

Public Works Committee

Impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales

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Terms of reference

1. That the Public Works committee inquire into and report on the impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales, including:
 - (a) The extent to which limitations on container port operations currently in place following the sale of the Port of Newcastle contribute to increased pressure for transport and freight infrastructure in New South Wales, specifically:
 - (i) the Westconnex Gateway project
 - (ii) the Port Botany Rail Line duplication
 - (iii) intermodal terminals and rail road connections in southwest and western Sydney
 - (iv) other additional public road infrastructure requirements due to the additional road freight movements in Sydney under the existing port strategy.
 - (b) The nature and status of the port commitment deeds, the extent to which they contain limitations on container port movements, and the terms and binding nature of any such commitments.
 - (c) The extent to which container port limitations contribute to additional costs for NSW industries who are importing or exporting from New South Wales, especially in the Port of Newcastle catchment.
 - (d) Any other related matters.
2. That the committee report by 28 February 2019.

The terms of reference were self-referred by the committee on 20 November 2018.¹

¹ *Minutes*, NSW Legislative Council, 21 November 2018, pp 3294-3295.

Committee details

Committee members

The Hon Robert Brown MLC	Shooters, Fishers and Farmers	<i>Chair</i>
The Hon Taylor Martin MLC	Liberal Party	<i>Deputy Chair*</i>
Ms Cate Faehrmann MLC	The Greens	
The Hon John Graham MLC	Australian Labor Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Scot MacDonald MLC	Liberal Party	
The Hon Lynda Voltz MLC	Australian Labor Party	

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* On 20 November 2018, the committee resolved to elect Mr Martin as the Deputy Chair of the committee for the duration of the inquiry into the impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales.

Chair's foreword

This inquiry was established to consider the impact of the Port of Newcastle sale arrangements on the state's public works expenditure. The inquiry also considered the Port Commitment Deeds (PCDs) which formed part of the Port of Newcastle transaction and the Port Botany and Port Kembla transaction, and the extent to which the PCDs limit container movements.

This inquiry has highlighted the complexities of the ports transactions, and has underlined the importance of container freight to the state's economy. A key issue canvassed throughout the inquiry was the proposal to develop a container terminal at the Port of Newcastle. Much of the evidence received by the inquiry was contradictory in this regard. The Port of Newcastle argues that while the proposed development will increase economic development in the area and reduce transport pressures in Sydney, the proposal is currently uneconomic due to provisions contained within the PCDs. On the other hand, the NSW Government argued that the leasing arrangements are based on long-term ports policy, which supports Port Botany as the state's primary container port.

Shortly after this inquiry began the Australian Competition and Consumer Commission (ACCC) commenced proceedings in the Federal Court against the operators of Port Botany and Port Kembla for making agreements with the state that the ACCC alleges had an anti-competitive purpose and effect. With this in mind, and within the context of the timing of the imminent election, the committee has recommended that the Legislative Council establish a future inquiry to examine the ports transactions, the PCDs and their broader impact. The committee has also recommended that the government review its ports policy, including the potential for a container terminal in Newcastle, once the Federal Court proceedings have concluded, or at such time as the House determines.

The committee did however make a number of findings. We found that Newcastle container limitations have not significantly impacted public expenditure on Sydney's transport infrastructure projects, which are driven by a number of factors including Sydney's growing population. We also found that the PCDs were not disclosed to the public or to the Parliament.

It was valuable to hear from local government and business representatives from Newcastle and the Hunter who support the development of a Newcastle container terminal as it would increase regional economic growth. We have encouraged the government to analyse the potential economic impact of a Newcastle container terminal. We have also called for the government to investigate freight rail options between the Port of Newcastle, Port Botany and Port Kembla.

Finally, I thank my committee colleagues for their efforts during this inquiry, the Public Works Committee's second in this Parliament. On behalf of all committee members, I also wish to thank all those who provided written submissions and appeared at the public hearing, and the committee secretariat and Hansard for their professional assistance throughout.



The Hon Robert Brown MLC
Chair

Findings

Finding 1

17

The Port Commitment Deeds including the conditions of sale and the levy were not disclosed to the public or the Parliament.

Finding 2

26

That the limitations on Newcastle container port operations following the ports transactions have not significantly impacted expenditure required on transport infrastructure projects in Sydney.

Recommendations

Recommendation 1

17

That the Legislative Council consider establishing an inquiry into the ports transactions, and specifically container limitations and associated financial obligations contained within the Port Commitment Deeds, at the conclusion of the Federal Court proceedings involving the Australian Competition and Consumer Commission and NSW Ports or at such time as the House determines.

Recommendation 2

26

That the NSW Government conduct a detailed investigation of freight rail options between Ports Botany, Newcastle and Kembla, including options for line duplication and dedicated freight-line construction, to ensure strategic future corridors are preserved, to optimise rail modal share of freight transport, to better align capacity to meet future demand and to improve the rail service reliability.

Recommendation 3

35

That the NSW Government conduct a review of the state's ports policy, including the potential for a container terminal at the Port of Newcastle, at the conclusion of the Federal Court proceedings involving NSW Ports, or at such time as the House determines.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 20 November 2018.

The committee received 22 submissions and three supplementary submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Port of Newcastle leasing arrangements

This chapter sets out introductory information on the leasing arrangements for three New South Wales based ports. It discusses the ports leasing arrangements, including provisions contained within the Port Commitment Deeds (PCDs), as well as recent calls for a container terminal to be developed at the Port of Newcastle.

Introduction

- 1.1** In 2014, the Port of Newcastle was leased to a private sector operator for a period of 98 years. Recently, that operator (referred to as the Port of Newcastle throughout this report) has sought support for plans to develop a container terminal in Newcastle, which it argues would enable economic growth in the Newcastle and Hunter region and alleviate congestion in Sydney, therefore reducing the need for public works infrastructure in Sydney.
- 1.2** The Port of Newcastle has claimed that it is currently uneconomic for it to pursue a container terminal development due to provisions contained within the Port Commitment Deeds. This chapter discusses the arrangements that form part of the Port of Newcastle and the Port of Botany/Kembla transactions, particularly the PCDs which contain provisions regarding a container freight threshold and related financial obligations.

Ports policy in New South Wales

- 1.3** Freight is a substantial driver for the state's economy. The NSW Government states that freight activities contribute \$66 billion to the state's economy each year and 200,000 people are directly employed in freight transport.² Container freight is a significant and growing part of the national and state freight industry, with the number of containers (by twenty-foot equivalent unit or TEU) handled by Australia growing by 11.6 per cent to 8 million in 2017-18.³ The Australian Competition and Consumer Commission (ACCC) has indicated that this is due to increases in domestic demand for imports fuelled by population and economic growth, as well as growth in refrigerated and empty container exports.⁴
- 1.4** There are several large commercial ports in New South Wales. (See figure 1 below) Port Botany is the state's main container port, and plays a major role in the state's economy. It is also the state's primary liquid and gas port. The government has forecast container cargo handled by Port Botany to increase by 77 per cent from 14.4 million tonnes in 2016 to 25.5 million tonnes in 2036.⁵ Currently, Port Botany has a capacity of more than 7.2 million TEU but currently only handles 2.6 million TEU between three stevedoring terminals.⁶

² NSW Government, *NSW Freight and Ports Plan 2018-2022* (2018), p 18.

³ AlphaBeta, *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*, (2018), p 2; Australian Competition and Consumer Commission (ACCC), *Container stevedoring monitoring report 2017-18*, (2018), p 15.

⁴ ACCC, *Container stevedoring monitoring report 2017-18*, (2018), p 15.

⁵ NSW Government, *NSW Freight and Ports Plan 2018-2022* (2018), p 28.

⁶ Submission 21, NSW Ports, p 3.

- 1.5 The table below forecasts a growth of total TEU volumes from the current figure of 2.6 million TEU (36 per cent of Port Botany's total capacity) to 4.8 million TEU by 2036 (approximately 66 per cent of Port Botany's total capacity), i.e. a compound annual growth rate of approximately 3.6 per cent.⁷

Table 1 Container volumes through New South Wales over the past 20 years and forecast volumes based on NSW Freight Commodity Demand Forecasts⁸

Source	Year	Imports (empty + full)	Exports (empty + full)	Trans- shipments	Total	Y-o-Y growth	Compound Annual Growth Rate
Ports Australia ³ & NSW Ports ⁴ reported throughput (TEU)	1999	459,216	419,963		879,179		
	2000	540,214	476,187		1,016,401	15.6%	
	2001	512,867	477,787		990,654	-2.5%	
	2002	529,238	480,104		1,009,342	1.9%	
	2003	601,039	559,708		1,160,747	15.0%	
	2004	654,797	615,419		1,270,216	9.4%	
	2005	700,281	676,084		1,376,365	8.4%	
	2006	740,086	705,379		1,445,465	5.0%	
	2007	819,218	800,903		1,620,121	12.1%	
	2008	906,582	871,860		1,778,442	9.8%	5.9%
	2009	902,533	881,484		1,784,017	0.3%	
	2010	976,215	951,292		1,927,507	8.0%	
	2011	1,020,560	999,526		2,020,086	4.8%	
	2012	1,027,445	1,008,697		2,036,142	0.8%	
	2013	1,074,291	1,051,977		2,126,268	4.4%	
	2014	1,110,105	1,096,264		2,206,369	3.8%	
	2015	1,157,294	1,132,735		2,290,029	3.8%	
	2016	1,173,709	1,151,133	-	2,324,842	1.5%	
2017	1,231,127	1,200,610	-	2,431,737	4.6%		
2018	1,320,972	1,292,734	-	2,613,706	7.5%		
TfNSW Freight Forecasts ⁵ (TEU)	2019	1,245,611	1,213,269	154,700	2,613,580	0.0%	
	2020	1,320,824	1,286,170	162,730	2,769,723	6.0%	
	2021	1,399,965	1,362,786	170,844	2,933,594	5.9%	
	2022	1,457,526	1,418,585	177,016	3,053,126	4.1%	
	2023	1,513,271	1,472,637	183,042	3,168,950	3.8%	
	2024	1,567,679	1,525,402	188,960	3,282,041	3.6%	
	2025	1,624,286	1,580,293	195,094	3,399,673	3.6%	
	2026	1,683,337	1,637,549	201,469	3,522,355	3.6%	
	2027	1,740,463	1,692,950	207,687	3,641,100	3.4%	3.6%
	2028	1,798,220	1,748,966	213,978	3,761,164	3.3%	
	2029	1,856,500	1,805,491	220,333	3,882,324	3.2%	
	2030	1,915,570	1,862,784	226,778	4,005,132	3.2%	
	2031	1,975,356	1,920,767	233,290	4,129,413	3.1%	
	2032	2,036,221	1,979,796	239,916	4,255,933	3.1%	
	2033	2,098,134	2,039,840	246,653	4,384,627	3.0%	
	2034	2,160,926	2,100,737	253,487	4,515,150	3.0%	
	2035	2,224,814	2,162,697	260,438	4,647,949	2.9%	
	2036	2,289,581	2,225,509	267,484	4,782,575	2.9%	

³ <http://www.portsaustralia.com.au/aus-ports-industry/trade-statistics/?archive>

⁴ <https://www.nswports.com.au/resources/trade-results>

⁵ https://www.transport.nsw.gov.au/system/files/media/documents/2018/NSW%20Freight%20Commodity%20Demand%20Forecasts%202016-56%5Baccessible%5D_0.pdf

⁷ Based on a continuing compound annual growth rate of 3.6 per cent from 2036, Port Botany would reach capacity in the late-2040s.

⁸ Answers to supplementary questions, Transport for NSW, 12 February 2019, p 5.

1.6 Transport for NSW observed in answers to supplementary questions:

The \$1 billion investment in the Port Botany expansion in 2009 reflects the longstanding policy strategy to use Port Botany for long-term container movement growth. The evidence base for the NSW Freight and Ports Plan indicates that there is sufficient terminal capacity at Port Botany to meet the demand for containerised freight in NSW until at least 2045 to 2050.⁹

1.7 Port Kembla is the state's largest terminal for vehicle imports and grain exports, and the second largest terminal for coal exports. The Port of Newcastle is the world's largest coal export port, and also has operations in bulk liquids, general cargo, bulk and project cargo.¹⁰ The Port of Newcastle has also developed a concept for a staged container terminal development, which is discussed later in this chapter.¹¹

Figure 1 The New South Wales port network



Source: Transport for NSW, *NSW port network*, <https://www.transport.nsw.gov.au/operations/logistics-network/nsw-port-network>.

⁹ Answers to supplementary questions, Transport for NSW, p 14.

¹⁰ Submission 14, Port of Newcastle, p 9.

¹¹ Port of Newcastle, *Newcastle Container Terminal*, (2018), <https://www.portofnewcastle.com.au/Projects-and-Development/Newcastle-Container-Terminal.aspx>.

1.8 The government's NSW Freight and Ports Plan 2018-2023 sets its priorities for the freight sector. In relation to container freight, the plan specifies that Port Botany is the state's primary container port, with Port Kembla as the location for a future container terminal when required.¹²

The NSW Government policy position is that Port Kembla has been identified as the location for the development of a future container terminal to augment capacity of Port Botany when required.¹³

1.9 The government stated that the current ports policy does not prohibit the development of a container terminal at the Port of Newcastle but rather allows for the growth of container volumes through Newcastle that service the region.¹⁴

1.10 In its submission to the inquiry, the government highlighted that the state's freight and ports policy has consistently sought to:

- Make better use of existing capacity in roads, rail lines and warehouses to lower transport costs
- Reduce the distance, cost and complexity for moving freight by building on investments in Port Botany due to its close proximity to customers and distribution centres
- Increase the proportion of containers moved by rail to improve efficiency and reduce the growth of trucks on roads
- Plan for container port capacity into the future and avoid unnecessary investment by taxpayers
- Provide certainty and confidence for investment.¹⁵

1.11 The government also indicated that the rationale of the ports policy is 'to maximise efficiency and minimise the total cost of container movements to the community, including transport and logistics costs to industry and, importantly, landside infrastructure costs to Governments and ultimately to taxpayers'.¹⁶

1.12 In answers to supplementary questions to Transport for NSW, the government observed:

Provisional cost and investment analysis was conducted by an independent analyst for TfNSW in 2012 which compared capital investment costs and freight transport costs for the road and rail task associated with the operation of additional container port capacity locations in NSW, particularly in Newcastle and Port Kembla. The preliminary assessment identified that the Port Kembla site had cost, access and likely demand advantages compared to the Newcastle site.¹⁷

¹² NSW Government, *NSW Freight and Ports Plan 2018-2022* (2018), p 39.

¹³ NSW Government, *NSW Freight and Ports Plan 2018-2022* (2018), p 81.

¹⁴ Submission 16, NSW Government, p 10.

¹⁵ Submission 16, NSW Government, p 10.

¹⁶ Submission 16, NSW Government, p 10.

¹⁷ Answers to supplementary questions, Transport for NSW, p 13.

The ports transactions

- 1.13** In July 2012, the government confirmed it would seek to lease Port Botany and Port Kembla to the private sector 'to fund priority infrastructure projects across NSW'.¹⁸
- 1.14** The Hon Mike Baird MP, then Treasurer and Minister for Industrial Relations, discussed the intended benefits of private sector investment in ports infrastructure during his second reading speech for the Ports Assets (Authorised Transactions) Bill 2012. This bill authorised the 99 year lease of Port Botany and Port Kembla and passed the Parliament on 22 November 2012.¹⁹ The Treasurer said:
- The Government's plans to drive regeneration in this State through greater private sector investment in our economic infrastructure will deliver both proceeds and savings by shifting capital obligations to the private sector. That will allow the Government, through balance sheet flexibility, to focus on key social investments and policy objectives.
- ...We cannot underestimate the significance of this transaction on the Government's ability to deliver the infrastructure needs of this State. It is a simple case of maintaining the triple-A credit rating versus the capacity to deliver on those projects. Without this transaction those projects cannot proceed.²⁰
- 1.15** According to the government, the leasing process has not only generated proceeds that support investment but has also resulted in the ports assets 'being operated with a stronger commercial focus'. The government also contended that private operators have a strong incentive to maximise the value of land use and to attract new tenants to develop under-used land.²¹
- 1.16** In April 2013, the government announced that the NSW Ports Consortium had been awarded a 99 year lease of Port Botany and Port Kembla for \$5.07 billion. The NSW Ports Consortium comprised of Industry Funds Management, Australian Super, QSuper and Tawreed Investments Limited, a wholly-owned subsidiary of the Abu Dhabi Investment Authority. The Treasurer stated that net proceeds from the transaction of around \$4 billion would be invested in the Government's infrastructure fund, Restart NSW.²²
- 1.17** In June 2013, the Parliament passed the Ports Assets (Authorised Transactions) Amendment Bill 2013, which authorised the lease of the Port of Newcastle to the private sector.²³
- 1.18** In May 2014, the government announced that Port of Newcastle Investments (a consortium comprising Hastings Funds Management and China Merchants) had been awarded a 98 year

¹⁸ Media Release, Hon Mike Baird MP and the Hon Duncan Gay MLC, *Green light given for long term lease of Port Botany and Port Kembla*, 27 July 2012, p 1.

¹⁹ NSW Parliament, Ports Assets (Authorised Transactions) Bill 2012, <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=1581>.

²⁰ *Hansard*, NSW Legislative Assembly, 17 October 2012, pp 15852-15855 (Mike Baird).

²¹ Submission 16, NSW Government, p 18.

²² Media Release, Hon Mike Baird MP, *NSW Government welcomes successful outcome of ports transaction*, 12 April 2013, p 2.

²³ NSW Parliament, Ports Assets (Authorised Transactions) Amendment Bill 2013, <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=828>.

lease of the Port of Newcastle, with gross proceeds of \$1.75 billion from the transaction. The then Treasurer, the Hon Andrew Constance MP, indicated that Newcastle would receive \$340 million of the gross proceeds, with the remaining proceeds of \$1.2 billion to be invested in the Restart NSW infrastructure fund.²⁴

The Port Commitment Deeds

1.19 Contractual agreements between the port lessees and the government are set out in Port Commitment Deeds (PCDs). NSW Ports, and the Port of Newcastle agreed to and signed the PCDs at the time of each transaction.²⁵ The Treasurer signed the PCDs on behalf of the State of New South Wales.²⁶

1.20 It should be noted that the PCDs for Port Botany and Port Kembla were entered into as part of the lease transaction in 2013. That deed was entered into between the State Government and NSW Ports. On the other hand, the PCD between the state government and Port of Newcastle was entered into in 2014.²⁷ In evidence before the inquiry, Ms Marika Calfas, Chief Executive Officer, NSW Ports, stated:

The port commitment deeds mirror the well-planned New South Wales Government strategy for port development. The Port of Newcastle port commitment deed is an arrangement between the Port of Newcastle and the New South Wales Government willingly agreed to by the Port of Newcastle shareholders. NSW Ports is not a party to that deed.²⁸

1.21 The Port Botany and Port Kembla PCDs contain provisions that require the government to provide a payment to the Port Botany/Port Kembla Port Manager should container volumes through the Port of Newcastle exceed a certain threshold. This support is payable if each of the following conditions are met:

- Container volumes through Newcastle exceed a threshold level of 30,000 TEUs (twenty-foot equivalent units) as at June 2013 escalated at the higher of 6% pa or the growth rate of container throughput at Port Botany ('excess'). The threshold has to be exceeded for two years.²⁹
- The Port Manager demonstrates to the reasonable satisfaction of the State that Port Botany or Port Kembla is not at full capacity.
- The Port Manager demonstrates to the reasonable satisfaction of the State that container throughput is less than it would have been if Newcastle did not exceed the threshold and that there is a reasonable, material, causal connection between the 'excess' at Newcastle and the reduction in trade at Botany/Kembla.³⁰

²⁴ Media Release, Hon Andrew Constance MP, *Port of Newcastle transaction finalised*, 30 May 2014, p 1.

²⁵ Submission 16, NSW Government, p 16.

²⁶ Answers to questions on notice, NSW Treasury, 11 February 2019, p 2.

²⁷ Submission 22, ACCC, pp 9-11.

²⁸ Evidence, Ms Marika Calfas, Chief Executive Officer, NSW Ports, 31 January 2019, p 23.

²⁹ Based on 30,000 TEU and a compounding increase of 6 per cent p.a., that is equivalent to 42,555 TEU in 2020, 76,210 TEU in 2030, 136,481 TEU in 2040, and 244,417 TEU in 2050.

³⁰ Submission 16, NSW Government, p 16.

1.22 The submission from the Australian Competition and Consumer Commission (ACCC) noted that the above provisions have a term of 50 years.³¹

1.23 Under the Newcastle PCD, the financial obligations of the state were contractually passed through to the Newcastle Port lessee.³² The government stated that 'this arrangement was known to the bidders and the ACCC ahead of the transaction'.³³ Mr Rodd Staples, Secretary, Transport for NSW, stated in relation to the Port of Newcastle bidding process:

It was a long-term lease following a competitive process during which the port commitment deed obligations were disclosed to all bidders. The bidders had the opportunity to seek their own independent legal and expert advice during the process. It is a commercial agreement entered into by the parties of their own volition.³⁴

1.24 The government advised that as of January 2019, the Port of Newcastle had 'not paid any PCD support related amounts to the State'.³⁵ Container volumes at the Port of Newcastle are currently about 10,000 TEU per annum.³⁶

Calls for a container terminal at the Port of Newcastle

1.25 Port of Newcastle has led recent calls for the development of a container terminal at the Newcastle port:

... we submit that the NSW Government lift its limitations on container port operations in New South Wales, and Port of Newcastle be permitted to build a 1.7-million TEU container terminal in its port precinct.³⁷

1.26 Port of Newcastle has indicated that the PCDs and the requirement for the support payment to Port Botany should the container threshold be exceeded are the main impediments to the Port of Newcastle developing a container terminal. Mr Craig Carmody, Chief Executive Officer, Port of Newcastle, argued that the PCD financial obligations mean that it is uneconomic for the Port to develop a container terminal:

None of the investors in this are prepared to give me a single dollar until that port commitment deed [PCD] is out of the way. Economically, it just does not work.³⁸

1.27 In supplementary questions, Mr Carmody was asked to identify the investors behind the proposed development of a container port at Newcastle. In answer to this question, Mr Carmody indicated that 'discussions with investors are commercial-in-confidence'.³⁹

³¹ Submission 22, ACCC, p 8.

³² Submission 16, NSW Government, p 16.

³³ Submission 16, NSW Government, p 15.

³⁴ Evidence, Mr Rodd Staples, Secretary, Transport for NSW, 31 January 2019, p 11.

³⁵ Submission 16, NSW Government, p 16.

³⁶ Submission 16, NSW Government, pp 16, 20.

³⁷ Submission 14, Port of Newcastle, p 3.

³⁸ Evidence, Mr Craig Carmody, Chief Executive Officer, Port of Newcastle, 31 January 2019, p 7.

³⁹ Answers to supplementary questions, Mr Craig Carmody, Chief Executive Officer, Port of Newcastle, 12 February 2019, p 9.

1.28 However, Mr Carmody also acknowledged that the lessees of the Port of Newcastle had agreed to the PCD at the time of the transaction, and that investors understood that they had purchased a coal terminal port:

What I would say, looking at it, first of all they did not really have a choice; people were desperate to buy a port; it was a condition of the sale that you had to agree to the deed, so that was what you had to agree to even be able to play the game. I would say that at the time they bought it coal was rampant, coal was an amazing future. They did buy a coal terminal port, there was no denying that is what they paid for.⁴⁰

1.29 Ms Calfas, on behalf of NSW Ports, observed in her evidence:

The other point I would make about the port commitment obligations that the Port of Newcastle reportedly have—and it goes to a point made by Mr Carmody earlier today—he says that the Port of Newcastle knew they were buying a coal port and they paid for a coal port. The Port of Newcastle paid for a coal port. They paid for a port that had certain conditions associated with it for containers. NSW Ports paid for a container port. We paid \$5.1 billion for that port on the understanding of what was longstanding bipartisan government policy about supporting container terminal development at Port Botany until it was nearing capacity. The Port of Newcastle is trying to plead that they need those conditions removed four years after purchasing the port.⁴¹

1.30 In answers to supplementary questions, Transport for NSW provided a table (see below) showing New South Wales coal demand forecasts for the period 2016-2056. These forecasts showed an increase in thermal coal demand from 139 million tonnes p.a. in 2016, to 158 million tonnes in 2056; that is an increase of 13 per cent. International demand forecasts for New South Wales coking coal showed an increase from 25 million tonnes to 47 million tonnes over the same period; that is an increase of 90 per cent.

Table 2 NSW Coal demand forecasts 2016 to 2056 (million tonnes per annum)⁴²

Type of coal	End user market demand driver	2016	2036 (f)	2056 (f)	CAGR % (2016-2056)	Total increase % (2016-2056)
Thermal	Domestic electricity generation	23	24	21	-0.3%	-10%
Thermal	International electricity generation	139	149	158	0.3%	13%
Coking	Domestic steel production	3	3	5	1.5%	81%
Coking	International steel production	25	33	47	1.6%	90%
Total	All end user demands	189	210	230	0.5%	21%

Source: TPA analysis

Note: CAGR (compound annual growth rate) is annualised growth rate for the indicated timeframe, and Total increase is the simple growth rate.

⁴⁰ Evidence, Mr Carmody, 31 January 2019, p 7.

⁴¹ Evidence, Ms Calfas, 31 January 2019, p 26.

⁴² Answers to supplementary questions, Transport for NSW, p 8.

- 1.31** Mr Carmody also advised the committee that the PCD had impacted a decision by port and supply chain operator DP World to 'walk away' from a memorandum of understanding to develop a container terminal in Newcastle:

DP World walked away. They had a memorandum of understanding [MOU] with us to develop a container terminal if it was possible. DP World walked away because the port commitment deed [PCD] made it economically unviable. Obviously that is fine; that is exactly what we are being told by the new investors.⁴³

- 1.32** Mr Carmody stated that he intended to demonstrate to the public that the removal of the PCD in order to enable the development of a Newcastle container terminal would benefit the state:

... my view is I am trying to prosecute this case as far as I can get to show people that the removal of the port commitment deed is actually in the benefit of New South Wales, particularly northern New South Wales.⁴⁴

- 1.33** On 3 February 2019, the *Australian Financial Review* reported that the Port of Newcastle will commission a project team in February 2019 to begin initial designs for 'a proposed \$1.8 billion container terminal with the aim of becoming a trans-shipment hub for the east coast and Asia-Pacific.'⁴⁵

- 1.34** Port of Newcastle has argued that a Newcastle container terminal would be of substantial benefit to the state's economy and would have several advantages for the Hunter region and for regional businesses and consumers:

We propose that a 2 million TEU container terminal at Port of Newcastle can resolve several issues: it can service the growing population of Hunter Region; it can service the growing containerised trade from Regional NSW north of Sydney; it can take pressure off Port Botany's well-documented landside congestion problems; it can save costs for importers and exporters, and therefore make it more affordable for regional households and businesses; and it can create a network-effect across regional NSW, driving economic growth, skills and jobs and a diversity of business types.⁴⁶

- 1.35** Mr Carmody contended that Australia is missing out on some of the opportunities arising as a result of global trends in containerisation and shipping, and that a new, advanced Newcastle container terminal could cater for the bigger ships that the shipping industry is trending towards.⁴⁷ Mr Carmody argued that consequently, it was essential that New South Wales has the port infrastructure in place to 'enjoy the benefits of those vessels', such as reductions in supply chain costs. The Port of Newcastle submission stated:

..world shipping companies are moving to very large vehicles – those handling up to 18,000 TEU – that substantially reduce the cost per container. All major shipping lines are building these very large vehicles, with the deliberate intent of making these vehicles

⁴³ Evidence, Mr Carmody, 31 January 2019, p 9.

⁴⁴ Evidence, Mr Carmody, 31 January 2019, p 9.

⁴⁵ Jenny Wiggins, 'Newcastle Port says the South Pacific is its playground', *Australian Financial Review*, 3 February 2019.

⁴⁶ Submission 14, Port of Newcastle, p 21.

⁴⁷ Evidence, Mr Carmody, 31 January 2019, p 3.

the new workhorse of global container ship trade...The countries trading with them will enjoy a significant reduction in their supply chain costs.⁴⁸

1.36 Mr Carmody stated that the Port of Newcastle is uniquely positioned to provide the necessary infrastructure as it already has the deep channel and road and rail side capacity to manage super-sized container ships.⁴⁹ Mr Carmody pointed to three reports by AlphaBeta, Deloitte, and HoustonKemp Economics, commissioned by the Port of Newcastle, which detailed and supported this case.⁵⁰

1.37 In response to the assertion of the unique position of the Port of Newcastle, Ms Calfas stated:

What Mr Carmody said was interesting. Port Botany is actually a premium container port including for the country. Port Botany has depths capable of handling vessels that are greater than 10,000 TEUs. We currently have berths that are capable of doing that. We have quay cranes at those berths that can handle vessels upwards of 12,000 TEUs. I am not 100 per cent sure of where he is getting those statistics from. The other point I would like to make is that right now Newcastle cannot. Newcastle's channel has declared depths, which are publicly available, of 15.2 metres, which is shallower than Port Botany. Newcastle's Mayfield berths are 7.8 metres and 12.8 metres. You need 16.5 metres to 17 metres for those very large vessels Mr Carmody was talking about. Port Botany has 16.5 metre depths at berths. You have questions around whether the channel of the Port of Newcastle can even accommodate those 18,000 TEU vessels. You should see them; they are absolutely enormous. They have huge box fronts—⁵¹

1.38 It should be noted that Port Botany has 12 container berths of which at least four of those berths are 16.5 metres deep.⁵²

1.39 In regards to trends towards larger container ships, Ms Calfas argued that it is important to consider the capacity to service larger vessels within the context of the market, as Australia is 'a small market by global standards'. Ms Calfas advised that there were a number of reasons that the largest ships were already not coming to the state, including market size and the capacity of Australian ports to service the larger ships:

... one is that the market does not need it. The market does not have the volume for it. The other is that you cannot get the vessels in at all ports.⁵³

1.40 Ms Calfas advised that the average vessels accommodated by Port Botany are between 5,000-6,000 TEUs and the maximum that they can handle is 12,500 TEUs.⁵⁴ NSW Ports also believed that the market for 10,000 TEU vessels was some decades away:

We are really at the point of 8,500 TEU vessels, which is where we think the market is. We think that the 10,000 TEU vessels are still some decades away.⁵⁵

⁴⁸ Submission 14, Port of Newcastle, pp ii-iii, Mr Carmody, 31 January 2019, p 3.

⁴⁹ Submission 14, Port of Newcastle, p iii.

⁵⁰ Evidence, Mr Carmody, 31 January 2019, p 3.

⁵¹ Evidence, Ms Calfas, 31 January 2019, p 27.

⁵² Evidence, Ms Calfas, 31 January 2019, p 27.

⁵³ Evidence, Ms Calfas, 31 January 2019, p 29.

⁵⁴ Evidence, Ms Calfas, 31 January 2019, pp 28-29.

⁵⁵ Evidence, Ms Calfas, 31 January 2019, p 29.

- 1.41 Arguments for the development of a Port of Newcastle container terminal are discussed further in Chapter 2.

Long term planning for Port Botany and Port Kembla

- 1.42 It is the government's position that the status of Port Botany as the state's main container port has been part of freight and ports policy for many years, including prior to the ports transactions. Mr Staples advised the committee that the ports policy reflected the terms of the ports transactions, including the designation of Port Botany as the state's main container port:

...the terms of the leases for Port Botany, Port Kembla and the Port of Newcastle reflect the Government's freight and ports policy, which was first released in 2012—prior to the ports transactions. The essence of this policy is that the community is best served by utilising the significant capacity that already exists at Port Botany and that Port Kembla will be the next location of development once Port Botany reaches capacity due to its proximity to the growth areas of western and southwestern Sydney and supply chain infrastructure. Fully utilising the existing capacity at Port Botany will maximise the benefits to industry, consumers and taxpayers.⁵⁶

- 1.43 Mr Staples also indicated that the ports policy had been developed in consultation with industry, and that the government does not see a need for the policy to change:

The New South Wales Government policy position is that Port Kembla is the preferred location for the development of a future container terminal to augment capacity at Port Botany when required. The NSW Freight and Ports Plan was updated in 2018 and continues to apply this policy. The plan was developed in close consultation with industry... We do not believe there is a case for a change in policy at the current time.⁵⁷

- 1.44 Mr Staples also observed:

If you look at our consultation last year, we had about 110 submissions around the port freight strategy. No-one is flagging that the Port Botany strategy is wrong—no-one from the supply chain. We are not seeing that. If you had a big issue about there not being enough capacity, that would have come through loud and clear. From looking at your submissions that you have received, we are not seeing that in that either. I respect the Port of Newcastle's advocacy of what they want to do, but it does not reflect the broader logistics chain and the industry's position on what it needs at the moment. What it needed was certainty about where Government would prioritise its investment so that they could build their logistics centres in places where they needed to minimise travel for their customers overall.⁵⁸

- 1.45 Mr Staples stated that the development of Port Botany as a container port has been a long term government policy:

If you look at the chronology of the policy development Botany, as a container port, has been a long-term policy position for Government. It was developed in the seventies with a long-term intent of moving containerisation out of Sydney Harbour as

⁵⁶ Evidence, Mr Staples, 31 January 2019, p 11.

⁵⁷ Evidence, Mr Staples, 31 January 2019, p 11.

⁵⁸ Evidence, Mr Staples, 31 January 2019, p 18.

congestion and pressure came in there. Through the nineties and two thousands there was bipartisan support around that.⁵⁹

1.46 Mr Geoff Rumble, Executive Director, Transport, Infrastructure, Planning and Environment Division, NSW Treasury, advised that the PCDs were a reflection of the existing policy at the time that they were entered into.⁶⁰

1.47 Mr Rumble further advised the committee that 'it is quite common' in major infrastructure transactions for bidders to seek arrangements that reflect policy and provide investment certainty into the future.⁶¹ Mr Staples advised that 'industry needs certainty about New South Wales Government priorities so that it can be confident in its long-term investments'.⁶²

1.48 Mr Jim Betts, Chief Executive Officer of Infrastructure NSW, also commented that it is essential for the government to provide certainty to ensure that the market can invest in largescale projects over the long term. Mr Betts also noted the endorsement of the government's current freight and ports plan by Infrastructure NSW.⁶³

1.49 A similar argument was presented by the Sydney Business Chamber:

...there is a need to provide certainty to existing and potential investors in respect to the decision(s) of the New South Wales Government and the processes associated with selecting preferred bidders/operators of Government owned assets. To this point, government should not underestimate the sophistication of the private sector in assessing and negotiating: terms and conditions; limitations; opportunities; commercial risks; future demands; developing proposals; or determining the price for the expected return on investment.⁶⁴

1.50 Several stakeholders therefore contended that the renegotiation of the port commitment deed for Port of Newcastle to allow for the development of a container terminal could undermine investor confidence in government policy. Ms Calfas stated:

Imposed retrospective changes to government agreements impact on investments in this State. They affect the State's reputation and its attractiveness as an investment destination and have the potential to impact our prized credit rating. Making these sorts of changes should be approached with a great deal of caution.⁶⁵

1.51 Likewise, the Sydney Business Chamber said that, amongst other consequences, renegotiating the terms of the deeds may result in '... potential compensation expense for existing investors; revenue implications for the NSW Government from changes in intended use; capacity and investment constraints...'.⁶⁶

⁵⁹ Evidence, Mr Staples, 31 January 2019, p 13.

⁶⁰ Evidence, Mr Geoff Rumble, Executive Director, Transport, Infrastructure, Planning and Environment Division, NSW Treasury, 31 January 2019, p 21.

⁶¹ Evidence, Mr Rumble, 31 January 2019, p 13.

⁶² Evidence, Mr Staples, 31 January 2019, p 11.

⁶³ Evidence, Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 31 January 2019, p 19.

⁶⁴ Submission 19, Sydney Business Chamber, p 1.

⁶⁵ Evidence, Ms Calfas, 31 January 2019, p 23.

⁶⁶ Submission 19, Sydney Business Chamber, p 1.

- 1.52** Ms Calfas provided details of the possible impact on investments, including loss of confidence, for NSW Ports should a container terminal at Port of Newcastle be approved:

Since taking over the management of the ports, together with the tenants we have invested \$1.6 billion over the last five to six years. We have already got \$400 million in the pipeline still for investment. So obviously decisions that are made that are imposed and they are retrospective do affect business confidence and the ability of businesses to rely on that long-term strategy. A lot of our leases, because it is such big investment our leases with third parties are quite often 20 to 30 years long, some of them are even longer. So it does affect the appetite and the confidence that other parties also have wanting to invest in the ports in New South Wales.⁶⁷

Previous plans for a container terminal in Newcastle

- 1.53** Other stakeholders indicated that there have been previous attempts and government support to pursue a container terminal in Newcastle. Mr Bob Hawes, Chief Executive Officer, Hunter Business Chamber, indicated that considerations had been given to the possible development of a Newcastle multipurpose terminal since the 1990s.⁶⁸

- 1.54** The Port of Newcastle stated that Newcastle had been originally intended to be the container 'overflow' port after Port Botany reached capacity, however this approach changed in 2012 with the development of a new government freight policy:

In the 2003 Port Growth Plan, Port of Newcastle was listed as the container 'overflow' port for Port Botany - the port that would be developed as a container port when Botany reached capacity. However, in 2012, the Port of Newcastle Leasing Agreement process followed the Government's new freight policy: that Port Botany was the state's primary container port until it reaches capacity at which point Port Kembla will take Botany's capacity-overflow.⁶⁹

- 1.55** The Port of Newcastle also advised that it currently has development consent to build a 350,000 TEU container terminal in Newcastle, dating from 2001. The Port also indicated that in 2012 the government approved the Mayfield Precinct Concept Plan, a development proposal for a 1.2 million TEU terminal and the 'penultimate step before final consent is given' to the project.⁷⁰

Federal Court proceedings

- 1.56** On 10 December 2018, after the committee had commenced its inquiry, the ACCC instituted proceedings in the Federal Court regarding competition for container freight in New South Wales. The proceedings are against NSW Ports Operations Hold Co Pty LTD and its subsidiaries Port Botany Operations Pty Ltd and Port Kembla Operations Pty Ltd for making

⁶⁷ Evidence, Ms Calfas, 31 January 2019, p 31.

⁶⁸ Evidence, Mr Bob Hawes, Chief Executive Officer, Hunter Business Chamber, 31 January 2019, p 41.

⁶⁹ Submission 14, Port of Newcastle, p 5.

⁷⁰ Submission 14, Port of Newcastle, p 4.

agreements with the State of New South Wales that the ACCC alleges had an anti-competitive purpose and likely effect.⁷¹

- 1.57** The ACCC has referred to the provisions in the PCDs that relate to the Newcastle container threshold support payments as the 'Compensation Provisions and Reimbursement Provision'. The ACCC has argued that the Compensation Provisions and Reimbursement Provision in the PCDs are likely to have prevented or hindered the development of a container terminal at the Port of Newcastle. The ACCC argues that this has prevented or delayed shipping companies, businesses and ultimately consumers in New South Wales and Australia from benefiting from competition for port services for container cargo in New South Wales.⁷²
- 1.58** The ACCC has indicated that the Commission is seeking the court's declaration that the PCDs included provisions which had the purpose and had or were likely to have the effect 'of substantially lessening competition in the market for the supply of port services for container cargo in New South Wales, and thereby contravened s 45(2)(a)(ii) of the *Competition and Consumer Act 2010* as in effect May 2013'.⁷³
- 1.59** The ACCC included its Originating Application and Concise Statement for the Federal Court proceedings in its submission to the inquiry. The Concise Statement included the following claims regarding the Compensation Provisions in the Port Botany and Port Kembla PCDs:

The Compensation Provisions had one or more of the following purposes, and/or had or were likely to have one or more of the following effects:

- a) substantially lessening the competitive constraint on Botany Operator and Kembla Operator arising from supply or potential supply of port services for container cargo by the Port of Newcastle by reason of their rights to compensation for loss of container traffic under the Compensation Provisions;
- b) causing the State to procure that the Port of Newcastle would not materially increase its ability or capacity to compete in the supply of port services for container cargo in NSW (including by developing a container terminal) for so long as the Port of Newcastle was owned directly or indirectly by the State; and
- c) in connection with the privatisation of the Port of Newcastle (then in contemplation) causing the State to impose on any acquirer of the Port of Newcastle an obligation to reimburse the State for any payments the State was required to make under the Compensation Provisions, consequently preventing or hindering the owner of the Port of Newcastle developing a container terminal and thereby substantially lessening the competitive constraint on Botany Operator and Kembla Operator.⁷⁴

- 1.60** The Concise Statement also included the following claims:

⁷¹ Media Release, Australian Competition and Consumer Commission, *ACCC takes action against NSW Ports*, 10 December 2018, <https://www.accc.gov.au/media-release/accc-takes-action-against-nsw-ports>.

⁷² Submission 22, Australian Competition and Consumer Commission (ACCC), p 12.

⁷³ Submission 22, ACCC, p 4.

⁷⁴ Submission 22, ACCC, pp 10-11.

As a consequence of making the Port Commitment Deeds which included the Compensation Provisions, the State required the successful bidder in the Port of Newcastle privatisation to enter into a deed imposing an obligation on the successful bidder to reimburse the State for any payments the State was required to make under the Compensation Provisions.

As a result, on 30 May 2014 the State entered into a deed with the Port of Newcastle Consortium parties including PON Operations. Under clause 3 of that deed, PON Operations is obliged to reimburse the State for any payments the State is required to make under the Compensation Provisions (Reimbursement Provision).

The likely effect of the Reimbursement Provision was and is to make it uneconomical to develop a container terminal at the Port of Newcastle for the 50 year term of the deed. As such, the Reimbursement Provision is a barrier to the expansion of the supply of port services for container cargo in NSW.

But for the Reimbursement Provision, the Port of Newcastle Consortium would be likely to build a container terminal at the Port of Newcastle to compete with Port Botany and, in the longer term, with Port Kembla in the supply of port services for container cargo in NSW. In the absence of a competing container terminal at the Port of Newcastle, the NSW Ports Consortium will remain the only major supplier of port services for container cargo in NSW.⁷⁵

- 1.61** At the public hearing, Mr Staples advised the committee that the government had consulted with the ACCC prior to the completion of the port transactions and that the ACCC been aware of the intended 'container compensation liability':

The Australian Competition and Consumer Commission [ACCC] was consulted before the lease was entered into and was aware of the State's intention to pass through its container compensation liability under the Botany and Kembla port commitment deed to the Newcastle lessee. As the Committee will be aware, the ACCC has recently commenced Federal proceedings against NSW Ports in relation to the port commitment deeds. As set out in the Government's submission to this inquiry, we have identified the scope of sub judice matters. In accordance with the principle, Treasury is limited in what it is able to say in relation to the port commitment deeds.⁷⁶

Other concerns regarding the Port Commitment Deeds

- 1.62** Concerns have been raised regarding whether legislation authorising the lease of Port Botany and Port Kembla (the *Ports Assets (Authorised Transactions) Act 2012*) permitted compensation/support payments to be made by the government to NSW Ports under the PCDs.⁷⁷ In response to a question taken on notice at the hearing regarding this issue, Ms Calfas advised:

The Act expressly allows compensation to be paid "under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement." See section 30(2) of the Act.

⁷⁵ Submission 22, ACCC, pp 11-12.

⁷⁶ Evidence, Mr Staples, 31 January 2019, p 11.

⁷⁷ Evidence, Mr Greg Cameron, 31 January 2019, p 56.

Accordingly, the Act does confer on the Treasurer the ability to enter into agreements in connection with the Port Botany and Port Kembla lease transactions which includes the ability to provide support payments.⁷⁸

1.63 Concerns were also raised that the Newcastle container threshold and the financial obligations specified in the PCDs were not publicly disclosed.⁷⁹

1.64 Mr Staples highlighted that all bidders during the Port of Newcastle transaction were made aware of the PCD and the required support payments that could apply:

I note that that transaction was not an outright sale of the Port of Newcastle. It was a long-term lease following a competitive process during which the port commitment deed obligations were disclosed to all bidders. The bidders had the opportunity to seek their own independent legal and expert advice during the process. It is a commercial agreement entered into by the parties of their own volition.⁸⁰

1.65 Mr Rumble informed the committee that the government had significant contact with the ACCC throughout 2012, 2013 and 2014:

... we again had significant contact with the ACCC throughout 2012, 2013 and 2014. At the end of 2014, when we had given a lot of information to the ACCC in relation to this transaction, it made a decision that no further action was required. Then a period of four years plus went by before this action was taken. Again, we were open and transparent with the ACCC and the bidders in relation to all of the transactions when they were undertaken.⁸¹

Committee comment

1.66 At the heart of Port of Newcastle's calls for a container terminal in Newcastle is the argument that the payments required to be made to the Port Botany/Kembla Port Manager if the specified container threshold is exceeded effectively inhibit the development of a Newcastle container terminal.

1.67 The committee notes the government's advice that the Port of Newcastle has not yet needed to make any PCD support related payments. The committee also notes the evidence of Mr Carmody, Chief Executive Officer, Port of Newcastle, that the PCD obligations mean that it is uneconomic for the Port of Newcastle to develop a container terminal. It is also apparent that the Port of Newcastle bought a port that was focused on coal freight, and agreed to the terms of the PCD during the transaction. The committee has also been advised that the Newcastle PCD does not explicitly prohibit the Port of Newcastle from pursuing container trade.

1.68 The inquiry coincided with Federal Court proceedings involving the ACCC and NSW Ports, which were still at an early stage at the conclusion of the committee's inquiry. The committee sought to ensure that its inquiry did not impact on these proceedings, however they have had

⁷⁸ Answers to questions on notice, NSW Ports, 11 February 2019, p 2.

⁷⁹ Submission 2, Mr Greg Cameron, pp 1-2.

⁸⁰ Evidence, Mr Staples, 31 January 2019, p 11.

⁸¹ Evidence, Mr Rumble, 31 January 2019, p 12.

some impact on the evidence available to the committee regarding the ports transactions and the PCDs.

- 1.69** The committee considers that this inquiry should be the first step in a thorough process of review by the Legislative Council of the ports transactions and specifically the extent to which the container limitations and associated financial obligations have impacted the state's economy. The committee considers that once the Federal Court proceedings involving NSW Ports have concluded, a future Legislative Council committee would be in a better informed position to analyse the impacts of the ports transactions on the state's economy and on businesses and consumers in New South Wales.
- 1.70** The committee therefore recommends that the Legislative Council in the 57th Parliament consider establishing a committee inquiry regarding the ports transactions, and specifically container limitations and associated financial obligations within the PCDs, at the conclusion of the Federal Court proceedings, or when the House determines. This recommendation is also made within the context of the limited time available to the committee to examine the technical aspects of the transaction arrangements due to the coming end of the 56th Parliament prior to the 2019 state election.

Recommendation 1

That the Legislative Council consider establishing an inquiry into the ports transactions, and specifically container limitations and associated financial obligations contained within the Port Commitment Deeds, at the conclusion of the Federal Court proceedings involving the Australian Competition and Consumer Commission and NSW Ports or at such time as the House determines.

-
- 1.71** While the focus of any future inquiry will undoubtedly be informed by the outcome of the Federal Court proceedings, the committee finds that the Port Commitment Deeds including the conditions of sale and the levy were not disclosed to the public or the Parliament. The committee therefore considers that there would be merit in examining the transparency of the transactions and the future of the container freight industry in New South Wales.

Finding 1

The Port Commitment Deeds including the conditions of sale and the levy were not disclosed to the public or the Parliament.

Chapter 2 Impacts of a Newcastle container terminal

This chapter discusses the potential impacts on Sydney transport infrastructure pressures and expenditure of a container terminal in Newcastle. It also discusses the purported economic benefits that could be delivered by the proposal.

Public works impacts

- 2.1 The Port of Newcastle argued that the development of a container terminal in Newcastle could alleviate transport pressures and reduce public works expenditure in Sydney. The NSW Government disagreed with this assertion. Each of the arguments are summarised below.

Sydney transport infrastructure pressures and expenditure

- 2.2 AlphaBeta stated in its *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle* report, commissioned by Port of Newcastle, that a Newcastle container terminal could result in the diversion of up to a million container movements each year away from Port Botany by 2050. This in turn would generate over \$500 million in savings through 'avoided infrastructure, pollution and congestion in Sydney'. The report specified:

It [a container terminal at Port of Newcastle] would relieve capacity pressures on Port Botany and surrounding infrastructure by diverting up to a million container movements each year to the Hunter Region and Northern NSW by 2050. Relieving pressure on Sydney's infrastructure, and thereby deferring infrastructure construction or upgrades, would contribute \$410 million of the savings. Reduced congestion and pollution costs would contribute a further \$110 million. Equivalent costs are unlikely to be incurred in the Port of Newcastle area.⁸²

- 2.3 Specifically, AlphaBeta argued that a Newcastle container terminal would lead to fewer container freight trips between Port Botany and the Moorebank Intermodal and distribution centres in Western Sydney. AlphaBeta also concluded that container freight movements from the Moorebank Intermodal and distribution centres to the north of the state would decrease, as they would be served by the Port of Newcastle, with up to 750,000 container truck trips possibly removed from Sydney by 2050.⁸³
- 2.4 Mr Jim Minifie, Principal, AlphaBeta, argued that a Newcastle terminal could help to resolve Sydney's congestion pressures by removing freight currently transported to and from Port Botany and the state's north:

With respect to traffic between Sydney and the north, effectively we have a mixture of truck and rail traffic between the port and the north of New South Wales that goes through about 70 kilometres of Sydney. At least half of that is on the road. You may be able to do significant amounts of planning to reduce the amount of the trip from the port to the distribution centres in Western Sydney by rail, but that is still a minority of

⁸² AlphaBeta, *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*, (2018), p 23.

⁸³ AlphaBeta, *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*, (2018), p 24.

the traffic. Fundamentally we have 40 to 70 kilometre trips two ways for each container load running through Sydney. To the extent that you remove that burden from Sydney, you are removing both congestion and pollution from Sydney.⁸⁴

2.5 Additionally, the Port of Newcastle argued that rail infrastructure around Port Botany is inadequate for the growing container trade, indicating that rail is 'a high cost and inefficient prospect at Botany'. The lack of an orbital road network in Sydney to efficiently move containers from Port Botany was also highlighted by the Port of Newcastle, which noted that 'more than 90% of the container freight through Sydney is carried on trucks'.⁸⁵

2.6 Several other inquiry participants expressed concerns about the impact on local roads from increased container freight moving from Port Botany to locations throughout Sydney, and particularly to and from intermodal facilities such as at Moorebank.⁸⁶ Associate Professor Philip Laird told the committee:

There is a national trend of the fatalities involving articulated trucks—these are the semis and the B-doubles—going down nationally but up in New South Wales, despite New South Wales having a higher level of enforcement. I think it reflects just the sheer numbers of trucks. The other concern that was raised by the member for Heffron was should we have these really big trucks, like B-doubles, going around places like Green Square in peak hour traffic? These are some of the issues that flow out from having a port only eight or 10 kilometres from the central business district.⁸⁷

2.7 The Port of Newcastle argued that a 1.7 million TEU Newcastle container terminal would 'render much of current and planned transport infrastructure investment in 'decongesting' metropolitan Sydney redundant and unnecessary, freeing up public resources and contributing to the development of an optimal freight and ports system in New South Wales'.⁸⁸

2.8 The Port of Newcastle argued that the government commitment to transport infrastructure to support Port Botany's growth is 'around \$11 billion in direct support – more than \$27 billion in broader transport upgrades'. The Port of Newcastle contended that container volumes on Sydney roads will increase into the future should Port Botany continue to be reliant on trucks and the container trade continue to grow.⁸⁹

2.9 Mr Minifie informed the committee that the development of a Newcastle terminal could lead to significant savings in public road and rail infrastructure expenditure. Mr Minifie estimated that this could be 'hundreds of millions' in relation to road investment, and between \$1-\$3 billion for rail infrastructure:

Looking ahead, we estimate that the Newcastle option would permit the New South Wales Government to avoid hundreds of millions of dollars of road investment just in

⁸⁴ Evidence, Mr Jim Minifie, Principal, AlphaBeta, 31 January 2019, p 4.

⁸⁵ Submission 14, Port of Newcastle, pp iii-iv, p 3 and p 12.

⁸⁶ See Submission 1, Mr John Anderson, p 1; Submission 5, Liverpool Action Group, p 1; Evidence, Mrs Narelle van den Bos, Director, Transport Modelling, 31 January 2019, p 50.

⁸⁷ Evidence, Associate Professor Philip Laird, 31 January 2019, p 63.

⁸⁸ Submission 14, Port of Newcastle, p 3.

⁸⁹ Submission 14, Port of Newcastle, p iii.

Sydney between now and 2050 and over a billion—possibly as much as \$3 billion—of rail investment.⁹⁰

2.10 The government submitted that the transport projects being pursued in Sydney are 'largely aimed at realising benefits for private and general commercial vehicles', with container freight traffic accounting for a 'small proportion of overall traffic using transport infrastructure across Sydney'.⁹¹ Specifically, the government advised that container trucks represent less than 3 per cent of traffic on Sydney's motorways.⁹²

2.11 The government stated that it is delivering projects including WestConnex, Sydney Gateway and NorthConnex to 'address critical gaps in the state's road network'.⁹³ In its submission, the government stated that the leasing of the state's major ports had no connection with a number of the state's most significant road network projects:

WestConnex, Sydney Gateway, NorthConnex, upgrades to the Pacific Highway and other regional road improvements will provide travel time savings, improved reliability and safety for motorists across NSW. These projects will reduce the cost of transporting goods including rapidly growing ecommerce deliveries to homes, offices, parcel lockers and other drop off locations. Leasing arrangements for major ports in NSW including Newcastle have no connection with these projects.⁹⁴

2.12 Similarly, Mr Geoff Rumble, Executive Director, Transport, Infrastructure, Planning and Environment Division, NSW Treasury, was asked at the hearing to respond to the Port of Newcastle's statement that investment of over \$27 billion has been committed to port-related road and rail infrastructure in and around Sydney to reduce freight bottlenecks. Mr Rumble stated that the 'vast majority' of the \$27 billion is being spent on projects 'that will be required to support population growth in Sydney, regardless of what happens on the container terminals'. Mr Rumble further said:

If we look at projects like Sydney Gateway and WestConnex, the main thing driving benefits for those projects is population growth and travel time savings as well as access for commuters to the gateway of Sydney Airport. The vast majority of that investment has very limited connection to freight and very strong connection to making Sydney a more livable city and delivering economic benefits to the people of Sydney and New South Wales.⁹⁵

2.13 The government advised the committee that there has been public investment in infrastructure over the past two decades to support container freight growth, including through the Port Botany Rail Line Duplication.⁹⁶ The government noted that 'public and private investment in

⁹⁰ Evidence, Mr Minifie, 31 January 2019, p 5.

⁹¹ Submission 16, NSW Government, p 13.

⁹² Submission 16, NSW Government, p 13.

⁹³ Submission 16, NSW Government, p 13.

⁹⁴ Submission 16, NSW Government, p 13.

⁹⁵ Evidence, Mr Geoff Rumble, Executive Director, Transport, Infrastructure, Planning and Environment Division, NSW Treasury, 31 January 2019, p 15.

⁹⁶ Submission 16, NSW Government, p 4.

new rail capacity is forecasted to support the growth in containers transported by rail to and from Port Botany to up to 1.5 million TEUs per annum by 2030/31.⁹⁷

2.14 In answers to supplementary questions, Transport for NSW observed:

Rail movements of containerised freight to a terminal at the site proposed for the Newcastle Port would have to travel on lines currently used by other rail operators within the Mayfield and Carrington precincts including Liberty OneSteel, Port Waratah Coal Services, Newcastle Agri Terminal, GrainCorp and CBH Newcastle Shiploader (concentrates export). Any new and significant user of these lines would impact on existing rail path allocation and would require multi-lateral discussion and negotiation.⁹⁸

2.15 Further, Transport for NSW in its answers to supplementary questions observed:

Given that parts of the Main North Rail Line are already close to capacity limits during periods of greatest freight demand, increased demand by PON [Port of Newcastle] for rail paths to accommodate a 2 million TEU container facility is likely to mean significant investment in new infrastructure. This includes duplicating existing sections of the network (i.e. amplify two track sections to four tracks) in order to provide efficient and reliable access to freight trains between Newcastle Port and intermodal terminals in Sydney.⁹⁹

2.16 NSW Ports also contended that the public investment that has been committed to transport infrastructure in Sydney is required for the needs of the broader population and economy:

Existing committed infrastructure investments are required to service the broader commuter and freight needs to support a growing Sydney. Optimising utilisation of existing freight infrastructure (such as through finishing the duplication of the Port Botany freight rail line in an existing and dedicated freight rail corridor) makes economic sense.¹⁰⁰

2.17 Ms Marika Calfas, Chief Executive Officer, NSW Ports, argued that whilst Port Botany will benefit tangentially from WestConnex and Sydney Gateway projects, they are not focused on Port Botany, but are aimed at assisting Sydney's economy and population more broadly:

The projects currently on foot—WestConnex and Sydney Gateway—do not materially impact on the traffic to and from Port Botany. Port Botany will benefit tangentially from them. ...on the whole those investments are being made to address the broader Sydney growth needs and the broader population and business needs of this State. They do not directly connect to Port Botany or provide significant additional benefit to the port...The investment in WestConnex will have a benefit to Port Botany but Port Botany is not the driver of those investments.¹⁰¹

2.18 The Sydney Business Chamber stated that infrastructure listed in the inquiry's terms of reference is a priority for government investment 'independent of the Port of Newcastle sale' and is needed to meet the demands of the state's growing population and economy:

⁹⁷ Submission 16, NSW Government, p 14.

⁹⁸ Answers to supplementary questions, Transport for NSW, 12 February 2019, p 2

⁹⁹ Answers to supplementary questions, Transport for NSW, 12 February 2019, pp 2-3.

¹⁰⁰ Submission 21, NSW Ports, p 4.

¹⁰¹ Evidence, Ms Marika Calfas, Chief Executive Officer, NSW Ports, 31 January 2019, p 24.

...the WestConnex Gateway project, Port Botany Rail Line duplication, intermodal terminals, and rail road connections in southwest and western Sydney, were investment priorities independent of the Port of Newcastle sale. These projects are necessary to meet the demands of a growing NSW economy and population.¹⁰²

Infrastructure requirements for a container terminal in Newcastle

2.19 During the inquiry the committee also heard contradictory evidence regarding the need for public infrastructure investment in and around the Port of Newcastle should a container terminal be developed there.

2.20 At the hearing Mr Craig Carmody, Chief Executive Officer, Port of Newcastle said that the development of a new container terminal at the Port of Newcastle would not require any public investment, unlike the public investment required to 'unlock' the potential at Botany and Kembla:

We are able to develop our container terminal using private money - \$1.8 billion of it. We can do so because we have existing mature rail and road networks that exist from BHP steel mill days... You have seen in the submissions that Botany and Kembla need a lot of public money to unlock their potential. There is no public money allocated to the Port of Newcastle. Obviously, that is a State Government position and we are not in the pecking order. The point is we can do this using private money.¹⁰³

2.21 Mr Carmody indicated that a future Newcastle container terminal could have 'automated rail systems' and a distribution warehousing intermodal system inside the port boundary, allowing for a significant proportion of containers to be transported from the port by rail. Mr Carmody advised that recent estimates indicate that 50 per cent of container movements from a Newcastle container terminal could be by rail, and 50 per cent by road.¹⁰⁴

2.22 The March 2018 report *NSW Container and Port Policy - Port of Newcastle*, prepared by Deloitte Access Economics on behalf of Port of Newcastle, estimated that minimal government investment would be required for a Newcastle container terminal:

Minimal NSW Government investment is required to establish a container terminal at the Port of Newcastle, as the Port has the land, channel, and existing road and rail connections to develop a container terminal now. Much of the investment identified in NSW Government strategies is actually focussed on enhancing connections between Sydney and Newcastle, with no significant planned or required direct investment in port infrastructure to enable an increase in container movements.

The investments that have been identified to support the Port of Newcastle would also most likely be needed regardless of the policy approach to port freight. These investments will support general freight movements between Sydney and Brisbane, and a growing number of passenger movements between Sydney, the Central Coast and the Hunter.¹⁰⁵

¹⁰² Submission 19, Sydney Business Chamber, p 1.

¹⁰³ Evidence, Mr Craig Carmody, Chief Executive Officer, Port of Newcastle, 31 January 2019, pp 3-4.

¹⁰⁴ Evidence, Mr Carmody, 31 January 2019, p 8.

¹⁰⁵ Deloitte Access Economics, *NSW Container and Port Policy - Port of Newcastle*, (2018), p xvi.

2.23 The government responded to claims in the Deloitte Access Economics and AlphaBeta studies commissioned by the Port of Newcastle that limited government investment would be required to establish a container terminal at Newcastle Port, stating that 'this is not supported by the evidence base which underpins the NSW Freight and Ports Plan'.¹⁰⁶

2.24 The government indicated that a Newcastle container terminal could actually need significant investment in road and rail infrastructure:

The Government is of the view that the development of a container terminal at the Port of Newcastle would require large road and rail infrastructure upgrades to address congestion/capacity issues that would arise. This would require the State to invest in infrastructure in Newcastle when Port Kembla is closer to container customers, distribution centres and intermodal facilities and has an existing corridor in place which supports dedicated rail freight.¹⁰⁷

2.25 The government submitted that the development of any new and sizeable container terminal outside Sydney would have implications for landside transport and would require investment to increase capacity and improve access and connectivity.¹⁰⁸ The government submission also noted that a Newcastle terminal would 'significantly increase trucks on the M1 Motorway and roads within the immediate vicinity of the port'.¹⁰⁹

2.26 In regards to rail, the government submission advised that 'parts of the Main North Rail Line are already close to its capacity limits during periods of greatest freight demand'. As a result, new infrastructure would be needed to duplicate sections of the network between Newcastle Port and Sydney. Competing demands on the Main North Rail Line between passenger trains and other rail freight services would also lead to congestion and the need for further investment and duplication.¹¹⁰

2.27 Mr Bob Hawes, Chief Executive Officer, Hunter Business Chamber, was of the perspective that the development of a container terminal at Newcastle would not need significant public works expenditure, but that some upgrades may be required in the future:

To begin operating a container facility in Newcastle, I don't believe any public infrastructure is required. Based on my understanding, the facility would be contained wholly on land leased to the Port of Newcastle which is already serviced by road and rail infrastructure and connections...

The Chamber is of the view however, for a container facility to grow and reach its full potential, transport corridors and infrastructure that currently service the site would need to be preserved and protected to minimise future conflicts at the land use interface. The road arterials for example, should not be compromised by encroaching residential development. The rail corridors are the same. Connections to the proposed upgraded M1 should be carefully planned and accommodate east-west as well as north-south traffic flows.

¹⁰⁶ Submission 16, NSW Government, p 23.

¹⁰⁷ Submission 16, NSW Government, p 15.

¹⁰⁸ Submission 16, NSW Government, p 23.

¹⁰⁹ Submission 16, NSW Government, p 24.

¹¹⁰ Submission 16, NSW Government, pp 23-24.

In time, some of these infrastructure elements may need to be upgraded to accommodate increased capacity at the port. There are many variables that will determine exactly what this entails.¹¹¹

2.28 At the hearing, Ms Calfas argued that any upgrade to rail and road networks between Sydney and Newcastle to accommodate increased container freight would involve substantial government financial investment:

...a container port at Newcastle would require billions of dollars of extra taxpayer investment to support the more than 2,700 extra truck movements a day that would be generated by the proposed container terminal, and most of those trucks would be travelling on the F3 between Newcastle and Sydney. That assumes that half the container volume would be on rail, which is not possible without billions of dollars in public funding to duplicate the Main North Rail Line to separate passenger and freight rail.¹¹²

Committee comment

2.29 The committee has received contradictory evidence relating to the potential impact of the Port of Newcastle transaction arrangements on public works expenditure in New South Wales.

2.30 On the one hand, Port of Newcastle argues that a container terminal at Newcastle will decrease pressure on the Sydney transport network and therefore reduce the need for planned infrastructure investments in Sydney. On the other hand, the Government argues that the majority of these transport infrastructure investments in Sydney are not focussed on freight and are mainly about addressing population growth and delivering economic benefits.

2.31 The committee notes community concerns regarding increased congestion facing Sydney, including on local roads, as a result of the predicted increase in truck movements originating from Port Botany. The committee also notes the limitations to the overall amount of containers able to be freighted by rail out of Port Botany compared to Port Newcastle. The committee also notes evidence from the NSW Government submission that successive governments have invested in creating capacity for container freight through Port Botany and that private sector investment has also been attracted.

2.32 It is apparent to the committee that there are a number of factors contributing to transport infrastructure pressures in the state's capital, with significant population growth being a fundamental driver. Therefore, the committee considers that the heaviest demand for container freight will continue to be from Sydney and in such a scenario a continued focus on Port Botany as the state's primary container port is appropriate.

2.33 It is clear that investment in freight infrastructure in Sydney will need to continue, considering the increasing demand for freight in Sydney, which would be unlikely to be completely resolved by a container terminal in Newcastle.

2.34 The committee notes the evidence provided by Port of Newcastle and its consultants claiming that billions of dollars' worth of transport infrastructure investments in Sydney could be avoided

¹¹¹ Answers to questions on notice, Hunter Business Chamber, 12 February 2019, p 1.

¹¹² Evidence, Ms Calfas, 31 January 2019, p 23.

or delayed due to the development of a Newcastle container terminal. The committee is not persuaded by this argument. The committee believes that the impact of the ports transactions on public works in Sydney has been overstated, as these works are primarily aimed at addressing challenges associated with Sydney's growing population and the burgeoning state economy.

Finding 2

That the limitations on Newcastle container port operations following the ports transactions have not significantly impacted expenditure required on transport infrastructure projects in Sydney.

- 2.35** The committee notes comments by Mr Carmody who indicated that the effect of the Port Commitment Deeds is to make the development and operation of a container terminal at the Port of Newcastle uneconomic for the next fifty years. Accordingly, the limitations placed on the Newcastle Port may restrict the future potential of the economy of the Hunter valley and the north west of the state.
- 2.36** The committee notes the government's stated rationale of the ports policy to maximise efficiency and minimise the total cost of container movements to the community, including transport and logistics costs. The committee further notes the contradictory evidence provided in relation to public investment in transport and freight infrastructure to support a container terminal in Newcastle.
- 2.37** The committee therefore recommends that the NSW Government conduct a detailed investigation of dedicated freight-rail options linking the three ports, to optimise the rail modal share of freight transport and to better align rail freight movements in light of future container demand.
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Recommendation 2

That the NSW Government conduct a detailed investigation of freight rail options between Ports Botany, Newcastle and Kembla, including options for line duplication and dedicated freight-line construction, to ensure strategic future corridors are preserved, to optimise rail modal share of freight transport, to better align capacity to meet future demand and to improve the rail service reliability.

- 2.38** The committee has also noted the contradictory evidence received regarding the need for public investment in transport and freight infrastructure to support a container terminal in Newcastle. The government argues that a Newcastle container terminal would need significant ancillary infrastructure investment in the form of upgrades to account for potential impacts on Newcastle roads, Sydney to Newcastle road connections, and the already heavily utilised Main North Rail Line. The committee considers it likely that a Newcastle container terminal would require some public investment particularly on road and rail connections between Sydney and Newcastle.
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Economic impacts

- 2.39** Port of Newcastle suggested that a container terminal at the Port of Newcastle would have 'significant potential ... to drive business diversification, trade, and jobs-growth in regional NSW'.¹¹³ Furthermore, as previously discussed, Mr Carmody stated that the container terminal could be developed using \$1.8 billion in private investment funds.¹¹⁴
- 2.40** The AlphaBeta report *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle* concluded that the container terminal would create a \$6 billion uplift in economic activity, and help create 4,600 jobs across a diverse range of industries.¹¹⁵
- 2.41** Similarly, the Deloitte Access Economics report *NSW Container and Port Policy - Port of Newcastle*, concluded that the Port of Newcastle:
- has capacity to accommodate a 2 million TEU container terminal
 - by servicing its 'natural catchment' it could reduce the need for 500,000 TEU a year to pass through Sydney's freight network, increasing to 1.1 million TEU by 2050
 - could help reduce the strain on Sydney's transport network
 - would support regional growth and development
 - would help port productivity to grow by 2.5 per cent and reduce landside transport costs by \$1.3 billion.¹¹⁶

Diversifying the Hunter economy

- 2.42** The economy of the Hunter region has traditionally relied on the coal industry.¹¹⁷ As previously mentioned, the Port of Newcastle is the world's leading coal export port, with mining accounting for 40 per cent of the region's exports by value and over 95 per cent by volume.¹¹⁸
- 2.43** Mr Rodd Staples, Secretary, Transport for NSW, advised that the government believes that there is still 'strong demand' for coal in the long-term.¹¹⁹ Mr Carmody noted that the region's reliance on coal means that if there is a global reduction in demand, there will be 'devastating' consequences for the Hunter economy.¹²⁰
- 2.44** Transport for NSW advised that the main data source used to develop the NSW Freight and Ports Plan 2018-2023 was the NSW Freight Commodity Demand Forecasts prepared in 2017-

¹¹³ Submission 14, Port of Newcastle, p ii.

¹¹⁴ Evidence, Mr Carmody, 31 January 2019, p 3.

¹¹⁵ AlphaBeta, *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*, (2018), p 35. Also see, Submission 14, Port of Newcastle, p ii.

¹¹⁶ Deloitte Access Economics, *NSW Container and Port Policy Port of Newcastle*, (2018), p v.

¹¹⁷ See, Evidence, Mr Carmody, 31 January 2019, p 3.

¹¹⁸ Submission 13, Hunter Business Chamber, p 2.

¹¹⁹ Evidence, Mr Rodd Staples, Secretary, Transport for NSW, 31 January 2019, p 21.

¹²⁰ Evidence, Mr Carmody, 31 January 2019, p 6.

18 by the Transport Performance and Analytics (TPA) team within Transport for NSW. These provide 40-year forecasts (2016-2056) for around 20 commodities including coal.¹²¹

- 2.45** The forecast suggests that domestic demand for thermal coal for electricity generation will increase by 1 million tonnes per annum by 2036 and only decrease by 2 million tonnes per annum (8.5 per cent) by 2056.¹²²
- 2.46** The NSW Treasury advised the committee that they do not model the long term outlook for coal to the Port of Newcastle.¹²³
- 2.47** Consequently, Port of Newcastle submitted that diversifying its operations is necessary to support the changing nature of the region's economy and to enhance the region's standing as a 'global gateway' for trade.¹²⁴ Mr Carmody said 'But our view is that in Newcastle we went through the steel mill days. We now rely on coal. We want to diversify before the day comes when we start to see that inevitable downward trend'.¹²⁵
- 2.48** Several inquiry participants echoed this argument and noted that the region, and subsequently the port, should consider opportunities to diversify output to ensure the sustainability of the economy and employment opportunities.¹²⁶ For example, the City of Newcastle stated: 'CN [City of Newcastle] is undergoing a transformation from its heavy industrial past to a service-based economy. Our Port is similarly changing and planning for sustainable growth'.¹²⁷
- 2.49** Lord Mayor of the City of Newcastle, Cr Nuatali Nelmes, explained: 'We will still see coal being extracted for a number of years. However, if you do not plan to diversify your economic base through a wide range of job opportunities, you will stifle the growth of the city of Newcastle and the Hunter for decades to come'.¹²⁸ The Lord Mayor observed that building a container terminal at the Port of Newcastle provides opportunities for industries such as agriculture and wine to enter new markets.¹²⁹
- 2.50** Evidence provided to the committee from Cr Bob Pynsent, Chair, Hunter Joint Organisation demonstrated the challenge of economic diversification:

Of the 10 local government areas that the Hunter Joint Organisation represents, the majority of those are affected by the coal industry. As that changes, as the demand

¹²¹ Answers to supplementary questions, Transport for NSW, p 7.

¹²² Answers to supplementary questions, Transport for NSW, pp 7-8.

¹²³ Answers to supplementary questions, NSW Treasury, 11 February 2019, p 2.

¹²⁴ See, Evidence, Mr Carmody, 31 January 2019, p 3; Submission 14, Port of Newcastle, pp 13-14.

¹²⁵ Evidence, Mr Carmody, 31 January 2019, p 5.

¹²⁶ See, Evidence, Cr Bob Pynsent, Mayor, Cessnock City Council, and Chair, Hunter Joint Organisation, 31 January 2019, p 37; Submission 11, Hunter Environment Lobby, p 1.

¹²⁷ Submission 20, City of Newcastle, p 1.

¹²⁸ Evidence, Cr Nuatali Nelmes, Lord Mayor, City of Newcastle, 31 January 2019, p 36. Also see, Submission 13, Hunter Business Chamber, pp 3-4. Also see, Evidence, Mr Bob Hawes, Chief Executive Officer, Hunter Business Chamber, 31 January 2019, p 43.

¹²⁹ Evidence, Cr Nelmes, 31 January 2019, pp 36-37.

decreases over the next 10 to 20 years, unless those communities diversify their employment opportunities they will not be viable.¹³⁰

2.51 The government has acknowledged that the Hunter economy must diversify. In April 2017, the government and Hunter Councils released the *Upper Hunter Diversification Action Plan* which sets priorities for encouraging new business and employment opportunities and sustainable regional transition.¹³¹

2.52 Mr Staples advised the government supports the Port of Newcastle diversifying its markets, and that there were other opportunities for the Port of Newcastle to consider including passenger tourism:

We support the port in wanting to diversify its markets. We are simply saying with containers, in that particular market, there are a number of dynamics around that both landside and portside, and the seaside, that we need to take account of and therefore we are prioritising Port Botany. But there are other bulk goods opportunities for them. There are more opportunities for passenger tourism type things. We will continue to explore all of those with the port very actively.¹³²

2.53 Mr Rumble also reflected on diversification of Newcastle, noting that he did not consider it a fair contention that the port transactions have led to a situation that will be devastating for the local economy.¹³³

Enhancing business opportunities

2.54 According to a number of stakeholders, the absence of a container terminal at the Port of Newcastle increases costs for local importers and exporters particularly for industry based in Newcastle and northern New South Wales.¹³⁴ For example, Cr Nelmes argued:

...it is the City of Newcastle's view, and it is backed by independent analysis and investigation, that the port commitment deeds have contributed to additional costs for New South Wales industries who are importing or exporting from New South Wales, especially those industries based in Newcastle and northern New South Wales; that is for a range of goods—groceries, clothing, consumer electronics but also agriculture, forestry, food processing, manufacturing, including machinery and world-leading mining equipment.¹³⁵

2.55 McLean Management Consultants offered a similar view and argued that the sale arrangements had impacted productivity and business growth opportunities:

¹³⁰ Evidence, Cr Pynsent, 31 January 2019, p 37.

¹³¹ NSW Government and Hunter Councils, *Upper Hunter Diversification Action Plan*, (2017), p 2.

¹³² Evidence, Mr Staples, 31 January 2019, p 21.

¹³³ Evidence, Mr Rumble, 31 January 2019, p 21.

¹³⁴ See, Evidence, Cr Nelmes, 31 January 2019, p 33; Submission 8, Lock the Gate Alliance, p 2; Submission 11, Hunter Environment Lobby, p 2; Submission 12, McLean Management Consultants, p 1.

¹³⁵ Evidence, Cr Nelmes, 31 January 2019, p 33.

It is our view that the NSW port sale arrangements as are publicly known, have impaired Hunter regional and NSW productivity growth particularly across the Port of Newcastle's catchment, including growth opportunities in regional, intrastate, state, national and international trade.¹³⁶

- 2.56** The committee heard that businesses in the Hunter region and North West can currently use container ports at Port Botany and Port of Brisbane. Stakeholders noted that this can increase prices of goods and services due to transport and other costs. For example, Mr Stuart Tighe, board member of GrowerCo, told the committee that some New South Wales wheat travels up to 500-600 kilometres, often by truck, to Port Botany or the Port of Brisbane.¹³⁷
- 2.57** AlphaBeta estimated that the expansion of the Port of Newcastle could save businesses and consumers in northern New South Wales \$2.8 billion on freight costs by 2050, cutting the distance freight travels over land by 40 per cent.¹³⁸ In a further report commissioned by the Port of Newcastle, Lycopodium Infrastructure found that exporters in the Central West and North West would spend 32 per cent less on rail costs and 18 per cent less on road costs to Newcastle compared to Botany. Port of Newcastle considered that such efficiencies would 'encourage investment in regional industries and regional jobs-growth and would align with the NSW Government's goal of creating diversified and resilient regional economies by leveraging existing and planned infrastructure'.¹³⁹
- 2.58** The Hunter Environment Lobby and the Maritime Union of Australia Newcastle Branch agreed, stating: '... the port will introduce lower freight costs as Hunter and Northern NSW exporters will no longer have to wear the cost and supply chain inefficiency of Sydney congestion on both the road and rail network'.¹⁴⁰
- 2.59** Further to possible cost efficiencies, AlphaBeta estimated that a Newcastle container port could also activate economic development and increase exports from the Hunter and northern New South Wales by \$800 million by 2050.¹⁴¹ The committee was informed by the Hunter Joint Organisation that certain businesses have already shown an interest in investing in the Hunter region should the Port of Newcastle be expanded.¹⁴²
- 2.60** The Hunter Business Chamber likewise said: '... the expansion and diversification of the Port of Newcastle as identified in the *Port Master Plan 2040* could realise significant benefits in efficiency and cost reduction for industry participants in the Hunter and northern NSW, as well as reducing bottlenecks in [the] metropolitan supply chain'.¹⁴³

¹³⁶ Submission 12, McLean Management Consultants, p 1.

¹³⁷ Evidence, Mr Stuart Tighe, Board member, GrowerCo, 31 January 2019, pp 41,44.

¹³⁸ AlphaBeta, *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*, (2018), p 1.

¹³⁹ Submission 14, Port of Newcastle, p 8.

¹⁴⁰ Submission 11, Hunter Environment Lobby, p 2; Submission 9, Maritime Union of Australia Newcastle Branch, p 1; Also see, Submission 15, Moree Plains Shire Council, p 1.

¹⁴¹ AlphaBeta, *Global Gateway for NSW: the economic impact of a container terminal at the Port of Newcastle*, (2018), p 1.

¹⁴² Evidence, Cr Pynsent, 31 January 2019, p 36.

¹⁴³ Submission 13, Hunter Business Chamber, p 8.

Port of Newcastle catchment

- 2.61 There was debate during the inquiry about the current market size and potential for growth in the estimated catchment area that could be serviced by a container terminal at the Port of Newcastle. The figure below shows that Deloitte Access Economics has characterised this area as including the Hunter, Western New South Wales, Central Western New South Wales, Mid-North Coast, Central Coast and Northern New South Wales.

Figure 2 Catchment area for Port of Newcastle



Deloitte Access Economics, NSW Container and Port Policy Port of Newcastle, (2018), p x.

- 2.62 The Deloitte Access Economics report stated that the projected Port of Newcastle catchment area, as defined in the figure above, is the estimated destination for around 27 per cent of containerised imports received at Port Botany.¹⁴⁴ Deloitte also reported that in 2014-15, the Port of Newcastle catchment accounted for 38 per cent of all containerised exports from the state.¹⁴⁵
- 2.63 The Port of Newcastle claims that its potential catchment area is growing and therefore could benefit from access to a closer container terminal:

The Hunter Region will have population growth second-only to Greater Sydney to 2036 and it should be noted that the Hunter Region had a greater economic output than Tasmania, ACT or Northern Territory in 2017 - it is not erroneous for the Hunter Region to have its own container port, or for regional NSW to enjoy its economic benefits.¹⁴⁶

- 2.64 The Port advised that by 2050, 'one-third of NSW's total container trade will come from or go to the Port of Newcastle Catchment area'.¹⁴⁷ Port of Newcastle further noted:

¹⁴⁴ Deloitte Access Economics, *NSW Container and Port Policy Port of Newcastle*, (2018), p ix.

¹⁴⁵ Deloitte Access Economics, *NSW Container and Port Policy Port of Newcastle*, (2018), p x.

¹⁴⁶ Submission 14, Port of Newcastle, p 7.

¹⁴⁷ Submission 14, Port of Newcastle, p 4.

The nameplate capacity of our container port - 2 million TEUs per annum - allows the container trade to grow with population, business activity and customer preference for our cost and efficiency proposition.¹⁴⁸

2.65 In contrast, NSW Ports contended that 'the modelling undertaken by the Port of Newcastle fails to consider a number of important issues and significantly exaggerates the volume assumptions and economic benefits of a container port at Newcastle'.¹⁴⁹

2.66 Furthermore, Ms Calfas explained that 80 per cent of incoming containers travel no further than 40 kilometres from the Port Botany gate:

... 80 per cent of the incoming containers at Port Botany travel no further than 40 kilometres from the port gate. At that location, they are delivered to businesses and warehouses and the goods are unpacked and then delivered. They are delivered mainly to the Sydney market because that is where 60 per cent of the population of New South Wales lives.¹⁵⁰

2.67 The committee also heard that the Newcastle, the Hunter and the Central Coast regions were the destination for 'less than 2 per cent of the containers coming into Port Botany'.¹⁵¹

2.68 The government similarly indicated that 90 per cent of imported containers stay within 60 kilometres of Port Botany.¹⁵²

2.69 In answers to supplementary questions, Transport for NSW stated:

Various claims have been made regarding the potential market for a containerised freight terminal at Newcastle Port. Recent studies undertaken on behalf of the Port of Newcastle imply that Newcastle Port could initially attract between 459,000 and 575,000 TEU by 2020, representing approximately 25-30% of total loaded NSW container movements. These estimates assume that all the goods that are generated and consumed in the Newcastle region could and would be shipped in containers through Newcastle Port.

However, the existing Sydney based investment in container freight distribution supply chains means that industry participants would be very likely to continue to bring containers in via Botany, break the containers down in existing facilities located in Western Sydney and distribute from that point to regions including Newcastle.¹⁵³

2.70 In terms of export containers, NSW Ports said that full exports make up only 19 per cent of total containers handled at the port, with half of the volume originating in regional New South Wales. NSW Ports advised that half of the state's regional exports originate from west and south of Sydney.¹⁵⁴

¹⁴⁸ Submission 14, Port of Newcastle, pp 10-11.

¹⁴⁹ Submission 21, NSW Ports, p 3.

¹⁵⁰ Evidence, Ms Calfas, 31 January 2019, p 23.

¹⁵¹ Evidence, Ms Calfas, 31 January 2019, p 23.

¹⁵² Submission 16, NSW Government, p 4.

¹⁵³ Answers to supplementary questions, Transport for NSW, p 4.

¹⁵⁴ Submission 21, NSW Ports, p 5.

- 2.71** NSW Ports further observed that the *Greater Sydney Region Plan* demonstrates that population and economic hubs in New South Wales are moving west and south-west of Sydney, towards the Port Kembla region:

The Greater Sydney Region plan shows that the population and economic hubs of New South Wales are shifting west and south-west of Sydney, so they are getting closer to the Port Kembla region. The analysis that we have done shows that post 2040 ... when New South Wales is handling 6.5 million TEUs, if it is handling that volume, 5 million of that would preferentially go to Port Botany and 700,000 of that would preferentially go to Port Kembla and 400,000 of that volume would preferentially go to Newcastle.¹⁵⁵

- 2.72** In contrast, Newcastle Lord Mayor Nelmes disputed the premise for these demand projections, which she argued assumed that all future import growth in New South Wales and the market distribution of container trade was all based around Western Sydney. She forwarded that this premise lacked strategic future thinking and showed limited regard for other regional areas of New South Wales:

...none of this thinking allows any future markets and channels to open up. There is a lot of discussion about the potential and support across a number of different political spectrums for inland rail and the opportunity that that opens to the Port of Newcastle for diversification, one of those being container terminals. If that opportunity is then cut off to Newcastle for the next 50 years, or the full term of the lease depending on what happens in the future, we will lose that economic development opportunity not only for Newcastle but also for the Central West and the northern part of the State.¹⁵⁶

- 2.73** Mr Staples disputed the estimated catchment area for the Port of Newcastle, asserting that the catchment area for container freight in Newcastle had been overstated.¹⁵⁷

Impact on existing New South Wales ports

- 2.74** Advocates of a container terminal at Port of Newcastle argued that increasing port competition can be beneficial. For example, Mr Carmody and others including Associate Professor Philip Laird indicated to the committee that competing ports in Auckland and Tauranga in New Zealand were both successful:

...if you look at New Zealand, Auckland and Tauranga are two ports next to each other. Tauranga is a new entrant port in New Zealand. They do ultra-large container vessels. They are an amazing success story. They are 200 kilometres south of Auckland, a bit similar to Newcastle being 200 and something kilometres north of Sydney. You can have two container terminal operations coexisting and be competitive and actually both be thriving.¹⁵⁸

¹⁵⁵ Evidence, Ms Calfas, 31 January 2019, p 27.

¹⁵⁶ Evidence, Cr Nelmes, 31 January 2019, p 35.

¹⁵⁷ Evidence, Mr Staples, 31 January 2019, p 11.

¹⁵⁸ Evidence, Mr Carmody, 31 January 2019, pp 9-10. Also see, Evidence, Associate Professor Laird, 31 January 2019, p 61.

- 2.75** NSW Ports stated that investment in a fourth container terminal for the state would be 'premature'¹⁵⁹, as there is significant surplus capacity at Port Botany.¹⁶⁰ Port Botany is currently 'less than half full'¹⁶¹ with a container throughput of about 2.6 million TEU per year, while its capacity for containers is estimated to be more than 7.2 million TEU.¹⁶²
- 2.76** Three container terminals currently operate at Port Botany. These are operated by stevedores which 'actively compete for trade',¹⁶³ not only with each other but also with the Port of Melbourne and the Port of Brisbane.¹⁶⁴
- 2.77** Explaining further, NSW Ports said that scale in operation was essential for the stevedoring industry. NSW Ports argued that premature entry of a fourth container terminal would result in higher costs to importers and exporters, as the stevedores would need to recover operating and investment costs across a smaller volume of containers with total container volume shared amongst more terminals.¹⁶⁵
- 2.78** Ms Calfas further explained that the most recently established terminal at Port Botany currently handles around 13 per cent of market share and has recorded losses in the previous five consecutive years of operation. Therefore, introducing a fourth container terminal would impact profitability of existing operators:
- The new third operator came in in 2013. They have made consecutive losses five years in a row. Last year's loss was even bigger than the one before. They are handling 13 per cent of the market share at Port Botany, which is about 360,000 TEUs. So at 360,000 TEUs, they cannot make their terminal profitable. They have to get more scale to make it profitable. Introducing a fourth container terminal now makes absolutely no sense because all you are going to do is have, potentially, two stevedores that cannot actually get profitable operations.¹⁶⁶
- 2.79** NSW Ports foreshadowed that the introduction of a fourth container terminal could also result in the collapse of one or more of the state's stevedores. This would be due to insufficient demand for services, ultimately leading to a 'price war' in which stevedores would reduce prices temporarily and then increase prices following the collapse of a competitor.¹⁶⁷

Committee comment

- 2.80** The committee supports the diversification and enhancement of economic opportunities in Newcastle and the Hunter region. The committee notes evidence that the government is actively working with stakeholders in the region to identify diversification and development opportunities.

¹⁵⁹ Submission 21, NSW Ports, p 14; Evidence, Ms Calfas, 31 January 2019, p 23.

¹⁶⁰ Submission 21, NSW Ports, p 15.

¹⁶¹ Evidence, Ms Calfas, 31 January 2019, p 23.

¹⁶² Submission 21, NSW Ports, p 15.

¹⁶³ Submission 21, NSW Ports, p 15.

¹⁶⁴ Evidence, Ms Calfas, 31 January 2019, p 23.

¹⁶⁵ Submission 21, NSW Ports, p 15.

¹⁶⁶ Evidence, Ms Calfas, 31 January 2019, p 30.

¹⁶⁷ Submission 21, NSW Ports, p 19.

- 2.81** Notwithstanding the evidence given by Transport for NSW regarding coal demand forecasts, the committee notes the evidence provided by Port of Newcastle that, based on their financial modelling and demand projections, that it is inevitable that the global demand for coal will decline. Limiting the capacity of the Port to diversify its operations given the outlook for thermal coal puts the viability of the Port at risk. Further, the committee recognises that this impact will be devastating to the region as a whole. Evidence provided by the Hunter Business Chamber and the Hunter Joint Organisation reiterates this assessment, and further demonstrates the imperative of the Port of Newcastle transitioning away from coal reliance.
- 2.82** The committee has received inconsistent evidence relating to the potential economic impacts of a Newcastle container terminal. In this vein, the committee encourages the government to conduct economic analysis on the potential impact of a Newcastle container terminal to inform any future considerations of state port policy.
- 2.83** The committee acknowledges the views of regional importers and exporters who have expressed an interest in using a Newcastle container terminal to decrease transport costs. It is important that the government consult with these stakeholders as part of any economic analysis and as part of any future review of the state's ports policy.
- 2.84** Whilst the committee understands that the development of a container terminal in Newcastle could reduce costs for some regional businesses, the wider impacts, such as those relating to the existing ports industry, must also be considered. The committee has noted the evidence provided by NSW Ports that scale in operation is important for the stevedoring industry.
- 2.85** The outcome of the ongoing Federal Court proceedings will provide more clarity regarding whether the PCD compensation provisions have had the effect of lessening competition for port services for container cargo. The committee therefore considers the NSW Government should review its ports policy, including its position on a container terminal in Newcastle, following the conclusion of the Court proceedings and in the context of the Court's determination, or at a time that the House decides.

Recommendation 3

That the NSW Government conduct a review of the state's ports policy, including the potential for a container terminal at the Port of Newcastle, at the conclusion of the Federal Court proceedings involving NSW Ports, or at such time as the House determines.

Appendix 1 Submissions

No.	Author
1	Mr John Anderson
1a	Mr John Anderson
1b	Mr John Anderson
1c	Mr John Anderson
2	Mr Greg Cameron
3	East Liverpool Progress Association
4	Mr Paul and Mrs Narelle van den Bos
5	Liverpool Action Group Inc
6	Associate Professor Philip Laird
7	Mr Scutella
8	Lock the Gate Alliance
9	Maritime Union of Australia - Newcastle Branch
10	GrowerCo
11	Hunter Environment Lobby Inc.
12	McLean Management Consultants
13	Hunter Business Chamber
14	Port of Newcastle
15	Moree Plains Shire Council
16	NSW Government
17	Infrastructure Partnerships Australia
18	Hunter Medical Research Institute
19	Sydney Business Chamber
20	The City of Newcastle
21	NSW Ports
22	Australian Competition and Consumer Commission

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 31 January 2019 Jubilee Room, Parliament House, Sydney	Mr Craig Carmody	Chief Executive Officer, Port of Newcastle
	Mr Jim Minifie	Principal, AlphaBeta
	Mr Rodd Staples	Secretary, Transport for NSW
	Mr Ken Kanofski	Chief Executive, Roads and Maritime Services
	Mr Jim Betts	Chief Executive Officer, Infrastructure NSW
	Mr Geoff Rumble	Executive Director, Transport, Infrastructure, Planning and Environment Division, NSW Treasury
	Ms Marika Calfas	Chief Executive Officer, NSW Ports
	Cr Nuatali Nelmes	Lord Mayor, City of Newcastle
	Cr Bob Pynsent	Chair, Hunter Joint Organisation
	Mr Bob Hawes	Chief Executive Officer, Hunter Business Chamber
	Mr Stuart Tighe	Board Member, GrowerCo
	Mr Paul van den Bos	Director, Transport Modelling
	Mrs Narelle van den Bos	Director, Transport Modelling
	Mr Greg Cameron	
	Associate Professor Philip Laird	Faculty of Engineering and Information Sciences, University of Wollongong

Appendix 3 Minutes

Minutes no. 9

Tuesday 20 November 2018
Public Works Committee
Room 1136, Parliament House, 2.00 pm

1. Members present

Mr Brown, *Chair*
Mr Field (substituting for Ms Faehrmann)
Mr Graham
Mr Khan
Mr MacDonald
Mr Martin
Ms Voltz

2. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 8 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 15 November 2018 – Letter from Mr John Graham, Ms Lynda Voltz and Ms Cate Faehrmann requesting a meeting of the Public Works Committee to consider a proposed self-reference into the impact of the Port of Newcastle sale arrangements on public works expenditure in New South Wales.
- 20 November 2018 – Email from Mr Justin Field to the secretariat, advising that he will be substituting for Ms Cate Faehrmann for the duration of the inquiry into the Port of Newcastle.

4. Election of Deputy Chair

The Chair called for nominations for the Deputy Chair.

Ms Voltz moved: That Mr Graham be elected Deputy Chair for the duration of the inquiry.

Mr Khan moved: That Mr Martin be elected as Deputy Chair for the duration of the inquiry.

The Clerk informed the committee that, there being two nominations, a ballot would be held.

The Clerk announced the result of the ballot as follows:

Mr Graham – 3 votes

Mr Martin – 4 votes

Mr Martin, having a majority of the members present and voting, was therefore declared elected Deputy Chair for the duration of the inquiry.

5. Consideration of terms of reference – impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales

The Chair tabled a letter to the Committee Clerk signed by Mr Graham, Ms Voltz and Ms Faehrmann requesting a meeting of the committee to consider the following self-reference:

1. That the Public Works committee inquire into and report on the impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales, including:

- (a) The extent to which limitations on container port operations currently in place following the sale of the Port of Newcastle contribute to increased pressure for transport and freight infrastructure in New South Wales, specifically:
 - (i) the Westconnex Gateway project
 - (ii) the Port Botany Rail Line duplication
 - (iii) intermodal terminals and rail road connections in southwest and western Sydney
 - (iv) other additional public road infrastructure requirements due to the additional road freight movements in Sydney under the existing port strategy.
- (b) The nature and status of the port commitment deeds, the extent to which they contain limitations on container port movements, and the terms and binding nature of any such commitments.
- (c) The extent to which container port limitations contribute to additional costs for NSW industries who are importing or exporting from New South Wales, especially in the Port of Newcastle catchment.
- (d) Any other related matters.

2. That the committee report by 28 February 2019.

Resolved, on the motion of Ms Voltz: That the committee adopt the terms of reference.

6. Conduct of the inquiry into the impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales

6.1 Proposed timeline

Resolved, on the motion of Mr Graham: That subject to consultation with members concerning availability, the committee adopt the following timeline for the administration of the inquiry:

- o Submissions close – Sunday 6 January 2019
- o One day hearing in Sydney – week commencing 28 January, date TBC
- o Deliberative – week commencing 18 February 2019.

6.2 Stakeholder list

Resolved, on the motion of Ms Voltz: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

6.3 Advertising

The committee noted that all inquiries are advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

7. Adjournment

The committee adjourned at 2.06 pm *sine die*.

Madeleine Foley

Clerk to the Committee

Minutes no. 10

Thursday 31 January 2019

Public Works Committee

Jubilee Room, Parliament House, 8.45 am.

1. Members

Mr Brown, *Chair*
 Mr Martin, *Deputy Chair*
 Ms Faehrmann
 Mr Graham
 Mr Khan
 Mr MacDonald
 Ms Voltz (from 8.55 am)

2. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 9 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 21 December 2018 – Email from Mr John Anderson to secretariat, attaching a radio interview with John Anderson on 2GLF
- 6 January 2019 – Email from Mr Allan Corben to secretariat, outlining support of Mr John Anderson's concerns submitted to the Port of Newcastle sale arrangements inquiry
- 9 January 2019 – Email from Mr Justin Field MLC to secretariat, advising he will no longer be substituting for Ms Cate Faehrmann MLC for the inquiry into the Impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales
- 17 January 2019 – Email from The Hon. Patricia Forsythe, Executive Director, Sydney Business Chamber, to secretariat, advising that the Sydney Business Chamber will decline the offer to provide a witness at the 31 January hearing
- 17 January 2019 – Email from Mr Nick Hudson, Director of Economics and Policy, Infrastructure Partnerships Australia, to secretariat, advising that Infrastructure Partnerships Australia will be unavailable to appear at the 31 January hearing
- 21 January 2019 – Email from Mr Greg Walls, Planning Manager, NSW Ports, to secretariat, providing an updated NSW Ports submission and requesting that the submission replace the previous version provided
- 22 January 2019 – Email from Mr Shaun McBride, Senior Strategy Manager, Local Government NSW, to secretariat, advising that Local Government NSW will be unavailable to appear at the 31 January hearing
- 22 January 2019 – Email from Ms Marika Calfas, Chief Executive Officer, NSW Ports, to Chair, providing a media release and an offer to discuss the NSW Ports submission.

4. Inquiry into the Impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales

4.1 Public submissions

The committee noted that submissions nos. 1-21 were published by the Committee Clerk under the authorisation of the resolution appointing the committee.

Resolved, on the motion of Mr Khan: That the Committee authorise the publication of submission no. 22.

4.2 Report deliberative date

The committee noted that the report deliberative meeting for the inquiry is scheduled for Tuesday 19 February 2019.

4.3 *Sub judice* convention

The committee noted that a Federal Court case involving the Australian Competition and Consumer Commission and NSW Ports was ongoing and that the *sub judice* convention may therefore apply to certain lines of questioning relevant to the committee's terms of reference.

4.4 Answers to questions and supplementary questions

Resolved, on the motion of Ms Faehrmann:

- That, following the receipt of the transcript, members have 24 hours to submit supplementary questions to the secretariat
- That witnesses return answers to questions on notice and supplementary questions by Monday 11 February 2019.

4.5 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Craig Carmody, Chief Executive, Port of Newcastle
- Mr Jim Minifie, Principal, AlphaBeta.

Mr Carmody tendered the following document:

- HoustonKemp Economists, Containerised trade trends and implications for Australian ports, January 2019.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Rodd Staples, Secretary, Transport for NSW
- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services
- Mr Jim Betts, Chief Executive Officer, Infrastructure NSW
- Mr Geoff Rumble, Executive Director, Transport, Infrastructure, Planning and Environment Division, NSW Treasury.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Marika Calfas, Chief Executive Officer, NSW Ports

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Cr Nuatali Nelmes, Lord Mayor, City of Newcastle
- Cr Bob Pynsent, Chair, Hunter Joint Organisation.

Cr Nelmes tendered the following document:

- Jacob Saulwick, 'Barilaro publicly backs Newcastle container terminal, despite policies', *Sydney Morning Herald*, 23 October 2018.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Bob Hawes, Chief Executive Officer, Hunter Business Chamber
- Mr Stuart Tighe, Board Member, GrowerCo.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul van den Bos, Director, Transport Modelling
- Mrs Narelle van den Bos, Director, Transport Modelling.

Mrs van den Bos tendered the following document:

- Narelle and Paul van den Bos, Freight – and the (potential) role of Newcastle.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Greg Cameron

Mr Cameron tendered the following document:

- Statement from Anglo Ports entitled 'Proposed container terminal at Newcastle', 10 February 2015.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Associate Professor Philip Laird.

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.47 pm.

The public and media withdrew.

4.6 Tendered documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during the public hearing:

- HoustonKemp Economists, Containerised trade trends and implications for Australian ports, January 2019
- Jacob Saulwick, 'Barilaro publicly backs Newcastle container terminal, despite policies', *Sydney Morning Herald*, 23 October 2018
- Narelle and Paul van den Bos, Freight – and the (potential) role of Newcastle
- Statement from Anglo Ports entitled 'Proposed container terminal at Newcastle', 10 February 2015.

5. Next meeting

The Committee adjourned at 3:48 pm until Tuesday 19 February 2019, McKell Room, Parliament House, Sydney (Port of Newcastle report deliberative).

Stephanie Galbraith
Committee Clerk

Draft minutes no. 11

Tuesday 19 February 2019

Public Works Committee

McKell Room, Parliament House, 10:05 am

1. Members present

Mr Brown, *Chair*

Mr Martin, *Deputy Chair*

Ms Faehrmann

Mr Graham

Mr Khan

Mr MacDonald

Ms Voltz

2. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 10 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 1 February 2019 – Email from Mr Greg Cameron, to Chair, providing three newspaper articles discussed at the public hearing on 31 January 2019
- 3 February 2019 – Email from Mr Greg Cameron, to Chair, submitting a transcript clarification to evidence given at the hearing on 31 January 2019
- 11 February 2019 – Email from Mr Paul van den Bos, Director, Transport Modelling, providing additional information for the committee following the public hearing
- 11 February 2019 – Email from Mr Paul van den Bos, Director, Transport Modelling, submitting a transcript clarification to evidence given at the hearing on 31 January 2019
- 11 February 2019 – Email from Mr Greg Cameron, to Chair, regarding an email to the Treasurer

Sent

- 24 January 2019 – Email to Ms Marika Calfas, Chief Executive Officer, NSW Ports, from secretariat on behalf of Chair, advising submission will be discussed at the public hearing
- 14 February 2019 – Email to AlphaBeta, from the secretariat, regarding outstanding answers to questions on notice
- 14 February 2019 – Email to GrowerCo, from the secretariat, regarding outstanding answers to questions on notice.

4. Inquiry into the impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales**4.1 Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Marika Calfas, Chief Executive Officer, NSW Ports received on 11 February 2019
- answers to questions on notice and answers to supplementary questions from Mr Michael Pratt, Secretary, NSW Treasury received on 11 February 2019
- answers to supplementary questions from Ms Marika Calfas, Chief Executive Officer, NSW Ports received on 12 February 2019
- answers to supplementary questions from Ms Tanya McDonald, Executive Manager Corporate Affairs, Port of Newcastle received on 12 February 2019
- answers to questions on notice and supplementary questions from Transport NSW received on 12 February 2019
- answers to supplementary questions from Infrastructure NSW received on 12 February 2019
- answer to question on notice and supplementary questions from Mr Bob Hawes, Chief Executive Officer, Hunter Business Chamber received on 12 February 2019
- answers to supplementary questions from City of Newcastle and Hunter Joint Organisation, received on 15 February 2019

4.2 Transcript clarifications

Resolved, on the motion of Ms Faehrmann, that the committee authorise the publication of correspondence from the following witnesses clarifying their evidence at the public hearing of 31 January 2019 and the inclusion of a footnote in the relevant transcripts noting the transcript clarification:

- Email from Mr Greg Cameron, to Chair, dated 3 February 2019
- Email from Paul van den Bos, Director, Transport Modelling, dated 11 February 2019

4.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled 'Impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Voltz: That paragraph 1.3 be amended by omitting 'with freight activities contributing' and inserting instead 'and the NSW Government states that freight activities contribute'.

Resolved on the motion of Mr Khan: That paragraph 1.4 be amended by omitting 'and handles' and inserting instead 'but currently only handles'.

Resolved, on the motion of Mr Khan: That the following new paragraph and table be inserted after paragraph 1.4:

'The table below forecasts a growth of total TEU volumes from the current figure of 2.6 million TEU (36 per cent of Port Botany's total capacity) to 4.8 million TEU by 2036 (approximately 66 per cent of Port Botany's total capacity), i.e. a compound annual growth rate of approximately 3.6 per cent.'

Table X – Container volumes through NSW over past 20 years and forecast volumes based on NSW Freight Commodity Demand Forecasts [FOOTNOTE: Answers to supplementary questions, Transport for NSW, 12 February 2019, p 5]

Source	Year	Imports (empty + full)	Exports (empty + full)	Trans- shipments	Total	Y-o-y growth	Compound Annual Growth Rate
Ports Australia ³ & NSW Ports ⁴ reported throughput (TEU)	1999	459,216	419,963	-	879,179	-	-
	2000	340,214	476,187	-	1,016,401	15.6%	-
	2001	312,867	477,787	-	990,654	-2.5%	-
	2002	329,238	480,104	-	1,009,342	1.9%	-
	2003	601,039	559,708	-	1,160,747	15.0%	-
	2004	654,797	615,419	-	1,270,216	9.4%	-
	2005	700,281	676,084	-	1,376,365	8.4%	-
	2006	740,086	705,379	-	1,445,465	5.0%	-
	2007	819,218	800,903	-	1,620,121	12.1%	-
	2008	906,582	871,860	-	1,778,442	9.8%	-
	2009	902,533	881,484	-	1,784,017	0.3%	-
	2010	976,215	951,292	-	1,927,507	8.0%	-
	2011	1,020,560	999,526	-	2,020,086	4.8%	-
	2012	1,027,445	1,008,697	-	2,036,142	0.8%	-
	2013	1,074,291	1,051,977	-	2,126,268	4.4%	-
	2014	1,110,105	1,096,264	-	2,206,369	3.8%	-
	2015	1,157,294	1,132,735	-	2,290,029	3.8%	-
	2016	1,173,709	1,151,133	-	2,324,842	1.5%	-
2017	1,331,127	1,200,610	-	2,431,737	4.6%	-	
2018	1,320,972	1,292,734	-	2,613,706	7.3%	-	
TFNSW Freight Forecasts ⁵ (TEU)	2019	1,245,611	1,219,269	154,700	2,619,580	0.0%	-
	2020	1,320,824	1,286,170	162,730	2,769,723	6.0%	-
	2021	1,399,965	1,362,786	170,844	2,933,594	5.9%	-
	2022	1,457,526	1,418,585	177,016	3,053,126	4.1%	-
	2023	1,513,271	1,472,637	183,042	3,168,950	3.8%	-
	2024	1,567,679	1,525,402	188,960	3,282,041	3.6%	-
	2025	1,624,286	1,580,293	195,094	3,399,673	3.6%	-
	2026	1,683,337	1,637,349	201,469	3,522,355	3.6%	-
	2027	1,740,463	1,692,950	207,687	3,641,100	3.4%	-
	2028	1,798,220	1,748,966	213,978	3,761,164	3.3%	-
	2029	1,856,500	1,805,491	220,333	3,882,324	3.2%	-
	2030	1,915,370	1,862,784	226,778	4,005,132	3.2%	-
	2031	1,975,356	1,920,767	233,290	4,129,413	3.1%	-
	2032	2,036,221	1,979,796	239,916	4,255,933	3.1%	-
2033	2,098,134	2,039,840	246,653	4,384,627	3.0%	-	
2034	2,160,926	2,100,737	253,487	4,515,150	3.0%	-	
2035	2,224,814	2,162,697	260,438	4,647,949	2.9%	-	
2036	2,289,581	2,225,509	267,484	4,782,573	2.9%	3.6%	

³ <http://www.portsaustralia.com.au/aus-ports-industry/trade-statistics/?archive>

⁴ <https://www.nswports.com.au/resources/trade-results>

⁵ https://www.transport.nsw.gov.au/system/files/media/documents/2018/NSW%20Freight%20Commodity%20Demand%20Forecasts%202016-56%5Baccessible%5D_0.pdf

Resolved, on the motion of Mr Khan: That the following footnote be added at the end of the new paragraph inserted after paragraph 1.4 (above): [FOOTNOTE: Based on a continuing compound annual growth rate of 3.6 per cent from 2036, Port Botany would reach capacity in the late-2040s].

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.4:

'Transport for NSW observed in answers to supplementary questions:

The \$1 billion investment in the Port Botany expansion in 2009 reflects the longstanding policy strategy to use Port Botany for long-term container movement growth. The evidence base for the NSW Freight and Ports Plan indicates that there is sufficient terminal capacity at Port Botany to meet the demand for containerised freight in NSW until at least 2045 to 2050. [FOOTNOTE: Answers to supplementary questions, Transport for NSW, 12 February 2019, p 14]'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.9:

'In answers to supplementary questions to Transport for NSW, the Government observed:

Provisional cost and investment analysis was conducted by an independent analyst for TfNSW in 2012 which compared capital investment costs and freight transport costs for the road and rail task associated with the operation of additional container port capacity locations in NSW, particularly in Newcastle and Port Kembla. The preliminary assessment identified that the Port Kembla site had cost, access and likely demand advantages compared to the Newcastle site. [FOOTNOTE: Answers to supplementary questions, Transport for NSW, 12 February 2019, p 13]'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.16:

'It should be noted that the Port Commitment Deeds for Port Botany and Port Kembla were entered into as part of the lease transaction in 2013. That deed was entered into between the State Government and NSW Ports. On the other hand, the Port Commitment Deed between the State Government and Port of Newcastle was entered into in 2014. [FOOTNOTE: Submission 22, ACCC, pp 9-11.] In evidence before the inquiry, Ms Calfas, Chief Executive Officer, NSW Ports, stated:

The port commitment deeds mirror the well-planned New South Wales Government strategy for port development. The Port of Newcastle port commitment deed is an arrangement between the Port of Newcastle and the New South Wales Government willingly agreed to by the Port of Newcastle shareholders. NSW Ports is not a party to that deed. [FOOTNOTE: Evidence, Ms Marika Calfas, Chief Executive Officer, NSW Ports, 31 January 2019, p 23]'

Resolved, on the motion of Mr Khan: That a footnote be inserted after dot point 1 in paragraph 1.17: [FOOTNOTE: Based on 30,000 TEU and a compounding increase of 6 per cent p.a., that is equivalent to 42,555 TEU in 2020, 76,210 TEU in 2030, 136,481 TEU in 2040, and 244,417 TEU in 2050.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.22:

'In supplementary questions Mr Carmody was asked to identify the investors behind the proposed development of a container port at Newcastle. In answer to this question, Mr Carmody indicated that "discussions with investors are commercial-in-confidence". [FOOTNOTE: Answers to supplementary questions, Mr Craig Carmody, Chief Executive Officer, Port of Newcastle, 12 February 2019, p 9]'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.23:

'Ms Calfas, on behalf of NSW Ports, observed in her evidence:

The other point I would make about the port commitment obligations that the Port of Newcastle reportedly have—and it goes to a point made by Mr Carmody earlier today—he says that the Port of Newcastle knew they were buying a coal port and they paid for a coal port. The Port of Newcastle paid for a coal port. They paid for a port that had certain conditions associated with it for containers. NSW Ports paid for a container port. We paid \$5.1 billion for that port on the understanding of what was longstanding bipartisan government policy about supporting container terminal development at Port Botany until it was nearing capacity. The Port of Newcastle is trying to plead that they need those conditions removed four years after purchasing the port. [FOOTNOTE: Evidence, Ms Marika Calfas, Chief Executive Officer, NSW Ports, 31 January 2019, p 26]'

Resolved, on the motion of Mr Khan: That the following new paragraph and table be inserted after paragraph 1.23:

'In answers to supplementary questions, Transport for NSW provided a table (see below) showing NSW coal demand forecasts for the period 2016-2056. These forecasts showed an increase in thermal coal demand from 136 million tonnes p.a. in 2016, to 158 million tonnes in 2056; that is an increase of 13 per cent. International demand forecasts for NSW coking coal showed an increase from 25 million tonnes to 47 million tonnes over the same period; that is an increase of 90 per cent.'

'Table X: NSW Coal demand forecasts 2016 to 2056 (million tonnes per annum) [FOOTNOTE: Answers to supplementary questions, Transport for NSW, 12 February 2019, p 8]

Type of coal	End user market demand driver	2016	2036 (f)	2056 (f)	CAGR % (2016-2056)	Total Increase % (2016-2056)
Thermal	Domestic electricity generation	23	24	21	-0.3%	-10%
Thermal	International electricity generation	139	149	158	0.3%	13%
Coking	Domestic steel production	3	3	5	1.5%	81%
Coking	International steel production	25	33	47	1.6%	90%
Total	All end user demands	189	210	230	0.5%	21%

Source: TPA analysis

Note: CAGR (compound annual growth rate) is annualised growth rate for the indicated timeframe, and Total increase is the simple growth rate.'

Resolved, on the motion of Mr Khan, That the following new paragraph be inserted after paragraph 1.29:

'In response to the assertion of the unique position of the Port of Newcastle, Ms Calfas stated:

What Mr Carmody said was interesting. Port Botany is actually a premium container port including for the country. Port Botany has depths capable of handling vessels that are greater than 10,000 TEUs. We currently have berths that are capable of doing that. We have quay cranes at those berths that can handle vessels upwards of 12,000 TEUs. I am not 100 per cent sure of where he is getting those statistics from. The other point I would like to make is that right now Newcastle cannot. Newcastle's channel has declared depths, which are publicly available, of 15.2 metres, which is shallower than Port Botany. Newcastle's Mayfield berths are 7.8 metres and 12.8 metres. You need 16.5 metres to 17 metres for those very large vessels Mr Carmody was talking about. Port Botany has 16.5 metre depths at berths. You have questions around whether the channel of the Port of Newcastle can even accommodate those 18,000 TEU vessels. You should see them; they are absolutely enormous. They have huge box fronts — [FOOTNOTE: Evidence, Ms Marika Calfas, Chief Executive Officer, NSW Ports, 31 January 2019, p 27]'

It should be noted that Port Botany has 12 container berths of which at least four of those berths are 16.5 metres deep. [FOOTNOTE: Evidence, Ms Marika Calfas, Chief Executive Officer, NSW Ports, 31 January 2019, p 27]'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.34:

'Mr Staples also observed:

If you look at our consultation last year, we had about 110 submissions around the port freight strategy. No-one is flagging that the Port Botany strategy is wrong—no-one from the supply chain. We are not seeing that. If you had a big issue about there not being enough capacity, that would have come through loud and clear. From looking at your submissions that you have received, we are not seeing that in that either. I respect the Port of Newcastle's advocacy of what they want to do, but it does not reflect the broader logistics chain and the industry's position on what it needs at the moment. What it needed was certainty about where Government would prioritise its investment so that they could build their logistics centres in places where they needed to minimise travel for their customers overall. [FOOTNOTE: Evidence, Mr Rodd Staples, Secretary, Transport for NSW, 31 January 2019, p 18]'

Resolved, on the motion of Mr Graham: That paragraph 1.57 be amended by inserting 'The committee also notes the evidence of Mr Carmody, Chief Executive Officer, Port of Newcastle, that the port commitment

deed obligations mean that it is uneconomic for the Port of Newcastle to develop a container terminal.' after 'support related payments'.

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after paragraph 2.69:

'Notwithstanding the evidence given by Transport for NSW regarding coal demand forecasts, the committee notes the evidence provided by Port of Newcastle that, based on their financial modelling and demand projections, that it is inevitable that the global demand for coal will decline. Limiting the capacity of the Port to diversify its operations given the outlook for thermal coal puts the viability of the Port at risk. Further, the committee recognises that this impact will be devastating to the region as a whole. Evidence provided by the Hunter Business Chamber and the Joint Organisation of Hunter Councils reiterates this assessment, and further demonstrates the imperative of the Port of Newcastle transitioning away from coal reliance.'

Resolved, on the motion of Mr Graham: That Recommendations 1 and 2 be amended by inserting at the end: 'or such time as the House determines'.

Resolved, on the motion of Ms Faehrmann: That paragraph 2.6 be amended by inserting at the end:

'Associate Professor Philip Laird told the committee:

There is a national trend of the fatalities involving articulated trucks—these are the semis and the B-doubles—going down nationally but up in New South Wales, despite New South Wales having a higher level of enforcement. I think it reflects just the sheer numbers of trucks. The other concern that was raised by the member for Heffron was should we have these really big trucks, like B-doubles, going around places like Green Square in peak hour traffic? These are some of the issues that flow out from having a port only eight or 10 kilometres from the central business district. [FOOTNOTE: Evidence, Associate Professor Philip Laird, 31 January 2019, p 63]'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.13:

'In answers to supplementary questions, Transport for NSW observed:

Rail movements of containerised freight to a terminal at the site proposed for the Newcastle Port would have to travel on lines currently used by other rail operators within the Mayfield and Carrington precincts including Liberty OneSteel, Port Waratah Coal Services, Newcastle Agri Terminal, GrainCorp and CBH Newcastle Shiploader (concentrates export). Any new and significant user of these lines would impact on existing rail path allocation and would require multi-lateral discussion and negotiation. [FOOTNOTE: Answers to supplementary questions, Transport for NSW, p 2]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.13:

'Further, Transport for NSW in its answers to supplementary questions observed:

Given that parts of the Main North Rail Line are already close to capacity limits during periods of greatest freight demand, increased demand by PON [Port of Newcastle] for rail paths to accommodate a 2 million TEU container facility is likely to mean significant investment in new infrastructure. This includes duplicating existing sections of the network (i.e. amplify two track sections to four tracks) in order to provide efficient and reliable access to freight trains between Newcastle Port and intermodal terminals in Sydney. [FOOTNOTE: Answers to supplementary questions, Transport for NSW, pp 2-3]'

Resolved, on the motion of Ms Faehrmann: That paragraph 2.29 be omitted: 'On balance, the committee considers that the congestion issues faced in Sydney and around Port Botany are unlikely to be significantly addressed through the development of the Port of Newcastle container terminal', and the following new paragraph be inserted instead:

'The committee notes community concerns regarding increased congestion facing Sydney, including on local roads, as a result of the predicted increase in truck movements originating from Port Botany.'

Resolved, on the motion of Ms Faehrmann: That paragraph 2.29 as amended, be amended by inserting at the end: 'The committee also notes the limitations to the overall amount of containers able to be freighted by rail out of Port Botany compared to Port Newcastle. The committee also notes evidence from the NSW Government submission that successive governments have invested in creating capacity for container freight through Port Botany and that private sector investment has also been attracted.'

Resolved, on the motion of Mr Graham: That paragraph 2.30 be amended by omitting 'With this population growth comes increased demand for container freight in the Sydney metropolitan area, which the committee feels is unlikely to be addressed by a Newcastle container terminal' after 'with significant population growth being a fundamental driver.'

Mr Graham moved: That paragraph 2.32 be amended by omitting 'The committee is not persuaded by this argument. The committee believes that the impact of the port transactions on public works in Sydney has been overstated, as these works are primarily aimed at addressing challenges associated with Sydney's growing population and the burgeoning state economy.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Ms Voltz.

Noes: Mr Brown, Mr Khan, Mr MacDonald, Mr Martin.

Question resolved in the negative.

Mr Graham moved: That Finding 1 be omitted: 'That the limitations on Newcastle container port operations following the ports transactions have not significantly impacted expenditure required on transport infrastructure projects in Sydney.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Ms Voltz.

Noes: Mr Brown, Mr Khan, Mr MacDonald, Mr Martin.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That the following new paragraph be inserted after paragraph 2.32:

'The committee notes comments by Mr Carmody who indicated that the effect of the Port Commitment Deeds is to make the development and operation of a container terminal at the Port of Newcastle uneconomic for the next fifty years. Accordingly, the limitations placed on the Newcastle Port may restrict the future potential of the economy of the Hunter valley and the north west of the state.'

Resolved, on the motion of Mr Graham: That the following new Finding be inserted after paragraph 1.61:

'Finding X

The Port Commitment Deeds including the conditions of sale and the levy were not disclosed to the public or the Parliament.'

Resolved, on the motion of Ms Faehrmann: That the following new paragraph and Recommendation be inserted after paragraph 2.32:

'The committee notes the government's stated rationale of the ports policy to maximise efficiency and minimise the total cost of container movements to the community, including transport and logistics costs. The committee further notes the contradictory evidence provided in relation to public investment in transport and freight infrastructure to support a container terminal in Newcastle.

The committee therefore recommends that the NSW Government conduct a detailed investigation of dedicated freight-rail options linking the three ports, to optimise the rail modal share of freight transport and to better align rail freight movements in light of future container demand.

Recommendation X

That the NSW Government conduct a detailed investigation of freight rail options between Ports Botany, Newcastle and Kembla, including options for line duplication and dedicated freight-line construction, to ensure strategic future corridors are preserved, to optimise rail modal share of freight transport, to better align capacity to meet future demand and to improve the rail service reliability.'

Resolved, on the motion of Ms Faehrmann: That the following new paragraphs be inserted after paragraph 2.38:

'Transport for NSW advised that the main data source used to develop the NSW Freight and Ports Plan 2018-2023 was the NSW Freight Commodity Demand Forecasts prepared in 2017-18 by the Transport Performance and Analytics (TPA) team within Transport for NSW. These provide 40-year forecasts (2016-2056) for around 20 commodities including coal.

The forecast suggests that domestic demand for thermal coal for electricity generation will increase by 1 million tonnes per annum by 2036 and only decrease by 2 million tonnes per annum (8.5%) by 2056. [FOOTNOTE: Answers to supplementary questions, Transport for NSW, p 7]

The NSW Treasury advised the committee that they do not model the long term outlook for coal to the Port of Newcastle. [FOOTNOTE: Answers to supplementary questions, NSW Treasury, p 2]'

Resolved, on the motion of Ms Faehrmann: That paragraph 2.39 be amended by omitting 'The committee heard that it was prudent for the Port of Newcastle to begin diversifying before the start of the 'inevitable downward trend' in global coal demand' and inserting instead: 'Mr Carmody said 'But our view is that in Newcastle we went through the steel mill days. We now rely on coal. We want to diversify before the day comes when we start to see that inevitable downward trend. [FOOTNOTE: Evidence, Mr Craig Carmody, Chief Executive Officer, Port of Newcastle, 31 January 2019, p 5]'

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after paragraph 2.41:

'Evidence provided to the committee from Mr Pynsent on behalf of the Hunter Joint Organisation of Councils demonstrated the challenge of economic diversification:

Of the 10 local government areas that the Hunter Joint Organisation represents, the majority of those are affected by the coal industry. As that changes, as the demand decreases over the next 10 to 20 years, unless those communities diversify their employment opportunities they will not be viable. [FOOTNOTE: Evidence, Mr Pynsent, Mayor, Cessnock City Council, and Chair, Hunter Joint Organisation, 31 January 2019, p 37.]'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.59:

'In answers to supplementary questions, Transport for NSW stated:

Various claims have been made regarding the potential market for a containerised freight terminal at Newcastle Port. Recent studies undertaken on behalf of the Port of Newcastle imply that Newcastle Port could initially attract between 459,000 and 575,000 TEU by 2020, representing approximately 25-30% of total loaded NSW container movements. These estimates assume that all the goods that are generated and consumed in the Newcastle region could and would be shipped in containers through Newcastle Port.

However, the existing Sydney based investment in container freight distribution supply chains means that industry participants would be very likely to continue to bring containers in via Botany, break the containers down in existing facilities located in Western Sydney and distribute from that point to regions including Newcastle. [FOOTNOTE: Answers to supplementary questions, Transport for NSW, p 4]'

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after paragraph 2.61:

'In contrast, Newcastle Lord Mayor Nelmes disputed the premise for these demand projections, which she argued assumed that all future import growth in New South Wales and the market distribution of container trade was all based around Western Sydney. She forwarded that this premise lacked strategic future thinking and showed limited regard for other regional areas of New South Wales:

None of this thinking allows any future markets and channels to open up. There is a lot of discussion about the potential and support across a number of different political spectrums for inland rail and the opportunity that that opens to the Port of Newcastle for diversification, one of those being container terminals. If that opportunity is then cut off to Newcastle for the next 50 years, or the full term of the lease depending on what happens in the future, we will lose that economic development opportunity not only for Newcastle but also for the Central West and the northern part of the State. [FOOTNOTE: Evidence, Clr Nuatali Nelmes, Lord Mayor, City of Newcastle, 31 January 2019, p 35.]'

Ms Faehrmann moved: That the following new paragraphs, Findings and Recommendation be inserted after paragraph 2.69:

'The committee notes the consistent evidence from regional stakeholders that the need for economic diversification, and the transition from export coal reliance in Newcastle and the Hunter region is urgent and immediate.

The committee notes the evidence that global coal demand is in inevitable decline, and agrees that a failure to diversify the economic base of the region will be devastating for Newcastle and the Hunter region.

The committee finds the Government's forecasts for coal consumption to 2056 are inconsistent with global trends and the NSW Government's own aspirational policy to reach net zero emissions by 2050.

As such, the committee recommends that the NSW Government establish a taskforce to better coordinate existing economic transition measures and to lead the development of an economic transition strategy for Newcastle and the Hunter in preparation for the inevitable decline in global coal demand. This Taskforce would consult with coal-affected communities, industry, unions, and local government in the development of this strategy.

Finding X:

The Government's forecasts for coal consumption to 2056 are not credible and are inconsistent with global trends and the NSW Government's own aspirational policy to reach net zero emissions by 2050.

Finding X:

That global coal demand is in inevitable decline, and a failure to diversify the economic base of the region will be devastating for Newcastle and the Hunter region.

Recommendation X:

That the NSW Government establish a Hunter Regional Economic Transition Taskforce to plan and coordinate the structural adjustment response to the global decline in coal demand and its impact on Newcastle and the Hunter Region.'

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Brown, Mr Graham, Mr Khan, Mr MacDonald, Mr Martin, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;

- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) That the report be tabled on 25 February 2019.

5. ***

6. **Other business**

Resolved, on the motion of Mr Khan: That the committee extend its sincere thanks to the Chair for his outstanding chairmanship of the committee.

7. **Adjournment**

The committee adjourned at 11:34 am, sine die.

Stephanie Galbraith
Committee Clerk