

**C L I F F O R D
C H A N C E**

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National Competition Council
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6 March 2019

Dear Mr York,

Application by Port of Newcastle Operations (PNO) to the National Competition Council (NCC) for a possible recommendation to revoke the declaration of shipping channel service at the Port of Newcastle

We refer to the NCC's Preliminary Views released on 19 December 2018.

It has recently come to our attention that on 31 January 2019, Mr Craig Carmody, the CEO of PNO gave evidence before the Legislative Council of NSW - Public Works Committee, Inquiry into the Impact of Port of Newcastle Sale Arrangements, in relation to the development of a \$1.8 billion container terminal by PNO. We draw your attention to the transcript of Mr Carmody's evidence available at: <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2166/31%20January%202019%20-%20Corrected%20-%20Port%20of%20Newcastle%20sale%20arrangements.pdf>

Glencore submits that the evidence by Mr Carmody before the Legislative Council of NSW is relevant to the NCC's consideration of PNO's arguments that the declaration has a negative impact on PNO's investment decisions at the Port. In particular, the evidence is contrary to argument identified in the NCC's Preliminary Views at [9.40] that:

“The Council considers that declaration of the Service (with the resultant access regulation through a negotiate-arbitrate regulatory model under Part IIIA) may lessen PNO's incentive to invest in maintaining or improving the Port or the Service due to limiting the returns which might otherwise have been accrued to PNO from such investment...”

It is unclear to us whether the NCC is still deliberating on this matter. If it is, can we please ask that this letter and referenced material be taken into consideration. The NCC previously stated on its website that the NCC final recommendation will be published in March 2019. Please let us know whether this has occurred and, if so, provide us with a copy of the

NCC's final recommendation. If it is now too late in the NCC process, we please ask that this letter is provided to the Treasurer as part of the Treasurer's consideration of the matter.

Yours sincerely

Dave Poddar
Partner
Clifford Chance