assist in obtaining the Development Consents), the Development Consents necessary to undertake that Expansion will not be obtained within a time that would reasonably allow the relevant Terminal Operator to Complete the Expansion in accordance with the relevant timeframe for that Expansion under this section 6.

(v) The length of any extension of time to be given under section 6(e)(i)(C) or 6(e)(iv) will be determined by the Reviewer (acting reasonably and in good faith), having regard to:

(A) in respect of an extension of time for Engineering Limitations, the length of time it would reasonably take to remedy or otherwise address the relevant Engineering Limitations;

(B) in respect of an extension of time for delays in obtaining Development Consents, the length of time it would reasonably take to obtain the Development Consents, including the period of time it would reasonably take to modify engineering designs to comply with the likely terms of any Development Consent; and

(C) in respect of an extension of time for a Force Majeure Event, the nature and extent of the relevant Force Majeure Event and the likely period of the delay it will cause to the Completion of the Expansion.

(vi) It is a condition of any extension of time that is granted under section 6(e)(v) that:

(A) the relevant Terminal Operator must take all reasonable and prudent steps to minimise the impact that the relevant Engineering Limitations or Force Majeure Event (as applicable) may have on the development and construction of the relevant Expansion (including the time for Completion of that Expansion);

(B) in the case of a PWCS Expansion, if Capacity can be realised from the PWCS Expansion it must be made available to Producers at the earliest possible time, notwithstanding that such Capacity may not fully satisfy the relevant Capacity Shortfall which triggered that PWCS Expansion; and

(C) in the case of NCIG Stage 2, if Capacity can be realised from NCIG Stage 2 it must be made available to relevant Non-NCIG Producers, notwithstanding that such Capacity may not fully satisfy all Non-NCIG Stage 2 Allocations,

and each Terminal Operator must also provide information to NPC regarding the conditions set out in paragraph (vi) (including the steps it is taking and proposes to take to comply with those conditions).

(vii) The relevant Terminal Operator or NPC (where NPC is not the Reviewer) may seek a review of the Reviewer's decision under this section 6(e) by notifying the other party and the Minister. Upon receipt of such notice the Minister will:

(A) identify the appropriate professional body having regard to the nature of the review and ask the president (or relevant equivalent) of that body to nominate a number of experts qualified to review the decision; and

(B) by agreement with the relevant Terminal Operator (as the case requires), appoint one of those persons to review the decision of the Reviewer.

The provisions of this section 6(e) will apply to the review to be conducted by that person (with such changes as are necessary).

(viii) Subject to section 6(e)(ix), the determination of an expert appointed to review the decision of the Reviewer will be final except in circumstances of manifest error.

(ix) If a review that is conducted under section 6(e)(vii) is not finalised and a determination made within 2 months of the date on which the Reviewer made its initial determination, the determination of the Reviewer will be final. If the Reviewer or NPC fails to respond to requests for information from the appointed expert within the required time or otherwise delays the review process the 2 month period referred to in this section 6(e)(vii) will be extended by the period of the delay.

7. Capacity Transfers

(i) The conduct of capping the fee that a Producer with a Contracted Allocation at the PWCS Terminals may charge another to use a portion of its Contracted Allocation ("**Relevant Proportion**") at no more than 5% of the fee charged by PWCS for the Relevant Portion.

(ii) The conduct of capping the fee that a Producer with a Contracted Allocation at the NCIG Terminals may charge another to use a portion of its Contracted Allocation ("**Relevant Proportion**") so that such fees do not exceed the fees which are charged to that Producer for the Relevant Portion by NCIG by more than 5%.

(iii) The conduct of sharing of information and coordination between the Applicants (and other participants in the Hunter Valley coal industry) for the purpose of developing and implementing a transparent centralised system to facilitate and manage the offering and acquisition of Unused Allocations ("**Capacity Transfer System**"), including the appointment of a Capacity Transfer System Working Group and CTS Administrator.

(iv) Making and/or giving effect to any requirement:

(A) for Producers to use the Capacity Transfer System to transfer Unused Allocations;

(B) that Producers who do not use their best efforts to transfer their Unused Allocations on customary terms (including by making a bona fide attempt to transfer Unused Allocations in accordance with the Capacity Transfer System) will not be entitled to claim relief from anti-hoarding compression in accordance with section 5(d)(i) in respect of those Contracted Allocations; and

(C) for Producers to pay a fee (including the setting or varying of that fee by the Capacity Transfer System Working Group or CTS Administrator) for using or registering with the Capacity Transfer System for the purpose of covering the cost of establishing, administering, operating and maintaining the Capacity Transfer System.

(v) The conduct of PWCS in:

(A) declining to accept a transfer of Contracted Allocation, having regard to the recommendations of HVCCC, the PWCS System Assumptions and operating protocols, and alignment of contractual entitlements; or

(B) adjusting transferred allocations to account for any variation in the PWCS System Assumptions of the transferring Producer and transferee Producer.

(vi) Any capacity at the Terminals that is lost due to a transfer of Contracted Allocation being attributed to the transferring Producer unless agreed by the transferring Producer and transferee Producer and notified to PWCS or NCIG (as the case requires) prior to the transfer.

7A Assignments of Capacity

(i) The conduct of PWCS in:

(A) declining to accept an assignment of Contracted Allocation, having regard to the recommendations of HVCCC, the PWCS System Assumptions and operating protocols, and alignment of contractual entitlements; or

(B) adjusting assigned allocations to account for any variation in the PWCS System Assumptions of the assigning Producer and assignee Producer.

(ii) In relation to the PWCS Terminals, the conduct of capping the fee that a Producer may charge to assign or novate its entire Load Point Allocation at no more than 5% of the fees that would have been charged by PWCS to the Producer for the use of that Load Point Allocation in the year in which the assignment or novation becomes effective.

(iii) In relation to the NCIG Terminal, the conduct of capping the fee that a Producer may charge to assign or novate its entire Contracted Allocation at no more than 5% of the fees that would have been charged by NCIG to the Producer for the use of that Contracted Allocation in the year in which the assignment or novation becomes effective.

7B Pre-emptive rights of Non-NCIG Producers over Non-NCIG Stage 2 Allocations

The conduct of Non-NCIG Producers in giving effect to the provisions of the T Class ship or pay agreements which grant pre-emptive rights to other Non-NCIG Producers in respect of their Non-NCIG Stage 2 Allocations.

8. Levy

(i) The setting, making, varying and/or giving effect to any industry levy (to be applied to all Terminal Users that contract to utilise the Terminals under a Long Term Ship or Pay Contract or short term contract (including those that do not utilise the Expansion) on a per tonne basis across all coal exported from the Terminals) that may be applied by PWCS or NCIG to assist with meeting the cost of any Unallocated Expansion Capacity ("**Levy**") in accordance with the Levy Protocols, including the following:

(A) A Terminal Operator may elect to apply the Levy whenever:

(I) that Terminal Operator Completes an Expansion;

(II) the Administrator determines that the Contracted Allocation for that Expansion is less than the Capacity that is made available by that Expansion ("**Unallocated Expansion Capacity**"); and

(III) an Administrator has been established,

provided that NCIG must not apply the Levy to any Excluded Stage 2 Capacity.

(B) Subject to paragraph (C), the Terminal Operator will use its best endeavours to allocate the Unallocated Expansion Capacity to any Producer either under a Long Term Ship or Pay Contract or under any short term contractual arrangement in accordance with the Nomination and Allocation Procedures.

(C) Whilst NCIG has not Committed to NCIG Stage 2, NCIG Producers will only be entitled to nominate for allocations of Unallocated Expansion Capacity at PWCS Terminals under fixed term contractual arrangements for the maximum term then available not exceeding 2 years.

(D) If the Levy is applied in respect of any Unallocated Expansion Capacity, the Levy will cease to apply when the Administrator determines in its reasonable opinion that:

(aa) the total expansion cost of Unallocated Expansion Capacity is recovered; or

(ab) all Expansion Capacity (as that term is defined in the Levy Protocols) is Contracted under Long Term Ship or Pay Contracts; or

(ac) the costs of Levy administration would exceed all remaining total expansion costs to be otherwise recovered through the Levy,

or until the Terminal Operators agree that the Levy should cease to apply.

(E) Where the relevant Unallocated Expansion Capacity is allocated under any short term contractual arrangement the Levy will be adjusted accordingly.

(ii) The establishment of a Levy Working Group and the sharing of information and coordination between the Applicants and any Levy Working Group for the purpose of developing and implementing protocols for the calculation, charging and collection of the Levy ("**Levy Protocols**").

(iii) Sharing of information and co-ordination between the Applicants, the Levy Working Group and the Administrator for the purpose of calculating the amount of, and period for charging for, the Levy in accordance with the Levy Protocols.

9. Contractual alignment and access to services

(a) The conduct of:

(i) sharing information and coordination between the Applicants, Producers, HVCCC, above and below rail providers and others for the purpose of:

(A) determining and reviewing system capacity for any period;

(B) developing and reviewing system assumptions (including the PWCS System Assumptions);

(C) developing, measuring and reviewing Producer performance standards, such as:

(aa) Load Point standards;

(bb) train standards (sizes and cycle times);

(cc) unloading standards;

(dd) cargo assembly standards (build times, parcels per vessel, parcel size); and

(ee) vessel standards;

(D) determining and coordinating flexibility and tolerance limits in relation to capacity allocations during any period;

(E) developing and reviewing a Capacity Transfer System; and

(F) facilitating and reviewing the operational coordination and efficient operation of different parts of the coal chain;

(ii) making or giving effect to contracts with Producers based on any agreed system capacity, system assumptions, performance standards, flexibility and tolerance limits, in each case for the purpose of facilitating contractual and operational alignment across the coal chain; and

(iii) making or giving effect to any adjustment or variation to contracted allocations or determination of capacity losses, due to a Producer deviating from the system assumptions or performance standards, including:

(A) determining Quarantined Allocation; and/or

(B) offering any Capacity of the terminal that has been gained due to a Producer's performance exceeding its performance standards or variation in its system assumptions or otherwise caused by the Producer on either an ongoing or ad hoc basis.

(b) The conduct of PWCS or NCIG:

(i) requiring Producers to have adequate entitlements to track and train haulage upon lodging any application under their contracts for the provision of coal handling services in respect of each vessel to be loaded; and

(ii) refusing to supply coal handling services if a Producer has inadequate track or train delivery entitlements in respect of the application for a vessel to be loaded.

(c) The conduct of PWCS in refusing to supply coal handling services if a Producer is an NCIG Producer and the Producer has not provided a notice from NPC that NPC is satisfied that the Producer is bound by the terms and conditions of both the Deed of Undertaking and the NCIG Producer Deed Poll.

(d) If, at any time:

(i) the capacity of a Terminal is affected by the construction or integration of any Expansion to the Terminal;

(ii) PWCS has not met the assumptions relating to the PWCS Terminals as set out in the PWCS System Assumptions;

(iii) the capacity of a Terminal is affected by the weather; or

(iv) there is a Force Majeure Event,

PWCS may make one or more downward adjustments to the Load Point Allocations of a Producer and any other relevant Producers for the relevant period in a manner that reasonably reflects the lost capacity of the Terminals. Any adjustment will generally be on a pro rata basis unless there are specific circumstances which affect only certain Producers, in which case the adjustment will be on a pro-rate basis for only those affected Producers.

In deciding the amount of any downward adjustment to the Load Point Allocations of the Producer and any other Producer, PWCS may have regard to the PWCS System Assumptions and any recommendations made by HVCCC.

(e) Vessel queue:

(i) If a Producer is utilising the turn of arrival system for vessels, then if at any time an excessive vessel queue arises or is forecast to arise which PWCS reasonably determines is due to unutilised PWCS Capacity arising from the random nature of vessel arrivals during the relevant period under the turn of arrival system, PWCS may make one or more downward adjustments on a pro rata basis to the Load Point Allocations of the Producer and any other relevant customers who are utilising the turn of arrival system for the relevant period, in a manner that reasonably reflects the lost capacity of the Terminals.

(ii) In deciding the amount of any downward adjustment to the Load Point Allocations of the Producer and any other customer, PWCS may have regard to the PWCS System Assumptions and any recommendations made by HVCCC.

10. Terminal 4

Any requirement in relation to the structure, ownership or operation of Terminal 4 that:

(a) the Capacity Framework Arrangements set out in this Part B of Attachment 1 will apply to the provision of Capacity at Terminal 4 in the same way as they apply to all other terminals owned and controlled by PWCS;

(b) access to capacity will be open to all Producers on a non-discriminatory basis, except to the extent discriminatory treatment is expressly contemplated in this Part B of Attachment 1; or

(c) PWCS must, prior to undertaking the construction of Terminal 4:

(i) take all reasonable steps to ensure that the design and construction of Terminal 4 does not interfere with the ability of NCIG to construct and efficiently operate NCIG Stage 2;

(ii) where there is such interference, use its best endeavours to minimise that interference; and

(iii) consult with NCIG regarding any potential interference.

11. Common charges at PWCS Terminals

Any requirement for PWCS to ensure that:

(a) the charges applicable to services provided at a PWCS Terminal are the same as charges applicable to like services provided at each other PWCS Terminal; or

(b) the quantum of the fees it charges to a person for particular services are the same quantum as the fees that it charges to any other person for the same services (although this will not prevent PWCS from applying a different charging method for those fees).

12. Information sharing

(a) Any conduct which involves the provision of information from one Applicant to another, or the sharing of information between two or more Applicants, for the purposes of giving effect to the conduct described in this Part B.

(b) Any conduct which involves the provision of information from the Reviewer to one or more Applicants, from one or more Applicants to the Reviewer or the sharing of information between the Reviewer or one more Applicants, for the purposes of giving effect to the conduct described in this Part B.

PART C - Dictionary

In this Attachment 1:

Administrator means the entity created to administer the application, calculation, charging and collection of the Levy, the release of Levy proceeds and the determination of when the Levy ceases to apply.

Aggregate PWCS Available Capacity means the aggregate Capacity of the PWCS Terminals from time to time.

Aggregate PWCS Contracted Allocations means the aggregate of all Contracted Allocations at PWCS Terminals. For the purposes of section 6, this:

(a) will be taken to be the aggregate amount of the Producers' Contracted Allocations before any compression or adjustment under sections 2D, 5(b), 5(c), 9(d) and 9(e) is applied to those Contracted Allocations; and

(b) excludes any Contracted Allocation which is the subject of a Dual Nomination (or any part of a Dual Nomination) until that Contracted Allocation becomes an operative Contracted Allocation

Allocation Period means for the period 1 January 2010 to 31 December 2011, where the Producer has aggregate Load Point Allocations in the relevant year:

(a) greater than 5 Mtpa, a month; or

(b) less than or equal to 5 Mtpa, a quarter.

From 1 January 2012 onwards, where the Producer has aggregate Load Point Allocations in the relevant year,

(c) greater than 3 Mtpa, a month; or

(d) less than or equal to 3 Mtpa, a quarter.

Associate means, in relation to a person:

(a) a Related Body Corporate of that person;

(b) a person, or the trustee or manager of a trust, which Controls that person;

(c) a person, or the trustee or manager of a trust, which that person Controls;

(d) a Related Body Corporate of a person included in paragraph (a), (b) or (c);

(e) a partnership or an incorporated or unincorporated joint venture in which the person, or any one or more of the persons mentioned in paragraph (a), (b), (c) or (d), holds an interest;

(f) a body corporate, or the trustee or manager of a trust, which one or more of the persons mentioned in paragraph (a), (b), (c), (d) or (e) alone or together Controls; or

(g) the trustee of a trust (including a discretionary trust) of which a person included in paragraph (a), (b), (c), (d) or (e) is a beneficiary (whether or not through one or more other trusts, including discretionary trusts).

For the purposes of this definition, a reference to a partnership or an unincorporated joint venture is also a reference to the persons who are parties to that partnership or unincorporated joint venture.

Base Allocation means, in respect of a Producer, that part of the PWCS Base Tonnage offer for the year 2009 and 2010 (respectively) that is accepted by that Producer and contracted as Load Point Allocations.

Capacity means in respect of:

(a) the PWCS Terminals, the PWCS Capacity; and

(b) the NCIG Terminal, the coal export capacity of the NCIG Terminal measured in Mtpa (being the amount of coal able to be loaded onto vessels) in the relevant period having regard to the mode of operation and system assumptions.

Capacity Framework Agreement means the agreement of that name to be entered into between NPC, NCIG and PWCS.

Capacity Shortfall has the meaning given in section 6(a)(i)(A) of Part B.

Capacity Transfer System has the meaning given in section 7(iii).

Committed means, in respect of NCIG Stage 2, the point in time as notified to PWCS in writing by NCIG when NCIG is contractually bound to make available Capacity at NCIG Stage 2 to Non-NCIG Producers pursuant to executed and binding long term ship or pay contracts, and **Commit** and **Commitment** have corresponding meanings.

Completed means, in respect of an Expansion, that Expansion is commissioned, available to receive coal and is capable of satisfying the Capacity that is required to be satisfied by that Expansion under this document.

Compressed Allocation means:

(a) in respect of a Producer at any time, the extent to which that Producer's Contracted Allocation has been compressed under section 5 of Part B; and

(b) in respect of all Producers at any time, the extent to which the Contracted Allocations of all Producers has been compressed in accordance with section 5 of Part B at that time.

Contracted Allocation means, in respect of a Producer, the aggregate amount of Capacity which the Terminal Operators are contractually bound to make available to that Producer, excluding allocations of Capacity for coal that is delivered by road transport to the PWCS Terminal located at Carrington.

Contracted Allocation Reduction means a reduction in the Contracted Allocation of a Producer at the PWCS Terminals as agreed between that Producer and PWCS from time to time.

Contracted Allocation Usage means, in respect of a Producer at any time, the use by that Producer of that Producer's Contracted Allocation, not including any part of that Producer's Contracted Allocation that has been transferred to another Producer through a capacity transfer or swap, plus:

(a) any portion of that Producer's Contracted Allocation which has not been used by the Producer as a direct result of a Force Majeure Event; and

(b) that Producer's use of any NCIG Contracted Allocation of another Producer that is acquired through a capacity transfer or swap.

The adjustments resulting from the application of sections 2D, 5(b), 5(c), 9(d) and 9(e) will be incorporated into the calculation of a Producer's PWCS Contracted Allocation and, accordingly, will not be added to the calculation of that Producer's Contracted Allocation Usage.

Control has the meaning given in the *Corporations Act 2001* (Cth).

Deed of Undertaking means the deed to be entered into between NPC, NCIG and NCIG Producers which gives effect to all of the provisions initially drafted for inclusion in the NCIG Agreement for Lease, as well as any other relevant or incidental provisions agreed between NPC and NCIG during discussions and negotiations of the long form documentation.

Development Consents means all licences, consents, approvals, permits, authorisations, certificates of registration or other concessions issued by a government authority which are required to be obtained or entered into in respect of any part of any Expansion.

Dual Nomination means a nomination for Capacity at the PWCS Terminals for which a Non-NCIG Producer has submitted a corresponding nomination to NCIG for the same annual tonnage in NCIG Stage 2, and which is identified as a "Dual Nomination".

Engineering Limitations means, in respect of an Expansion:

(a) the time for delivery of the Expansion in the most efficient and effective manner (having regard to the then prevailing practice for comparable terminals in Australia) will exceed the time in which that expansion is required to be Completed under the relevant document; or

(b) any engineering limitation in the construction of that Expansion that:

(i) *is of a type that a reasonable and prudent person of sufficient experience, knowledge, qualification and skill would not have foreseen or allowed for when preparing the project plan and project timeline for that Expansion, including:*

(A) a latent condition affecting the site the subject of the Expansion; or

(B) any delay or excessive lead times in the supply of major items of equipment by a supplier;

(ii) *is beyond the reasonable control of the relevant Terminal Operator and not attributable to an employee, agent or Related Body Corporate of that Terminal Operator;*

(iii) the relevant Terminal Operator or any Related Body Corporate of that Terminal Operator could not reasonably have provided against before a specified date;

(iv) the relevant Terminal Operator could not reasonably have avoided or overcome; and

(v) has been notified to the Reviewer promptly after the date on which the relevant Terminal Operator undertaking that Expansion became aware of that engineering limitation (whether before or after commencement of construction of that Expansion).

Escrow Notice means a notice from NCIG stating the following:

(a) each Non-NCIG Producer who submitted a nomination for NCIG Stage 2 and the amount nominated by that Non-NCIG Producer;

(b) whether or not that Non-NCIG Producer's application has been successful and the date by which each of them was required to execute and deliver a long term ship or pay agreement to accept the allocation that was offered; and

(c) in respect of each successful Non-NCIG Producer that has executed a long term ship or pay agreement:

(i) confirmation that such agreement is being held in escrow; and

(ii) the tonnage amount to be contracted by that Non-NCIG Producer if NCIG elects to proceed with NCIG Stage 2 construction and financing.

Excess Capacity means in respect of PWCS, PWCS Capacity less the aggregate of all Load Point Allocations for Producers, if a positive amount.

Excluded Contracted Allocation means any part of a Producer's Contracted Allocation which is to be provided through NCIG Stage 1 or through Excluded Stage 2 Capacity.

Excluded NCIG Producer means Gloucester Coal Limited (ABN 66 008 881 712) and each NCIG Producer that is a wholly-owned subsidiary of Gloucester Coal Limited as at 31 August 2009 for so long as Gloucester Coal Limited satisfies all of the following criteria:

(a) it is a publicly listed company;

(b) it is not an NCIG Shareholder;

(c) it is not a wholly-owned subsidiary of:

(i) an NCIG Shareholder; or

(ii) any Associate of that NCIG Shareholder;

(d) it is an NCIG Producer only because it is controlled by an entity which also controls an NCIG Shareholder.

For the avoidance of doubt, Gloucester Coal Limited and each NCIG Producer that is a wholly-owned subsidiary of Gloucester Coal Limited will cease to be an Excluded NCIG Producer if at any time Gloucester Coal Limited fails to satisfy any of the criteria set out in paragraphs (a), (b), (c) or (d) above.

Excluded Stage 1 Allocation means any part of a Producer's Contracted Allocation which is to be provided through NCIG Stage 1.

Excluded Stage 2 Capacity means that portion of the Capacity available at NCIG Stage 2 which is not required to be offered for allocation to Non-NCIG Producers in accordance with section 6(c) of Part B.

Expansion means NCIG Stage 2 and each PWCS Expansion (as applicable).

Expansion Delay means a PWCS Expansion Delay or an NCIG Stage 2 Delay (as applicable)

Expansion Shortfall means a PWCS Expansion Shortfall or an NCIG Stage 2 Shortfall (as applicable).

Force Majeure Event means an event or circumstance which:

(a) in relation to a party:

(iii) *(i) is beyond that party's reasonable control and not attributable to an employee, agent or Related Body Corporate of that party;*

(iv) *(ii) that party or any Related Body Corporate of that party could not reasonably have provided against before executing the relevant document; and*

(v) *(iii) that party could not reasonably have avoided or overcome; and*

(b) is not substantially attributable to any breach of the relevant document by one or more of the other parties,

and so long as the requirements of paragraphs (a) and (b) have been satisfied, may include:

(c) an act of God, lightning, storm, flood, hurricane, typhoon, cyclone, volcanic activity, fire, earthquake, explosion or peril of navigation;

(d) theft, malicious damage, strike, lockout, boycott or any a state-wide or national industrial dispute directly affecting work on the site not caused or contributed by the affected party;

(e) a state-wide or national industrial dispute directly affecting work on the site not caused or contributed by the affected party;

(f) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, terrorism, insurrection, civil commotion, epidemic, rebellion, military or usurped power or martial law;

(g) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

(h) embargo, power or water shortage;

(i) confiscation by order of any government;

(j) the introduction of or change to legislative requirements or regulations applicable to an Expansion;

(k) a direction by a municipal, public or statutory authority (not caused by a failure of the affected party to comply with legislative requirements);

(l) a delay by a municipal, public or statutory authority (not caused by the affected party);

(m) the affected party is unable to secure a lease from the applicable NSW State Government authority or department for land that is needed to carry out an Expansion but for which that affected party does not already hold a lease; or

(n) failure by a financier to meet its commitment to provide funding for an Expansion where that failure is not due to the financier exercising or not exercising (as the case may be) any rights its has against the affected party under the financing documents or otherwise.

General Compression Limit means, in respect of a Producer:

(a) 5% of that Producer's Qualified Contracted Allocation in the calendar year in which that Producer's aggregate Load Point Allocations is first compressed for a PWCS Expansion Delay or PWCS Expansion Shortfall under section 5(b)(iii) of Part B; and

(b) for each calendar year thereafter in which that PWCS Expansion Delay or PWCS Expansion Shortfall (and any other concurrent PWCS Expansion Delay or PWCS Expansion Shortfall) subsists, an additional 5% of that Producer's Qualified Contracted Allocation.

Group Contracted Allocation means, in respect of a Producer at any time, the Qualified Contracted Allocation of that Producer and other Producer who is a member of the Producer Group of the Producer at that time.

HVCCC means Hunter Valley Coal Chain Coordinator Limited or any body providing planning and logistics services for the Hunter Valley coal chain.

Levy Protocols means the Levy Protocols referred to in section 8 and set out in Schedule A.

Load Point means a single or shared facility where coal is loaded onto trains for transportation through the Hunter Valley rail corridor.

Load Point Allocation means the volume of services to be provided by PWCS, expressed in tonnes, allocated to a Producer in respect of coal to be delivered to PWCS from an individual Load Point.

NCIG Capacity Deficit means the extent to which NCIG Stage 2 fails to satisfy the Non-NCIG Stage 2 Allocations due to either a NCIG Stage 2 Delay or a NCIG Stage 2 Shortfall.

NCIG Capacity Framework Documents means:

(a) the Deed of Variation between NCIG and NPC amending the terms of the Agreement for Lease for the land on which NCIG Stage 1 and NCIG Stage 2 is to be constructed in order to give effect to the relevant provisions of the Capacity Framework Arrangements;

(b) the Capacity Framework Agreement between PWCS, NCIG and NPC which gives effect to the relevant provisions of the Capacity Framework Arrangements; and

(c) the Deed of Undertaking.

NCIG Contracted Allocation means in respect of a Producer, the aggregate amount of Capacity that NCIG is contractually bound to make available to that Producer at the NCIG Terminal.

NCIG Party means NCIG and each NCIG Producer who is a party to (or is otherwise bound by) the Deed of Undertaking.

NCIG Producer Deed Poll means the Deed Poll executed on or about 31 August 2009 by NCIG and certain NCIG Producers in favour of NPC and certain Non-NCIG Producers with Contracted Allocations at NCIG Stage 2.

NCIG Member means each shareholder of NCIG Holdings Pty Ltd (ACN 124 700 483) from time to time.

NCIG Producer means each NCIG Member and any Producer who is an Associate of that NCIG Member from time to time, excluding any Producer that delivers coal for export solely by road transport.

NCIG Stage 1 means the terminal operated by NCIG up to a total Capacity of 30 Mtpa.

NCIG Stage 2 means any expansion (or part thereof) of the terminal operated by NCIG in excess of the total Capacity that can be delivered by NCIG Stage 1.

NCIG Stage 2 Delay means the NCIG Stage 2 is not capable of meeting the Non-NCIG Stage 2 Allocations by the date required for the completion of NCIG Stage 2 pursuant to the Deed of Undertaking.

NCIG Stage 2 Shortfall means the extent to which the Capacity available at NCIG Stage 2 falls short of meeting the Non-NCIG Stage 2 Allocations.

NCIG Terminal means the terminal and associated infrastructure operated by NCIG.

Nominated Deferral Period has meaning given in section 5(d)(i)(B)(II) of Part B.

Non-NCIG Producer means a Producer who is not an NCIG Producer, excluding any NCIG Producer entity that delivers coal to PWCS solely by road transport.

Non-NCIG Stage 2 Allocations means in respect of a Non-NCIG Producer, the Contracted Allocation which NCIG is contractually bound to make available to that Non-NCIG Producer at NCIG Stage 2 pursuant to an NCIG Long Term Ship or Pay Contract with that Non-NCIG Producer. For the avoidance of doubt, the Non-NCIG Stage 2 Allocation of a Non-NCIG Producer is the Contracted Allocation that NCIG is contractually bound to make available to that Non-NCIG Producer after completion of any ramp up period for NCIG Stage 2.

NPC means Newcastle Port Corporation.

Producer means any person who, by virtue of its ownership, management rights or some other means:

(a) exercises effective operational control over; or

(b) has, in relation to its dealings with the Terminal Operators, authority to represent the interest of,

one or more mines (including planned mines) producing (or expected to produce) coal for export through the Hunter Valley Coal Chain.

Producer Group means, in respect of a Producer, that Producer and each Associate of that Producer.

PWCS Base Tonnage means the base tonnage to be offered for allocation to Producers at the PWCS Terminals in the year 2009 in accordance with Part A and in the year 2010 in accordance with section 1 of Part B. Allocations of Capacity for coal that is delivered by road transport to the PWCS Terminal located at Carrington are not included in the PWCS Base Tonnage.

PWCS Capacity means the coal export capacity of the Terminals measured in Mtpa being the aggregate amount of coal from time to time, expressed in tonnes, able to be loaded onto vessels at the Terminals in the relevant period, having regard to the PWCS System Assumptions and operating protocols.

PWCS Capacity Framework Documents means:

(a) each Deed of Variation between PWCS and NPC amending the respective PWCS Leases to give effect to the relevant provisions of the Capacity Framework Arrangements;

(b) the Agreement for Lease for Terminal 4 between PWCS and NPC; and

(c) the Capacity Framework Agreement between PWCS, NCIG and NPC which gives effect to the relevant provisions of the Capacity Framework Arrangements.

PWCS Contracted Allocation means, in respect of a Producer, the Contracted Allocation of that Producer at the PWCS Terminals at that time. For the avoidance of doubt, the expression "PWCS Contracted Allocation" has the same meaning in this document as the expression "PWCS Load Point Allocation"

PWCS Contracted Allocation Usage means, in respect of a Producer at any time, the use by that Producer of that Producer's PWCS Contracted Allocation, not including any part of that Producer's PWCS Contracted Allocation that has been transferred to another Producer through a capacity transfer or swap, plus:

(a) that Producer's use of any PWCS Contracted Allocation of another Producer that is acquired through a capacity transfer or swap;

(b) any portion of that Producer's PWCS Contracted Allocation which has been compressed in accordance with section 5 of Part B to this Attachment 1 during the 18 month period immediately prior to that time; and

(c) any portion of that Producer's PWCS Contracted Allocation which has not been used by the Producer as a direct result of a Force Majeure Event.

PWCS Expansion means an expansion of existing PWCS Terminals or the building of a new terminal by PWCS (as applicable) as required under section 6 of Part B.

PWCS Expansion Delay means a PWCS Expansion that is not Completed within the time required under section 6(b) of Part B (subject to any extension of time permitted under section 6(e) of Part B) but does not include any PWCS Expansion that is suspended under section 6(e)(ii) of Part B.

PWCS Expansion Shortfall means the extent to which a PWCS Expansion falls short of meeting the Load Point Allocations due to be satisfied by that PWCS Expansion.

PWCS System Assumptions means the assumptions for the Hunter Valley export coal chain that underpin the calculation of PWCS Capacity in the relevant period including:

(a) interface and live run losses between each element in the Hunter Valley Export Coal Chain;

(b) agreed operating mode of the Hunter Valley Export Coal Chain;

(c) surge and tolerance requirements;

(d) capacities of fixed infrastructure;

(e) rolling stock requirements; and

(f) vessel requirements,

detailed in the system assumptions document prepared by HVCCC, as varied from time to time.

PWCS Terminals means each coal loading terminal and associated infrastructure operated by PWCS within the Port of Newcastle from time to time.

PWCS Tonnage Allocation Stage 1 means the PWCS Tonnage Allocation Stage 1 set out in Attachment 1 of PWCS' and NCIG's supporting submission in respect of applications for authorisation A91110 - A91112.

Qualified Contracted Allocation means in respect of a Producer, the Contracted Allocation of the Producer prior to any adjustments (including compression) being applied to the aggregate Load Point Allocations of that Producer in accordance with sections 5 and 7.

Quarantined Allocation means a portion of Load Point Allocation that cannot be used, transferred or assigned by any Producer because:

(a) it is lost capacity due to the Producer's performance not meeting its Producer assumptions or performance standards, or is otherwise lost capacity caused by the Producer;

(b) it is removed from the Load Point Allocation by any downward adjustment in accordance with section 9(e); or

(c) it is the subject of a downward adjustment by PWCS in accordance with section 7(v)(B) or section 7A(i)(B).

Quarantined Allocation is subject to ship or pay obligations.

Reviewer NPC or an independent expert appointed by NPC (in its absolute and sole discretion).

Sunset Date means the later of 31 December 2009 and the date which is 6 months after the date on which Non-NCIG Producers entered into long term ship or pay contracts for capacity allocations at Stage 2 to be held in escrow as may be extended by agreement between NCIG and all of those Non-NCIG Producers and with NPC's prior written approval.

Target Completion Date means the date by which NCIG Stage 2 is required to be Completed as set out in section 6(d).

Terminal Access Protocols means, in relation to PWCS, the proposed PWCS Terminal Access Protocols.

Terminal Operators means each of PWCS and NCIG.

Unallocated Expansion Capacity has the meaning given in section 8(i)(A)(II) of Part B.

Unused Allocations means the portion of a Producer's Contracted Allocation under a long term ship or pay contract that will not be utilised by that Producer for any period and for any reason after allowing for delivery tolerances permitted under the relevant long term ship or pay contract.

Unutilised Allocation means, in respect of a Producer, the difference between the amount that is 95% of that Producer's Contracted Allocation for a relevant period of time and that Producer's Contracted Allocation Usage during that period.

Utilisation Threshold means, in respect of a Producer, that Producer's Contracted Allocation Usage is at least 95% of that Producer's Contracted Allocation on average over a period of 18 consecutive months.

Schedule A to Capacity Framework Arrangements - Levy Protocols

Deloitte.

This document is the form of the "Levy Protocols" referred to in each Deed of Variation of Lease between Newcastle Port Corporation and Port Waratah Coal Services Ltd dated on or about 31 August 2009.

GILBERT TOBIN LAWYERS

Initialled by **Newcastle Port Corporation** by its authorised delegate who states he has had no notice of any revocation of the delegation

..... Initial of delegate

GARY WEBB ..... Name of delegate

Initialled by **Port Waratah Coal Services Ltd** by its director/secretary

..... Initial of director/secretary

MICHAEL HARVEY ..... Name of director/secretary

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Unallocated expansion capacity levy protocol

This document is the Levy Protocol referred to in the Capacity Framework Agreement between Newcastle Port Corporation, Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Limited dated on or about 31 August 2009 (CFA) and may be referred to as such in the long form documentation envisaged by the CFA.

PART 1: PRELIMINARY

1 Purpose

The unallocated expansion capacity levy ('Levy') is intended to assist Terminal Operators to meet the cost of Unallocated Expansion Capacity at NCIG Stage 2, PWCS and/or Terminal 4 through application of a per tonne levy on all coal exported by Terminal Users.

2 Modifications

Terminal Operators may jointly, with the consent of the Administrator and NPC, modify this Levy Protocol in the light of experience to the extent that it is necessary in order to more accurately satisfy the purpose of the Levy.

3 Conditions for Levy to apply

(a) The Levy will apply to an Expansion upon election by the relevant Terminal Operator.

(b) A Terminal Operator may elect to apply the Levy whenever:

i. an Expansion is Completed by a Terminal Operator; and

ii. the Contracted Allocation for that Expansion is less than the Capacity that is made available by that Expansion; and

iii. an Administrator has been established in accordance with Part 6 of this Levy Protocol.

4 Definitions

Administrator means the entity created to administer the application, calculation, charging and collection of the Levy, the release of Levy Proceeds, and the determination of when the Levy ceases to apply.

Annual Total Expansion Cost means, in respect of an Expansion, the annual cost of owning and operating the Expansion as determined under clause 9 of this Levy Protocol.

Annual Unrecovered Expansion Cost means, in respect of an Expansion, the Annual Total Expansion Cost of that Expansion less the costs recovered from all coal committed for shipment for export (under a Long Term Ship or Pay Contract) and each tonne (in addition to tonnes committed for shipment under a Long Term Ship or Pay Contract) that is actually shipped for export by Terminal Users in each case for that Levy Year.

Billing Period means the period for which the Terminal User is billed as per the terms and conditions contained in their respective Long Term Ship or Pay Contracts or Short Term Contracts to which the Levy applies.

Capacity means the coal export capacity measured in Mtpa (having regard to the mode of operation and system assumptions of the relevant terminal).

Capital Cost means any expenditure, which has been brought to account as a non-current asset in the balance sheet of the Terminal Operator's statutory accounts provided that the expenditure conforms with at least one of the following:

(a) the expenditure relates to the purchase, commissioning, development or construction of an Expansion, including all pre-commissioning costs and those costs incurred by Terminal Operator prior to notification of Expansion requirements including financing costs, or
(b) the expenditure will extend the service life of the Expansion beyond that expected when the Expansion was originally Completed.

Committed in respect of NCIG Stage 2, has the meaning given in the CFA.

Completed in respect of an Expansion, an Expansion is commissioned, available to receive coal and capable of satisfying the Contracted Allocations due to be satisfied by that Expansion.

Contracted Allocation means, in respect of a Producer, the aggregate amount of Capacity which the Terminal Operators are contractually bound to make available to that Producer.

Debt Any financial indebtedness that is classified as a financial liability under the Australian accounting standards.

Debt Financing Costs means the actual interest payments and principal repayments and other fees and charges incurred by the Terminal Operator in respect of Debt used to fund the Capital Cost of the relevant Expansion, where principal repayments have regard to the quantum of Debt, useful life of the assets or the usual pattern of financing for similar assets.

Depreciation means the depreciation of the Expansion assets which has been brought to account annually in the financial statements of the Terminal Operator in accordance with Australian accounting standards.

Expansion means any or all of NCIG Stage 2, Terminal 4 and any expansion to the PWCS Terminals from time to time for which the relevant Terminal Operator elects to apply the Levy under clause 3. An Expansion may be a stage of a multiple-stage Expansion.

Expansion Capacity means the additional Capacity made available by an Expansion.

Hunter Valley Coal Chain chain of coal delivery in New South Wales from coal mines in the Hunter Valley to the Port of Newcastle.

Levy means the charge to be paid by all Terminal Users of the amount calculated under Clause 8 and payable under Clause 14 of this Levy Protocol.

Levy Account means the account controlled by the Administrator for the receipt and disbursement of Levy Proceeds.

Levy Proceeds means the monies collected from the Levy paid by all Terminal Users to the Administrator.

Levy Reset means the recalculation of the Levy prior to each Levy Year after the first year in which the Levy was applied to the Expansion.

Levy Year means the period from which the Levy may be applied until the end of that financial year, and thereafter each financial year.

Long Term Ship or Pay Contract means a minimum 10 year evergreen ship or pay contract with the relevant Terminal Operator which provides a Producer with access to Capacity that is to be allocated at the terminals according to the Nomination and Allocation Procedures.

Mtpa means million tonnes per annum.

Nomination and Allocation Procedures means:

(a) in respect of PWCS, the Nomination and Allocation Procedure for the nomination of Capacity by and allocation of Capacity to Producers at the PWCS Terminals which PWCS is required to comply with in accordance with the terms of each lease for the land on which the PWCS Terminals are located, and

(b) in respect of NCIG, the Nomination and Allocation Procedure for the nomination of 12 Mtpa of Capacity by and allocation of Capacity to Non NCIG Producers at NCIG Stage 2 which NCIG is required to comply with as a condition precedent to exercising its option to lease the land on which NCIG Stage 2 will be located.

NPC means Newcastle Port Corporation a statutory state owned corporation established under the *Ports and Maritime Administration Act 1995* (NSW).

Operating Cost means those costs which relate to the reasonable day to day operations required to make the Expansion Capacity available to Terminal Users, net of any working capital costs associated with the Expansion.

Producer means the any person who, by virtue of its ownership, management rights or some other means:
(a) exercises effective operational control over, or
(b) has, in relation to its dealings with the Terminal Operators, authority to represent the interest of, one or more mines producing coal for export through the Hunter Valley Coal Chain.

Recovery Period means the period over which a Levy is to apply for each Expansion as determined under clause 5.

Return on Capital Cost means the return on the Capital Cost that is funded by equity, as determined by the Administrator with reference to relevant regulatory and other relevant precedent.

Short Term Contracts means any agreement with a Terminal Operator which provides for access to Capacity at the terminal (or terminals) operated by that Terminal other than under a Long Term Ship or Pay Contract.

Terminal Operator means each of Port Waratah Coal Services Ltd and Newcastle Coal Infrastructure Group Pty Ltd or their successors.

Terminal User means any person that utilises the services provided by a Terminal to export coal through the Port of Newcastle, including without limitation any counterparty to a Terminal Operator under a Long Term Ship or Pay Contract or a Short Term Contract such as related parties, agents, marketing companies or traders.

Total Expansion Cost means the Operating Costs, Debt Financing Costs, and Return on Capital Cost (for the portion of Capital Cost funded by equity) and Depreciation (for the portion of Capital Cost funded by equity) of the Expansion.

5 What is 'unallocated expansion capacity'?

(a) For NCIG Stage 2 "Unallocated Expansion Capacity" refers to that portion of the 12 Mtpa of Capacity that is offered for allocation at NCIG Stage 2 in accordance with the NCIG Nomination and Allocation Procedure that is not contracted in accordance with that NCIG Nomination and Allocation Procedure.

(b) For all other Expansions, Unallocated Expansion Capacity is the total Expansion Capacity for that Expansion less the total of all Contracted Allocations for that Expansion.

(c) The Unallocated Expansion Capacity for an Expansion is determined in the following manner:

i. Following satisfaction of the conditions for a Levy to apply under Clause 3, the Terminal Operator must provide to the Administrator an estimate of the Capacity and the proposed Recovery Period for that Expansion.

ii. The Administrator must form an independent view of the reasonableness of the estimate of the total Capacity and proposed Recovery Period for each Expansion and ensure all Terminal Operators and Terminal Users of the Expansion are notified of the Capacity per Expansion prior to each Levy Year.

iii. Prior to each Levy Year, having regard to the outcome of relevant Nomination and Allocation Procedures, the Administrator will declare the Unallocated Expansion Capacity for the Expansion.

(d) For avoidance of doubt, where an Expansion is developed in stages, the Administrator may aggregate Expansion stages per terminal for the purposes of declaring the total Capacity for each Expansion and declaring the Unallocated Expansion Capacity for each such Expansion.

PART 2: IMPOSITION OF LEVY

6 How is the Levy imposed

(a) The Levy is imposed on each tonne of coal committed for shipment for export (under a Long Term Ship or Pay Contract) and each tonne (in addition to tonnes committed for shipment under a Long Term Ship or Pay Contract) that is actually shipped for export per Levy Year at a per tonne rate from the time that conditions for a Levy to apply under Clause 3 are satisfied.

(b) The Levy will continue until the Administrator determines in its reasonable opinion that:

i. the Total Expansion Cost of Unallocated Expansion Capacity is recovered, or

ii. all Expansion Capacity is Contracted under Long Term Ship or Pay Contracts, or

iii. the costs of Levy administration would exceed all remaining Total Expansion Costs to be otherwise recovered through the Levy,

or, until the Terminal Operators agree that the Levy should cease to apply.

(c) Any Terminal Operator or Producer may request a determination under Clause 6(b) by providing the Administrator with its reasons to make such a determination on the basis of at least one of Clause 6(b)(i) to 6(b)(iii), and the Administrator must respond to these reasons within 2 months of the request.

7 Who is liable for Levy?

All Terminal Users that contract to utilise the terminals under Long Term Ship or Pay Contract or Short Term Contracts (including those that do not utilise the Expansion) are liable to pay the Levy.

8 Calculation of Levy

(a) The Levy will be set each Levy Year by dividing the Annual Unrecovered Expansion Cost of owning and operating an Expansion by the forecast total tonnes of coal committed for shipment for export (under a Long Term Ship or Pay Contract) and each tonne, in addition to tonnes committed for shipment under a Long Term Ship or Pay Contract, that is forecast to be shipped for export by Terminal Users.

(b) The Levy calculation can occur once the Administrator establishes:

i. the Annual Total Expansion Cost of owning and operating each Expansion;

ii. the Capacity of each Expansion and the date that the Capacity will become available;

iii. the total tonnage contracted to each Expansion under Long Term Ship or Pay Contracts or Short Term Contracts;

iv. the costs to be recovered by Terminal Operator from contracted Expansion Capacity;

v. the forecast total tonnes of coal committed for shipment for export (under a Long Term Ship or Pay Contract) and each tonne in addition to tonnes committed for shipment under a Long Term Ship or Pay Contract that is forecast to be shipped for export by Terminal Users;

vi. the Unallocated Expansion Capacity for each Expansion;

vii. the Recovery Period; and

viii. costs of Levy administration, including cost of Administrator operation, as estimated by the Administrator under Part 6 of this Levy Protocol.

(c) The Administrator will seek estimates for each variable listed under Clauses 8(b) and 9(a) from each relevant Terminal Operator by a specified date following conclusion of the Nomination and Allocation Procedure for each Expansion and where relevant prior to each Levy Year, and the relevant Terminal Operator will provide these estimates to the Administrator by that date.

(d) The Administrator will review the estimates, assess the reasonableness of each estimate, make amendments to an estimate where the Administrator considers the estimate to be unreasonable and advise the relevant Terminal Operator of the final estimates of each variable listed under Clauses 8(b) and 9(a) prior to calculating the Levy under Clause 8.

(e) The Administrator will calculate the Levy.

(f) The Administrator will ensure all Terminal Operators and Terminal Users are notified of the Levy for each Levy Year.

See Annex 1: Flow chart of Levy calculation

See Annex 3: Worked example of Levy calculation and reset

9 Calculation of Annual Total Expansion Cost of owning and operating the Expansion

(a) The Annual Total Expansion Cost comprises, for or in respect of each Levy Year:

i. the Debt Financing Costs;

ii. a Return on Capital Cost for that portion of the agreed Capital Cost of the Expansion that is funded by equity;

iii. the Depreciation for the portion of Capital Cost of the Expansion that is funded by equity; and

iv. the Operating Costs of the Expansion.

10 Costs of Administrator

(a) The costs incurred by the Administrator in undertaking its functions under this Levy Protocol will be recovered from Levy Proceeds up to the amount approved by Terminal Operators under Clause 10(b).

(b) At least 2 months prior to commencement of each Levy Year, the Administrator will provide an annual budgeted cost for Levy administration to Terminal Operators for approval by Terminal Operators.

(c) Any Terminal Operator or Producer may seek an independent review of the reasonableness of its annual budgeted cost to be recovered.

PART 3: VARIATION OF LEVY

11 Levy Reset

The Administrator will calculate the Levy for each Levy Year.

See Annex 2: Flow chart of Levy Reset

See Annex 3: Worked example of Levy calculation and reset

12 Over- and under-recovery of Annual Total Expansion Cost per Levy Year

(a) The total Levy Proceeds per annum may amount to more or less than the Annual Unrecovered Expansion Cost estimated for that Levy Year. As soon as possible following each Levy Year, the Administrator will compare the estimate of the Annual Unrecovered Expansion Cost in the previous Levy Year and the amount of total Levy Proceeds actually collected for that Levy Year.

(b) Any over (under) recovery of the Annual Unrecovered Expansion Cost in the prior Levy Year through Levy Proceeds collected for that Levy Year will be applied to reduce (increase) the Annual Unrecovered Expansion Cost calculated for the following Levy Year.

13 Changes in Contracted Capacity

Where Unallocated Expansion Capacity at commencement of Levy Year is subsequently allocated under new Long Term Ship or Pay Contracts or Short Term Contracts within that Levy Year, Levy Proceeds may exceed the Annual Unrecovered Expansion Cost. This over-recovery will be set off against the Annual Total Expansion Cost for the following Levy Year in the Levy Reset under Clause 12.

PART 4: COLLECTION

14 Payment

(a) The Levy is to be paid by all Terminal Users.

(b) The Levy will be separately identified as an item in the invoices issued by the Terminal Operators to Terminal Users.

(c) Invoices will be issued in accordance with the invoicing arrangements the Terminal User has with the Terminal Operator under Long Term Ship or Pay Contracts or Short Term Contracts, including Billing Period.

PART 5: DISBURSEMENT OF LEVY PROCEEDS

15 Disbursement

(a) All Levy Proceeds will be deposited into the Levy Account controlled by the Administrator.

(b) Each month the Administrator will:

i. first, retain Levy Proceeds deposited into the Levy Account up to an amount equal to one-twelfth of the annual budgeted cost of the Administrator approved under Clause 10; and

ii. second, disburse all remaining Levy Proceeds deposited into the Levy Account to each Terminal Operator(s) with Unallocated Expansion Capacity, based on the proportion of the Total Annual Expansion Cost applicable to that Terminal Operator(s) for that Levy Year (net of any adjustments calculated under Clause 12 above).

(c) At the end of each Levy Year, the Administrator will conduct a reconciliation of shipments, collections and disbursements, and conduct a final disbursement of remaining Levy Proceeds deposited into the Levy Account to:

i. first, the Administrator, an amount up to the annual budgeted cost of the Administrator approved under Clause 10 and not previously disbursed to the Administrator in that Levy Year; and

ii. second, to each Terminal Operator(s) with Unallocated Expansion Capacity within the Levy Year, the remaining Levy Proceeds collected for that Levy Year based on the proportion of the Annual Unrecovered Expansion Cost applicable to that Terminal Operator(s) for that Levy Year (net of any adjustments calculated under Clause 12 above).

PART 6: ADMINISTRATOR

16 Administrator

(a) The Administrator will be established by NCIG, PWCS and NPC in accordance with the terms of the CFA.

(b) The Administrator will continue to operate until it is determined under Clause 6(b) that the Levy should no longer continue.

(c) The Administrator acts to:

i. fulfil all functions ascribed to it under this protocol;

ii. manage the Levy Account for receipt and disbursement of Levy Proceeds; and

iii. source any expert advice it requires to fulfil its functions under this protocol.

PART 7: GENERAL

17 Availability and Allocation of Expansion Capacity

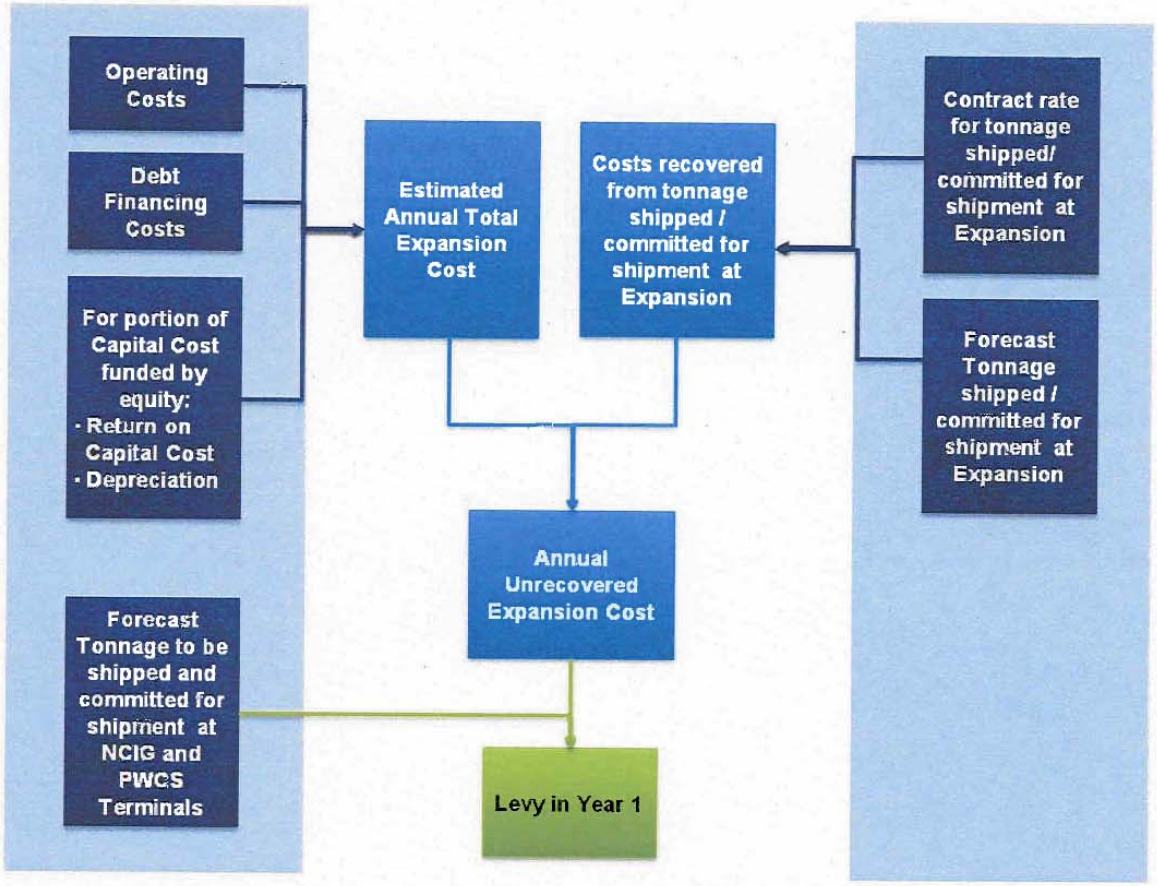
(a) Subject to paragraph (b), the Terminal Operator will use its best endeavours to allocate the Unallocated Expansion Capacity to any Producer either under a Long Term Ship or Pay Contract or under any Short Term Contract in accordance with the relevant Nomination and Allocation Procedure of that Terminal Operator.

(b) Whilst NCIG has not Committed to NCIG Stage 2, NCIG Producers will only be entitled to nominate for allocations of Unallocated Expansion Capacity at PWCS Terminals under fixed term contractual arrangements for the maximum term then available not exceeding 2 years.

18 Undertaking to minimise use of the Levy

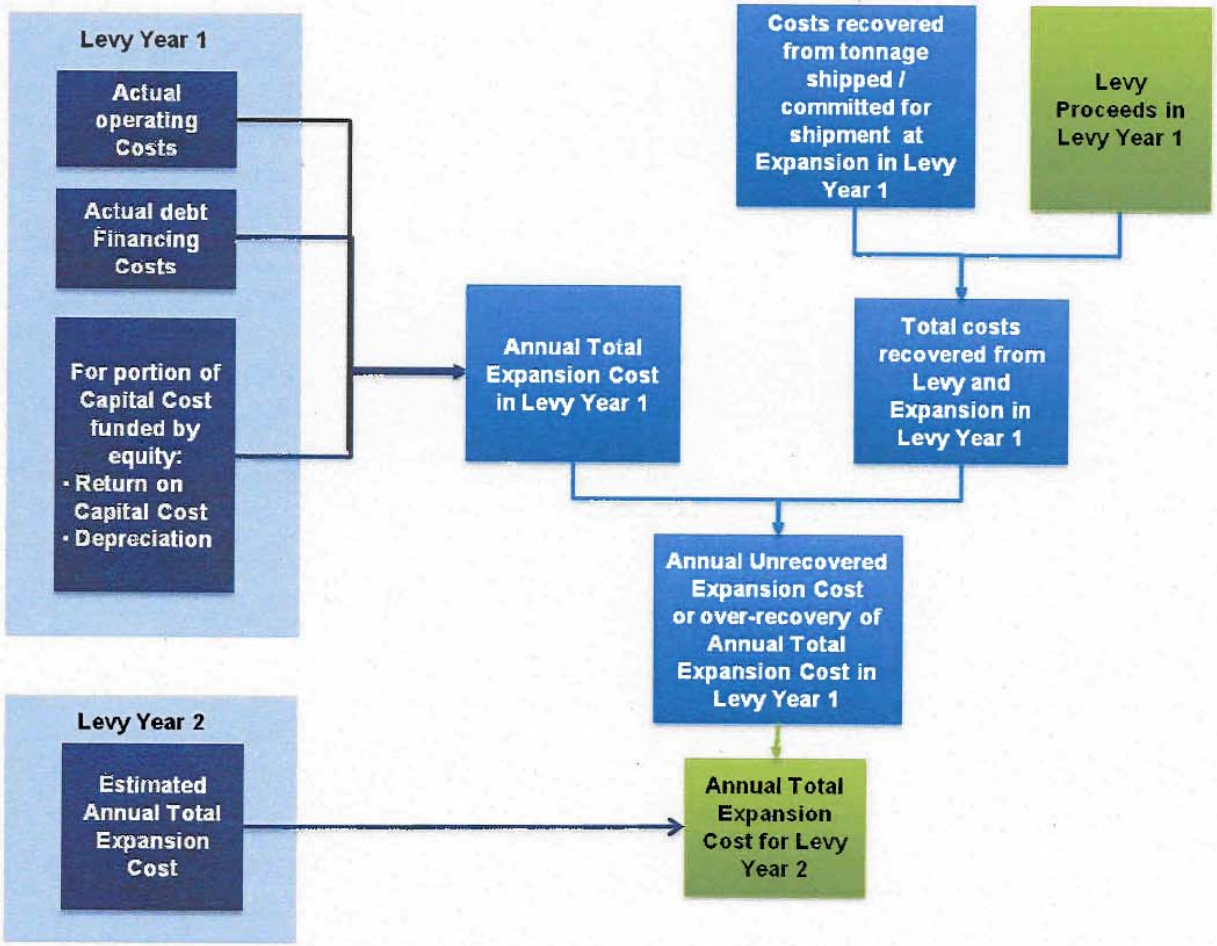
Each Terminal Operator must use all reasonable endeavours to minimise its use of the Levy, including by using reasonable endeavours to minimise the amount of Unallocated Expansion Capacity when undertaking an Expansion.

ANNEX 1: FLOW CHART OF LEVY CALCULATION IN YEAR 1



Note: The term 'tonnage shipped/committed for shipment' is abbreviated term meaning 'tonnes of coal committed for shipment for export (under a Long Term Ship or Pay Contract) and each tonne, in addition to tonnes committed for shipment under a Long Term Ship or Pay Contract, that is shipped for export by Terminal Users'

ANNEX 2: FLOW CHART OF LEVY RESET



Note: The term 'tonnage shipped/committed for shipment' is abbreviated term meaning 'tonnes of coal committed for shipment for export (under a Long Term Ship or Pay Contract) and each tonne, in addition to tonnes committed for shipment under a Long Term Ship or Pay Contract, that is shipped for export by Terminal Users'

ANNEX 3: WORKED EXAMPLE OF LEVY CALCULATION AND RESET

One Expansion

Key assumptions

Cost of debt	10%	(estimate for calculation purposes)
Cost of equity	15%	(pre tax nominal)
Debt/equity ratio	90%	
Debt repayment period	30	years
Accounting asset life	30	years
Capital Cost of Expansion ($m)	$500	
Expansion Capacity (Mtpa)	35	
Ship or pay (for tonnes committed to expansion)	100%	

	Year 1	Year 2
Mtpa committed by other Terminal Users	120	120
Tonnes committed to Expansion (Mtpa)	10	15
Estimated Operating Costs per annum ($m)	$30	$31

Levy Calculation

Estimated Annual Total Expansion Cost ($m)

	Year 1	Year 2
Debt Financing Costs	$46	$46
Return on Capital Cost	$8	$7
Depreciation (on equity finance portion of Capital Cost)	$2	$2
Operating Cost	$30	$31
Annual Total Expansion Cost	$86	$86

Forecast tonnes

	Year 1	Year 2
Mtpa committed to Expansion	10	15
Mtpa committed by other (non-Expansion) Terminal Users	120	120
Mtpa committed by all Terminal Users	130	135

Summary

Annual cost of additional Capacity ($ per tonne)	$2.4	$2.5
Expected costs recovered from tonnes committed to Expansion ($m)	$24.5	$37.0
Forecast cost of unallocated expansion ($m)	$61.1	$49.3
Adjustment for previous years over (under) recovery ($m)	na	$1.2
Net cost to be recovered via the Levy ($m)	$61.1	$50.5
Levy per tonne forecast for Terminal Users	$0.47	$0.37

Annual Disbursement and Reset

	Year 1	Year 2
Actual Operating Costs ($m)	$35	$32
Actual Mtpa committed/shipped by other Terminal Users	122	126
Actual Mtpa committed/shipped through Expansion	11	16

Actual Annual Total Expansion Cost for Levy Year 1

	Year 1	Year 2
Debt Financing Costs	$46.4	$46.4
Return on Capital Cost	$7.5	$7.3
Depreciation (on equity finance portion of Capital Cost)	$1.7	$1.7
Operating Cost	$35.0	$32.0
Adjustment for previous years over (under) recovery ($m)	na	$1.2
Actual Annual Total Expansion Cost	**$90.6**	**$88.5**

Actual Levy Proceeds

	Year 1	Year 2
Expansion	$5.2	$6.0
Other Terminal Users	$57.4	$47.2
Total	$62.5	$53.1

	Year 1	Year 2
Costs recovered via Levy	$62.54	$53.15
Cost Recovered from Expansion Terminal Users	$26.9	$39.5
Total cost recovery	**$89.44**	**$92.61**

Levy Reset Summary ($m)

	Year 1	Year 2
Total cost recovery	$89.4	$92.6
Actual Annual Total Expansion Cost	$90.6	$88.5
Cost recovery excess (shortfall)	-$1.14	$4.09
Variation working capital costs (compared to annual budget)	$0.05	-$0.19
Carry forward (to next years Levy)	-$1.20	$3.89

Two Expansions

Key assumptions

Cost of debt	10%	(estimate for calculation purposes)
Cost of equity	15%	(pre-tax nominal)
Debt/equity ratio	90%	
Debt repayment period	30	years
Accounting asset life	30	years
Additional Capacity (Expansion 1)	35	mtpa
Additional Capacity (Expansion 2)	25	mtpa
Total Expansion Capital Cost (Expansion 1)	$500	$m
Total Expansion Capital Cost (Expansion 2)	$400	$m
Ship or pay (for tonnes committed to expansion)	100%	

	Year 1	Year 2
Mtpa committed by other Terminal Users	120	120
Mtpa committed Expansion 1	28	28
Mtpa committed Expansion 2	10	15
Estimated Operating Costs per annum (Expansion 1)	$30	$31
Estimated Operating Costs per annum (Expansion 2)	$20	$21

Levy Calculation

Estimated Annual Total Expansion Cost (Expansion 1) ($m)

	Year 1	Year 2
Debt Financing Costs	$46	$46
Return on Capital Cost	$8	$7
Depreciation (on equity finance portion of Capital Cost)	$2	$2
Operating Cost	$30	$31
Annual Total Expansion Cost	$86	$86

Estimated Annual Total Expansion Cost (Expansion 2) ($m)

	Year 1	Year 2
Debt Financing Costs	$37	$37
Return on Capital	$6	$6
Depreciation (on equity finance portion of Capital Cost)	$1	$1
Operating Cost	$20	$21
Annual Total Expansion Cost	$64	$65

Forecast tonnes (Mtpa)

	Year 1	Year 2
Mtpa committed Expansion 1	28	28
Mtpa committed Expansion 2	10	15
Mtpa committed by other Terminal Users	120	120
Mtpa committed by all Terminal Users	158	163

Summary - Expansion 1

	Year 1	Year 2
Annual cost of additional Capacity ($ per tonne)	$2.4	$2.5
Expected costs recovered from tonnes committed to Expansion ($m)	$68.5	$69.1
Forecast cost of unallocated expansion ($m)	$17.1	$17.3
Adjustment for previous years over (under) recovery ($m)	na	-$0.6
Net cost to be recovered via the Levy ($m)	$17.1	$16.6
Levy per tonne forecast for Terminal Users	$0.11	$0.10

Summary - Expansion 2

	Year 1	Year 2
Annual cost of additional Capacity ($ per tonne)	$2.6	$2.6
Expected costs receovered from tonnes committed to Expansion ($m)	$25.8	$39.2
Forecast cost of unallocated expansion ($m)	$38.7	$26.1
Adjustment for previous years over (under) recovery ($m)	na	$3.1
Net cost to be recovered via the Levy ($m)	$38.7	$29.2
Levy per tonne forecast for Terminal Users	$0.24	$0.18
Aggregate Levy ($ per tonne)	$0.35	$0.28

Two Expansions cont/d

Annual Disbursement and Reset

Actual Operating Costs ($m) - Expansion 1	$32	$33
Actual Operating Costs ($m) - Expansion 2	$26	$22
Actual Mtpa committed/shipped by other Terminal Users	120	120
Actual Mtpa committed/shipped at Expansion 1	29	29
Actual Mtpa committed/shipped at Expansion 2	11	16

Actual Levy Proceeds

	Year 1	Year 2
Expansion terminal 1 users	$10.2	$8.2
Expansion terminal 2 users	$3.9	$4.5
Other Terminal Users	$42.4	$33.7
Total	$56.5	$46.4

Disbursement of Levy Proceeds to Expansion Terminal Operators

	Year 1	Year 2
Expansion terminal 1	$17.3	$16.8
Expansion terminal 2	$39.2	$29.5
Total	$56.5	$46.4

Total costs recovered: Expansion terminal 1

	Year 1	Year 2
Costs recovered via Levy	$17.3	$16.8
Cost Recovered from Expansion 1 Terminal Users	$70.9	$71.5
Total costs recovered	**$88.2**	**$88.4**

Actual Annual Total Expansion Cost ($m): Expansion 1

	Year 1	Year 2
Debt Financing Costs	$46.4	$46.4
Return on Capital Cost	$7.5	$7.3
Depreciation (on equity finance portion of Capital Cost)	$1.7	$1.7
Operating Cost	$32.0	$33.0
Adjustment for previous years over (under) recovery ($m)	na	-$0.6
Actual Annual Total Expansion Cost for Expansion 1	**$87.6**	**$87.7**

Reset Summary ($m): Expansion 1

	Year 1	Year 2
Total cost recovery	$88.2	$88.4
Actual Annual Total Expansion Cost	$87.6	$87.7
Cost recovery excess (shortfall)	$0.66	$0.67
Variation working capital costs (compared to annual budget)	-$0.03	-$0.03
Carry forward (to next years Levy)	$0.63	$0.64

Total costs recovered ($m): Expansion terminal 2

	Year 1	Year 2
Costs recovered via Levy	$39.2	$29.5
Cost Recovered from Expansion 2 Terminal Users	$28.4	$41.8
Total costs recovered	**$67.5**	**$71.3**

Actual Annual Total Expansion Cost ($m): Expansion 2

	Year 1	Year 2
Debt Financing Costs	$37.1	$37.1
Return on Capital	$6.0	$5.8
Depreciation (on equity finance portion of Capital Cost)	$1.3	$1.3
Operating Cost	$26.0	$22.0
Adjustment for previous years over (under) recovery ($m)	na	$3.1
Actual Annual Total Expansion Cost for Expansion 2	**$70.5**	**$69.3**

Reset Summary ($m): Expansion 2

	Year 1	Year 2
Total cost recovery	$67.5	$71.3
Actual Annual Total Expansion Cost	$70.5	$69.3
Cost recovery excess (shortfall)	-$2.93	$1.97
Variation working capital costs (compared to annual budget)	$0.14	-$0.09
Carry forward (to next years Levy)	-$3.07	$1.88

Attachment B — the authorisation process

The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an 'authorisation'.

The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.

After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.

Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.

The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.

Attachment C — chronology

The following table provides a chronology of significant dates in the consideration of these applications for authorisation. Of note, the Applicants requested to amend the proposed Capacity Framework Arrangements for which authorisation is sought on 14 September 2009 and 26 October 2009.

DATE	ACTION
29 June 2009	Applications for authorisation (A91147-A91149) lodged with the ACCC, including a request for interim authorisation.
30 June 2009	Public supporting submission to the applications received by the ACCC.
8 July 2009	Closing date for submissions from interested parties in relation to the request for interim authorisation.
13 July 2009	Submission from the Applicants in response to a request for further information from the ACCC about the request for interim authorisation.
22 July 2009	The ACCC granted conditional interim authorisation to allow the Applicants to commence the phased-in implementation of the Capacity Framework Arrangements. Interim authorisation did not extend to Section 11 of Part B of the Capacity Framework Arrangements. Interim authorisation subject to a condition that the Applicants execute their respective Capacity Framework Documents by 31 August 2009.
24 July 2009	Further applications for authorisation (A91168-A91169) lodged with the ACCC under section 88(1A) of the Act, including a request for interim authorisation.
	Closing date for submissions from interested parties in relation to the substantive applications for authorisation.
29 July 2009	For the reasons set out in its interim authorisation decision of 22 July 2009, the ACCC granted conditional interim authorisation to applications A91168-A91169.
27 August 2009	Submission received from PWCS in response to interested party submissions on the substantive applications for authorisation. PWCS advises that amendments to the proposed conduct for which authorisation is sough might be required to be lodged with the ACCC in the future.
31 August 2009	The Applicants advised that PWCS and NPC signed the 'PWCS Capacity Framework Documents'.
1 September 2009	ACCC revoked the conditional interim authorisation previously granted in relation to the Capacity Framework Arrangements.
14 September 2009	The Applicants amend the proposed conduct for which authorisation is sought.

17 September 2009	The Applicants advised NCIG and NPC signed the 'NCIG Capacity Framework Documents'. Request for interim authorisation of amended Capacity Framework Arrangements.
21 September 2009	Closing date for submissions from interested parties in relation to the amended Capacity Framework Arrangements.
23 September 2009	The ACCC granted interim authorisation to the amended Capacity Framework Arrangements.
26 October 2009	The Applicants lodge further revisions to the proposed Capacity Framework Arrangements.
28 October 2009	Draft determination issued.
11 November 2009	Closing date for interested parties and the Applicants to request a conference in relation to the draft determination. A conference was not requested.
13 November 2009	Closing date for interested parties to provide a written submission in relation to the draft determination.
24 November 2009	Submissions received from PWCS and NPC in relation to the draft determination and request for information from the ACCC.
26 November 2009	Submission received from NCIG in relation to the draft determination and request for information from the ACCC.
3 December 2009	Submission received from NCIG in response to a request for further information from the ACCC.
9 December 2009	Final determination issued.

Attachment D – PWCS Shareholders

Shareholder name	Share (per cent)
Newcastle Coal Shippers Pty Limited*	36.9491
Coal and Allied Industries Limited	16.0018
RW Miller (Holdings) Limited	13.9982
Tomen Panama Asset Management SA	10.0000
Japan Coal Development Co Ltd	4.1039
Bloomfield Collieries Pty Limited	3.4611
Nippon Steel Australia Pty Ltd	3.3171
Mitsui and Co Ltd	2.8861
Mitsubishi Corporation	1.9862
Sojitz Corporation	1.1745
JFE Steel Corporation	2.1874
Sumitomo Metal Australia Pty Ltd	1.0452
Itochu Coal Resources Australia Pty Limited	1.0171
Kobe Steel Ltd	0.6022
Nisshin Steel Co Ltd	0.2146
Taiheiyo Cement Corporation	0.1759
Kanematsu Corporation	0.1173
Marubeni Corporation	0.1173
Sumitomo Corporation	0.1173
Tokyo Boeki Steel and Materials Ltd	0.1173
Ube Industries Ltd	0.1173
Sumitomo Osaka Cement Co Ltd	0.0879
Idemitsu Kosan Co Ltd	0.0586
Mitsubishi Materials Corporation	0.0586
Nippon Oil Corporation	0.0586
Tokuyama Corporation	0.0293

* Please see over for list of shareholders

Newcastle Coal Shippers Pty Limited

Shareholder name	Share (per cent)
Oakbridge Pty Limited	20.2321
Anglo Coal (Drayton Management) Pty Limited	20.0000
Ulan Coal Mines Limited	15.9742
Coal and Allied Industries Limited	11.4102
Warkworth Coal Sales Limited	11.2681
Port Waratah Coal Services Limited	8.9640
Bloomfield Collieries Pty Limited	2.8170
Camberwell Coal Pty Limited	2.1306
Mt Arthur Coal Pty Limited	1.7479
Muswellbrook Coal Company Limited	1.6902
Powercoal Pty Limited	1.5809
Wambo Coal Pty Limited	1.1268
United Collieries Pty Limited	0.6429
Liddell Coal Marketing Pty Limited	0.1804
Cumnock No.1 Colliery Pty Limited	0.0361
Hunter Valley Coal Corporation Pty Limited	0.0361
Oceanic Coal Australia Limited	0.0361
Bengalla Coal Sales Company Pty Limited	0.0316
Centennial Coal Company Limited	0.0316
Gloucester Coal Ltd	0.0316
Namoi Mining Pty Ltd	0.0316

Attachment E – NCIG shareholders

Shareholder name	Share (per cent)
Hunter Valley Energy Coal Pty Limited	35.47
Peabody Pacific Pty Ltd	17.68
Felix Resources Ltd	15.40
Donaldson Coal Pty Ltd	11.61
Whitehaven Coal Ltd	11.06
Centennial Coal Company Ltd	8.79

<u>Attachment F</u> — the tests for authorisation and other relevant provisions of the Act

Trade Practices Act 1974

Section 90—Determination of applications for authorisations

(1) The Commission shall, in respect of an application for an authorisation:

(a) make a determination in writing granting such authorisation as it considers appropriate; or

(b) make a determination in writing dismissing the application.

(2) The Commission shall take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a State or by any other person.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(4) The Commission shall state in writing its reasons for a determination made by it.

(5) Before making a determination in respect of an application for an authorisation the Commission shall comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(5A) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:

(a) that the provision would result, or be likely to result, in a benefit to the public; and

(b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

(i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and

(ii) the provision were given effect to.

(5B) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:

(a) that the provision has resulted, or is likely to result, in a benefit to the public; and

(b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.

(6) The Commission shall not make a determination granting an authorisation under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct (other than conduct to which subsection 47(6) or (7) applies), unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

(a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;

(b) the proposed covenant were given, and were complied with; or

(c) the proposed conduct were engaged in;

as the case may be.

(7) The Commission shall not make a determination granting an authorisation under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(8) The Commission shall not:

(a) make a determination granting:

(i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or

(ii) an authorisation under subsection 88(7) or (7A) in respect of proposed conduct; or

(iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or

(iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

(b) make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(9) The Commission shall not make a determination granting an authorisation under subsection 88(9) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

(9A) In determining what amounts to a benefit to the public for the purposes of subsection (9):

(a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):

(i) a significant increase in the real value of exports;

(ii) a significant substitution of domestic products for imported goods; and

(b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

Variation in the language of the tests

There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).

The Australian Competition Tribunal (the Tribunal) has found that the tests are not precisely the same. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but the test under section 90(8) is not so limited.[170]

However, the Tribunal has previously stated that regarding the test under section 90(6):

> [the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.[171]

Consequently, when applying either test, the ACCC can take most, if not all, public detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

Given the similarity in wording between sections 90(6) and 90(7), the ACCC considers the approach described above in relation to section 90(6) is also applicable to section 90(7). Further, as the wording in sections 90(5A) and 90(5B) is similar to section 90(6), this approach will also be applied in the test for conduct that may be a cartel provision.

Conditions

The Act allows the ACCC to grant authorisation subject to conditions.[172]

Future and other parties

Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:

- persons who become party to the contract, arrangement or understanding at some time in the future[173]
- persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.[174]

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170 *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] AcompT9 at paragraph 67.

171 Re *Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty Ltd, Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

172 Section 91(3).

173 Section 88(10).

174 Section 88(6).

Six- month time limit

A six-month time limit applies to the ACCC's consideration of new applications for authorisation[175]. It does not apply to applications for revocation, revocation and substitution, or minor variation. The six-month period can be extended by up to a further six months in certain circumstances.

Minor variation

A person to whom an authorisation has been granted (or a person on their behalf) may apply to the ACCC for a minor variation to the authorisation.[176] The Act limits applications for minor variation to applications for:

> …a single variation that does not involve a material change in the effect of the authorisation.[177]

When assessing applications for minor variation, the ACCC must be satisfied that:

- the proposed variation satisfies the definition of a 'minor variation' and
- if the proposed variation is minor, the ACCC must assess whether it results in any reduction to the net benefit of the conduct.

Revoking an authorisation and revocation and substitution

A person to whom an authorisation has been granted may request that the ACCC revoke the authorisation.[178] The ACCC may also review an authorisation with a view to revoking it in certain circumstances.[179]

The holder of an authorisation may apply to the ACCC to revoke the authorisation and substitute a new authorisation in its place.[180] The ACCC may also review an authorisation with a view to revoking it and substituting a new authorisation in its place in certain circumstances.[181]

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175 Section 90(10A)
176 Subsection 91A(1)
177 Subsection 87ZD(1).
178 Subsection 91B(1)
179 Subsection 91B(3)
180 Subsection 91C(1)
181 Subsection 91C(3)