

Port of Darwin

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Handling note

- DEPSEC NSIP Katrina Cooper to lead.

Framing points

- On 8 June 2022, the Prime Minister announced that the Government will review the circumstances of the Port of Darwin lease.

PM&C role

- The Department of the Prime Minister and Cabinet ('The Department') is leading the review into the circumstances of the Port of Darwin lease.

Key issues

**If asked:** about the Prime Minister's announcement of a review into the Port of Darwin lease.

- The Prime Minister has requested a review into the circumstances of the Port of Darwin lease.
- This work is underway.

**If pressed:** what are the terms of reference for the review?

- We are currently reviewing all information that is available in relation to the lease of the Port of Darwin to inform our review.

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- This will enable the Department to advise the Government about what the terms of a review could be and timelines to complete the review.

**If pressed:** when does the Department expect to provide this advice to Government?

- The work is underway.

**If asked** who is leading the review?

- [Katrina] I am leading the review.

**If asked:** why the review into the circumstances of the Port of Darwin lease is required.

- The previous government undertook a number of reviews on the circumstances of the Port of Darwin and its lease.
- The Government has asked the Department to look into the findings and outcomes of previous reviews, and advise if any action is required.

**If asked:** about communications with Landbridge (the lessee) on the review

- The Department received a letter from Landbridge’s representative dated 4 October 2022 relating to the review into the circumstances of the Port of Darwin announced by the Prime Minister.
- The Department responded to Landbridge on 25 October 2022.
- *[If pressed on the Department’s response]* The Department confirmed that work on a review into the circumstances of the Port of Darwin is underway

**Timeline**

*(Blue entries = PM&C action)*

| <b>Date</b>              | <b>Action</b>   |
|--------------------------|---|
| <b>25 October 2022</b>   | PM&C responded to Landbridge Infrastructure Australia Pty Ltd.  |
| <b>4 October 2022</b>    | Letter to PM&C Secretary from Landbridge Infrastructure Australia Pty Ltd, seeking advice on the nature and scope of any further review of the Port of Darwin lease, and inquiring whether Landbridge will be provided an opportunity to respond. |
| <b>20 September 2022</b> | PM&C provided advice to the PMO on paths forward for consideration of the Port of Darwin lease.   |
| <b>22 August 2022</b>    | PM statement on review of the lease and making review public.   |

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| <b>3 August 2022</b> | PM&C provided advice to the PMO relating to the 2021 Defence review of the Port of Darwin lease.                                    |
| <b>8 June 2022</b>   | PM statement on reviewing the circumstances of the lease.   |
| <b>December 2021</b> | Media reported that the 2021 Defence review of the port lease had not found sufficient national security grounds to overturn lease. |
| <b>December 2020</b> | The <i>Foreign Relations (State and Territory Arrangements) Act 2020</i> passes both Houses of Parliament.                          |
| <b>July 2018</b>     | Commencement of <i>Security of Critical Infrastructure Act 2018</i> .   |
| <b>March 2016</b>    | Amendments to Foreign Investment Review Board process to consider sale of state and territory government assets.                    |
| <b>October 2015</b>  | Landbridge Group formally wins bid for the lease of the Port of Darwin.   |
| <b>May 2015</b>      | Commonwealth Deed of Licence agreed with the Northern Territory Government.   |
| <b>Date</b>          | <b>Action</b>   |

### Background

In December 2021, media reported that Defence had conducted a security assessment into the lease of Port of Darwin to Landbridge Group for the former Government, and had not found sufficient national security grounds to overturn the lease.

While in opposition, the Prime Minister was critical of the previous government's response to the Port of Darwin lease. On 8 June 2022 the Prime Minister promised there would be a "review of the circumstances of the port". On 22 August the Prime Minister noted he had asked for advice on the lease, and that it would be made public.

The Department has commenced consultations with Commonwealth agencies and has requested information, reports, assessments, relating to the Port of Darwin developed in 2022 from:

| <b>Agency</b>                           | <b>Date of request</b> | <b>Format of request</b> | <b>Information received?</b> |
|---|------------------------|--------------------------|------------------------------|
| Department of Foreign Affairs and Trade | 17 October 2022        | Email                    | N                            |
| Department of Home Affairs              | 17 October 2022        | Email                    | Y – 25 October               |

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|   |                 |         |   |
|---|-----------------|---------|---|
| Department of Defence                         | 18 October 2022 | Email   | N |
| Office of National Intelligence               | 20 October 2022 | Email   | N |
| Australian Security Intelligence Organisation | 21 October 2022 | Email   | N |
| Attorney-General's Department                 | 24 October 2022 | Meeting | N |

In response to recent media reporting, on 4 October 2022 Landbridge Infrastructure Australia Pty Ltd wrote to Secretary PM&C, requesting advice on matters relating to the review announced by the Prime Minister, including the review's proposed scope and timing, and requesting that Landbridge be given an opportunity to respond to the findings of the review (**Attachment B**). On 25 October 2022 the Department responded to Landbridge by letter signed by Katrina Cooper, Deputy Secretary, National Security and International Policy Group (**Attachment C**).

### FOI Request

On 25 August 2022 the Department received a FOI request from Jano Gibson (ABC) seeking "the terms of reference and/or scope of that review including any time frames for it, and any list of government departments involved in the review."

PM&C refused the request under subsection 24A(1) of the FOI Act, on the grounds that the Department has taken all reasonable steps to locate the documents, and those documents do not exist.

### Landbridge Lease

In 2015, Landbridge Group leased parts of Darwin Harbour for 99 years, including the Fort Hill Wharf, used primarily for cruise ships, and East Arm Wharf, primarily for commercial use. These are a small portion of the harbour precinct. Landbridge Group is a private Chinese firm headquartered in Shandong, China.

There are a number of publically known protections for Australia's interests in the Port of Darwin:

- Defence interests in the Port of Darwin are covered by a Deed of Licence with the Northern Territory Government.
- There are a range of options available to the Northern Territory Government to enforce Landbridge's obligations under its legislation and the lease.
- Defence also has a general power to access the Port facilities under the Defence Act 1903.
- The *Security of Critical Infrastructure Act 2018* also provides protections for the Commonwealth's interests in the Port of Darwin and other ports around Australia.

**Port of Darwin under the new *Foreign Relations (State and Territory Arrangements) Act 2020* (Foreign Arrangements Scheme)**

The *Foreign Relations (State and Territory Arrangements) Act 2020* does not apply to arrangements with corporations that operate on a commercial basis. As the Port of Darwin lease is an arrangement between the Northern Territory Government and a corporation, the Foreign Arrangements Scheme does not apply.

Media Coverage

| Date        | Source                   | Item   |
|-------------|--------------------------|--|
| 29 Aug 2022 | ABC                      | <a href="#">Chinese-owned company Landbridge rejects 'myths and mistruths' about Darwin Port lease</a>                           |
| 24 Aug 2022 | Australian Chinese Daily | <a href="#">The new government re-examines the Darwin port lease</a>   |
| 23 Aug 2022 | Sky News Australia       | <a href="#">DPM appearance on Sky News breakfast</a>   |
| 23 Aug 2022 | ABC News Breakfast       | <a href="#">DPM appearance on ABC News Breakfast</a>   |
| 23 Aug 2022 | ABC                      | <a href="#">Darwin Port review will examine potential 'impropriety' in lease to Chinese-owned firm Landbridge, Labor MP says</a> |
| 22 Aug 2022 | The Canberra Times       | <a href="#">PM pledges to reveal Darwin port review</a>  |

|  |  |                |                |
|--|--|----------------|----------------|
| Lachlan Colquhoun<br>First Assistant Secretary | National Security Division                               | (02) 6228 6310 | s 22(1)(a)(ii) |
| s 22(1)(a)(ii)                                 | Critical Infrastructure and Counter Foreign Interference | s 22(1)(a)(ii) | s 22(1)(a)(ii) |
| Consultation                                   | International - China                                    |                |                |

Attachments

s 22(1)(a)(ii)