



MALABAR RESOURCES LIMITED

ABN 29 151 691 468

Level 26, 259 George Street  
Sydney NSW 2000

PO Box R864  
Royal Exchange NSW 1225

Ph: +61 2 8248 1272

Fax: +61 2 8248 1273

**Privileged & Confidential**

Mr Richard York  
Executive Director  
National Competition NCC  
Level 17, Casselden  
2 Lonsdale Street  
Melbourne VIC 3000

2 September 2020

Dear Mr York

**Second application for declaration of certain services at the Port of Newcastle**

On 24<sup>th</sup> August 2020 Malabar Coal Ltd (**Malabar**) made a submission to the National Competition Council (**NCC**) in relation to seeking declaration of the Port of Newcastle (**Port**) pursuant to Part IIIA of the *Competition and Consumer Act 2010* (Cth).

This second submission is in relation to the decision by the Federal Court regarding Glencore Coal Assets Australia Pty Ltd v Australian Competition Tribunal, that was published on 27 August 2020.

The Federal Court requires the Australian Competition Tribunal takes into account user-funded expenditure of \$912m (i.e. **reducing** the Port's asset base) in setting access charges for Glencore.

Whilst the Federal Court Decision is only binding on Glencore and the Port, the underlying economic principle that "*the Port should **not** be able to earn a return on expenditures it did not make*" should be available to all coal shippers including Malabar.

It would appear that in the absence of declaration the Port is intending to continue to charge all users of the Port (other than Glencore), charges that are based on a capital value which includes user-funded capital expenditure that Port did not make.

Malabar considers that declaration is necessary to ensure the efficiency of coal exports, by providing regulatory oversight over the terms and conditions of access imposed by coal infrastructure service providers such as the Port of Newcastle.

Malabar believes that as a result of declaration of the Services, competition would be materially increased in dependent markets as per NSWMC's application to the NCC.

Yours sincerely

Wayne Seabrook

**Chairman**

**Malabar Resources Ltd**

[wseabrook@malabarresources.com.au](mailto:wseabrook@malabarresources.com.au)