



## PORT WARATAH COAL SERVICES

3 April 2020

Mr James Martin  
Assistant Director, Adjudication  
Australian Competition & Consumer Commission

Via email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Mr Martin

### **New South Wales Minerals Council – Application for authorisation (AA1000473)**

I refer to the application to the ACCC by the NSW Mineral Council and various other parties (**Applicants**) dated 5 March 2020 (**Application**) seeking authorisation to conduct collective negotiations with Port of Newcastle Operations Pty Limited (**PNO**).

As the ACCC is aware, Port Waratah Coal Services (**Port Waratah**) is one of Australia's largest bulk cargo terminal operators. We own and operate the Kooragang and Carrington Coal Terminals, with a combined capacity of 145 million tonnes per annum. We have approximately 330 employees operating our terminals 24 hours per day, seven days a week. We work with more than 25 producers and other service providers in the Hunter Valley Coal Chain, one of the largest and most collaborative coal supply chains in the world.

Port Waratah supports the Application for authorisation of the Proposed Conduct and considers that the Proposed Conduct will deliver benefits to the coal industry in the Hunter Region and New South Wales.

The Proposed Conduct will assist the coal industry overcome material concerns relating to access to essential infrastructure and services at the Port, including significant increases in prices and inflexibility in commercial negotiations.

Access to services provided by PNO for use of the channel, a key piece of monopoly infrastructure, on reasonable terms and conditions is essential to the efficient operation of the Hunter Valley coal chain. We consider that collective negotiations are likely to assist the industry in reaching long-term, sustainable and beneficial commercial outcomes.

### **The Application**

Port Waratah supports the Applicants' request to enable them to collectively negotiate with PNO on all terms of access that are necessary or desirable for the exporting of coal from the Port. This will reduce the significant bargaining power advantage that PNO holds against other market participants in the coal industry.

### *Regulated asset base*

Port Waratah shares the Applicants' concern with PNO's proposed regulated asset base (**RAB**) and, in particular, the inclusion of expenditure totaling in excess of \$500 million related to dredging of the channels. Port Waratah funded the construction of the existing deep-water channel, swing basin, berth pockets and seawalls adjacent to the Kooragang Coal Terminal. As a result, our customers have already paid for these construction costs via historical terminal access charges. Customers should not be required to pay twice through PNO's access charge.

As the ACCC is aware, Glencore Coal Pty Ltd has commenced proceedings in the Federal Court of Australia in relation to the calculation of PNO's RAB. However, any decision by the Federal Court will apply only between Glencore and PNO.

### *Development of Port infrastructure*

Port Waratah and the coal industry are also concerned at the lack of evidence that PNO has provided to show that recent increases in port charges have been re-invested in the Port for the benefit coal export operations.

There have been significant price increases since the privatisation of the Port, and the industry is seeking greater transparency in how cost and charges are allocated, and the benefits that these price increases are delivering.

Charges levied on the coal industry should also not be used to cross-subsidise the development of a container terminal or other potential future infrastructure development by PNO that does not provide a benefit to the customer. This is a significant and unwarranted impost on the coal industry.

### *Public benefits and detriments*

Port Waratah agrees that the Proposed Conduct will deliver significant public benefits as outlined by the Applicants in the Application. These public benefits include:

- **Increased investment and employment:** Certainty for investment in the Hunter Valley will facilitate economic growth and employment in the Hunter region.
- **Improving efficiency:** PNO's proposed access arrangements will affect the industry as a whole (e.g. capital expenditure at the Port) and should be dealt with at an industry level. A long-term arrangement on user funded expenditure will lead to more certain pricing and efficient investment.
- **Improving pricing outcomes:** Increased transparency on expenditure and how costs are allocated may lead to more efficient investment and reduced charges over time. Collective negotiations will also assist smaller producers access longer-term arrangements, helping them manage uncertainty and investment.
- **Transaction cost savings:** Cost savings for PNO and mining companies who would otherwise be required to negotiate on an individual basis.
- **Promoting competition in markets:** Increased certainty of investment will promote competition in relation supply of Hunter Valley coal into export markets.



Port Waratah does not consider that the Proposed Conduct will involve any significant public detriments, because of the voluntary nature of the negotiation with PNO and the limited information sharing that will occur between the Applicants.

### **Conclusions**

Port Waratah operates in a market which is dependent on the Service. If our customers are exposed to significant increases in the monopoly prices PNO charge for access to their services then this increases future uncertainty, impacts customers' long-term viability and reduces their competitiveness in the global coal export market. This would adversely impact upon the utilisation of Port Waratah's infrastructure and Port Waratah's long-term viability. It also has significant consequences for the long-term prosperity of the broader Hunter region.

We note separately that Port Waratah's Carrington Coal Terminal is situated on land leased from PNO under the terms of the privatisation of the Port. The Carrington Coal Terminal has operated on this land successfully since 1976, currently has a licenced capacity of 25 million tonnes of coal per annum (mtpa) and is a key component of the terminal capacity Port Waratah provides to coal producers in fulfilment of its obligations under the Capacity Framework Arrangements. Port Waratah has determined that the Hunter Valley coal industry will require access to and use of its terminal infrastructure at Carrington beyond the expiry of the current lease term at the end of 2024.

To secure this access, Port Waratah have been seeking to negotiate an extension of the Carrington Coal Terminal leases with PNO since shortly after the privatisation of the Port in 2014. While we acknowledge that property management services are not a subject of the current application, we wish to again record concerns we have previously raised about the potential for PNO's approach to these lease negotiations to increase uncertainty and/or add to logistics costs for the coal industry.

If the ACCC has any further questions, Port Waratah would be pleased to assist.

Yours sincerely



**HENNIE DU PLOOY**  
**CHIEF EXECUTIVE OFFICER**

