



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2021
Re: Application for review lodged by New South Wales Minerals Council under subsection 44K(2) of the *Competition and Consumer Act 2010 (Cth)* of the decision of the designated Minister under subsection 44H(1) of the *Competition and Consumer Act 2010 (Cth)*
Applicant: New South Wales Minerals Council

DIRECTIONS

TRIBUNAL: Justice O'Bryan (Deputy President)
Dr D Abraham (Member)
Prof K Davis (Member)
DATE: 16 June 2021
WHERE MADE: Melbourne

THE TRIBUNAL DIRECTS THAT:

1. Pursuant to s 44K(6A) of the *Competition and Consumer Act 2010 (Cth)*, the Tribunal directs the National Competition Council (NCC) to provide the following documents to the Tribunal on or before 17 June 2021:
 - (a) the following documents located at the hyperlink <https://ncc.gov.au/application/application-for-declaration-of-certain-services-in-relation-to-the-port-of-newcastle/1> at footnote 11 of the NCC's Final Recommendation made on 18 December 2020:
 - (i) Application – Annexure A;
 - (ii) Application – Annexure B; and
 - (iii) Application – Annexure C,**(Pro Forma Long Term Pricing Deeds).**
2. Pursuant to s 44ZZOAAA(4) of the *Competition and Consumer Act 2010 (Cth)*, the Tribunal requests the Port of Newcastle Operations Pty Ltd (PNO) to provide to the

Tribunal by 12 noon on Friday, 18 June 2021 any document that satisfies the following four criteria:

- (a) the document was submitted to the NCC by PNO for the purposes of the NCC's Final Recommendation made on 18 December 2020; and
 - (b) the document relates to any of the Pro Forma Long Term Pricing Deeds; and
 - (c) the document is relevant to an understanding of the operation of the Pro Forma Long Term Pricing Deeds or the extent to which PNO has entered into Pro Forma Long Term Pricing Deeds with port users; and
 - (d) PNO wishes to rely on the document in the review.
3. The Tribunal will provide a copy of the documents referred to in directions 1 and 2 to the participants in the review and the NCC.
 4. Volumes 4 and 5 of the Hearing Book filed by the New South Wales Minerals Council (NSWMC) are not part of the Hearing Book for the review.
 5. PNO is to file and serve a supplementary volume of the Hearing Book containing the documents referred to in directions 1 and 2 by 4pm on Friday, 18 June 2021 which is in electronic form and:
 - (a) is produced in a text-recognised PDF format;
 - (b) is paginated sequentially throughout; and
 - (c) contains electronic bookmarks to each document in that volume.
 6. NSWMC is to file and serve any revised outline of submissions by noon on Friday, 18 June 2021.
 7. Direction 15 of the directions of the Tribunal made on 8 April 2021 be varied to require PNO to file and serve an outline of submissions not exceeding 20 pages by 12 noon on Sunday, 20 June 2021.
 8. Direction 16 of the directions of the Tribunal made on 8 April 2021 be varied to require the NCC to file and serve an outline of submissions not exceeding 10 pages as soon as possible on Monday 21 June 2021, but no later than 4pm.



A handwritten signature in blue ink, consisting of a stylized 'R' followed by a '4'.

REGISTRAR
Australian Competition Tribunal