

26 April 2019

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

On 8th April 2019 we received an email from the National Competition Council (**NCC**) stating that Malabar Coal Ltd (**Malabar**) had been identified as a party who might have an interest in this matter.

This is the first time that the NCC has contacted Malabar. We appreciate the NCC doing so, as it provides Malabar with the opportunity to explain the significance of these matters for Malabar.

We understand that submissions close at 5:00pm today. This time-frame of 12 business days (given public holidays) is insufficient for our company to undertake a thorough review of all prior documentation, nonetheless we provide this important submission as the decision to be made as to whether or not revoke the declaration of the shipping channel service at the Port of Newcastle is very important to our company.

Malabar is an Australian public company with around 150 shareholders, (most of whom reside in NSW).

Our sole assets are coal development assets in the Upper Hunter Valley in NSW. Indeed, the investment case that we put to our shareholders is that Malabar is solely seeking to develop underground coal mines in the Hunter Valley to produce predominantly metallurgical coal for export. A key reason for the assets we have acquired is the globally competitive costs from the future mines to our customers' ships. Revoking the declaration will erode that key economic advantage,

Malabar was established in NSW in 2012 when it acquired the Spur Hill Underground Project. In 2018 Malabar acquired 100% of the neighbouring Maxwell Underground Project and Drayton Mine (and the associated infrastructure) from Anglo American plc and a group of Asian minorities. The name "Malabar" refers to the name of a geological formation in the region of our project.

In summary we own;

- (i) 100% of the Spur Hill Underground Coal Project (acquired 2012),

- (ii) 100% of the Maxwell Underground Coal Project (acquired 2018), and;
- (iii) 100% of the now-closed Drayton Mine and the associated infrastructure – re-named “Maxwell Infrastructure” (acquired 2018).

None of these projects are currently in production. Malabar is currently in the process of seeking Development Consent for the Maxwell Underground Coal Project.

A key element in making these substantial acquisitions and investments in NSW is the confidence Malabar and its stakeholders have in the regulatory and competitive investment climate in NSW. However, we are most concerned that the Port of Newcastle’s (PNO) behaviour is manifestly counter to the investment climate under which we made our investment decisions. We are not a global company, rather are a local leadership team that has a track record of developing mines in NSW.

Collectively Malabar has coal resources of c.1,400 million tonnes and is currently progressing the development approval for the Maxwell Underground Project. This Project will produce up to 7 million tonnes per annum of high quality export coal and directly employ around 350 people. The capital cost to develop the Maxwell Underground Project is many hundreds of millions of dollars.

As a monopoly, PNO will have the unconstrained ability to impose exorbitant charges and fees. PNO's past actions prove this to be very likely. So, in the absence of the declaration there will be the continual value transfer from our shareholders to PNO’s shareholders. We would expect PNO to continually increase charges to the point that coal mines in the Hunter Valley start to fail.

NERA theorises at paragraph 39 of their 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. This is nonsense and doesn’t address the fact that value is reduced irrespective of the efficiency of the miner.

The Port of Newcastle is the world’s largest coal export port, and the Hunter Valley coal shippers have no alternative port.

With the risk that PNO may ramp charges and fees, then the challenge to raise funds to develop new projects such as ours is made more difficult. Hence PNO actions put at risk hundreds of future jobs, and billions of dollars of commonwealth taxes and state royalties.

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. Malabar would be very concerned if the NCC was persuaded by NERA. 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. While we do not dispute the global nature of the seaborne coal market, we are a small mining company with neither the scale nor the desire to consider operating in jurisdictions outside Australia.

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 Malabar could readily invest

elsewhere around the globe. This is absolute nonsense as Malabar's sole investment proposition to NSW investors was to raise sufficient capital to invest solely in Hunter Valley developments with the understanding that there was a fair regulatory environment and competitive suppliers and services. NERA's economic theories do not reflect the practical realities for companies such as ours and the reasons individuals invest in companies such as Malabar. 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.

NCC should disregard the theories put forward in the NERA Economic Report which are disconnected from the realities of investment by entrepreneurial developers such as Malabar. We would be disappointed if the Australian Treasurer accepts such arguments in favour of a revocation, given the negative impacts on Australian employment, corporate taxes, state royalties, and economic growth.

Malabar is also concerned that PON's ambition to develop a container terminal means that the Hunter Valley coalmining companies will be subsidising their 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.

In conclusion, there is little downside for all parties and the broader community and stakeholders in maintaining the declaration of the shipping channel service at the Port of Newcastle. To do otherwise will reduce the globally competitive attractiveness of Hunter Valley export coal and further consolidate coal production to the major global producers who are better placed 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 decide to retain the declaration under the National Access Regime in Part 111A of the Competition and Consumer Act.

Finally, we would welcome a conversation with the NCC to explain why the economic theories of NERA have no relevance to Malabar's investment strategies. Their theories are destructive to the very entrepreneurship and risk-taking that has allowed junior mining companies to develop projects and contribute significantly to Australia's economy.

Yours sincerely,

Wayne Seabrook - Chairman ()
Malabar Coal Ltd