

Chapter 2

Lease of the Port of Darwin to the Landbridge Group

2.1 The Northern Territory (NT) Government's decision to lease the Port of Darwin for a period of 99 years, along with its decision to sell a controlling stake in the port operator, involved a number of stages. These stages occurred within two distinct phases. First, the decision to lease the port, rather than sell it outright, and second, the bidding process that led to Landbridge Group being awarded the lease and acquiring a controlling stake in the port operator (now known as Darwin Port). This chapter provides an overview of structure and operations of the Port of Darwin prior to the lease; the lease process undertaken by the NT Government; and the successful Landbridge bid, including the company's engagement with the foreign investment review framework.

2.2 The decision of the NT Government to lease parts of the Port of Darwin to the Landbridge Group came into effect on 16 November 2015.

2.3 Prior to the NT Government's decision, the port was operated by the Darwin Port Corporation. According to information made public by the NT Government, the areas of the Port of Darwin that have been leased to the Landbridge Group (Landbridge) are:

- East Arm Wharf;
- Darwin Marine Supply Base;
- Fort Hill Wharf (which is used for cruise ships and Defence vessels);
- Commercial shipping channels within the port area;
- The Bulk fuel terminal, which is leased to VOPAK.¹

2.4 A number of areas of the port do not form part of the lease agreement, and these will continue to be owned and operated by the NT Government. These include:

- Stokes Hill Wharf;
- Fisherman's Wharf;
- Hornibrook's Wharf; and
- Frances Bay Mooring Basin, including Sadgroves Creek moorings.

2.5 As a business division of the NT Government, the Darwin Port Corporation was established under its own enabling legislation, the *Darwin Port Corporation Act*

1 Department of the Chief Minister, Northern Territory Government, *Darwin Port Lease*, http://dcm.nt.gov.au/darwin_port_lease/areas_of_the_port_to_be_leased (accessed 9 December 2015).

(Darwin Port Act).² In accordance with the requirements of the Act, the Darwin Port Corporation held sole responsibility for the management and operation of the port. Headed by a Chief Executive Officer (CEO), the corporation was ultimately responsible to the Northern Territory Parliament through the Minister for Infrastructure. It employed 85 full-time staff.³

2.6 In order to fulfil its responsibilities under the Darwin Port Act, the corporation's activities were underpinned by a corporate governance framework that included an Advisory Board; a Port Management Group; and a variety of subordinate committees. The latter provided advice to the Port Management Group and the CEO. The Advisory Board consisted of seven members, including the corporation's CEO. The Board's members were appointed by the Minister for Infrastructure for a period of three years. The Advisory Board also provided advice on strategic matters referred to it by the CEO. The Board was required to consider these matters from a largely commercial perspective, yet also had to take into account the NT Government's wider strategic objectives, including national and international trade development.⁴

2.7 In addition to the Advisory Board, which was established through legislation, the second major component of the corporation's governance framework was the Port Management Group. Formed by the senior leadership group of the Darwin Port Corporation, and headed by the CEO, the Port Management Group held primary responsibility for managing the strategic direction of the corporation. Its responsibilities included the following:

- Delivery and performance monitoring of corporate objectives in accordance with the Corporate Plan;
- Strategic issues and priorities in relation to organisational development and planning;
- Determining and implementing policy in a manner that is consistent with Government's overall transport objectives;
- Monitoring budget and resource allocation within the Corporation; and
- The exchange of corporate knowledge and dissemination of decisions and other information throughout the corporation.⁵

2 *Darwin Port Corporation Act*, available at http://www5.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/nt/consol_act/dpca282.pdf (accessed 9 December 2015). It should be noted that, in preparation for the lease of parts of the Port of Darwin, the *Darwin Port Corporation Act* was recently amended by the Northern Territory Parliament. The amended act came into force in July 2015.

3 Darwin Port Corporation, <https://www.darwinport.com.au/about-corporation/port-management-group>, (accessed 9 December 2015).

4 Darwin Port Corporation, <https://www.darwinport.com.au/about-corporation/port-management-group>, (accessed 9 December 2015).

5 Darwin Port Corporation, <https://www.darwinport.com.au/about-corporation/port-management-group>, (accessed 9 December 2015).

2.8 As part of its responsibilities as the operator of the Port of Darwin, the corporation oversaw the management and strategic expansion of port and logistics services, including, for instance, livestock exports; dry bulk imports and exports; container and general cargo services; offshore oil and gas rig services; petroleum, avgas and other bulk liquids; and services for cruise ships, naval vessels and Australian customs vessels.

2.9 Upon the commencement of the lease on 16 November 2015, the Darwin Port Corporation, which was a wholly-owned business division of the NT Government, was replaced by a new corporate entity, Darwin Port. This is the business name that will represent the operations of Darwin Port Operations Pty Ltd and Darwin Port Pilotage Pty Ltd, both of which are part of the Landbridge Group.

2.10 Although operational responsibility for the port has been transferred to a new corporate entity, Darwin Port, there is continuity in management. At the time of writing, the former CEO of the Darwin Port Corporation, Mr Terry O'Connor, continues to manage the operations of the new company.

Port of Darwin lease process

2.11 According to the NT Government's submission to the NT Legislative Assembly Port of Darwin Select Committee inquiry, the decision to lease parts of the Port of Darwin rested on two principal factors: significant growth in demand for the port's services – with new usage records set over the last four years – and the need to meet future growth projections.⁶

2.12 In evidence to the Legislative Assembly's Select Committee, the Northern Territory's Coordinator General, Mr Garry Barnes reported that successive Australian Governments have rejected applications, made through Infrastructure Australia, for additional capital funding to meet the current and future infrastructure needs of the Port of Darwin. Advice given to the NT Government by the Federal Government was that the Port of Darwin was better suited to privatisation than to continue operating as a Government owned facility.⁷

2.13 The Port of Darwin Select Committee advised the NT Government that the Port of Darwin could find itself at full operational capacity in the near future. Given the Federal Government's decision not to fund further capital investment in the Port, the NT Government sought urgent expert advice on the best way to secure capital investment to increase the Port's capacity. The expert advice sought was to consider funding options for the Port of Darwin, given its unique features, including:

- its small size, compared with other ports around Australia;

6 Port of Darwin Project Steering Committee – Northern Territory Government, *Submission to the Port of Darwin Select Committee*, http://www.nt.gov.au/lant/parliamentary-business/committees/pod/Submissions/Number_4_Northern_Territory_Government.pdf (accessed 9 December 2015).

7 Mr Greg Barnes, Coordinator General, *Transcript of Evidence, Port of Darwin Select Committee, Legislative Assembly of the Northern Territory*, 31 March 2015, p. 12.

- its utilisation by many different industries, such as mining and cattle transport; and
- the need for significant, and correspondingly costly, infrastructure upgrades.⁸

2.14 In early 2014, the NT Government hired Flagstaff Partners, a company that had earlier advised the Victorian Government on the Port of Melbourne lease project. Flagstaff Partners recommended that a long term lease would be the best option to expand and develop the Port of Darwin.⁹

2.15 Throughout 2014, further reports were prepared for the NT Government by independent consultants, including Deloitte Access Economics; GHD; Environmental Resource Management; and Price Waterhouse Coopers. The expert reports examined those sectors likely to drive future economic growth in the NT, such as the Oil and Gas sector, along with the key commercial, financial, accounting, tax, environmental and engineering issues raised by the lease or privatisation of the port. Minter Ellison acted as the NT Government's legal advisor for the lease transaction.¹⁰

2.16 In addition to consulting with a range of external experts on the scope and shape of a potential privatisation of the port, the NT Government also appointed a Port of Darwin Project Steering Committee, whose primary responsibility was to examine ways in which a public/private partnership might facilitate the development of the port's infrastructure.¹¹

2.17 In January 2015, the NT Government launched an exploratory process to gauge the level of national and international private sector interest in the Port of Darwin. Thirty-three private investors, including Landbridge, registered their interest in leasing the port.¹²

2.18 In February 2015, the NT Legislative Assembly unanimously agreed to appoint a Port of Darwin Select Committee. The committee held two public hearings (31 March and 1 April 2015) where a range of public and private sector stakeholders, including Patrick Stevedoring and the Maritime Union of Australia gave evidence. The Select Committee's report was tabled in April 2015.¹³

8 Department of the Chief Minister, Northern Territory Government, *Research into the lease process*, http://dcm.nt.gov.au/darwin_port_lease/research (accessed 9 December 2015).

9 Department of the Chief Minister, Northern Territory Government, *Research into the lease process*, http://dcm.nt.gov.au/darwin_port_lease/research (accessed 9 December 2015).

10 Department of the Chief Minister, *Research into the lease process*, http://dcm.nt.gov.au/darwin_port_lease/research (accessed 9 December 2015).

11 Department of the Chief Minister, *Research into the lease process*, http://dcm.nt.gov.au/darwin_port_lease/research (accessed 9 December 2015).

12 Northern Territory Government, *Submission 16*, p. 4.

13 Legislative Assembly of the Northern Territory Port of Darwin Select Committee, *Port of Darwin Lease Model*, April 2015, http://www.nt.gov.au/lant/parliamentary-business/committees/pod/Port_of_Darwin_Report.pdf (accessed 9 December 2015).

2.19 In the course of its inquiry, the select committee explored a number of potential lease models, in order to examine the benefits and pitfalls of private investment in the Port of Darwin. Its final report included 18 separate recommendations, including, most importantly:

- that a component of the lease be kept in the control of an Australian entity; and
- that the Government consult with FIRB and the Department of Defence in relation to the strategic and security risks that a potential international investor might present.¹⁴

Landbridge bid

2.20 Landbridge Industry Australia Pty Ltd is a subsidiary of the Shandong Landbridge Group, which has substantial interests in port logistics, petrochemicals, timber trading and processing, and real estate development businesses. The company engages in petrochemical products' processing, sale, storage, importing, transportation, and other services, and has further interests in petrochemical refining, warehousing and logistics, oils sale, port transportation, and international trade. It also engages in the wholesale and retail business of gasoline, diesel, kerosene, and other oil products. Additionally, it provides property development, property management, and construction services, while also having an involvement in ocean shipping supply, trade, and hotel services. Shandong Landbridge Group is a private company owned by two Chinese national shareholders. It was founded in 2001 and is based in Rizhao, China.¹⁵

2.21 In its submission to the committee, as well as in evidence at the committee's hearing on 15 December 2015, Landbridge Infrastructure Australia provided an overview of its interactions with FIRB.

2.22 After initially expressing its interest in a lease over the Port of Darwin in December 2014, Landbridge first met with FIRB on 19 June 2015, in order to indicate its interest in submitting a bid for the port lease.¹⁶

2.23 Landbridge observes that, in late June 2015, it submitted a notification to FIRB in relation to both the port lease and the purchase of shares in the port operator. According to Landbridge, this 'dual' notification was provided because the granting of

14 Legislative Assembly of the Northern Territory, *Port of Darwin Select Committee Report: Port of Darwin Lease Model*, April 2015, p.13, <http://www.nt.gov.au/lant/parliamentary-business/committees/pod/Reports.shtml> (accessed 9 December 2015).

15 For a detailed overview of Shandong Landbridge Group, see 'Company Overview of Shandong Landbridge Group', *Bloomberg Business*, <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=33920707> (accessed 9 December 2015).

16 Landbridge Infrastructure Australia Pty. Ltd., *Submission 17*, p. 3.

the lease and the purchase of shares in the port operator would be treated differently under the provisions of the *Foreign Acquisitions and Takeovers Act 1975* (the Act).¹⁷

2.24 On 8 July 2015, Landbridge submitted its initial FIRB application, in which it noted that it was still unclear whether the port manager would be an exempt corporation from the need to gain approval. Therefore, it enclosed a notice under section 26 of the Act for the acquisition of shares. Landbridge further clarified that:

At this stage in the transaction, the bid price had not been allocated between the lease and the shares. This is because the allocation depended on the specific assets to be leased and the value of the shares in the Port Manager. Landbridge did not have the required information about the Port Manager to allow it to form a view on the allocation of value at this time.¹⁸

2.25 According to Landbridge's evidence, it was contacted by FIRB on 11 September 2015. FIRB informed the company that it was in the process of seeking confirmation from the NT Government about the allocation of the bid price. According to Landbridge:

What price the Northern Territory Government allocated to the share component of the transaction would guide whether or not the share transaction required FIRB approval. Landbridge was not involved in discussions with FIRB and the Northern Territory Government about the allocation of value for the shares. The Northern Territory Government informed the Committee at the hearing that the value of the transaction was verified by the Auditor-General of the Northern Territory Government, and that this information was provided to FIRB.¹⁹

2.26 On 15 September 2015, FIRB contacted Landbridge to inform the company that a 99-year lease of the Port of Darwin and the purchase of shares in the port operator would be exempt under Section 12A(7)(a) of the Act.²⁰ Section 12A(7)(a) of the Act exempts assets owned by State, Territory or local governments from its provisions.

2.27 Section 12A(7)(a) has been removed from the Act, but remains in force under the Foreign Acquisitions and Takeovers Regulation 2015. State, Territory and local government assets continue to be exempt from FIRB scrutiny, except in cases where the purchase is being made by a foreign government.

2.28 On 13 October 2015, the Hon. Adam Giles MLA, Chief Minister of the NT, announced that the Landbridge Group was successful in its bid for a 99-year lease over the Port of Darwin. The NT Government selected Landbridge as its private sector

17 Landbridge Infrastructure Australia Pty. Ltd., *Submission 17*, p. 3.

18 Landbridge Infrastructure Australia Pty. Ltd., *Submission 17*, p. 4.

19 Landbridge Infrastructure Australia Pty. Ltd., *Submission 17*, p. 4.

20 Landbridge Infrastructure Australia Pty. Ltd., *Submission 17*, p. 4.

partner after a competitive bidding process, which included final and binding bids from a number of Australian and international companies.²¹

2.29 The total price of the lease package, which also includes a controlling stake in the port operator, now known as Darwin Port, came to \$506 million. The lease commenced on 16 November 2015 and will expire on 15 November 2114.²²

21 The Hon. Adam Giles MLA, Chief Minister of the Northern Territory, 'NT Government selects Landbridge as its partner for the Port of Darwin', Media Release, 13 October 2015, available at <http://newsroom.nt.gov.au/mediaRelease/15788> (accessed 9 December 2015).

22 'NT Government selects Landbridge as its partner for the Port of Darwin', Media Release, 13 October 2015, available at <http://newsroom.nt.gov.au/mediaRelease/15788> (accessed 9 December 2015).

