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National Competition Council
GPO Box 250
Melbourne VIC 3001

pon@ncc.gov.au

Dear Council Secretariat,

RE: APPLICATION FOR REVOCATION OF THE DECLARATION OF THE SHIPPING CHANNEL SERVICE AT THE PORT OF NEWCASTLE

We refer to the email dated 17 April 2019 from the National Competition Council (**NCC**) attaching a report dated 8 April 2019 (**NERA Report**) from NERA Economics Consulting (**NERA**). The NERA Report was commissioned by the NCC as an input to its assessment of the application by Port of Newcastle Operations (**PNO**), seeking revocation of the declaration under the National Access Regime in Part 111A of the Competition and Consumer Act of the shipping channel service at the Port of Newcastle (**Port**). The NCC has requested submissions in response to the NERA Report by 5pm on 26 April 2019.

The Bloomfield Group (**Bloomfield**) has previously made a submission dated 4 February 2019 to the NCC in relation to this matter. As stated in that submission, Bloomfield is an Australian owned and operated group of private companies which operates in the Hunter Valley and directly employs 600 people. Bloomfield operates the Rix's Creek Mine at Singleton and the Bloomfield Mine at Ashtonfield. It also holds Exploration Tenements in the Hunter Valley.

We have read the NERA Report. We are not in a position to provide a learned critique of NERA's hypothetical and theoretical economic arguments. However, we do wish to respond by noting certain factual matters. As explained below, we don't believe that NERA's economic analysis holds true in the NSW mining environment. We reiterate some of the points explained in more detail in our submission dated 4 February 2019 and ask that you also refer to that earlier submission.

We note that PNO has not contacted us in relation to the concerns set out in our 4 February 2019 submission.

As stated in our earlier submission, PNO is an infrastructure monopolist. In the absence of the declaration, PNO will have an opportunity to appropriate as much return as it wishes from the mining companies in the Hunter Valley. PNO's past actions have shown that. So, in the absence of the declaration, there is no reason to believe that we will not see a recurrence of predatory pricing behaviour.

NERA theorises at paragraph 39 of the NERA Report in relation to competition for mining tenements that "even if the value of tenements was reduced because of PNO's pricing, the tenements are likely to be allocated to the most efficient miners/explorers" because the higher cost miners would not apply.

With respect, that does not address the practical valuation and uncertainty concern that mining companies would have in the absence of the declaration. If PNO's pricing behaviour is unconstrained and there is no alternative to PNO, with no ability to forecast PNO pricing or to tie any such forecast to a best estimate of cost plus a reasonable margin, then how could anyone (however efficient) prudently invest in new NSW mining tenements at all?

Finally, we note NERA's arguments that the relevant market for mining tenements is not the Hunter Valley, but is global or at least as broad as the Asia Pacific region. Bloomfield finds the potential consequences of NERA's analysis troubling and would be very concerned if the NCC were to find it persuasive. The Competition and Consumer Act (**CCA**) is intended to ensure competitive markets *in Australia* for the benefit of Australian consumers. Mining companies such as ours seek to grow our businesses by investing in the NSW economy and its people. Expansion into new local tenements and mines can bring us economies of scale and scope so that we can compete more effectively for our benefit and the benefit of the Australian economy. While we do not dispute the global nature of the seaborne coal market, we count ourselves among the diminishing ranks of small mining companies who have neither the scale nor the desire to consider operating in jurisdictions outside Australia which may offer more cost certainty in relation to essential infrastructure.

We see no comfort in the NERA analysis as to what would occur if the constraints afforded by the declaration were removed. Bloomfield is also most concerned by the potential, should PON progress its stated ambition to develop a large container terminal, for PON to effectively force Hunter Valley coalmining companies to subsidise this pursuit and pay the financial penalties imposed by the suite of agreements that the NSW government put in place in relation to the ports of Kembla, Botany and Newcastle as part of its sale to PON.

The NERA arguments ignore the reality of past actual monopolistic pricing by PNO and seek to conclude that this would not recur because miners such as Bloomfield could readily invest elsewhere around the globe. NERA's economic theories do not reflect the practical realities for companies such as ours. It would be insurmountably difficult for us to seek to invest in other countries and be detrimental to royalty streams and employment opportunities in Australia. For Australian mining companies of our size, the options are effectively either Australia or an exit from mining.

In summary, Bloomfield cannot see any basis on which the NCC should seriously consider the theories put forward in the NERA Economic Report in the absence of any evidence that the economic theories reflect observable reality.

We would be more disappointed still if an Australian Treasurer would accept such arguments in favour of a revocation, should the NCC (in our view wrongly) ultimately recommend this, given the probable negative impacts on Australian employment and growth.

Also more broadly, the Australian public, regulators and governments seem to be becoming aware of the negative impacts (many unforeseen) on the economy and the public of the oligopolistic behaviour of electricity generators following the various privatisations and Government sales processes.

It seems to us that the Port of Newcastle is an even more problematic case than are the electricity generators given that it has an absolute monopoly over the distribution of Hunter Valley export coal production. In the absence of regulatory constraints, there is an opportunity for the private operators of essential infrastructure to force coal mining operators, who are already very significant contributors to regional employment and to the NSW economy, to pay the ultimate price for the commercial arrangements made between the State of NSW and the Port of Newcastle as part of the sale process.

Considering the submissions made throughout the whole review process undertaken by the NCC, including the NERA Report, there seems little downside for all parties and the broader community in recommending that the declaration of the shipping channel service at the Port of Newcastle be maintained. The alternative of revocation, delivers risk to pricing, investment and growth as well as the potential for unforeseen or mis-modelled outcomes that have been seen in recent unconstrained privatisations. Possible, or perhaps probable, impacts on competition include diminution of the global price attractiveness of Hunter Valley export coal compared to coals from other jurisdictions and further consolidation of coal production to the major global producers who are better placed to choose to disinvest in NSW or to rebalance global production in response to price signals when compared to smaller Australian owned companies.

We encourage the Treasurer to take heed of the ACCC's concerns and to make a decision to retain the declaration under the National Access Regime in Part 111A of the Competition and Consumer Act.

Yours sincerely,

Brett Lewis
Managing Director/CEO
The Bloomfield Group