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Advice for Buildev Group

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Privileged and confidential

**Advice on implications of ACCC
Authorisation for Capacity Framework
Arrangements at the Port of Newcastle**

Question You have asked whether the ACCC Authorisation dated 9 December 2009 (**Authorisation**) in relation to the Capacity Framework Arrangements at the Newcastle Port would prevent the Newcastle Port Corporation (**NPC**) from entering into arrangements for the development of a new coal handling terminal at the Port.

Answer

- (a) The Authorisation does not expressly prevent NPC from entering into arrangements for the development of a new terminal at the Port.
- (b) Indeed, the Authorisation and a submission lodged by the applicants for the Authorisation respectively state that:
 - (i) the Capacity Framework Arrangements covered by the Authorisation do not prevent a new entrant constructing a coal loading terminal at the Port to meet demand; and
 - (ii) the Capacity Framework Arrangements will not limit the total volume of coal actually shipped through the Port.
- (c) The Capacity Framework Arrangements contemplate a number of provisions that regulate the expansion of the existing terminals referred to in the Framework and which require long-term take or pay commitments from users of those terminals. The extent to which those factors might impact on the demand for new terminal facilities at the Port needs to be separately considered by Buildev. However, as stated above, the ACCC Authorisation itself does not prohibit further terminal capacity from being developed.

Please call to discuss any aspects of this advice

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