

NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

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

Lodgment and Details

Document Lodged: Affidavit

File Number: ACT 2 of 2020

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

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



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

REGISTRAR

Dated: 30/07/2021 7:11 PM

Important information

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



COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2020

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

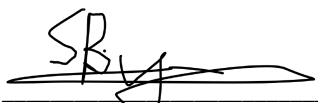
Applicant: Port of Newcastle Operations Pty Limited (ACN 165 332 990)

AFFIDAVIT

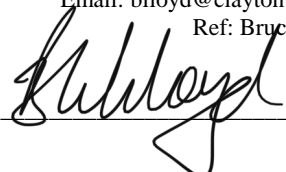
I, Simon Byrnes, of Level 4, 251 Wharf Road, Newcastle in the State of New South Wales, lawyer, affirm:

1. I am the Chief Commercial Officer and General Counsel for Port of Newcastle Operations Pty Limited (**PNO**), the applicant in this proceeding. I am authorised to make this affidavit on PNO's behalf.
2. Except where otherwise indicated, I make this affidavit from my own knowledge acquired from my personal experience, and from my examination of certain documents and records of PNO which are made and kept in the normal course, and for the purposes, of the business of PNO. Where I depose to matters from information or belief, I believe those matters to be true.
3. PNO claims confidentiality over the confidential annexures of this affidavit on the basis that they contain commercially sensitive and confidential information concerning the business of PNO.
4. I have previously affirmed affidavits in these proceedings on 15 March 2021 (**First Affidavit**) and 25 June 2021 (**Second Affidavit**). In this affidavit, I adopt terms defined in my First Affidavit and Second Affidavit.

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Sydney NSW 2000


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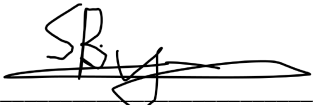
5. I make this third affidavit for the purpose of direction 3 of the directions made by the Tribunal on 18 May 2021 in this proceeding.
6. In this affidavit, I provide facts and information about:
 - a. charges levied by PNO at the Port since 1 July 2014;
 - b. vessel movements, and the total capacity of the shipping channel, at the Port; and
 - c. the possible development of a container terminal by PNO at the Port.

Charges levied by PNO at the Port

7. In my First Affidavit, I described the charges levied by PNO at the Port under the PAMA Act and, with effect from 1 January 2020, pursuant to the long-term pricing deeds between PNO and all coal vessels calling at the Port (**Vessel Agent Deeds**).
8. I am aware that NSWMC has filed a report from Mr Euan Morton in this proceeding, which makes a number of statements in relation to PNO's pricing practices at the Port since May 2014.
9. In the ordinary course of its business, PNO fixes its charges annually for services at the Port, including the NSC and WhC, which are published in PNO's Schedule of Charges on its website. Copies of each of PNO's Schedule of Charges from 1 July 2014 to date appear at **Annexures SB-1 to SB-8** of this affidavit.
10. PNO's Schedules of Charges record the following standard rates for the NSC per gross tonnage charged by PNO (other than under the Vessel Agent Deeds) in respect of coal vessels since 1 July 2014 (ex. GST):

2014	2015	2016	2017	2018	2019	2020	2021
<50,000GT: \$0.4292	\$0.6900	\$0.7169	\$0.7305	\$0.7553	\$0.7809	\$1.0424	\$1.0580
>50,000GT: \$0.9656							
Max. NSC: \$45,633.68							


11. I note that the NSC rates for 2014 recorded in PNO's 2015 Schedule of Charges (annexed and marked **SB-2**) are exclusive of GST, whereas the NSC rates recorded in PNO's 2014 Schedule of Charges (annexed and marked **SB-1**) include GST.





12. As I explained in my First Affidavit (at [15]-[16]), from 1 January 2015, PNO removed the two-tiered NSC arrangement that was previously in place at the Port for coal vessels, depending on the GT of the vessel, and replaced this with a flat rate NSC per GT. The new flat rate was announced on 1 July 2014, and was effective from 1 January 2015.
13. PNO entered into Vessel Agent Deeds with vessel agents on behalf of all coal vessels calling at the Port in around March 2020, with legal effect from 1 January 2020. Since that time, PNO has entered into one further Vessel Agent Deed with a modified initial term to coincide with the expiry of the other Vessel Agent Deeds.
14. The template vessel agent deed, on which all Vessel Agent Deeds agreed between PNO and agents are based, was first published on PNO's website in around December 2019. The link to the template vessel agent deed has, since around that time, been contained in PNO's Schedule of Service Charges immediately adjacent to the link to the template producer deed.
15. The Vessel Agent Deeds, which apply in respect of all coal vessels calling at the Port, are all in identical terms (save as to party names, and the Initial Term of the recent deed described at paragraph 13 above) and are in the form of the template vessel agent deed published on PNO's website and annexed and marked "GS-2" to the affidavit of Ms Sainsbury affirmed 15 March 2021 in this proceeding.
16. Clause 7(a) of the Vessel Agent Deeds provides for an annual adjustment to the contractual NSC by the amount which is the greater of 4% or the consumer price index number published by the Australian Statistician for Australia-All Groups (**CPI**). Clause 7(b) also allows for increases to the contractual NSC where such increase is greater than 5% and consistent with the pricing principles in clause 4.2 of Schedule 3 to the Vessel Agent Deed.
17. Schedule 2 to the Vessel Agent Deeds provides the following illustrative example of the adjusted NSC applying cl 7(a) if the increase in CPI for the relevant year is less than 4% (with no other adjustments under cl 7):

Scenario	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
CPI increase	2.37%	2.37%	2.37%	2.37%	2.37%	2.39%	2.50%	2.50%	2.50%	2.50%
NSC + 4%	\$0.8121	\$0.8446	\$0.8784	\$0.9135	\$0.9501	\$0.9881	\$1.0276	\$1.0687	\$1.1115	\$1.1559

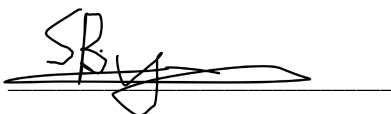




18. PNO has not exercised a contractual right under cl 7(b) to increase the NSC for any coal vessel operator who has entered into a Vessel Agent Deed with PNO. The only adjustment that PNO has made to the NSC for all coal vessel operators under the Vessel Agent Deeds since 1 January 2020 is the annual adjustment contemplated by cl 7(a), consistent with the example in Schedule 2 to the Vessel Agent Deeds and extracted at paragraph 17 above.
19. Since the commencement of PNO's long term lease over the Port in 2014, PNO has not discriminated on price or non-price terms between:
 - a. coal vessel operators with respect to the NSC payable for the use of the channels and berths at the Port; and
 - b. coal producers whose coal is exported through the Port in respect of any Port charges, including the WhC payable by the coal producers in respect of the availability of a site at which stevedoring operations may be carried out.
20. Division 6A of the PAMA Act provides that port infrastructure charges may be levied by a port authority to fund investment (and return on investment) in port infrastructure projects, being the acquisition or development of land or the provision of services and facilities by the port operator, either:
 - a. at the port in connection with the operation of the port; or
 - b. outside the port in connection with the transport of cargo to or from the port or the storage, handling or distribution of cargo transported to or from the port.
21. I am aware that port infrastructure charges have never been levied at the Port by PNO, or the State as the predecessor port authority, under Div 6A of the PAMA Act which was introduced in 2012.
22. Further, under the terms of its lease over the Port, PNO must not carry out any development that involves the imposition of port infrastructure charges unless the development has the approval of the relevant State Minister in writing. No such approval has been sought by PNO from, or given by, the relevant State Minister.

Absence of capacity constraint at the Port

23. I am aware that Mr Dave Poddar has affirmed an affidavit in this proceeding dated 25 June 2021, in which Mr Poddar deposes, by reference to statements published by PNO on its website, to the capacity of the shipping channel at the Port.

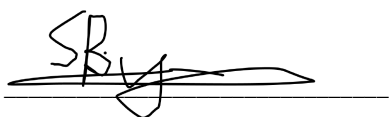


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A handwritten signature in black ink, appearing to be 'K. B. J.', written over a horizontal line.

24. Under the terms of its lease, PNO is required to prepare a development plan to assist the State, Government agencies, and the local community to understand its intentions in relation to the development of the Port. PNO's current development plan (**Port Master Plan 2040**) was published in 2018, and is available on PNO's website at: <https://www.portofnewcastle.com.au/master-plan-2040-2/>. A copy also appears at Annexure DP-2 to Mr Poddar's affidavit.
25. The Port Master Plan 2040 states (at page 30) that the shipping channel at the Port can accommodate the safe movement of over 10,000 vessels per annum, and that, as at 2018, "the Channel is currently operating at less than 50% of its capacity". At page 29, the Port Master Plan 2040 lists the following constraints which can limit the size of vessels entering and departing the Port:
- 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.
26. PNO publishes annual trade reports on its website at <https://www.portofnewcastle.com.au/about-our-port/#facts-and-figures>, which include statistics on ship visits at the Port, coal export destinations and volumes, and the financial performance of the Port. PNO's most recent annual trade report (**2020 Trade Report**) states at page 2 that:
- a. 2,205 ship visits were made at the Port in the calendar year 2020, of which 1,754 (around 80%) were visits by coal ships. One vessel 'visit' comprises approximately two vessel 'movements' (that is, one movement in, and one movement out of, the Port); and
 - b. 96% of total trade through the Port in the calendar year 2020 related to coal (from which PNO derives more than 70% of its revenues).



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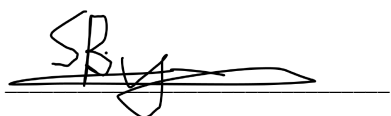


Handwritten signature of A. B. J. on a horizontal line.

27. A copy of the 2020 Trade Report is annexed and marked **SB-9**.
28. The ship visits reported in PNO's 2020 Trade Report record that, in 2020, the shipping channel at the Port operated at less than 50% of its capacity as estimated in the PNO Master Plan 2040.

Development of a Multi-purpose Deepwater Terminal at the Port

29. In his affidavit, Mr Poddar cites extracts from a number of public statements made by PNO in relation to the possible development of a dedicated, high volume container terminal, known as the Multi-purpose Deepwater Terminal (**MDT**), at the Port.
30. In May 2013, in connection with the privatisation of Port Kembla and Port Botany, the State of NSW entered into agreements, known as Port Commitment Deeds (**PCDs**), with the incoming operator of Port Kembla and Port Botany, NSW Ports Operations Hold Co Pty Limited (and two of its subsidiaries) (together, **NSW Ports**) for a term of 50 years (**Port Botany and Port Kembla PCDs**). The Port Botany and Port Kembla PCDs oblige the State of NSW to compensate NSW Ports for containers diverted from Port Botany or Port Kembla to a container terminal at the Port of Newcastle (if one exists) above a specified threshold amount (which the capacity of the MDT substantially exceeds). Separately, in connection with the privatisation of the Port of Newcastle, the State of NSW and PNO entered into an agreement, known as the **Port of Newcastle PCD**. The Port of Newcastle PCD requires PNO to reimburse the State of NSW for any compensation paid under the Port Botany and Port Kembla PCDs to NSW Ports in respect of container traffic at the Port of Newcastle.
31. Although PNO has publicly stated its ambition to develop the MDT at the Port, PNO cannot proceed with the MDT until the restrictions under the PCDs are removed.
32. PNO's five-year capital expenditure forecast (**Capex Plan**) as at March 2021 was produced to the Tribunal on 16 June 2021 in this proceeding in response to the notice under ss 90(6)(c) and 102(1) of the CCA dated 2 June 2021, and is the same document provided by PNO to vessel agents under the Vessel Agent Deeds in about March 2021. A copy of the Capex Plan appears at **Confidential Annexure SB-10**.
33. Consistent with the position I have described above at paragraph 30, the Capex Plan does not include provision for capital expenditure on any future channel improvements or future berths related to the MDT. Further, as far as am I am aware, no such capital expenditure





will occur in respect of construction of the MDT by PNO, a related body corporate of PNO, or its shareholders, until the restrictions in the PCDs are removed.

Clarifications to my First Affidavit

34. In the course of reviewing my First Affidavit for the purpose of this affidavit, I have observed that the references to "2019" in the final two lines of paragraph 30 should be to "2020" as corrected below:

...September ~~2020-2019~~, and a further decline of [CONFIDENTIAL TO PNO] 73% from October to November ~~2020-2019~~:

35. In my First Affidavit, I provided (at [25]-[28]) facts and information regarding the costs incurred by coal producers and coal purchasers relative to charges at the Port. This included a cost breakdown analysis (extracted at [27]) for one tonne of coal exported through the Port.

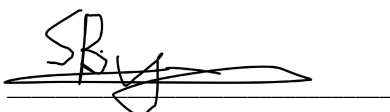
36. As I explained at [9] of my First Affidavit, the NSC is fixed and payable according to the gross tonnage (**GT**) of a vessel that enters the Port and uses the shipping channel. GT refers to the capacity of the vessel using the channel, rather than the volume of coal or other cargo which might be loaded onto the vessel during its visit at the Port. The GT (or capacity) of a vessel is determined by reference to the total internal volume of the vessel, expressed in cubic metres.

37. I am aware that one vessel GT (cubic metre of volume) can accommodate around 1.56 tonnes (mass) of coal, owing to factors including the density of coal. That is, the NSC is levied at around per 1.56 tonnes of coal.

38. The cost breakdown at [25]-[28] of my First Affidavit expresses the NSC on a rate per revenue tonne (**RT**) basis, being \$0.44/RT as opposed to \$0.69/GT as at 2015, for the purpose of explaining the relative costs incurred by producers and purchasers per mass tonne of coal exported through the Port.

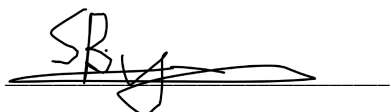
39. In my First Affidavit, I provided (at [36]) facts and information in relation to revenues reported by Glencore for the year ended 31 December 2019 by reference to publicly available sources.

40. I have reviewed the financial reports published by several of the coal producers on whose behalf authorisation is sought by NSWMC:





- a. **BHP Group Ltd**, in its 2020 annual report published at https://www.bhp.com/-/media/documents/investors/annual-reports/2020/200915_bhpannualreport2020.pdf states (at page 106, annexed and marked **SB-11**) that revenues from its New South Wales Energy Coal operations were US\$972 million for the year ended 30 June 2020;
- b. **Centennial Coal Company Pty Limited**, in its 2019 sustainability report published at <https://www.centennialcoal.com.au/wp-content/uploads/2021/01/Sustainability-Report-2019-Web-Email-1.pdf> states (at page 17, annexed and marked **SB-12**) that sales revenues from its total operations in Australia were A\$1.107 billion (A\$308 million EBITDA) for the year ended 31 December 2019, with 11.8 million tonnes of coal sold in that period;
- c. **Glencore plc**, in its 2020 annual report published at https://www.glencore.com/dam/jcr:e03a8caf-f2aa-46ad-81c5-821719caf5bf/Glencore_AR20_Interactive.pdf states (at pages 63-64 and 67, annexed and marked **SB-13**) that revenues from its thermal coal operations in Australia were US\$4.031 billion (adjusted EBITDA US\$799 million) for the year ended 31 December 2020, with 66.7 million tonnes of thermal coal produced in Australia during that period;
- d. **Peabody Energy Corporation**, in its 2020 annual report published at https://www.peabodyenergy.com/Peabody/media/MediaLibrary/Investor%20Info/Annual%20Reports/2020-Annual-Report_2.pdf?ext=.pdf states (at page 5, annexed and marked **SB-14**) that it sold 19 million tons of thermal coal from Australian mines in the year ended 31 December 2020;
- e. **Whitehaven Coal Mining Ltd**, in its 2020 annual report published at <https://whitehavencoal.com.au/wp-content/uploads/2020/09/Whitehaven-Coal-Annual-Report-2020.pdf> states (at page 72, annexed and marked **SB-15**) that its revenues for thermal coal production were around A\$1.402 billion for the year ended 30 June 2020; and
- f. **Yancoal Australia Ltd**, in its 2020 annual report published at <https://www.yancoal.com.au/content/Document/2204466.pdf> states (at page 59, annexed and marked **SB-16**) that its total ex-mine revenues for thermal coal production were A\$2.535 billion for the year ended 31 December 2020.



41. Further, I have reviewed NSWMC's website at <https://www.nswmining.com.au/our-leadership> (a screenshot of which is annexed and marked **SB-17**), which states that NSWMC's Board of Directors comprises:
- a. Mr Tony McPaul, Regis Resources Limited, Chair;
 - b. Mr Mick Buffier, Glencore, Deputy Chair;
 - c. Mr Stephen Galilee, NSWMC, Director;
 - d. Mr Paul Flynn, Whitehaven Coal, Director;
 - e. Mr Lawrie Conway, Evolution Mining, Director;
 - f. Ms Katie Brassil, Centennial Coal, Director;
 - g. Mr David Moul, Yancoal, Director; and
 - h. Ms Christina Langby, NSWMC, Company Secretary.
42. I am aware that Regis Resources and Evolution Mining are gold producers.
43. I have also reviewed a disclosure of material industry association memberships dated 2019 published on BHP's website at https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/200918_bhp-membership-disclosure-2019.pdf?la=en, a copy of which is annexed and marked **SB-18**. That document (at page 3) states that membership fees for NSWMC are "production-based", and that BHP's base membership fee for 2019 ranged from US\$500,000 to US\$1 million. Glencore also publishes a *Review of our industry organisations' positions on climate change* on its website at <https://www.glencore.com/dam/jcr:c0a28982-8f4e-4957-9096-fe2769e2fed1/2020-D-Membership-review-final.pdf> which, at page 8 (annexed and marked **SB-19**), records US\$561,222 in membership fees paid to NSWMC in 2019.
44. I have formed the view from my dealings and correspondence that the coal producers with whom I entered into negotiations in relation to the Pro-forma Producer Deed (and describe at [33]-[79] of my First Affidavit) do not intend to participate in further bilateral negotiations with PNO in relation to that Deed, as long as NSWMC (and the coal producers on whose behalf authorisation was sought) are authorised to engage in collective negotiations with PNO.
45. On 14 July 2021, PNO's CEO, Mr Carmody, received a letter from NSWMC's CEO, Mr Galilee, also signed by 9 of the 11 members on whose behalf NSWMC sought authorisation,





which stated that, "[b]ilateral negotiations previously undertaken with the Port of Newcastle have failed" and that "collective negotiation under the collective bargaining authorisation granted by the ACCC is the most pragmatic and efficient way to reach agreeable terms and conditions". A copy of this letter is annexed and marked **SB-20**.

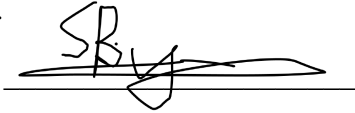
AFFIRMED by the deponent
at Newcastle in New South Wales
on 30 July 2021

Before me:



SOLICITOR, NEW SOUTH
WALES.

Signature of deponent



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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-1

This is the Annexure marked "SB-1" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:



.....

Witness



Port of Newcastle Operations Pty Ltd

**(ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust (ABN
97 539 122 070) (trading as Port of Newcastle)**

Schedule of Port Pricing

Effective from 1 July 2014

Contact details:

Port of Newcastle
6 Newcomen Street,
Newcastle NSW 2300 Australia
PO Box 790 Newcastle NSW 2300 Australia

Tel: (02) 4908 8222

Port of Newcastle Schedule of Port Pricing – Terms & Definitions

Set out below is the schedule of Port Pricing for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (“**Port of Newcastle**”) for the period from 1 July 2014.

Types of Charges

Navigation Services Charge

The Navigation Services Charge is levied by Port Of Newcastle on vessels at the time of port entry for the general use of the Port and its infrastructure.

- **Payer** - Ship Owner (usually via Shipping Agent on port entry)
- **Calculation** - Calculated on basis of vessel's Gross Tonnage (**GT**) for each visit for all vessels greater than 600 GT.

Note: *A removal to the offshore anchorage area followed by a subsequent re-entry to the port will be subject to an additional Navigation Services Charge.*

Wharfage Charge

Wharfage charge is levied by Port of Newcastle for the provision of the following services and facilities:

Berth-specific Dredging & Surveying	Wharf Structure
Offices	Workers' Amenities
Wetland (mooring)	Pavements
Wharf & Area Maintenance	Wharf Management & Patrol
Wharf Sheds	Serviced Land
Utilities (excluding services to ship)	

- Wharfage is charged for the availability of a site at which stevedoring operations may be carried out.
- Wharfage is levied per revenue tonne or container of cargo traded. The charge is levied on the cargo owner.
 - **Payer** - Cargo owner (can be via Shipping Agent)
 - **Calculation:**
 - **Non-containerised Cargo** - on basis of greater of weight or volume and berth used regardless of type of commodity.
 - **Containerised Cargo** - on basis of size of container regardless of type or source and destination of cargo.

Note: *A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of cargo quantity.*

Site Occupation Charge

Site Occupation Charge is levied by Port of Newcastle for the occupation of all or part of a site. The charge is levied per hour (or part thereof) for which a berth is reserved or occupied and is charged to the site occupant.

- **Payer** - Site Occupant (usually Stevedore)
- **Calculation** - Site Occupation charge commences from tie up of a vessel at a berth until departure of the vessel from the berth. This Site Occupation charge will be charged per hour or part thereof.

Ship Utility Charge

The Ship Utility Charge is levied by Port of Newcastle as a fixed fee on vessels for the supply and provision of facilities and services to supply water, electricity and telephones to vessels.

- **Payer** - Ship owner (usually via Shipping Agent).
- **Calculation** - Per visit to Port Operator's berths where this service is provided.

Port Pricing Schedule

Port of Newcastle's Port Prices are inclusive of GST and are subject to annual CPI increases each July.

Navigation Service Charge Rates

Vessel Gross Tonnage (GT)	Rate
Vessels over 600 GT and up to 50,000 GT	\$0.4721 per GT
Vessels over 50,000 GT	\$0.4721 per GT for the first 50,000 GT plus \$1.0622 per GT thereafter
Maximum Charge	\$50,197.05 per visit

Navigation Services Charge for Cruise Ships – the following Navigation Services Charge applies for Cruise Ships:

- The Maiden visit by a Cruise Ship attracts a 100% concession on Navigation Services Charge;
- All other visits by a Cruise Ship visit attracts a 35% concession on Navigation Services Charge; and
- Where a cruise operator commits at the start of a financial year to 10 or more Cruise Ship visits in that financial year then each visit will attract a 50% concession on Navigation Services Charge.

Port Security Charge – An additional component of the Navigation Services Charge is the port security charge. This component of the charge in the sum of \$510.13 will be applied to each trading vessel entering the port. This levy is required to cover costs arising from implementing the *Australian Maritime Transport and Offshore Facilities Security Act & Regulation 2003*.

Ships Utility Charge

Per visit for non-coal vessels	\$197.51
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Site Occupation Charge Rates

Berth	Rate / hour
Channel Berth – Cruise Vessels	\$232.04
Channel Berth – All Other Vessels	\$69.61
Dyke 1 and 2	\$69.61
Kooragang 2, 2.5 and 3	\$263.68
Mayfield 4	\$263.68
Western Basin 3 and 4	\$263.68
Tie-up rate	\$58.01

- Note:** Three (3) free days cargo storage will be provided prior to loading of export cargo and/or three (3) days after discharge of import cargo **subject to availability of wharf space at the time required**. The hourly rate will apply on completion of the three days.
- Note:** **Tie Up Berths** – When a vessel requests a tie up berth which is unavailable, then the vessel may be allowed to use another berth provided it does not interfere with the turnaround of any other vessel.
- Note:** **Partial Use of Berths** – Where the full berth is not being utilised the rate charged will be at the percentage utilised as determined by Port Operator. This will normally apply to cargo storage only after the ‘three (3) free days’ storage period.

Wharfage Charge Rates**Non- Containerised**

Berth	Per Revenue Tonne
Dyke 1	\$1.74
Dyke 2	\$0.92
Kooragang 2, 2.5 and 3	\$1.87
Mayfield 4	\$1.87
Western Basin 3 and 4	\$1.87
Eastern Basin 1 and 2	\$0.0722
Dyke 4 and 5	\$0.0722
Kooragang 4, 5, 6, 7, 8, 9, and 10	\$0.0722
BHP 6	\$0.0722

Containerised

	Per 20' Container	Per 40' Container
Full	\$57.55	\$115.10
Empty	\$10.55	\$21.09

Container wharfage rates apply to conventional containers or full size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

Kooragang 2 Crane Hire

Commodity	Per Revenue Tonne
Fertiliser(s)	\$3.68
Soda Ash	\$3.68
Boutique Coal	\$3.68
Grain/Meals – import	\$3.68
Grain/Meals – export	\$0.23
Wheat	\$0.23
Woodchip	\$0.45

Terms of Trade

Port of Newcastle's terms of trade require that payment is made within seven days.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-2

This is the Annexure marked "SB-2" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me

.....
Witness

A handwritten signature in black ink, appearing to read 'Simon Byrnes', is written over a horizontal dotted line. The signature is cursive and extends below the line.



Port of Newcastle Operations Pty Ltd

**(ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust (ABN 97 539 122 070)
(trading as Port of Newcastle)**

Schedule of Port Pricing

Effective from 1 January 2015

Port of Newcastle Schedule of Port Pricing

Set out below is the schedule of Port Pricing for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (“**Port of Newcastle**”) for the period from 1 January 2015 to 31 December 2016.

All prices are set out in this schedule are in Australian dollars and are exclusive of GST.

Types of Charges

Navigation Services Charge

The Navigation Services Charge is levied by Port Of Newcastle on vessels at the time of port entry for the general use of the Port and its infrastructure.

- **Payer** - Ship Owner (usually via Shipping Agent on port entry)
- **Calculation** - Calculated on basis of vessel's Gross Tonnage (**GT**) for each visit for all vessels greater than 600 GT.

Note: A removal to the offshore anchorage area followed by a subsequent re-entry to the port will be subject to an additional Navigation Services Charge.

Wharfage Charge

Wharfage charge is levied by Port of Newcastle for the provision of the following services and facilities:

Berthing Box	
Berth-specific Dredging & Surveying	Wharf Structure
Site Offices	Workers' Amenities
Utilities (excluding services to ship)	Pavements
Wharf & Area Maintenance	Wharf Management & Patrol
Wharf Sheds	Serviced Land

- Wharfage is charged for the availability of a site at which stevedoring operations may be carried out.
- The amount of the wharfage charge reflects the level of facilities or services provided at the particular berth.
- Wharfage is levied per revenue tonne or container of cargo traded. The charge is levied on the cargo owner.
 - **Payer** - Cargo owner (can be via Shipping Agent)
 - **Calculation:**
 - **Non-containerised Cargo** - on basis of greater of weight or volume and berth used regardless of type of commodity.
 - **Containerised Cargo** - on basis of size of container regardless of type or source and destination of cargo.

Note: A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of cargo quantity.

Site Occupation Charge

Site Occupation Charge is levied by Port of Newcastle for the occupation of all or part of a site. The charge is levied per hour (or part thereof) for which a berth is reserved or occupied and is charged to the site occupant.

- **Payer** - Site Occupant (usually Stevedore)
- **Calculation** - Site Occupation charge commences from tie up of a vessel at a berth until departure of the vessel from the berth. This Site Occupation charge will be charged per hour or part thereof.

Ship Utility Charge

The Ship Utility Charge is levied by Port of Newcastle as a fixed fee on vessels for the supply and provision of facilities and services to supply water, electricity and telephones to vessels.

- **Payer** - Ship owner (usually via Shipping Agent).

Calculation - Per visit to Port Operator's berths where this service is provided.

Port Pricing Schedule

Port of Newcastle's Port Prices are exclusive of GST.

Navigation Service Charge Rates

From 1 January 2015, Port of Newcastle will charge a separate Navigation Services Charge for:

- vessels entering port to load coal at any of the dedicated coal export berths being Dyke 4 and 5, Kooragang 4, 5, 6, 7, 8, 9 and 10 ("Coal Vessels"); and
- all other vessels entering the port ("Non-Coal Vessels").

Vessel Gross Tonnage (GT)	Rate		
	2014	2015	2016
Non Coal Vessels			
Non-Coal Vessels from 601 GT to 50,000 GT	\$0.4292 per GT	\$0.4459 per GT	\$0.4633 per GT
Non-Coal Vessels over 50,000 GT	\$0.4292 per GT for the first 50,000 GT plus \$0.9656 per GT thereafter. Maximum charge \$45,633.68	\$0.4459 per GT for the first 50,000 GT plus \$1.0033 per GT thereafter.	\$0.4633 per GT for the first 50,000 GT plus \$1.0424 per GT thereafter.
Coal Vessels			
Coal vessels over 600 GT	\$0.4292 for the first 50,000 GT plus \$0.9656 per GT thereafter. Maximum charge \$45,633.68 per visit	\$0.6900 per GT	\$0.7169 per GT

Navigation Services Charge for Cruise Ships

Special arrangements may apply to cruise vessels. Please contact us for further details regarding cruise pricing.

Port Security Charge

An additional component of the Navigation Services Charge is the Port Security Charge. This levy is required to cover costs arising from implementing the *Australian Maritime Transport and Offshore Facilities Security Act & Regulation 2003*. This component of the charge will be applied to each trading vessel entering the port.

	2014	2015	2016
Port Security Charge	\$463.75	\$481.84	\$500.63

Ships Utility Charge

Per visit for Non-Coal vessels	\$179.55	\$186.56	\$193.83
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Site Occupation Charge Rates

Berth	Rate / hour		
	2014	2015	2016
Channel Berth – Cruise Vessels	\$210.95	\$219.17	\$227.72
Channel Berth – Non-Cruise Vessels	\$63.28	\$65.75	\$68.31
Dyke 1 and 2	\$63.28	\$65.75	\$68.31
Kooragang 2, 2.5 and 3	\$239.71	\$249.06	\$258.77
Mayfield 4	\$239.71	\$249.06	\$258.77
Western Basin 3 and 4	\$239.71	\$249.06	\$258.77
Tie-up rate	\$52.74	\$54.79	\$56.93

Note:

- Three (3) free days cargo storage will be provided prior to loading of export cargo and/or three (3) days after discharge of import cargo **subject to availability of wharf space at the time required**. The hourly rate will apply on completion of the three days.
- **Tie Up Berths** – When a vessel requests a tie up berth which is unavailable, then the vessel may be allowed to use another berth provided it does not interfere with the turnaround of any other vessel.
- **Partial Use of Berths** – Where the full berth is not being utilised the rate charged will be at the percentage utilised as determined by Port Operator. This will normally apply to cargo storage only after the ‘three (3) free days’ storage period.

Wharfage Charge Rates

Non- Containerised

Berth	Per Revenue Tonne		
	2014	2015	2016
Dyke 1	\$1.58	\$1.64	\$1.70
Dyke 2	\$0.84	\$0.87	\$0.90
Kooragang 2, 2.5 and 3	\$1.70	\$1.77	\$1.84
Mayfield 4	\$1.70	\$1.77	\$1.84
Western Basin 3 and 4	\$1.70	\$1.77	\$1.84
Eastern Basin 1 and 2	\$0.0656	\$0.0682	\$0.0709
Dyke 4 and 5	\$0.0656	\$0.0682	\$0.0709
Kooragang 4, 5, 6, 7, 8, 9, and 10	\$0.0656	\$0.0682	\$0.0709
BHP 6	\$0.0656	\$0.0682	\$0.0709

Containerised

Berth	Per 20'Container			Per 40'Container		
	2014	2015	2016	2014	2015	2016
Full	\$52.32	\$54.36	\$56.48	\$104.64	\$108.72	\$112.96
Empty	\$9.59	\$9.96	\$10.35	\$19.17	\$19.92	\$20.70

Container wharfage rates apply to conventional containers or full size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

Kooragang 2 Crane Hire

Commodity	Per Revenue Tonne		
	2014	2015	2016
Fertiliser(s)	\$3.35	\$3.48	\$3.62
Soda Ash	\$3.35	\$3.48	\$3.62
Boutique Coal	\$3.35	\$3.48	\$3.62
Grain/Meals – import	\$3.35	\$3.48	\$3.62
Grain/Meals – export	\$0.21	\$0.22	\$0.23
Wheat	\$0.21	\$0.22	\$0.23
Woodchip	\$0.41	\$0.43	\$0.45

Crane hire is not a statutory charge. The provision of the crane at Kooragang 2 may be subject to review from time to time. The result of such a review could result in changes to the infrastructure that is provided and to charges for its use.

Terms of Trade

Port of Newcastle's terms of trade require that payment is made within fourteen days of departure of the vessel or seven days from delivery of the invoice, whichever is the earlier.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-3

This is the Annexure marked "SB-3" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to read 'Simon Byrnes', written over a horizontal dotted line. The signature is cursive and extends below the line.

Witness



Port of Newcastle Schedule of Port Pricing

**Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust
(ABN 97 539 122 070) (trading as Port of Newcastle)**

Effective from 1 January 2016

Port of Newcastle Schedule of Port Pricing

Set out below is the schedule of Port Pricing for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (“Port of Newcastle”) for the period from 1 January 2015 to 31 December 2016.

All prices are set out in this schedule are in Australian dollars and are exclusive of GST.

Types of Charges

Navigation Services Charge

The Navigation Services Charge is levied by Port of Newcastle on vessels at the time of port entry for the general use of the Port and its infrastructure.

- **Payer** - Ship Owner (usually via Shipping Agent on port entry)
- **Calculation** - Calculated on basis of vessel's Gross Tonnage (**GT**) for each visit for all vessels greater than 600 GT.

Note: A removal to the offshore anchorage area followed by a subsequent re-entry to the port will be subject to an additional Navigation Services Charge.

Wharfage Charge

Wharfage charge is levied by Port of Newcastle for the provision of the following services and facilities:

Berthing Box	
Berth-specific Dredging & Surveying	Wharf Structure
Site Offices	Workers' Amenities
Utilities (excluding services to ship)	Pavements
Wharf & Area Maintenance	Wharf Management & Patrol
Wharf Sheds	Serviced Land

- Wharfage is charged for the availability of a site at which stevedoring operations may be carried out.
- The amount of the wharfage charge reflects the level of facilities or services provided at the particular berth.
- Wharfage is levied per revenue tonne or container of cargo traded. The charge is levied on the cargo owner.
 - **Payer** - Cargo owner (can be via Shipping Agent)
 - **Calculation:**
 - **Non-containerised Cargo** - on basis of greater of weight or volume and berth used regardless of type of commodity.
 - **Containerised Cargo** - on basis of size of container regardless of type or source and destination of cargo.

Note: A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of cargo quantity.

Site Occupation Charge

Site Occupation Charge is levied by Port of Newcastle for the occupation of all or part of a site. The charge is levied per hour (or part thereof) for which a berth is reserved or occupied and is charged to the site occupant.

- **Payer** - Site Occupant (usually Stevedore)
- **Calculation** - Site Occupation charge commences from tie up of a vessel at a berth until departure of the vessel from the berth. This Site Occupation charge will be charged per hour or part thereof.

Ship Utility Charge

The Ship Utility Charge is levied by Port of Newcastle as a fixed fee on vessels for the supply and provision of facilities and services to supply water and electricity to vessels.

- **Payer** - Ship owner (usually via Shipping Agent).

Calculation - Per visit to Port Operator’s berths where this service is provided.

Port Pricing Schedule

Port of Newcastle’s Port Prices are exclusive of GST.

Navigation Service Charge Rates

Vessel Gross Tonnage (GT)	Rate	
	2015	2016
Non Coal Vessels		
Non-Coal Vessels from 601 GT to 50,000 GT	\$0.4459 per GT	\$0.4633 per GT
Non-Coal Vessels over 50,000 GT	\$0.4459 per GT for the first 50,000 GT plus \$1.0033 per GT thereafter.	\$0.4633 per GT for the first 50,000 GT plus \$1.0424 per GT thereafter.
Coal Vessels		
Coal vessels over 600 GT	\$0.6900 per GT	\$0.7169 per GT

Definitions:

- Coal Vessel – a vessel entering port to load coal at any of the dedicated coal export berths being Dyke 4 and 5, Kooragang 4, 5, 6, 7, 8, 9 and 10; and
- Non-Coal Vessel – all other vessels entering the port.

Navigation Services Charge for Cruise Ships

Special arrangements may apply to cruise vessels. Please contact us for further details regarding cruise pricing.

Port Security Charge

An additional component of the Navigation Services Charge is the Port Security Charge. This levy is required to cover costs arising from implementing the *Australian Maritime Transport and Offshore Facilities Security Act & Regulation 2003*. This component of the charge will be applied to each trading vessel entering the port.

	2015	2016
Port Security Charge	\$481.84	\$500.63

Ships Utility Charge

	2015	2016
Per visit for Non-Coal vessels	\$186.56	\$193.83

Site Occupation Charge Rates

Berth	Rate/hour	
	2015	2016
Channel Berth – Cruise Vessels	\$219.17	\$227.72
Channel Berth – Non-Cruise Vessels	\$65.75	\$68.31
Dyke 1 and 2	\$65.75	\$68.31
Kooragang 2, 2.5 and 3	\$249.06	\$258.77
Mayfield 4	\$249.06	\$258.77
Western Basin 3 and 4	\$249.06	\$258.77
Tie-up rate	\$54.79	\$56.93

Note:

- Three (3) free days cargo storage will be provided prior to loading of export cargo and/or three (3) days after discharge of import cargo **subject to availability of wharf space at the time required**. The hourly rate will apply on completion of the three days.
- **Tie Up Berths** – When a vessel requests a tie up berth which is unavailable, then the vessel may be allowed to use another berth provided it does not interfere with the turnaround of any other vessel.
- **Partial Use of Berths** – Where the full berth is not being utilised the rate charged will be at the percentage utilised as determined by Port Operator. This will normally apply to cargo storage only after the ‘three (3) free days’ storage period.

Wharfage Charge Rates

Non-Containerised

Berth	Per Revenue Tonne	
	2015	2016
Dyke 1	\$1.64	\$1.70
Dyke 2	\$0.87	\$0.90
Kooragang 2, 2.5 and 3	\$1.77	\$1.84
Mayfield 4	\$1.77	\$1.84
Western Basin 3 and 4	\$1.77	\$1.84
Eastern Basin 1 and 2	\$0.0682	\$0.0709
Dyke 4 and 5	\$0.0682	\$0.0709
Kooragang 4, 5, 6, 7, 8, 9, and 10	\$0.0682	\$0.0709
BHP 6, and Mayfield 7 (when constructed)	\$0.0682	\$0.0709

Containerised

Berth	Per 20’Container		Per 40’Container	
	2015	2016	2015	2016
Full	\$54.36	\$56.48	\$108.72	\$112.96
Empty	\$9.96	\$10.35	\$19.92	\$20.70

Container wharfage rates apply to conventional containers or full size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

Kooragang 2 Crane Hire

Commodity	Per Revenue Tonne	
	2015	2016
Fertiliser(s)	\$3.48	\$3.62
Soda Ash	\$3.48	\$3.62
Boutique Coal	\$3.48	\$3.62
Grain/Meals – import	\$3.48	\$3.62
Grain/Meals – export	\$0.22	\$0.23

Crane hire is not a statutory charge. The provision of the crane at Kooragang 2 may be subject to review from time to time. The result of such a review could result in changes to the infrastructure that is provided and to charges for its use.

Terms of Trade

Port of Newcastle's terms of trade require that payment is made within fourteen days of departure of the vessel or seven days from delivery of the invoice, whichever is the earlier.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-4

This is the Annexure marked "SB-4" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'S. Byrnes', written over a dotted line. The signature is cursive and extends below the line.

Witness



Port of Newcastle Schedule of Port Pricing

**Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust
(ABN 97 539 122 070) (trading as Port of Newcastle)**

Effective from 1 January 2017

Port of Newcastle Schedule of Port Pricing

Set out below is the schedule of Port Pricing for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port Of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (“Port of Newcastle”) for the period from 1 January 2017 to 31 December 2017.

All prices are set out in this schedule are in Australian dollars and are exclusive of GST.

Types of Charges

Navigation Services Charge

The Navigation Services Charge is levied by Port of Newcastle on vessels at the time of port entry for the general use of the Port and its infrastructure.

- **Payer** - Ship Owner (usually via Shipping Agent on port entry)
- **Calculation** - Calculated on basis of vessel's Gross Tonnage (**GT**) for each visit for all vessels greater than 600 GT.

Note: A removal to the offshore anchorage area followed by a subsequent re-entry to the port will be subject to an additional Navigation Services Charge.

Wharfage Charge

Wharfage charge is levied by Port of Newcastle for the provision of the following services and facilities:

Berthing Box	
Berth-specific Dredging & Surveying	Wharf Structure
Site Offices	Workers' Amenities
Utilities (excluding services to ship)	Pavements
Wharf & Area Maintenance	Wharf Management & Patrol
Wharf Sheds	Serviced Land

- Wharfage is charged for the availability of a site at which stevedoring operations may be carried out.
- Wharfage is levied per revenue tonne or container of cargo traded. The charge is levied on the cargo owner.
 - **Payer** - Cargo owner (can be via Shipping Agent)
 - **Calculation:**
 - **Non-containerised Cargo** - on basis of greater of weight or volume and berth used regardless of type of commodity.
 - **Containerised Cargo** - on basis of size of container regardless of type or source and destination of cargo.

Note: A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of cargo quantity.

Site Occupation Charge

Site Occupation Charge is levied by Port of Newcastle for the occupation of all or part of a site. The charge is levied per hour (or part thereof) for which a berth is occupied and is charged to the site occupant.

- **Payer** - Site Occupant (usually Stevedore)
- **Calculation** - Site Occupation charge commences from tie up of a vessel at a berth until departure of the vessel from the berth and / or period pre and post vessel cargo storage. This Site Occupation charge will be charged per hour or part thereof.

Ship Utility Charge

The Ship Utility Charge is levied by Port of Newcastle as a fixed fee on vessels for the supply and provision of facilities and services to supply water to vessels and electricity for vessel operations.

- **Payer** - Ship owner (usually via Shipping Agent).
- **Calculation** - Per visit to Port Operator’s berths where this service is provided.

Port Pricing Schedule

Port of Newcastle’s Port Prices are exclusive of GST.

Navigation Service Charge Rates

Vessel Gross Tonnage (GT)	Rate 2017
Non Coal Vessels (over 600 GT)	
Non-Coal Vessels first 50,000 GT	\$0.4721 per GT
Non-Coal Vessels over 50,000 GT	\$0.4721 per GT for the first 50,000 GT plus \$1.0622 per GT thereafter.
Coal Vessels (over 600 GT)	
Coal vessels	\$0.7305 per GT

Definitions:

- Coal Vessel – a vessel entering port to load coal at any of the dedicated coal export berths being Dyke 4 and 5, Kooragang 4, 5, 6, 7, 8, 9 and 10; and
- Non-Coal Vessel — all other vessels entering the port.

Port Security Charge

An additional component of the Navigation Services Charge is the Port Security Charge. This levy is required to cover costs arising from implementing the *Australian Maritime Transport and Offshore Facilities Security Act & Regulation 2003*. This component of the charge will be applied to each trading vessel entering the port.

	2017
Port Security Charge	\$510.14

Ships Utility Charge

	2017
Per visit for Non-Coal vessels	\$197.51

Site Occupation Charge Rates

Berth	Rate/hour
	2017
Channel Berth – Cruise Vessels	\$232.05
Channel Berth – Non-Cruise Vessels	\$69.61
Dyke 1 and 2	\$69.61
Kooragang 2, 2.5 and 3	\$263.69
Mayfield 4	\$263.69
Western Basin 3 and 4	\$263.69

Note:

- Three (3) free days cargo storage will be provided prior to loading of export cargo and/or three (3) days after discharge of import cargo **subject to availability of wharf space at the time required**. The hourly rate will apply on completion of the three days.
- **Partial Use of Berths** – Where the full berth is not being utilised the rate charged will be at the percentage utilised as determined by Port Operator. This will normally apply to cargo storage only after the ‘three (3) free days’ storage period.

Wharfage Charge Rates

Non-Containerised

Berth	Per Revenue Tonne
	2017
Dyke 1	\$1.73
Dyke 2	\$0.92
Kooragang 2, 2.5 and 3	\$1.87
Mayfield 4	\$1.87
Western Basin 3 and 4	\$1.87
Eastern Basin 1 and 2	\$0.0722
Dyke 4 and 5	\$0.0722
Kooragang 4, 5, 6, 7, 8, 9, and 10	\$0.0722
BHP 6, and Mayfield 7 (when constructed)	\$0.0722

Containerised

Berth	Per 20'Container	Per 40'Container
	2017	2017
Full	\$57.55	\$115.11
Empty	\$10.55	\$21.09

Container wharfage rates apply to conventional containers or full size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

Kooragang 2 Crane Hire

Commodity	Per Revenue Tonne
	2017
Fertiliser(s)	\$3.69
Soda Ash	\$3.69
Boutique Coal	\$3.69
Grain/Meals - import	\$3.69
Grain/Meals - export	\$0.23

Crane hire is not a statutory charge. The provision of the crane at Kooragang 2 may be subject to review from time to time. The result of such a review could result in changes to the infrastructure that is provided and to charges for its use.

Terms of Trade

Port of Newcastle's terms of trade require that payment is made within seven days from delivery of the invoice.

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

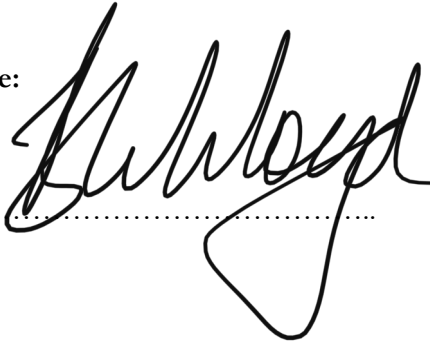
Applicant: Port of Newcastle Operations Pty Limited (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-5

This is the Annexure marked "SB-5" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to read 'Simon Byrnes', is written over a horizontal dotted line. The signature is cursive and extends below the line.

Witness



Port of Newcastle Schedule of Service Charges

Effective from 1 January 2018

About this Schedule of Service Charges

This Schedule of Service Charges for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (“**Port of Newcastle**”) is a summary of the service charges applicable to the commercial use of the Port of Newcastle effective from 1 January 2018 in accordance with the *Ports and Maritime Administration Act 1995* (NSW) (“**the Ports Act**”) and *Ports and Maritime Administration Regulation 2012*.

All charges set out in this schedule are in Australian dollars and are exclusive of GST. The party liable for the Service Charge is identified in the relevant provisions of the Ports Act and Port of Newcastle may in its discretion agree to issue invoices to shipping agents engaged by a person who is liable to pay any Service Charge.

By using the Port or its facilities, you agree to be bound by the terms and conditions in this Schedule and all other relevant Port of Newcastle requirements.

This schedule is not exhaustive and does not detail all rules and requirements applicable to charges at the Port. If you are unfamiliar with these or this schedule please contact:

Name: Wayne Mabbott

Email: wayne.mabbott@portofnewcastle.com.au

Phone: (02) 4908 8228

For details about Port of Newcastle’s berths please visit our website:

<http://www.portofnewcastle.com.au/Shipping-and-Operations/Berth-Information.aspx>

For details about other charges applicable to the use of the Port, including pilotage, contact the Port Authority of NSW.

Payment Terms

Port of Newcastle requires that payment is made within seven days from delivery of the invoice.

Port of Newcastle may charge interest on service charges that are unpaid by the due date for payment stated in PON’s invoice at a rate not exceeding 5% per annum above the interest rate that in the ordinary course of business would be charged by the Commonwealth Bank for the relevant period on unsecured overdrafts of more than \$100,000.

Terms used in this Schedule

Unless otherwise defined terms in this schedule have the meaning in the *Ports and Maritime Administration Act 1995* (NSW).

Coal vessel

A vessel which enters the Port of Newcastle to load coal at any dedicated coal berth within the Port of Newcastle, being Dyke 4 and Dyke 5 and Kooragang 4, 5, 6, 7, 8, 9 and 10.

Navigation Service Charge

The navigation service charge is payable on each entry by a vessel greater than 600GT into the Port of Newcastle and is calculated by reference to the gross tonnage of the vessel. The charge is payable by the owner of the vessel.

Non-coal vessel

Any vessel that is not a coal vessel.

Port security charge

The port security charge is a component of the navigation service charge payable on each entry by a vessel into the Port to cover costs associated with implementation of the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth). The charge is payable by the owner of the vessel.

Revenue Tonne

A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of quantity cargo.

Ship Utility Charge

A fixed fee payable by non-coal vessels on each entry for the supply of utilities, including water and electricity. The charge is payable by the vessel owner.

Site Occupation Charge

The site occupation charge is calculated by reference to the amount of time during which a site, or part of it, is reserved or occupied for stevedoring purposes, or for the embarkation or disembarkation of passengers, or for the accommodation of a vessel for any purpose, or for any other purpose in connection with a vessel, its passengers or cargo. The charge is calculated per hour (or part thereof) and is payable by the occupier of the site which is the stevedore unless otherwise agreed by Port of Newcastle.

Wharfage Charge

The wharfage charge is calculated by reference to the quantity of cargo loaded or unloaded. The charge is payable by the cargo owner.

Port charges

Navigation Service Charge

Vessel Gross Tonnage (GT)	Rate (ex GST)
Non-coal vessels (over 600 GT)	\$0.4881 per GT for the first 50,000 GT plus \$1.0983 per GT thereafter.
Coal vessels (over 600 GT)	\$0.7553 per GT

Port Security Charge

	Rate (ex GST)
Per visit for all vessels	\$527.48

Site Occupation Charge

Berth name	Rate per hour (ex GST)
Channel Berth (cruise vessels)	\$239.93
Dyke 1 and 2 Channel Berth (non-cruise vessels)	\$71.97
Kooragang 2 and 3, Mayfield 4, West Basin 3 and 4	\$272.65

Wharfage Charge

Non-containerised cargo by berth	Per Revenue Tonne (ex GST)
Dyke 1	\$1.78
Dyke 2	\$0.95
Kooragang 2 and 3, Mayfield 4, West Basin 3 and 4	\$1.93
East Basin 1 and 2, Dyke 4 and 5, Kooragang 4 - 10 BHP 6 and Mayfield 7 (when operational)	\$0.0746

Containerised cargo & cargo on platforms	Rate per Twenty Foot Equivalent Unit (TEUs) (ex GST)
Full Import	\$59.50
Full Export	\$59.50
Empty	\$10.90

Note: Container wharfage rates apply to conventional containers or full-size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

Other charges

Ship Utility Charge

	Rate (ex GST)
Per visit for non-coal vessels	\$204.23

Kooragang 2 Bulk Cargo Unloading Infrastructure - Price on Application.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-6

This is the Annexure marked "SB-6" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:



.....

Witness



Port of Newcastle Schedule of Service Charges

Effective from 1 January 2019

About this Schedule of Service Charges

This Schedule of Service Charges for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (“**Port of Newcastle**”) is a summary of the service charges applicable to the commercial use of the Port of Newcastle effective from 1 January 2019 in accordance with the *Ports and Maritime Administration Act 1995* (NSW) (“**the Ports Act**”) and *Ports and Maritime Administration Regulation 2012*.

All charges set out in this schedule are in Australian dollars and are exclusive of GST. The party liable for the Service Charge is identified in the relevant provisions of the Ports Act and Port of Newcastle may in its discretion agree to issue invoices to shipping agents engaged by a person who is liable to pay any Service Charge.

By using the Port or its facilities, you agree to be bound by the terms and conditions in this Schedule and all other relevant Port of Newcastle requirements.

This schedule is not exhaustive and does not detail all rules and requirements applicable to charges at the Port. If you are unfamiliar with these or this schedule please contact:

Name: Wayne Mabbott

Email: wayne.mabbott@portofnewcastle.com.au

Phone: (02) 4908 8228

For details about Port of Newcastle’s berths please visit our website:

<http://www.portofnewcastle.com.au/Shipping-and-Operations/Berth-Information.aspx>

For details about other charges applicable to the use of the Port, including pilotage, contact the Port Authority of NSW.

Payment Terms

Port of Newcastle requires that payment is made within seven days from delivery of the invoice.

Port of Newcastle may charge interest on service charges that are unpaid by the due date for payment stated in PON’s invoice at a rate not exceeding 5% per annum above the interest rate that in the ordinary course of business would be charged by the Commonwealth Bank for the relevant period on unsecured overdrafts of more than \$100,000.

Terms used in this Schedule

Unless otherwise defined terms in this schedule have the meaning in the *Ports and Maritime Administration Act 1995* (NSW).

Coal vessel

A vessel which enters the Port of Newcastle to load coal at any dedicated coal berth within the Port of Newcastle, being Dyke 4 and Dyke 5 and Kooragang 4, 5, 6, 7, 8, 9 and 10.

Navigation Service Charge

The navigation service charge is payable on each entry by a vessel greater than 600GT into the Port of Newcastle and is calculated by reference to the gross tonnage of the vessel. The charge is payable by the owner of the vessel.

Non-coal vessel

Any vessel that is not a coal vessel.

Port security charge

The port security charge is a component of the navigation service charge payable on each entry by a vessel into the Port to cover costs associated with implementation of the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth). The charge is payable by the owner of the vessel.

Revenue Tonne

A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of quantity cargo.

Ship Utility Charge

A fixed fee payable by non-coal vessels on each entry for the supply of utilities, including water and electricity. The charge is payable by the vessel owner.

Site Occupation Charge

The site occupation charge is calculated by reference to the amount of time during which a site, or part of it, is reserved or occupied for stevedoring purposes, or for the embarkation or disembarkation of passengers, or for the accommodation of a vessel for any purpose, or for any other purpose in connection with a vessel, its passengers or cargo. The charge is calculated per hour (or part thereof) and is payable by the occupier of the site which is the stevedore unless otherwise agreed by Port of Newcastle.

Wharfage Charge

The wharfage charge is calculated by reference to the quantity of cargo loaded or unloaded. The charge is payable by the cargo owner.

Port charges**Navigation Service Charge**

Vessel Gross Tonnage (GT)	Rate (ex GST)
Non-coal vessels (over 600 GT)	\$0.5046 per GT for the first 50,000 GT plus \$1.1356 per GT thereafter.
Coal vessels (over 600 GT)	\$0.7809 per GT

Port Security Charge

	Rate (ex GST)
Per visit for all vessels	\$545.41

Site Occupation Charge

Berth name	Rate per hour (ex GST)
Channel Berth (cruise vessels)	\$248.08
Dyke 1 and 2 Channel Berth (non-cruise vessels)	\$74.41
Kooragang 2 and 3, Mayfield 4, West Basin 3 and 4	\$281.92

Wharfage Charge

Non-containerised cargo by berth	Per Revenue Tonne (ex GST)
Dyke 1	\$1.84
Dyke 2	\$0.98
Kooragang 2 and 3, Mayfield 4, West Basin 3 and 4	\$1.99
East Basin 1 and 2, Dyke 4 and 5, Kooragang 4 - 10 BHP 6 and Mayfield 7	\$0.0771

Containerised cargo & cargo on platforms	Rate per Twenty Foot Equivalent Unit (TEUs) (ex GST)
Full	\$61.52
Empty	\$11.27

Note: Container wharfage rates apply to conventional containers or full-size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

Other charges**Ship Utility Charge**

	Rate (ex GST)
Per visit for non-coal vessels	\$211.17

Kooragang 2 Bulk Cargo Unloading Infrastructure - Price on Application.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-7

This is the Annexure marked "SB-7" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'R. H. Lloyd', is written over a horizontal dotted line. The signature is cursive and extends below the line.

Witness



SCHEDULE OF SERVICE CHARGES
EFFECTIVE FROM 1 JANUARY 2020

VERSION: 16 DECEMBER 2019

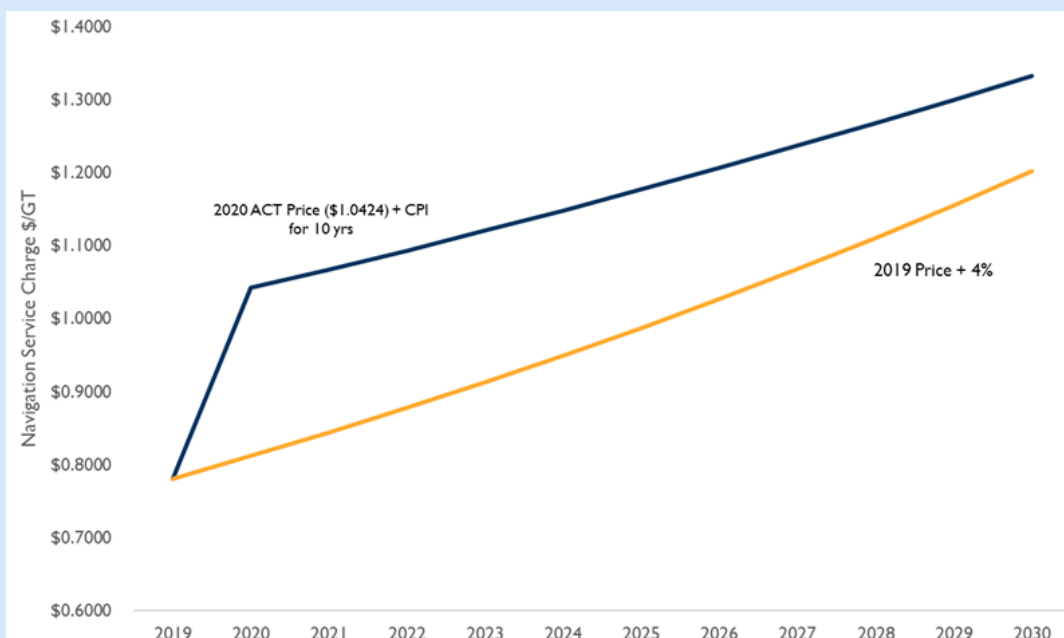
ABOUT THIS SCHEDULE OF SERVICE CHARGES

This Schedule of Service Charges for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (**Port of Newcastle**) sets out the service charges applicable to the commercial use of the Port of Newcastle effective from 1 January 2020, including in accordance with the Ports and Maritime Administration Act 1995 (NSW) (**PAMA Act**) and Ports and Maritime Administration Regulation 2012 (**Service Charges**). The party liable for the applicable Service Charge is as identified in the relevant provisions of the PAMA Act or in this schedule. Port of Newcastle may in its discretion agree to issue invoices to shipping agents engaged by a person who is liable to pay any Service Charge.

Note: Longer term bilateral arrangements

PON encourages Vessel Agents, Vessel Operators, Coal Producers and FOB coal consignees involved in the shipment of coal from the Port to contact PON directly to discuss entering into longer term discounted pricing arrangements with PON, based on the terms of the [pro forma deed which is available here](#). Please refer in particular to Schedule 2 of this deed for discounted navigation service charge pricing available.

The graph below is indicative only of the forward 10 year price variance between standard coal vessel pricing and bilateral price deed coal vessel pricing (assuming CPI is 2.37 – 2.50%):



By using the Port or its facilities, you agree to be bound by the terms and conditions in this schedule and all other relevant Port of Newcastle requirements.

Port of Newcastle may vary this schedule from time to time, including varying or introducing any new fees or charges. Port of Newcastle will publish notice of the proposed change on its website at least 10 Business Days before the variation is proposed to take effect.

Unless expressly stated otherwise, all charges set out in this schedule are in Australian dollars and are exclusive of GST. If GST is payable on any supply made by Port of Newcastle under this schedule, then unless the consideration for that supply is expressly stated to be inclusive of GST, you agree to pay to Port of Newcastle (or must ensure that your agent or other party required to provide consideration for that supply pays to Port of Newcastle) an additional amount equal to the GST payable on the supply. The additional amount must be paid at the same time as the first part of any consideration is provided for that supply. Port of Newcastle will issue a tax invoice in respect of any taxable supply it makes under this schedule. Words and expressions used in this paragraph which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) have the same meaning in this paragraph as in the GST Act.

To the extent that a charge is expressed in this schedule to be a fee or charge fixed by Port of Newcastle under Part 5 of the PAMA Act (**PAMA Charges**), for the avoidance of any doubt, those PAMA Charges are so fixed by Port of Newcastle under Part 5 of the PAMA Act and this schedule does not displace such determinations for the purposes of section 67 of the PAMA Act.

This schedule is not exhaustive and does not detail all charges, rules and requirements applicable to use of the Port. For further details please contact:

Email: trade@portofnewcastle.com.au

Phone: (02) 4908 8200

For details about our berths please visit our website [www. https://www.portofnewcastle.com.au/](https://www.portofnewcastle.com.au/).

For details about other charges applicable to the use of the Port, including pilotage, contact the Port Authority of NSW.

PORT CHARGES 2020

Navigation Service Charge (NSC)

Vessel Gross Tonnage (GT)	Rate (ex GST)
Non-coal vessels (over 600GT)	\$0.5247 per GT for the first 50,000 GT plus \$1.1810 per GT thereafter. (Subject to a maximum NSC for passenger cruise ships of \$55,816.82 per visit)
Standard price for coal vessel (over 600GT) where bilateral long term price deed does not apply to the vessel	\$1.0424 per GT
If bilateral long-term price deed applies for the coal vessel (over 600GT)	See schedule 2 of the deed found here

Port Security Charge

Per visit all vessels	Rate (ex GST)
	\$608.10

Site Occupation Charge

Berth name	Rate per hour (ex GST)
Channel Berth (cruise vessels)	\$258.00
Dyke 1 and 2 Channel Berth (non passenger cruise vessels)	\$77.39
Kooragang 2,2.5 and 3, Mayfield 4, West Basin 3 and 4	\$293.20

Wharfage Charge

Non-containerised cargo by berth	Rate per Revenue Tonne (ex GST)
Dyke 1	\$1.91
Dyke 2	\$1.02
Mayfield 4, West Basin 3 and 4, Kooragang 2 and 3	\$2.07
East Basin 1 and 2, Dyke 4 and 5, Kooragang 4 - 10, BHP 6 and Mayfield 7	\$0.0802

Containerised cargo and cargo on platforms	Rate per Twenty Foot Equivalent Unit (TEUs) (ex GST)
Full	\$63.98
Empty	\$11.72

Note: Container wharfage rates apply to conventional containers or full-size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

OTHER CHARGES

Ship Utility Charge

Per visit for non-coal vessels	Rate (ex GST)
	\$219.62

Kooragang 2 Bulk Cargo Unloading Infrastructure

Price on application.

Non-Standard Vessel Charges

Charge	Rate (ex GST)
Non standard vessel movements	Additional fees and charges may be prescribed by Port of Newcastle for vessel movements which are not undertaken in accordance with standard vessel movement requirements and procedures required under the Vessel Standard Terms and Conditions, including any Port Rules or directions given by Port of Newcastle. These charges may include additional charges for late vessel arrivals or failure to berth in accordance with Port of Newcastle requirements.
Additional bespoke services requested by users	Price on application

FUTURE CHARGE INCREASES

PON's current intention is that from 1 January 2021, the published Navigation Service Charge and Wharfage Charge for Coal vessels will increase by CPI annually, and may also be increased to reflect additional investment by Port of Newcastle in port services, any increases in government charges or taxes or changes in law and any material change events.

PAYMENT TERMS

Port of Newcastle requires that payment for any Service Charge is made in full within seven days from the date of the Port of Newcastle's invoice.

All such invoiced monies payable to Port of Newcastle must be paid without any discount, deduction, counterclaim or set-off and regardless of any dispute between Port of Newcastle and the party liable for the Service Charge.

If any amounts payable by the party liable for the service charge to Port of Newcastle are not paid by the due date, the party liable for the Service Charge must pay to Port of Newcastle, by way of liquidated damages, interest accruing daily at the Default Rate on the amount outstanding calculated daily from the due date until payment is made in full.

The party liable for the Service Charge must ensure that all payments required to be made under the invoice are made by:

- a) direct transfer or immediately available funds by the due date for payment to the bank account nominated in writing by Port of Newcastle; or
- b) any other method of payment approved by Port of Newcastle in writing provided that payment is made no later than 3 Business Days before the due date for payment.

TERMS USED IN THIS SCHEDULE

Unless otherwise defined, terms in this schedule have the meaning set out in the PAMA Act and:

Business Day

Means a day on which banks are open for general banking business in the City of Newcastle, but does not include Saturdays, Sundays or public holidays in the City of Newcastle.

Coal vessel

A vessel which enters the Port of Newcastle to load coal at any dedicated coal berth within the Port of Newcastle, being Dyke 4 and Dyke 5 and Kooragang 4, 5, 6, 7, 8, 9 and 10.

Default Rate

Means the rate of 5% per annum above the interest rate at the applicable time charged by the Commonwealth Bank of Australia on unsecured overdrafts in excess of \$100,000.

Navigation service charge

The navigation service charge means the charge levied by Port of Newcastle under section 50 of the PAMA Act in consideration for the service described in that provision on vessels at the time of port entry and, for the avoidance of doubt, is in addition to any Wharfage Charge, any Site Occupation Charge and any other fee or charge (including Non-Standard Vessel Charges) provided for in this schedule, the Vessel

Standard Terms and Conditions or the PAMA Act arising from the relevant vessel's visit to the Port. The charge is payable by the owner of the vessel.

Non-coal vessel

Any vessel that is not a coal vessel.

Non-Standard Vessel charges

The additional fees and charges specified above under the heading "Non-Standard Vessel Charges" in "Other Charges" above payable by the owner of the vessel.

Port security charge

The port security charge is payable on each entry by a vessel into the Port to cover costs associated with implementation of the Maritime Transport and Offshore Facilities Security Act 2003 (Cth). The charge is payable by the owner of the vessel.

Revenue Tonne

A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of quantity cargo.

Ship Utility Charge

A fixed fee payable by non-coal vessels on each entry for the supply of utilities, including water and electricity. The charge is payable by the vessel owner.

Site Occupation Charge

The site occupation charge means the charge levied by Port of Newcastle under section 60 of the PAMA Act in consideration for the service described in that provision and, for the avoidance of doubt, is in addition to any Navigation Service Charge, Wharfage Charge and any other fee or charge provided for in this schedule (including Non-Standard Vessel Charges), the Vessel Standard Terms and Conditions or the PAMA Act arising from the relevant vessel's visit to the Port. The charge is currently calculated per hour (or part thereof) during which the site, or a part of it, is reserved or is occupied without reservation. The charge is payable by the person whom Port of Newcastle recognises as the occupier of the relevant site.

Vessel Standard Terms and Conditions

The Vessel Standard Terms and Conditions published by Port of Newcastle on this website from time to time.

Wharfage Charge

The wharfage charge means the charge levied by Port of Newcastle under section 61 of the PAMA Act in consideration for the service described in that provision and, for the avoidance of doubt, is in addition to any Navigation Service Charge, any Site Occupation Charge, and any other fee or charge provided for in this schedule (including Non-Standard Vessel Charges), the Vessel Standard Terms and Conditions or the PAMA Act arising from the relevant vessel's visit to the Port. The charge is payable by the owner of the cargo, as determined under sections 61 and 48 of the PAMA Act.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-8

This is the Annexure marked "SB-8" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'S. Byrnes', is written over a horizontal dotted line. The signature is cursive and somewhat stylized.

Witness



SCHEDULE OF SERVICE CHARGES
EFFECTIVE FROM 1 JANUARY 2021

VERSION: 2 DECEMBER 2020



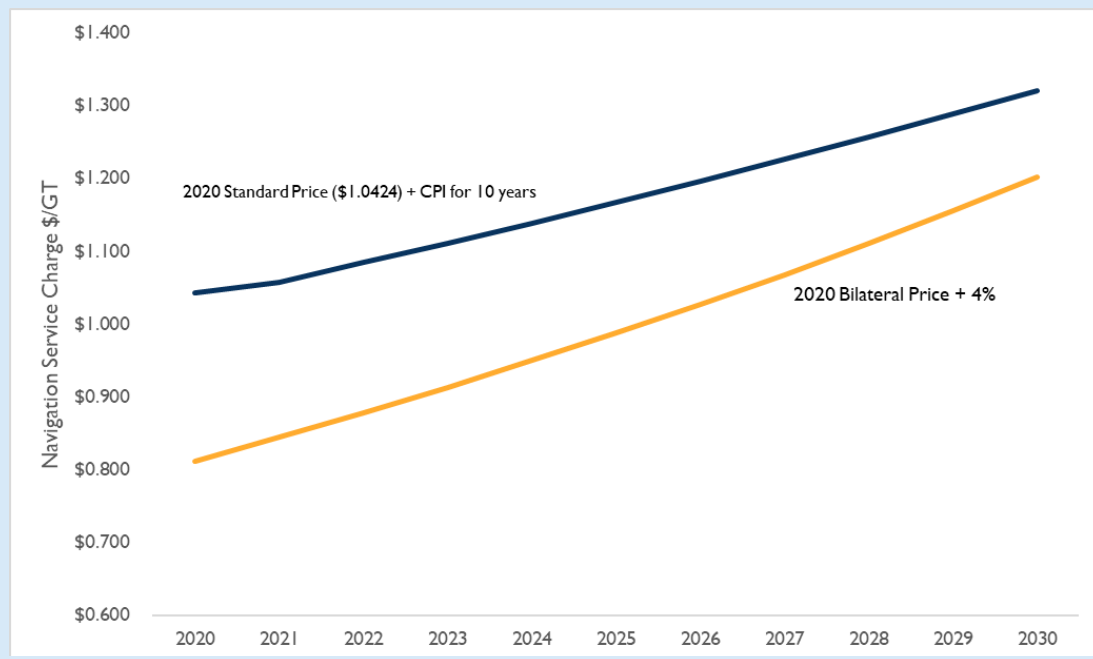
ABOUT THIS SCHEDULE OF SERVICE CHARGES

This Schedule of Service Charges for Port of Newcastle Operations Pty Ltd (ACN 165 332 990) as Trustee for the Port of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle (**Port of Newcastle**) sets out the service charges applicable to the commercial use of the Port of Newcastle effective from 1 January 2021, including in accordance with the Ports and Maritime Administration Act 1995 (NSW) (**PAMA Act**) and Ports and Maritime Administration Regulation 2012 (**Service Charges**). The party liable for the applicable Service Charge is as identified in the relevant provisions of the PAMA Act or in this schedule. Port of Newcastle may in its discretion agree to issue invoices to shipping agents engaged by a person who is liable to pay any Service Charge.

Note: Longer term bilateral arrangements

PON encourages Vessel Agents, Vessel Operators, Coal Producers and FOB coal consignees involved in the shipment of coal from the Port to contact PON directly to discuss entering into longer term discounted pricing arrangements with PON, based on the terms of the pro forma deed which is available [here for Vessel Agents](#) and [here for Coal Producers](#). Please refer in particular to Schedule 2 of this deed for discounted navigation service charge pricing available.

The graph below is indicative only of the forward 10 year price variance between standard coal vessel pricing and bilateral price deed coal vessel pricing (using an indicative assumption that CPI is 2.5%):



By using the Port or its facilities, you agree to be bound by the terms and conditions in this schedule and all other relevant Port of Newcastle requirements.

Port of Newcastle may vary this schedule from time to time, including varying or introducing any new fees or charges. Port of Newcastle will publish notice of the proposed change on its website at least 10 Business Days before the variation is proposed to take effect.

Unless expressly stated otherwise, all charges set out in this schedule are in Australian dollars and are exclusive of GST. If GST is payable on any supply made by Port of Newcastle under this schedule, then



unless the consideration for that supply is expressly stated to be inclusive of GST, you agree to pay to Port of Newcastle (or must ensure that your agent or other party required to provide consideration for that supply pays to Port of Newcastle) an additional amount equal to the GST payable on the supply. The additional amount must be paid at the same time as the first part of any consideration is provided for that supply. Port of Newcastle will issue a tax invoice in respect of any taxable supply it makes under this schedule. Words and expressions used in this paragraph which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) have the same meaning in this paragraph as in the GST Act.

To the extent that a charge is expressed in this schedule to be a fee or charge fixed by Port of Newcastle under Part 5 of the PAMA Act (**PAMA Charges**), for the avoidance of any doubt, those PAMA Charges are so fixed by Port of Newcastle under Part 5 of the PAMA Act and this schedule does not displace such determinations for the purposes of section 67 of the PAMA Act.

This schedule is not exhaustive and does not detail all charges, rules and requirements applicable to use of the Port. For further details please contact:

Email: trade@portofnewcastle.com.au

Phone: (02) 4908 8200

For details about our berths please visit our website [www. https://www.portofnewcastle.com.au/](https://www.portofnewcastle.com.au/).

For details about other charges applicable to the use of the Port, including pilotage, contact the Port Authority of NSW.

PORT CHARGES 2021

Navigation Service Charge (NSC)

Vessel Gross Tonnage (GT)	Rate (ex GST)
Non-coal vessels (over 600GT)	\$0.5325 per GT for the first 50,000 GT plus \$1.1987 per GT thereafter. (Subject to a maximum NSC for passenger cruise ships of \$56,654.07 per visit)
Standard price for coal vessel (over 600GT) where bilateral long term price deed does not apply to the vessel	\$1.0580 per GT
If bilateral long-term price deed applies for the coal vessel (over 600GT)	See schedule 2 of the deeds found here for Vessel Agents and here for Coal Producers , which indicates a 2021 NSC Covered Vessel charge of \$0.8445.

Port Security Charge

Per visit all vessels	Rate (ex GST)
	\$617.22

Site Occupation Charge

Berth name	Rate per hour (ex GST)
Channel Berth (cruise vessels)	\$261.87
Dyke 1 and 2 Channel Berth (non passenger cruise vessels)	\$78.55
Kooragang 2,2.5 and 3, Mayfield 4, West Basin 3 and 4	\$297.59

Wharfage Charge

Non-containerised cargo by berth	Rate per Revenue Tonne (ex GST)
Dyke 1	\$1.93
Dyke 2	\$1.03
Mayfield 4, West Basin 3 and 4, Kooragang 2 and 3	\$2.10
East Basin 1 and 2, Dyke 4 and 5, Kooragang 4 - 10, BHP 6 and Mayfield 7	\$0.0814

Containerised cargo and cargo on platforms	Rate per Twenty Foot Equivalent Unit (TEUs) (ex GST)
Full	\$64.93
Empty	\$11.89

Note: Container wharfage rates apply to conventional containers or full-size frames. All other types of containers carrying cargo are invoiced at the appropriate tonnage rate based on the gross weight or volume of the cargo.

OTHER CHARGES

Ship Utility Charge

Per visit for non-coal vessels	Rate (ex GST)
	\$222.91

Kooragang 2 Bulk Cargo Unloading Infrastructure

Price on application.

Non-Standard Vessel Charges

Charge	Rate (ex GST)
Non standard vessel movements	Additional fees and charges may be prescribed by Port of Newcastle for vessel movements which are not undertaken in accordance with standard vessel movement requirements and procedures required under the Vessel Standard Terms and Conditions, including any Port Rules or directions given by Port of Newcastle. These charges may include additional charges for late vessel arrivals or failure to berth in accordance with Port of Newcastle requirements.
Additional bespoke services requested by users	Price on application

FUTURE CHARGE INCREASES

PON's current intention is that from 1 January each year, published charges will increase by CPI annually, and may also be increased to reflect additional investment by Port of Newcastle in port services, any increases in government charges or taxes or changes in law and any material change events.

PAYMENT TERMS

Port of Newcastle requires that payment for any Service Charge is made in full within seven days from the date of the Port of Newcastle's invoice.

All such invoiced monies payable to Port of Newcastle must be paid without any discount, deduction, counterclaim or set-off and regardless of any dispute between Port of Newcastle and the party liable for the Service Charge.

If any amounts payable by the party liable for the service charge to Port of Newcastle are not paid by the due date, the party liable for the Service Charge must pay to Port of Newcastle, by way of liquidated damages, interest accruing daily at the Default Rate on the amount outstanding calculated daily from the due date until payment is made in full.

The party liable for the Service Charge must ensure that all payments required to be made under the invoice are made by:

- a) direct transfer or immediately available funds by the due date for payment to the bank account nominated in writing by Port of Newcastle; or
- b) any other method of payment approved by Port of Newcastle in writing provided that payment is made no later than 3 Business Days before the due date for payment.

TERMS USED IN THIS SCHEDULE

Unless otherwise defined, terms in this schedule have the meaning set out in the PAMA Act and:

Business Day

Means a day on which banks are open for general banking business in the City of Newcastle, but does not include Saturdays, Sundays or public holidays in the City of Newcastle.

Coal vessel

A vessel which enters the Port of Newcastle to load coal at any dedicated coal berth within the Port of Newcastle, being Dyke 4 and Dyke 5 and Kooragang 4, 5, 6, 7, 8, 9 and 10.

Default Rate

Means the rate of 5% per annum above the interest rate at the applicable time charged by the Commonwealth Bank of Australia on unsecured overdrafts in excess of \$100,000.

Navigation service charge

The navigation service charge means the charge levied by Port of Newcastle under section 50 of the PAMA Act in consideration for the service described in that provision on vessels at the time of port entry and, for the avoidance of doubt, is in addition to any Wharfage Charge, any Site Occupation Charge and any other fee or charge (including Non-Standard Vessel Charges) provided for in this schedule, the Vessel Standard Terms and Conditions or the PAMA Act arising from the relevant vessel's visit to the Port. The charge is payable by the owner of the vessel.

Non-coal vessel

Any vessel that is not a coal vessel.

Non-Standard Vessel charges

The additional fees and charges specified above under the heading "Non-Standard Vessel Charges" in "Other Charges" above payable by the owner of the vessel.

Port security charge

The port security charge is payable on each entry by a vessel into the Port to cover costs associated with implementation of the Maritime Transport and Offshore Facilities Security Act 2003 (Cth). The charge is payable by the owner of the vessel.

Revenue Tonne

A revenue tonne is a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of quantity cargo.

Ship Utility Charge

A fixed fee payable by non-coal vessels on each entry for the supply of utilities, including water and electricity. The charge is payable by the vessel owner.

Site Occupation Charge

The site occupation charge means the charge levied by Port of Newcastle under section 60 of the PAMA Act in consideration for the service described in that provision and, for the avoidance of doubt, is in addition to any Navigation Service Charge, Wharfage Charge and any other fee or charge provided for in this schedule (including Non-Standard Vessel Charges), the Vessel Standard Terms and Conditions or the PAMA Act arising from the relevant vessel's visit to the Port. The charge is currently calculated per hour (or part thereof) during which the site, or a part of it, is reserved or is occupied without reservation. The charge is payable by the person whom Port of Newcastle recognises as the occupier of the relevant site.

Vessel Standard Terms and Conditions

The Vessel Standard Terms and Conditions published by Port of Newcastle on this website from time to time.

Wharfage Charge

The wharfage charge means the charge levied by Port of Newcastle under section 61 of the PAMA Act in consideration for the service described in that provision and, for the avoidance of doubt, is in addition to any Navigation Service Charge, any Site Occupation Charge, and any other fee or charge provided for in this schedule (including Non-Standard Vessel Charges), the Vessel Standard Terms and Conditions or the PAMA Act arising from the relevant vessel's visit to the Port. The charge is payable by the owner of the cargo, as determined under sections 61 and 48 of the PAMA Act.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-9

This is the Annexure marked "SB-9" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

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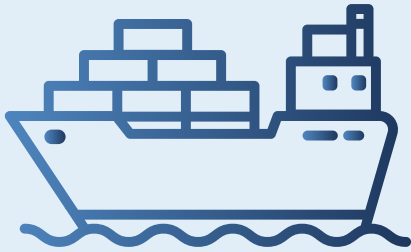
Witness



**TRADE
REPORT
2020**

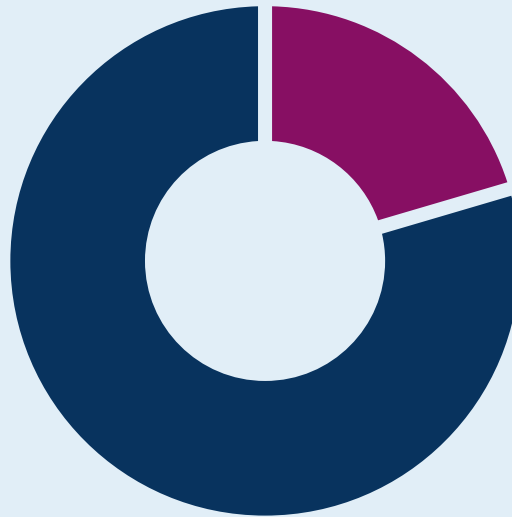


SHIP VISITS



2,205
ship visits in 2020

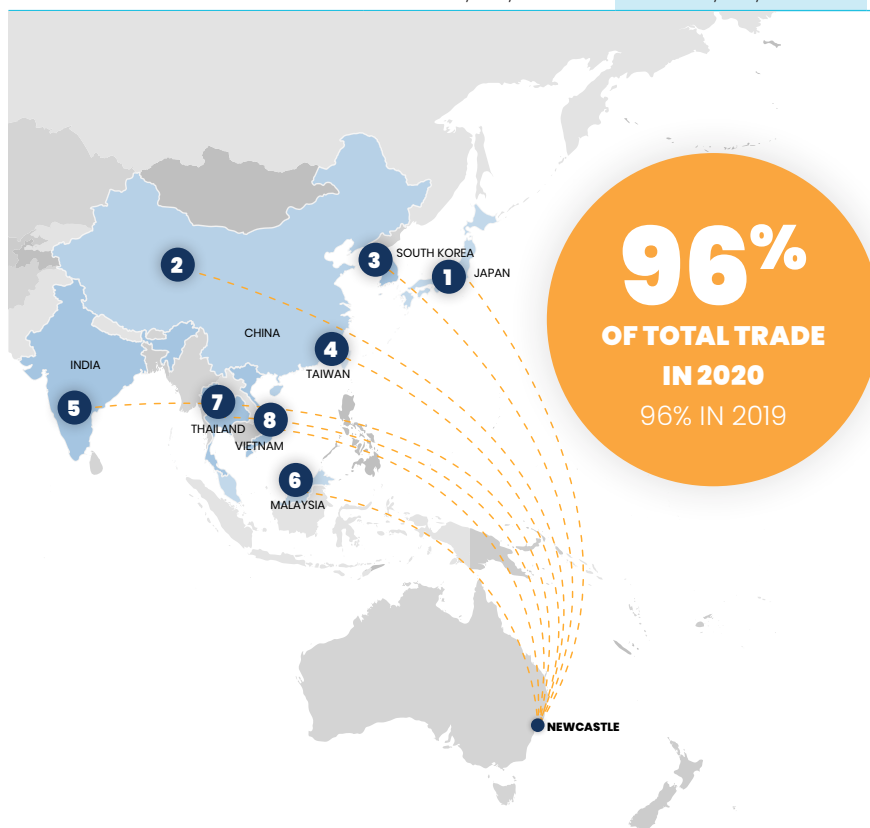
2,296 in 2019



	COAL	2020	1,754
		2019	1,813
	DIVERSIFIED TRADE	2020	451
		2019	461
	CRUISE SHIPS	2020	0
		2019	22

COAL TRADE

COMMODITY EXPORTS	MASS TONNES		TRADE VALUE (\$ MILLION)	
	2020	2019	2020	2019
COAL	158,429,148	165,252,666	\$18,559	\$17,913



DESTINATION	YEAR	MT	%
1. JAPAN	2020	65.7	41.5
	2019	69.7	42.2
2. CHINA	2020	25.3	16
	2019	34.6	20.9
3. SOUTH KOREA	2020	21	13.3
	2019	20.6	12.4
4. TAIWAN	2020	20.9	13.2
	2019	21.2	12.8
5. INDIA	2020	6.5	4.1
	2019	2.3	1.4
6. MALAYSIA	2020	4.8	3
	2019	5.2	3.1
7. THAILAND	2020	3.8	2.4
	2019	3	1.8
8. VIETNAM	2020	3	1.9
	2019	3.5	2.1
OTHER	2020	7.4	4.6
	2019	3	1.8

EXPORTS

COMMODITY EXPORTS	MASS TONNES		TEUS		TRADE VALUE (\$ MILLION)	
	2020	2019	2020	2019	2020	2019
Aluminium	49,409	9,397	0	0	\$129	\$24
Ammonia	119,659	140,518	27	21	\$81	\$96
Ammonium Nitrate	468	15,077	22	16	\$0	\$5
Boutique Coal	0		0		\$0	
Concentrates	399,033	452,115	0	0	\$1,364	\$1,336
General Cargo	73,058	46,273	66	1,370	\$105	\$77
Grinding Media	14,517		469	634	\$15	
Machinery, Project Cargo & Vehicles	10,093	7,585	441	959	\$101	\$76
Meals & Grains	10,520	14,614	0	683	\$2	\$3
Pitch & Tar Products	86,586	93,221	0	0	\$56	\$66
Silica Sand	6,048	0	0	0	\$0	\$0
Steel	42,200	58,304	279	290	\$117	\$162
Timber	1,025	1,842	0	0	\$2	\$2
Wheat	304,345	41,344	23	283	\$99	\$12
Exports (Non Coal)	1,116,961	880,290	1,327	2,232	\$2,071	\$1,859
Total Exports (All Trades)	159,546,109	166,132,956	1,327	2,232	\$20,630	\$19,772



COMMODITY EXPORTS OVERVIEW

COMMODITY EXPORTS	DEFINITION	DESTINATIONS 2020	DESTINATIONS 2019
Aluminium		Japan	Japan
Ammonia		Australia & New Zealand	Australia & New Zealand
Ammonium Nitrate		New Zealand & Papua New Guinea	Australia & New Zealand
Boutique Coal		Australia	
Concentrates	Copper ore concentrates, zinc ore concentrates and lead ore concentrates	China, Taiwan, Philipines	China & Australia
General Cargo		China, New Zealand, Australia, Papua New Guinea, Taiwan, Japan, Solomon Islands, India, New Caledonia & South Korea	South Korea, Australia, New Zealand, United States, Philipines, China, Taiwan, Phillipines & Untied Kingdom
Grinding Media		Indonesia & Papua New Guinea	
Machinery, Project Cargo & Vehicles	Mining machinery, agricultural machinery, power generation machinery, construction machinery, rail wagons, passenger vehicles and commercial vehicles.	Indonesia, Papua New Guinea & New Zealand	Australia, Indonesia, New Zealand & Turkey
Meals & Grains	Barley, sorghum, canola, maize, canola meal and cottonseed meal.	China, Australia, Papua New Guinea & New Zealand	New Zealand
Pitch & Tar Products	Pitch, coal tar, tar, carbon black and creosote.	Japan & Australia	Japan, Philipines & Australia
Silica Sand		Philipines	
Steel		Indonesia & New Zealand	Indonesia, United States, Indonesia & New Zealand
Timber		Australia & New Zealand	New Zealand
Wheat		Egypt, Italy, Papua New Guinea, Vietnam, Japan, Fiji, Yemen, Indonesia & India	Japan & New Zealand

IMPORTS

COMMODITY IMPORTS	MASS TONNES		TEUS		TRADE VALUE (\$ MILLION)	
	2020	2019	2020	2019	2020	2019
Alumina	1,152,336	1,125,549	0	0	\$508	\$496
Ammonia	15,002	32	0	0	\$10	\$0
Ammonium Nitrate	63,091	69,699	0	0	\$19	\$21
Cement	248,823	342,560	0	0	\$2	\$2
Fertiliser	425,538	386,089	0	0	\$160	\$123
Fuels	1,814,975	1,842,194	0	0	\$2,774	\$2,831
General Cargo	81,843	84,777	1,438	3,017	\$188	\$123
Grinding Media	0	0	0	0	\$0	\$0
Machinery, Project Cargo & Vehicles	32,221	31,934	85	20	\$321	\$319
Magnetite	116,586	100,645	0	0	\$35	\$30
Meals & Grains	385,379	415,085	0	0	\$217	\$166
Petroleum Coke	214,555	235,127	0	0	\$76	\$83
Pitch & Tar Products	87,055	120,351	0	0	\$59	\$91
Steel	199,887	149,813	46	11	\$555	\$416
Timber	15,026	20,596	62	56	\$1	\$1
Wheat	90,500	314,856	0	0	\$30	\$95
Total Imports (Non Coal)	4,942,817	5,239,307	1,630	3,104	\$4,955	\$4,797

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 World Bank.

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 (\$'000)		NOTE
	2020	2019	
Navigation Services Charge	86,390	86,259	
Wharfage	21,822	22,027	
Site Occupation	5,337	4,747	1
Security	1,358	1,254	
Utilities	102	102	
Trade Revenue	115,009	114,389	
Operations Expense – Trade Assets	38,458	36,769	2
Depreciation – Trade Assets	20,616	18,685	3
Allocated Overheads – Trade Assets	12,536	7,514	4
Trade Expenses	71,610	62,968	5
Operating Profit from Trade Operations	43,399	51,421	
Trade Assets	2,308,000	2,340,000	6,7

NOTES

1. Site Occupation includes berthside 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. Depreciation – Trade Assets is the depreciation and amortisation costs specifically related to Trade Assets.
4. 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.
5. Trade Expenses exclude sublease rental, financing costs and income tax.
6. Trade Assets are those assets which generate revenue for the Company excluding those assets which are associated with property leasing activities.
7. The value of Trade Assets as at 31 December 2020 is as reported per the audited financial statements at 31 December 2020.



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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 (ACN 165 332 990)

CONFIDENTIAL ANNEXURE CERTIFICATE

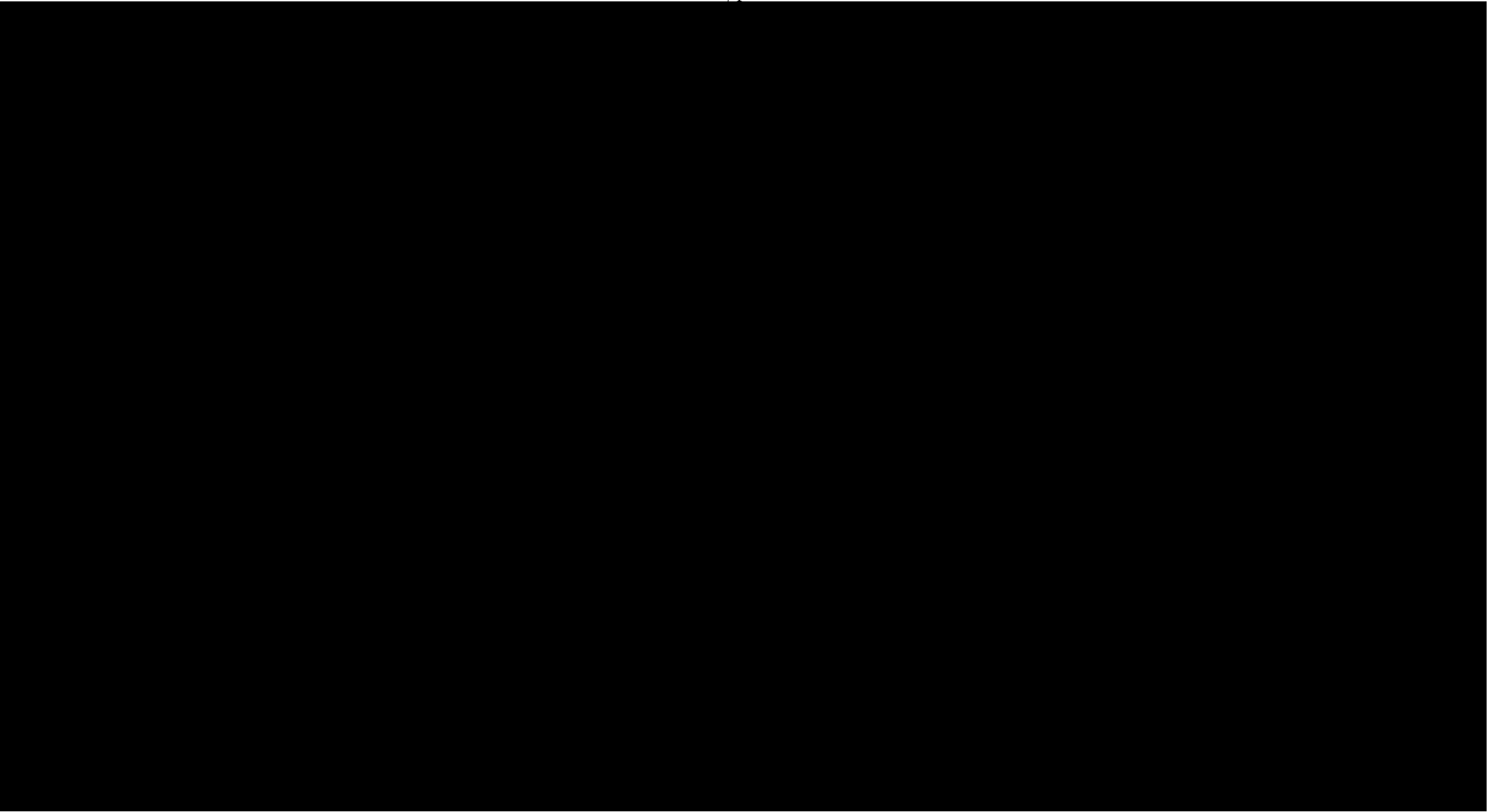
SB-10

This is the Confidential Annexure marked "SB-10" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'R. Byrnes', written over a horizontal dotted line.

Witness



COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2020

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Applicant: Port of Newcastle Operations Pty Limited (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-11

This is the Annexure marked "SB-11" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:



.....

Witness

BHP

Annual
Report
2020



Bringing people and resources
together to build a better world

1.11.4 Coal



Detailed below is financial information for our Coal assets for FY2020 and FY2019 and an analysis of Coal's financial performance for FY2020 compared with FY2019.

Year ended 30 June 2020 US\$M	Revenue	Underlying EBITDA	D&A	Underlying EBIT	Net operating assets ⁽⁵⁾	Capital expenditure	Exploration gross	Exploration to profit
Queensland Coal	5,357	1,935	684	1,251	8,168	523		
New South Wales Energy Coal ⁽¹⁾	972	(19)	152	(171)	841	73		
Colombia ⁽¹⁾	364	69	112	(43)	776	24		
Other ⁽²⁾	-	(155)	11	(166)	(276)	8		
Total Coal from Group production	6,693	1,830	959	871	9,509	628		
Third party products	-	-	-	-	-	-		
Total Coal	6,693	1,830	959	871	9,509	628	22	9
Adjustment for equity accounted investments ⁽³⁾⁽⁴⁾	(451)	(198)	(138)	(60)	-	(25)	-	-
Total Coal statutory result	6,242	1,632	821	811	9,509	603	22	9

Year ended 30 June 2019 US\$M	Revenue	Underlying EBITDA	D&A	Underlying EBIT	Net operating assets ⁽⁵⁾	Capital expenditure	Exploration gross	Exploration to profit
Queensland Coal	7,679	3,722	532	3,190	8,232	549		
New South Wales Energy Coal ⁽¹⁾	1,527	431	166	265	920	102		
Colombia ⁽¹⁾	698	274	101	173	853	104		
Other ⁽²⁾	2	(110)	2	(112)	(331)	5		
Total Coal from Group production	9,906	4,317	801	3,516	9,674	760		
Third party products	19	(1)	-	(1)	-	-		
Total Coal	9,925	4,316	801	3,515	9,674	760	23	15
Adjustment for equity accounted investments ⁽³⁾⁽⁴⁾	(804)	(249)	(134)	(115)	-	(105)	-	-
Total Coal statutory result	9,121	4,067	667	3,400	9,674	655	23	15

(1) Newcastle Coal Infrastructure Group and Cerrejón are equity accounted investments and their financial information presented above with the exception of net operating assets reflects BHP Group's share.

(2) Predominantly comprises divisional activities and ceased operations.

(3) Total Coal statutory result revenue excludes US\$364 million (2019: US\$698 million) revenue related to Cerrejón. Total Coal statutory result Underlying EBITDA includes US\$112 million (2019: US\$101 million) D&A and US\$25 million (2019: US\$70 million) net finance costs and taxation expense related to Cerrejón, that are also included in Underlying EBIT. Total Coal statutory result Capital expenditure excludes US\$24 million (2019: US\$104 million) related to Cerrejón.

(4) Total Coal statutory result revenue excludes US\$87 million (2019: US\$106 million) revenue related to Newcastle Coal Infrastructure Group. Total Coal statutory result excludes US\$61 million (2019: US\$78 million) Underlying EBITDA, US\$26 million (2019: US\$33 million) D&A and US\$35 million (2019: US\$45 million) Underlying EBIT related to Newcastle Coal Infrastructure Group until future profits exceed accumulated losses. Total Coal Capital expenditure excludes US\$1 million (2019: US\$1 million) related to Newcastle Coal Infrastructure Group.

(5) Refer to section 6.1 for a reconciliation of Net operating assets to Net assets and section 6.1.1 for the definition and method of calculation of Net operating assets.

Key drivers of Coal's financial results

Price overview

Metallurgical coal

Our average realised sales price for FY2020 was US\$143.65 per tonne for hard coking coal (FY2019: US\$199.61 per tonne) and US\$92.59 per tonne for weak coking coal (FY2019: US\$130.18 per tonne). Metallurgical coal prices were under downward pressure for most of FY2020. Broad-based demand weakness in all major import regions but China was a weight on the price. This was amplified during the second half of FY2020 with each of the major importers going into lockdown. In China, uncertainty regarding the approach to the volume of coal imports was an additional headwind for the physical trade at times. In the short term, metallurgical coal still has to navigate a difficult period as major importing regions manage their re-openings. COVID-19 permitting, a sustained improvement is possible in the second half of FY2021. Over time, premium-quality coking coals are expected to be particularly advantaged given the drive by steelmakers to improve blast furnace productivity, partly to reduce emissions intensity. We believe that a wholesale shift away from blast furnace steelmaking, which requires metallurgical coal, is still decades in the future given the high cost of conversion and operation associated with alternative steelmaking technologies.

Energy coal

Our average realised sales price for FY2020 was US\$57.10 per tonne (FY2019: US\$77.90 per tonne). The Newcastle 6,000 kcal/kg price reached its high for the financial year in July 2019. It then declined gradually over the course of the first half of FY2020, the rate of decline accelerated in second half of FY2020 due to lockdowns in major consumption markets. Tighter import controls at Chinese ports also contributed to lower prices. Longer term, we expect total primary energy derived from coal (power and non-power) to expand at a compound rate slower than that of global population growth.

Production

Metallurgical coal production for FY2020 decreased by 3 per cent to 41 Mt (73 Mt on a 100 per cent basis) as a result of significant wet weather events and geotechnical constraints at South Walker Creek. At Queensland Coal strong underlying operational performance, including record underground coal mined at Broadmeadow and record annual production at Caval Ridge and Poitrel, was offset by planned major wash plant shutdowns in the first half of the year and significantly higher rainfall during January and February 2020 compared with historical averages.

Energy coal production decreased by 16 per cent to 23 Mt. NSWEC production decreased by 12 per cent to 16 Mt as a result of the change in product strategy to focus on higher quality products and unfavourable weather impacts from December 2019 to February 2020. This was partially offset by a strong performance in the June 2020 quarter driven by record truck utilisation. Cerrejón production decreased by 23 per cent to 7 Mt due to a temporary shutdown during the June 2020 quarter in response to COVID-19, as well as a focus on higher quality products. The temporary shutdown lasted for approximately 6 weeks and allowed for completion of COVID-19 control measures to meet the Colombian Government's regulations.



For more information on individual asset production in FY2020, FY2019 and FY2018, refer to section 6.3.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-12

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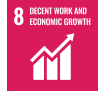
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Witness



SUSTAINABILITY REPORT 2019

FINANCIAL



Our financial strength and viability are at the heart of our success, creating economic and social value. We operate as part of a Greener & Smarter strategy within Banpu.

MANAGEMENT APPROACH

It remains Centennial's priority to productively and efficiently grow our business to ensure our continued commercial viability, whilst striving for continual improvement in safety, environmental and social performance.

Centennial seeks a balanced sales portfolio between domestic and export markets. Coal contracts with domestic generators tend to be for the longer-term, with volumes and prices negotiated and settled in advance. This provides Centennial with a high degree of business certainty for a substantial portion of its output.

PERFORMANCE

As a resource company we are exposed to external financial pressures; most notably the \$US coal price and the \$A/\$US exchange rate. However, through Centennial's long-held balanced sales strategy, the Company has, in part, a natural hedge from \$A/\$US volatility and a shelter from the higher end of the exchange rate range. Centennial's export split for 2019 was 42%, slightly higher than the previous year.

Earnings before interest and tax (and unrealised foreign exchange losses on \$US denominated debt) decreased 11% to 308 million – primarily due to higher export prices. During 2019, Centennial sold 11.8 million tonnes of coal (100% basis), down 26% on the previous year. During the year various production records were achieved at Airly and Mandalong, despite Mandalong encountering difficult geological conditions. Mandalong required four, and Springvale one longwall changeover during the year (each incurred an extended changeover).

In 2019, Centennial continued to focus on cost control and productivity improvements. Specifically, through a focus on operational excellence, production growth, automation and Digital Transformation, we aimed to increase our competitiveness and improve our position on the cost curve.

While social and financial pressures on coal mining continue, demand for high-quality Australian black coal remains strong throughout Asia, giving Centennial and Australian coal a competitive and real advantage.

HIGHLIGHT STATS

10M tonnes
(saleable production)

\$1,107M
sales revenue

\$308M
EBITDA - earnings before interest, tax, depreciation & amortisation

\$68M NSW
Government royalty



COMMONWEALTH OF AUSTRALIA
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Applicant: Port of Newcastle Operations Pty Limited (ACN 165 332 990)

ANNEXURE CERTIFICATE

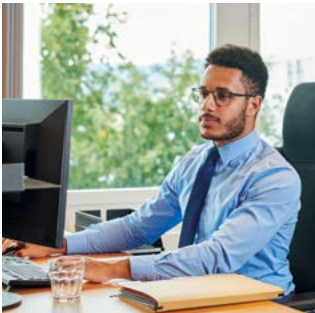
SB-13

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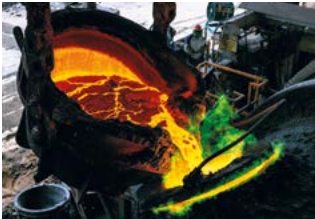
Before me:

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Witness



RESPONSIBLY
SOURCING THE
COMMODITIES
THAT ADVANCE
EVERYDAY LIFE





Financial information

US\$ million	2020	2019	Change %
Revenue[◇]			
Copper assets			
Africa (Katanga, Mutanda, Mopani)	3,105	2,829	10
Collahuasi ¹	1,732	1,385	25
Antamina ¹	1,055	1,025	3
Other South America (Lomas Bayas, Antapaccay)	2,025	1,709	18
Australia (Mount Isa, Ernest Henry, Townsville, Cobar)	1,988	1,836	8
Custom metallurgical (Altonorte, Pasar, Horne, CCR)	7,842	7,107	10
Intergroup revenue elimination	(308)	(212)	n.m.
Copper	17,439	15,679	11
Zinc assets			
Kazzinc	3,031	2,906	4
Australia (Mount Isa, McArthur River)	1,219	1,292	(6)
European custom metallurgical (Portovesme, San Juan de Nieva, Nordenham, Northfleet)	2,883	922	213
North America (Matagami, Kidd, CEZ Refinery)	1,746	2,226	(22)
Other Zinc (Argentina, Bolivia, Peru)	317	400	(21)
Zinc	9,196	7,746	19
Nickel assets			
Integrated Nickel Operations (Sudbury, Raglan, Nikkelverk)	1,461	1,551	(6)
Australia (Murrin Murrin)	646	664	(3)
Koniambo	239	315	(24)
Nickel	2,346	2,530	(7)
Ferroalloys	1,321	1,716	(23)
Aluminium/Alumina	1	1	-
Metals and minerals revenue[◇]	30,303	27,672	10
Coking Australia	971	1,544	(37)
Thermal Australia	4,031	5,951	(32)
Thermal South Africa	969	1,279	(24)
Prodeco	357	793	(55)
Cerrejón ¹	208	494	(58)
Coal revenue (own production)	6,536	10,061	(35)
Coal other revenue (buy-in coal)	400	768	(48)
Oil E&P assets	111	350	(68)
Oil refining assets ²	4,098	3,888	5
Energy products revenue[◇]	11,145	15,067	(26)
Corporate and other revenue	5	4	25
Total Industrial Activities revenue[◇]	41,453	42,743	(3)

1 Represents the Group's share of these JVs.

2 Controlling interest acquired in April 2019, see note 25.

OUR INDUSTRIAL BUSINESS

continued



US\$ million	Adjusted EBITDA [◇]			Adjusted EBIT [◇]		
	2020	2019	Change %	2020	2019	Change %
Copper assets						
Africa	712	(349)	n.m.	148	(1,279)	n.m.
Collahuasi ¹	1,301	885	47	1,011	603	68
Antamina ¹	755	737	2	472	462	2
Other South America	1,042	859	21	518	264	96
Australia	385	449	(14)	79	121	(35)
Polymet	(20)	(7)	n.m.	(20)	(7)	n.m.
Custom metallurgical	336	377	(11)	162	227	(29)
Copper	4,511	2,951	29%	2,370	391	506
<i>Adjusted EBITDA mining margin²</i>	<i>42%</i>	<i>29%</i>				
Zinc assets						
Kazzinc	1,228	1,097	12	824	641	29
Australia	384	406	(5)	(63)	6	n.m.
European custom metallurgical	327	166	97	181	50	262
North America	240	155	55	74	(59)	n.m.
Volcan	(33)	(44)	n.m.	(33)	(44)	n.m.
Other Zinc	(21)	(5)	n.m.	(292)	(109)	n.m.
Zinc	2,125	1,775	20	691	485	42
<i>Adjusted EBITDA mining margin²</i>	<i>35%</i>	<i>33%</i>				
Nickel assets						
Integrated Nickel Operations	670	657	2	235	235	-
Australia	117	105	11	92	81	14
Koniambo	(196)	(136)	n.m.	(298)	(249)	n.m.
Nickel	591	626	(6)	29	67	(57)
<i>Adjusted EBITDA margin</i>	<i>25%</i>	<i>25%</i>				
<i>Adjusted EBITDA margin excl. Koniambo</i>	<i>37%</i>	<i>34%</i>				
Ferroalloys	133	246	(46)	39	116	(66)
Aluminium/Alumina	(73)	(40)	n.m.	(73)	(40)	n.m.
Iron ore	(2)	(3)	n.m.	(2)	(3)	n.m.
Metals and minerals Adjusted EBITDA/EBIT[◇]	7,285	5,555	31	3,054	1,016	201
<i>Adjusted EBITDA mining margin²</i>	<i>36%</i>	<i>28%</i>				
Coking Australia	244	793	(69)	(1)	546	n.m.
Thermal Australia	799	2,332	(66)	(528)	1,018	n.m.
Thermal South Africa	183	324	(44)	(164)	23	n.m.
Prodeco	(72)	43	n.m.	(133)	(180)	n.m.
Cerrejón ¹	5	132	(96)	(105)	(56)	n.m.
Coal	1,159	3,624	(68)	(931)	1,351	n.m.
<i>Adjusted EBITDA margin³</i>	<i>18%</i>	<i>36%</i>				
Oil E&P assets	(15)	215	n.m.	(187)	-	n.m.
Oil refining assets	(105)	15	n.m.	(247)	(77)	n.m.
Energy products Adjusted EBITDA/EBIT[◇]	1,039	3,854	(73)	(1,365)	1,274	n.m.
Adjusted EBITDA margin³	17%	37%				
Corporate and other	(496)	(445)	n.m.	(612)	(505)	n.m.
Industrial activities Adjusted EBITDA/EBIT[◇]	7,828	8,964	(13)	1,077	1,785	(40)

1 Represents the Group's share of these JVs.

2 Adjusted EBITDA mining margin for Metals and Minerals is Adjusted EBITDA excluding non-mining assets as described below (\$6,488 million (2019: \$4,941 million)) divided by Revenue excluding non-mining assets and intergroup revenue elimination (\$18,139 million (2019: \$17,628 million)) i.e. the weighted average EBITDA margin of the mining assets. Non-mining assets are the Copper custom metallurgical assets, Zinc European custom metallurgical assets, Zinc North America (principally smelting/processing), the Aluminium/Alumina group and Volcan (equity accounted with no relevant revenue) as noted in the table above.

3 Energy products EBITDA margin is Adjusted EBITDA for coal and Oil E&P (but excluding Oil refining) (\$1,144 million (2019: \$3,839 million)), divided by the sum of coal revenue from own production and Oil E&P revenue (\$6,647 million (2019: \$10,411 million)).



Murrin Murrin

Own sourced nickel production of 36,400 tonnes was in line with 2019.

Koniambo

Nickel production of 16,900 tonnes was 6,800 tonnes (29%) lower than 2019, with the operation having effectively been run on one furnace (rather than two) for the majority of 2020. One of the furnaces was undergoing scheduled maintenance when Covid-19 restrictions were introduced in March, delaying its restart until October.

The second furnace was taken down for its own maintenance in January 2021, with a restart expected in March.

FERROALLOYS ASSETS

Attributable ferrochrome production of 1,029,000 tonnes was 409,000 tonnes (28%) lower than 2019, reflecting the South African lockdown and resulting suspension of smelting operations in Q2, with a phased restart thereafter. Lydenburg smelter has been placed on extended care and maintenance. The remaining four smelters were fully operational from Q4, resulting in materially higher quarter on quarter production.

COAL ASSETS

Coal production of 106.2 million tonnes was 33.3 million tonnes (24%) lower than in 2019, reflecting the impacts of the pandemic via stopped or reduced work periods in Colombia and South Africa, extended care and maintenance at Prodeco, plus market-related supply reductions in Australia in H2 2020.

Australian coking

Production of 7.6 million tonnes was 1.6 million tonnes (17%) down on 2019, reflecting downtime at Oaky Creek with an additional longwall move in the current period, timing of coking coal processing at Newlands and planned wash plant maintenance at Hail Creek.

Australian thermal and semi-soft

Production of 66.7 million tonnes was 12.5 million tonnes (16%) down on 2019, mainly reflecting targeted volume reductions in H2 2020, in response to the weak coal price environment.

South African thermal

Production of 24.0 million tonnes was 2.9 million tonnes (11%) down on 2019, reflecting various Covid-19 impacts, including self-isolation requirements for staff and contractors.

Prodeco

Prodeco has been on temporary care and maintenance since March 2020. An application for longer-term care and maintenance was refused in December 2020. On 4 February 2021, Glencore announced that Prodeco would commence the process of handing its mining contracts back to the Republic of Colombia through the National Mining Agency and that the mines would remain on care and maintenance until the formal process of relinquishing the contracts was complete.

Correjón

Correjón production was interrupted initially by a mandated shutdown from Q2-Q3, and subsequently by strike action in Q3-Q4. Production restarted in December 2020, later than initially expected.

OIL ASSETS

Exploration and production

Entitlement interest oil production of 3.9 million barrels was 1.6 million barrels (29%) lower than 2019. Operated fields in Chad were placed on care and maintenance in March/April 2020 and are yet to be restarted, given continued pandemic-related challenges in international mobility (2.3 million barrels decrease). The balance reflects year over year production increases in Equatorial Guinea and Cameroon since new wells were drilled.

Quarter on quarter, production in Equatorial Guinea reduced as a result of a scheduled temporary shut-in to tie in gas pipeline-related infrastructure. The Alen field is moving into a natural gas production phase with first gas expected in Q1 2021.



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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-14

This is the Annexure marked "SB-14" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:



.....

Witness

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2020

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Commission File Number 1-16463



PEABODY ENERGY CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

701 Market Street, St. Louis, Missouri
(Address of principal executive offices)

13-4004153

(I.R.S. Employer Identification No.)

63101-1826
(Zip Code)

(314) 342-3400

(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class

Common Stock, par value \$0.01 per share

Trading Symbol(s)

BTU

Name of Each Exchange on Which Registered

New York Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Aggregate market value of the voting and non-voting common equity held by non-affiliates (stockholders who are not directors or executive officers) of the Registrant, calculated using the closing price on June 30, 2020: Common Stock, par value \$0.01 per share, \$196.3 million.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

Number of shares outstanding of each of the Registrant's classes of Common Stock, as of February 16, 2021: Common Stock, par value \$0.01 per share, 98,244,140 shares outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Company's Proxy Statement to be filed with the Securities and Exchange Commission in connection with the Company's 2021 Annual Meeting of Shareholders (the Company's 2021 Proxy Statement) are incorporated by reference into Part III hereof. Other documents incorporated by reference in this report are listed in the Exhibit Index of this Form 10-K.

The table below summarizes information regarding the operating characteristics of each of our mines that were active in 2020 in the U.S. and Australia. The mines are listed within their respective mining segment in descending order, as determined by tons sold in 2020.

Segment/Mining Complex	Location	Mine Type	Mining Method	Coal Type	Primary Transport Method	2020 Tons Sold (In millions)
Seaborne Thermal Mining						
Wilpinjong	New South Wales	S	D, T/S	T	R, EV	13.8
Wambo Open-Cut ⁽¹⁾	New South Wales	S	T/S	T	R, EV	4.0
Wambo Underground ⁽²⁾	New South Wales	U	LW	T, C	R, EV	1.2
Seaborne Metallurgical Mining						
Coppabella ⁽³⁾	Queensland	S	DL, D, T/S	P	R, EV	2.0
Metropolitan ⁽⁴⁾	New South Wales	U	LW	C, P, T	R, EV	1.4
Moorvale ⁽³⁾	Queensland	S	D, T/S	C, P, T	R, EV	1.0
Shoal Creek ⁽⁴⁾	Alabama	U	LW	C	B, EV	0.9
Millennium ⁽⁵⁾	Queensland	S	HW	C, P	R, EV	0.3
Middlemount ⁽⁶⁾	Queensland	S	D, T/S	C, P	R, EV	—
Powder River Basin Mining						
North Antelope Rochelle	Wyoming	S	D, DL, T/S	T	R	66.1
Caballo	Wyoming	S	D, T/S	T	R	11.6
Rawhide	Wyoming	S	D, T/S	T	R	9.5
Other U.S. Thermal Mining						
Bear Run	Indiana	S	DL, D, T/S	T	Tr, R	5.7
El Segundo/Lee Ranch	New Mexico	S	D, DL, T/S	T	R	4.6
Wild Boar	Indiana	S	D, T/S, HW	T	Tr, R, R/B, T/B	2.0
Gateway North	Illinois	U	CM	T	Tr, R, R/B, T/B	1.9
Francisco Underground	Indiana	U	CM	T	R	1.8
Twentymile	Colorado	U	LW	T	R, Tr	1.6
Somerville Central ⁽⁷⁾	Indiana	S	DL, D, T/S	T	R, R/B, T/B, T/R	0.5
Wildcat Hills Underground ⁽⁸⁾	Illinois	U	CM	T	T/B	0.2

Legend:

S	Surface Mine	B	Barge
U	Underground Mine	Tr	Truck
HW	Highwall Miner	R/B	Rail to Barge
DL	Dragline	T/B	Truck to Barge
D	Dozer/Casting	T/R	Truck to Rail
T/S	Truck and Shovel	EV	Export Vessel
LW	Longwall	T	Thermal/Steam
CM	Continuous Miner	C	Coking
R	Rail	P	Pulverized Coal Injection

⁽¹⁾ In December 2020, the United Wambo Joint Venture began joint production. The tons shown reflect our proportionate share throughout the year. The Company's 50% joint venture interest is subject to an outside non-controlling ownership interest.

⁽²⁾ Majority-owned mine in which there is an outside non-controlling ownership interest.

⁽³⁾ We own a 73.3% undivided interest in an unincorporated joint venture that owns the Coppabella and Moorvale mines. The tons shown reflect our share.

⁽⁴⁾ Mine was idled during the fourth quarter of 2020.

⁽⁵⁾ Mine ceased production in March 2020, with sales continuing throughout May 2020.

⁽⁶⁾ We own a 50% equity interest in Middlemount, which owns the Middlemount Mine. Because that entity is accounted for as an unconsolidated equity affiliate, 2020 tons sold from that mine, which totaled 3.2 million tons (on a 100% basis), have been excluded from the table above.

⁽⁷⁾ Mine ceased production in December 2020, with sales continuing into January 2021.

⁽⁸⁾ Mine ceased production in December 2019, with sales continuing throughout April 2020.

Refer to the "Summary of Coal Production and Sulfur Content of Assigned Reserves" table within Part I, Item 2. "Properties," which is incorporated by reference herein, for additional information regarding coal reserves, product characteristics and production volume associated with each mine.

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-15

This is the Annexure marked "SB-15" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'S. Byrnes', written over a horizontal dotted line.

Witness



Annual Report 2020

Producers of
high-quality coal.



Notes to the consolidated financial statements

For the year ended 30 June 2020

2. Group performance

2.1 Segment reporting

Identification of reportable segments

The Group identifies its operating segments based on the internal reports that are reviewed and used by the executive management team in assessing performance and determining the allocation of resources. The performance of operating segments is evaluated at least monthly based on revenues and profit before taxes and is measured in accordance with the Group's accounting policies.

The Group has determined that it has two reportable segments: open cut operations and underground operations.

Unallocated operations include coal trading, and corporate, marketing and infrastructure functions, which are managed on a group basis and are not allocated to reportable segments.

The Group's financing (including finance costs and finance income), and depreciation and income taxes are managed on a group basis and are not allocated to reportable segments.

The following table represents revenue, profit and capital expenditure information for reportable segments:

	Open Cut Operations	Underground Operations	Unallocated Operations	Total
Year ended 30 June 2020	\$'000	\$'000	\$'000	\$'000
Revenue				
Sales to external customers	1,040,781	475,820	205,008	1,721,609
Revenue by product type:				
Metallurgical coal	246,434	73,605	-	320,039
Thermal coal	794,347	402,215	205,008	1,401,570
Total revenue from contracts with customers	1,040,781	475,820	205,008	1,721,609
Result				
Segment EBITDA result	212,276	107,655	(13,968)	305,963
Depreciation and amortisation				(224,583)
Income tax expense				(12,294)
Net finance expense				(39,050)
Net profit after tax per consolidated statement of comprehensive income				30,036
Capital expenditure				
Segment expenditure	94,832	91,797	61,717	248,346

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-16

This is the Annexure marked "SB-16" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'S. Byrnes', written over a horizontal dotted line. The signature is cursive and somewhat stylized.

Witness

FOUNDED ON SHARED VALUES 
Focused on Australian futures
ANNUAL REPORT 2020



YANCOAL
AUSTRALIA LTD

(INCORPORATED IN VICTORIA, AUSTRALIA WITH LIMITED LIABILITY)
ASX STOCK CODE: YAL HKEX STOCK CODE: 3668 ACN 111 859 119

MANAGEMENT DISCUSSION AND ANALYSIS

The table below provides a summary of the Watagan financial performance for the period 31 March 2016 to 16 December 2020.

	YEAR ENDED 31 DECEMBER					TOTAL \$'M
	31 MAR 2016 TO 31 DEC 2016 \$'M	2017 \$'M	2018 \$'M	2019 \$'M	1 JAN 2020 TO 16 DEC 2020 \$'M	
Operating loss (including finance costs)	(151)	(136)	(204)	(241)	(180)	(912)
Unrealised foreign exchange gain / (loss)	(59)	77	(104)	(8)	82	(12)
Impairments	-	-	(100)	(873)	-	(973)
Loss before tax	(210)	(59)	(408)	(1,122)	(98)	(1,897)
Income tax benefit	48	1	120	337	26	532
Loss after tax	(162)	(58)	(288)	(785)	(72)	(1,365)

FINANCIAL RESULTS REVIEW

RESULTS FOR THE YEAR ENDED 31 DECEMBER 2020

For the management discussion and analysis, the Group's operating results for the year ended 31 December 2020 are compared with the operating results for the year ended 31 December 2019.

All financial numbers included below, and in the commentary to follow, are stated in Australian dollars (A\$ or \$) unless otherwise stated.

	YEAR ENDED 31 DECEMBER						CHANGE %
	2020			2019 ⁴⁵			
	IFRS REPORTED \$M	NON- OPERATING \$M	OPERATING \$M	IFRS REPORTED \$M	NON- OPERATING \$M	OPERATING \$M	
Revenue	3,473	110	3,583	4,459	85	4,544	(21%)
Other income	680	(676)	4	102	(94)	8	(50%)
Changes in inventories of finished goods and work in progress	12	-	12	39	-	39	(69%)
Raw materials and consumables	(666)	-	(666)	(707)	-	(707)	(6%)
Employee benefits	(568)	-	(568)	(525)	-	(525)	8%
Transportation	(556)	-	(556)	(562)	-	(562)	(1%)
Contractual services and plant hire	(364)	-	(364)	(388)	-	(388)	(2%)
Government royalties	(232)	-	(232)	(310)	-	(310)	(25%)
Coal purchases	(302)	-	(302)	(332)	-	(332)	(9%)
Loss on reconsolidation	(1,383)	1,383	-	-	-	-	-
Other operating expenses	(183)	79	(104)	(145)	56	(89)	17%
Share of (loss)/profit of equity-accounted investees, net of tax	(59)	-	(59)	(24)	-	(24)	(146%)
EBITDA	(148)	896	748	1,607	47	1,654	(55%)
EBITDA %	(104%)		21%	36%		36%	
Depreciation and amortisation	(804)	-	(804)	(607)	-	(607)	32%
EBIT	(952)	896	(56)	1,000	47	1,047	(105%)
EBIT %	(127%)		(102%)	22%		23%	
Net finance costs	(191)	29 ⁴⁶	(162)	(233)	42 ⁴⁶	(171)	(5%)
Non-operating items	-	(925)	(884)	-	(89)	(90)	-
(Loss) / Profit before income tax	(1,143)		(1,143)	767		767	(249%)
(Loss) / Profit before income tax %	(132%)		(132%)	17%		17%	
Income tax benefit / (expense)	103	-	103	(48)	(219)	(267)	139%
Income tax one-off	-	-	-	-	219	219	-
(Loss) / Profit after income tax	(1,040)		(1,040)	719		719	(249%)
(Loss) / Profit after income tax %	(132%)		(132%)	16%		16%	
Attributable to:							
- Owners of Yancoal	(1,040)	-	(1,040)	719	-	719	(249%)
- Non-controlling interests	-	-	-	-	-	-	-
(Loss) / Profit per share attributable to the ordinary equity holders of the Company							
Basic (loss) / profit per share (cents)	(78.8)	-	(78.8)	54.5	-	54.5	(245%)
Diluted (loss) / profit per share (cents)	(78.8)	-	(78.8)	54.4	-	54.4	(245%)

45 In 2020 the accounting presentation of the Middlemount royalty was changed to better reflect the substance of the royalty income. This required the reclassification of certain prior year income statement items but with no change in profit before tax or the balance sheet. The reclassifications comprised the recognition of \$19 million of royalty revenue, the de-recognition of \$20 million of interest income and a \$1 million increase in the remeasurement of royalty receivable within other income.

46 Includes the reclassification of interest income of \$84 million (2019: \$105 million) from other income to net finance costs and bank fees and other charges of \$55 million (2019: \$56 million) from other operating expenses to net finance costs as these amounts are excluded from operating EBITDA.

MANAGEMENT DISCUSSION AND ANALYSIS

To supplement the Group's consolidated financial statements, which are presented in accordance with International Financial Reporting Standards ("IFRSs") the Group also uses adjusted Operating EBITDA and Operating EBIT as additional financial measures, as set out in the table above, which are unaudited and not required by or presented in accordance with, IFRSs. These financial measures are presented because they are used by management to evaluate the Group's financial performance. These non-IFRSs measures provide additional information to investors and others in understanding and evaluating the consolidated results of operations in the same manner as they help management compare the financial results across accounting periods with those of our peer companies, by removing one-off or non-operating items.

As presented by the management, Operating EBITDA represents profit or loss before income tax for the year as adjusted for net finance costs, depreciation and amortisation and any significant non-operating items, while Operating EBIT represents profit or loss before income tax as adjusted for net finance costs and any significant non-operating items.

PROFIT ATTRIBUTABLE TO EQUITY HOLDERS OF THE COMPANY

Profit after income tax decreased by 249% from \$719 million in 2019 to a loss of \$1,040 million in 2020 and was fully attributable to the owners of Yancoal with no non-controlling interests.

Loss attributable to the owners of Yancoal of \$1,040 million was impacted by a number of non-operating items during 2020. These totaled a net loss before tax impact of \$925 million comprising a \$653 million gain on bargain purchase recognised on the acquisition of an additional 10% interest in the Moolarben unincorporated joint venture, a \$1,383 million loss on the Watagan reconsolidation, \$15 million of stamp duty also on the Moolarben 10% acquisition, a \$194 million fair value loss recycled from the hedge reserve, a \$23 million contingent royalty revaluation gain and a \$9 million royalty revaluation loss. These are discussed in more detail separately below, refer "Overview of non-operating items", and have been excluded from the operating commentary.

OVERVIEW OF OPERATING RESULTS

The below comparison of the financial results for the years ended 31 December 2020 and 2019 is impacted by changes in the Group's portfolio of assets, most significantly the acquisition of a further 10% interest in the Moolarben joint venture from 1 April 2020 and the Watagan reconsolidation from 17 December 2020.

The analysis in this section includes ex-mine sales tonnes, saleable production and ex-mine revenue comprising (i) 85% of the Moolarben unincorporated joint venture up to and including 31 March 2020 and 95% thereafter (ii) 51% of the unincorporated HVO joint venture (iii) 82.9% of the combined unincorporated Mount Thorley and Warkworth joint ventures (MTW) (iv) 100% of Yarrabee and Stratford Duralie and (v) 100% of the Watagan group from 16 December 2020.

47 Ex-mine coal sales include only coal that has been produced at one of the Group's mines. They exclude the sale of coal that has been purchased from third parties.

48 The Group's quarterly report issued on 19 January 2021 included Attributable Thermal Sales of 33.7Mt with this amount including an additional 0.5 Mt attributable to the additional 10% interest acquired in Moolarben in the first quarter of 2020. The difference arises as the economic effective date of the acquisition was 1 January 2020 but for accounting purposes the transaction completion date was 31 March 2020.

The results of Middlemount and Watagan (prior to 16 December 2020) are excluded from the line by line commentary below as their results, as incorporated equity-accounted investments, are included in share of profits of equity-accounted investees, net of tax in the statement of profit and loss and is discussed separately below.

REVENUE

	YEAR ENDED 31 DECEMBER		
	2020 \$M	2019 \$M	CHANGE %
Ex-mine coal sales ⁴⁷	3,051	3,932	(22%)
Sale of purchased coal	366	415	(12%)
Other	12	18	(31%)
Sale of coal	3,429	4,365	(21%)
Mining service fees	45	43	5%
Sea freight	64	83	(23%)
Royalty revenue	15	19	(21%)
Other	30	34	(12%)
Revenue	3,583	4,525	(21%)

Total revenue decreased by 21% from \$4,525 million in 2019 to \$3,583 million in 2020, primarily due to a 21% decrease in coal sales revenue from \$4,365 million in 2019 to \$3,429 million in 2020. With respect to coal sales revenue, the key factors were:

	YEAR ENDED 31 DECEMBER		
	2020	2019	CHANGE %
Thermal coal			
Average selling price (A\$ per tonne)	76	100	(24%)
Sales volume (Mt)	33.2 ⁴⁸	30.1	10%
% of total ex-mine sales volume	89	85	5%
Total ex-mine thermal coal revenue (A\$ million)	2,535	3,015	(16%)
Metallurgical coal			
Average selling price (A\$ per tonne)	124	167	(26%)
Sales volume (Mt)	4.2	5.5	(24%)
% of total ex-mine sales volume	11	15	(28%)
Total ex-mine metallurgical coal revenue (A\$ million)	516	917	(44%)
Total coal			
Average selling price (A\$ per tonne)	82	111	(26%)
Total ex-mine sales volume (Mt)	37.4	35.6	5%
Total ex-mine coal revenue (A\$ million)	3,051	3,932	(22%)

COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2020

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Applicant: Port of Newcastle Operations Pty Limited (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-17

This is the Annexure marked "SB-17" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:



.....

Witness



Our Leadership

Our Leadership

Chief Executive, NSW Minerals Council

Mr Stephen Galilee



Stephen Galilee has been CEO of the NSW Minerals Council since 2012. In this role he has been a strong and successful advocate for the mining industry and the mining communities of NSW.

Prior to joining the NSW Minerals Council, Stephen worked in senior roles in politics and government, including as a Senior Adviser to former Prime Minister John Howard and as Chief of Staff to Mike Baird when NSW Treasurer.

Stephen brings extensive public policy experience to his role at the NSW Minerals Council, along with significant campaign skills honed over many years while working on a range of past election campaigns across Australia at state and federal levels. Stephen also has experience in small business, family business, and as a consultant advising major corporations in construction, engineering and infrastructure.

[\[Read More\]](#)

NSW Minerals Council - Board of Directors

Chair | Mr Tony McPaul, Regis Resources Limited

Deputy Chair | Mr Mick Buffier, Glencore

Director | Mr Stephen Galilee, NSW Minerals Council

Director | Mr Paul Flynn, Whitehaven Coal

Director | Mr Lawrie Conway, Evolution Mining

Director | Ms Katie Brassil, Centennial Coal

Director | Mr David Mout, Yancoal Australia Limited

Company Secretary | Ms Christina Langby, NSW Minerals Council

News

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- Economy
- Infrastructure

Contact us

12 O'Connell St,
Sydney NSW 2000

02 9274 1400

information@nswmining.com.au

Media Inquiries:

Brad Emery

Company

- Our Members
- Our Leadership
- Our Partnerships
- Media inquiries

Events

- NSW Mining HSEC Conference & Awards (POSTPONED)
- NSW Women in Mining Awards (POSTPONED)
- NSW Mining Industry & Suppliers Awards

Campaigns

- Land Use Facts
- Voice For Mining
- Women in mining
- Fix the NSW Planning System (2019)

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UPPER HUNTER MINING DIALOGUE

Community, Mining, Government and Business working together

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 (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-18

This is the Annexure marked "SB-18" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'S. Byrnes', written over a dotted line. The signature is cursive and somewhat stylized.

Witness



Disclosure of material industry association memberships – 2019

Name	Base membership fee for 2019, ranges, US\$*	Nature of fee	Highest level of governance role	Rationale for membership
American Petroleum Institute	1 million - 1.5 million†	Production-based	Board member	<ul style="list-style-type: none"> • API represents the oil and gas sector in the United States. • It plays a world-leading role in developing standards and guidance on workplace health and safety and environmental protection for offshore oil and gas production. • It also advocates for policies that enable a strong and viable oil and gas sector, and builds awareness of the sector’s contribution to the American economy.
Australian Petroleum Production and Exploration Association	100,000 - 500,000	Production-based	Board member	<ul style="list-style-type: none"> • APPEA represents the oil and gas sector in Australia. • It plays an important role in helping to build the capacity of member companies in relation to health and safety and environmental protection. • It also advocates for policies that support the development of the nation’s oil and gas resources in a manner that maximises the return to the Australian industry and community.
Business Council of Australia	Less than 100,000 (<1%)	Flat rate	Representative s on various committees, including Climate Change and Energy.	<ul style="list-style-type: none"> • The BCA represents Australia’s largest companies. • It advocates for policies that enable a productive, competitive and fair economic environment. • It also promotes the contribution of large businesses to the Australian community.
Chamber of Minerals and Energy of Western Australia	100,000 - 500,000	Production-based	Board member	<ul style="list-style-type: none"> • The CME represents the minerals and energy sectors in Western Australia. • It advocates for policies that help secure a safe, sustainable and competitive resources sector. • It also plays an important role in engaging with the community to strengthen sector practices and build awareness of the sector’s contribution to the West Australian economy.

Name	Base membership fee for 2019, ranges, US\$*	Nature of fee	Highest level of governance role	Rationale for membership
Consejo Minero	100,000 - 500,000	Production-based	Board member	<ul style="list-style-type: none"> • Consejo Minero is the association that brings together the largest producing mining companies in Chile. • It advocates for policies that enable a safe, sustainable and competitive resources sector. • It also focuses on addressing key sectoral challenges (e.g. skills and training, access to energy), and engages with the community to strengthen sector practices.
International Copper Association	5 million - 7.5 million	Production-based	Board member	<ul style="list-style-type: none"> • The ICA is a global association that represents copper producers. • It advocates on issues critical to future copper demand. • It also actively promotes the environmental and other benefits of copper, and works to increase the application of, and demand for, copper around the world.
International Council on Mining and Metals	500,000 - 1 million (10-15%)	Production-based	Council member	<ul style="list-style-type: none"> • The ICMM is a global body that focuses on strengthening the environmental and social performance of the mining and metals sectors. • BHP was a founding member of the ICMM.
Minerals Council of Australia	1 million - 1.5 million (10-15%)	Production-based	Board member	<ul style="list-style-type: none"> • The MCA represents the minerals sector in Australia. • It plays an important role in helping to build the capacity of member companies in areas such as health and safety, and environmental protection. • It also advocates for policies that benefit the sector and its host communities, particularly in relation to education and skills, regional development and fiscal settings.

Name	Base membership fee for 2019, ranges, US\$*	Nature of fee	Highest level of governance role	Rationale for membership
New South Wales Minerals Council	500,000 - 1 million	Production-based	Member of Executive Committee	<ul style="list-style-type: none"> • The NSWMC represents the minerals sector in New South Wales. • It is the key representative body to interact with the New South Wales Government when dealing with industry-wide issues (such as a pandemic response). • It advocates for policies that help secure a safe, sustainable and competitive resources sector. • It promotes the positive contribution mining makes to New South Wales, and inclusion and diversity initiatives in the sector. • It works actively in the health and safety space, by promoting best practice and engaging with the New South Wales Government.
Queensland Resources Council	500,000 - 1 million ‡	Production-based	Board member	<ul style="list-style-type: none"> • The QRC is the key representative body to interact with the Queensland Government when dealing with industry-wide issues (such as a pandemic response). • The QRC advocates for policies that support a competitive and sustainable resources sector in Queensland. • It actively promotes the positive contribution mining makes to Queensland. • It highlights inclusion and diversity practices. An example is the QRC Indigenous Awards, which celebrate Indigenous employment and training opportunities. • It encourages skills, training and education, all of which are vital to the industry's future in Queensland.
South Australian Chamber of Mines and Energy	Less than 100,000	Production-based	Board member	<ul style="list-style-type: none"> • SACOME represents the minerals and energy sectors in South Australia. • It advocates for policies that help secure a safe, sustainable and competitive resources sector. • It also plays an important role in building awareness of the sector's contribution to the South Australian economy, and its performance in relation to key sustainable development goals.

Name	Base membership fee for 2019, ranges, US\$*	Nature of fee	Highest level of governance role	Rationale for membership
United States Chamber of Commerce	100,000 - 500,000	Tiered	Representative on the Energy and Environment Committee and newly formed Climate Task Force	<ul style="list-style-type: none"> • The US Chamber is a high profile and longstanding association that plays a significant role in the United States business community. • It plays an important role in advocating on issues to improve the productivity of the American economy, with a particular focus on the benefits of free trade.

* Figures in parentheses represent BHP's estimate of what proportion our fees account for the total membership fees of an association. These estimates are only provided where information on total fees is publicly available.

† Our fees for API in 2019 include production associated with our now divested shale Assets.

‡ Fees for the QRC involve the BHP Mitsubishi Alliance (BMA). BMA is a 50:50 joint venture between BHP Group Limited and Mitsubishi Development Pty Ltd that was formed in 2001.

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Applicant: Port of Newcastle Operations Pty Limited (ACN 165 332 990)

ANNEXURE CERTIFICATE

SB-19

This is the Annexure marked "SB-19" referred to in the affidavit of Simon Byrnes affirmed at Newcastle in New South Wales on 30 July 2021.

Before me:

A handwritten signature in black ink, appearing to be 'B. Byrnes', is written over a horizontal dotted line. The signature is cursive and extends below the line.

Witness



Review of our industry
organisations' positions
on climate change
2020

Membership fees

For each of our industry organisations, we pay annual fees. Organisations calculate their fees as a fixed amount for all members or as a proportion of annual revenue or production volumes. Generally, organisations do not assign membership fees to a particular purpose or activity. On some occasions, we may pay additional fees for one-off projects.

During 2019, the organisations to which we paid fees in excess of US\$200,000 are:

Organisation	US\$
International Copper Association	4,200,000
Minerals Council of Australia	2,007,525
Nickel Institute	1,790,000
Cobalt Institute	970,000
ICMM	805,000
Queensland Resource Council	671,750
NSW Minerals Council	561,222
International Zinc Association	560,000
Sociedad Nacional de Minería, Petróleo y Energía (Perú)	426,000
Minerals Council of South Africa	412,208
International Lead Association	286,500
World Coal Association	205,000

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ANNEXURE CERTIFICATE

SB-20

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Before me:

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Witness



NSW MINERALS COUNCIL
PO Box H367
Australia Square, NSW 1215

T 02 9274 1400
nswmining.com.au
ABN: 42 002 500 316

Mr Craig Carmody
Chief Executive Officer
Port of Newcastle
Level 4, 251 Wharf Road
NEWCASTLE NSW 2300

14 July 2021

BY EMAIL: craig.carmody@portofnewcastle.com.au

ACCC Collective Bargaining Authorisation - Request to Negotiate Collectively

Dear Craig,

Thank you for taking the time to meet with NSWMC on 15 June 2021.

NSWMC and the Hunter Valley coal producer signatories to this letter reinforce our wish to enter constructive negotiations with the Port of Newcastle on terms and conditions for accessing services at the Port under our collective bargaining authorisation.

We continue to believe collective negotiation under the collective bargaining authorisation granted by the ACCC is the most pragmatic and efficient way to reach agreeable terms and conditions.

Collective bargaining authorisations are commonly used by a range of industries, including port infrastructure services and the resources sector. Since the 1990's, the ACCC has determined several hundred authorisations which have been used to facilitate negotiations, reduce transaction costs and ensure common and equitable terms of access.

Bilateral negotiations previously undertaken with the Port of Newcastle have failed. The issues impeding the ability to reach agreement around the terms and conditions are more appropriately dealt with through a collective bargaining process, which would provide more consistency and certainty for all parties and the Hunter Valley mining industry in general.

The continued refusal of the Port of Newcastle to collectively negotiate creates a significant impediment to reaching any agreement between the parties.



NSW MINERALS COUNCIL
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NSWMC and the Hunter Valley coal producers once again request you withdraw your review of the authorisation and enter voluntary negotiations through it.

This is the only way such discussions can occur in compliance with competition law. As long as the ACCC authorisation remains under review we cannot participate in any such discussions.

In the absence of the Port's agreement to this process we will have no alternative but to continue to seek regulatory change, including an arbitration process to resolve these matters.

We look forward to your response.

Yours sincerely

Stephen Galilee
CHIEF EXECUTIVE OFFICER

Glencore Coal Assets Australia

The Bloomfield Group

Malabar Resources

Whitehaven Coal Mining

MACH Energy Australia

Peabody Energy Australia

Idemitsu Australia Resources

Yancoal Australia

Centennial