transport

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REPUBLIC OF SOUTH AFRICA

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To	**:**	**The Chairman: South African Ports Regulator**
From	**:**	**The National Port Consultative Committee**
Subject	**:**	**Proposals to Transnet National Ports Authority's Alteration of Tariffs for 2021 - 2022**

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PROPOSALS TO TRANSNET NATIONAL PORTS AUTHORITY'S ALTERATION OF TARIFFS FOR 2021/2022

1. PURPOSE

The purpose of this memorandum is to submit proposals and recommendations in response to the Amendment of the Ports Authority's Tariff Application as submitted by the National Ports Authority to the Ports Regulator of South Africa (PRSA) for the 2021/22 – 2023/24 financial year from the National Ports Consultative Committee (NPCC).

2. BACKGROUND

Section 82(1) of the National Ports Act, Act 12 of 2005, empowers the Minister of Transport in the appointment of the National Ports Consultative Committee (NPCC). The function of the NPCC, amongst others, is to consider the National Ports Authority's (NPA) tariff applications, to comment on those, and to propose meaningful alterations where it is felt necessary to do so.

The Ports Regulator of South Africa's issued a Press Statement regards the "National Ports Authority Tariff Year 2021/22 – 2023/24 Proposed Tariff Application received 3 August 2020. The press statement invited port users and interested parties to comment and submit proposals on the proposed tariffs as received and published. As part of the NPCC processes, it was resolved that an ad-hoc NPCC meeting be convened to discuss the NPA tariff application and to formulate and record an official submission to the Ports Regulator of South Africa (PRSA). This was followed up by subsequent meetings.

The current tariff application is the 10th submitted to be considered by the PRSA since the institution of the NPCC.

3. NPCC TARIFF RESPONSE DISCUSSION

The subject meeting was held Friday 11th ***SEPTEMBER****, 17 and 18th September 2020 supported by NPCC Representatives. The main aim of the discussion was to review and discuss the proposed NPA's Tariff Application 2021/22 – 2023/24 and status of current fin year 2019/2020 assessing and contextualising Covid19 impact.*

Key focus areas include the progress made towards improved efficiencies within the port system, ongoing challenges exacerbated due to the Ports Authority's modus operandi in comparison to what the Ports Act of 2005 envisaged. Referencing to PCC level KPI monitoring KPIs per terminal, per commodity together with WEGO implementation and ongoing refinement with port users actively participating through PCC platforms amongst others.

The ongoing delay in the corporatization of the Ports Authority was once again acknowledged to have a direct influence on the independence and execution of its mandate as envisaged in the Ports Act (Ports Act Chapter 2 (3 & 4) Establishment and Incorporation of the Authority). This was noted to be reflected in a myriad of challenges across the port system. Compromising the Authority's oversight role and its independence as a Ports Authority. Examples highlighted across PCCs include ongoing Capex underspend, ongoing lack of transparency (Island View Strategy, National Container Strategy and Interim Changes whilst expansions programmes are underway etc) and Special Unit Investigations. The NPCC discussed the impact and implications of the Authority's Interim Deemed Board not being active.

The level of transparency with the Ports Authority not having its independent financial results remains a challenge. To this end the NPCC meeting resolved that the response addresses the following key issues:

- Compliance with the National Ports Act, Port Regulations, Directives and the PRSA 2019/2020 Record of Decision.
- Content and Completeness: Consideration given in respect of the provision of sufficient information in the tariff application, or not.
- Methodological Consistency: Methodology application.
- Revenue Requirement Model and Pricing Strategy: Comment on Ports Authority's application of the Pricing Methodology.
- Level of Content Detail: To comment on the level of content provided in the Application.

- To analyse and comment on the draft Tariff Book
- Recommendations: Propose Recommendations that are deemed necessary.

3.1 Compliance with the Act, Regulations, Directives and the Record of decision for 2019/20.

3.1.1 Section 72(2) of the National Ports Act, indicates that the Authority must, before any substantial alteration of tariffs, consult with the NPCC.

It is important to note that the Ports Authority has worked alongside the PCCs during the PCC Port Performance Roadshow held during July 2020. In doing so presenting its Oversight Report Update, Port Development Framework Plans, Capex Plans and Port Efficiency measures status.

3.1.1.1 Directive 22(3):

(a) The manner in which the tariffs have been calculated, and the model used by the Authority for determining and calculating tariffs;

The NPCC noted that the Ports Authority calculated its tariffs based on the Valuation methodology as was published by the PRSA March 2020 constituting compliance. This factoring in the PRSA concession allowing the Authority to apply the TOC across the board instead of using the hybrid model. This concession is acknowledged in light of the pronouncement in Parliament that the Ports Authority be corporatized within the 21/22 financial year.

(b) All operating and capital costs, expenses and revenues, incurred or generated from the port service or port facility, as well as the value of the capital stock;

The NPCC acknowledges the efforts by the Ports Authority to disclose granular levels of information. It is noted that Operating Expenditure and Capex remain a grey area lacking detail and on the Capex side execution. Game Changer initiative related to the Capex programme noted. Challenges related to Operations Phakisa and the details thereto remain to be clarified and resolved. This noting that DAFF instituted “Towards a

South African Oceans Economy Master Plan” replacing what was previously known as Operations Phakisa.

c. Directives 23(1) (c) the amounts to be invested and the revenues to be utilised in port development, safety, security and environmental protection;

The NPCC is mindful of the Ports Authority’s “Game-Changer” initiative intention. Further noting the ongoing divisional Transnet processes continuously negatively impacting the Ports Authority resulting in significant ongoing Capex and critical skills underspend or underinvestment. This negates the broader South African economic priorities in respect of the Ports Authority deliverables as articulated in the Ports Act of 2005 and approved by the PRSA. It is therefore difficult to conclude whether all the required areas have been addressed satisfactorily.

Considering Transnet’s impact on the SA economy, it maintains its previous statement regards the Authority not being corporatized or at least a separate subsidiary similar to Transnet Holdings. The current form of the Ports Authority a division within Transnet, continues to have dire implications for the SA port system and the SA economy as is evident in ongoing port congestion, special unit investigations and CAPEX underspend across the port system. NPCC further acknowledging the Port of Ngqura positive Capex spend.

(i) the manner in which the tariffs will affect the cost of doing business in the ports;

The NPCC wish to highlight again that institution of the PRSA methodology has resulted in significant strides being made in this area reducing the cost of doing business in SA. It is mindful that it requires the collaboration of all parties to play its role contributing to reducing the cost of doing business. The NPCC wish to highlight again that more work needs to be done in this area. There is no clear position with regards to rental calculations and escalations.

(ii) The proposed profit margin or rate of return, together with a motivation to show why this margin or return is commensurate with the Ports Authority risk;

The NPCC supports the Ports Authority earning a return commensurate with the risk of owning, managing, controlling and administering ports and providing a port service facilities as outlined in the Directives. The NPCC maintains that the Authority's Application does not differentiate between what it considers to be its investment risks impacting on its revenues and that of Transnet. The NPCC is aware that as a division within Transnet it does not borrow funds on the open market neither is it required to do so as the Revenue Requirement model provides that all funds be reinvested back into the Authority. Whilst not corporatized and a division within Transnet, the NPCC observes that the Authority's asset base is used by Transnet to raise funds in the open market. It is not clear how this is dealt with between the Authority and Transnet. The NPCC further considers the level of transparency lacking, as it relates to the Ports Authority's risk profile.

(iii) The manner in which the factors set out in Directive 23 apply to the proposed tariffs.

Directive 22 (4): The Regulator may call on the Authority to provide any additional information which the Regulator required to consider the submission made in terms of sub directive 1 or 2 or to approve the proposed tariff.

Some strides have been made under this directive.

Directive 22 (6): The Authority shall maintain such financial and accounting systems as are necessary for the Regulator to verify the pricing principles and models used by the Authority to determine and calculate its tariffs.

The NPCC maintains that the Authority's audited statements, like the Airports Company of SA (ACSA), should be available to the SA public to scrutinise. This should allow for the PCCs and NPCC to have a better understanding regards the Authority's financials, governance and financial management.

Directive 23 (1): In considering the proposed tariffs in terms of Directive 22, the Regulator must have regard to whether the proposed tariffs reflect and balance the following considerations: -

(a) A systematic tariff methodology that is applicable on a consistent and comparable basis;

The NPCC acknowledges the Authority's compliance with the Tariff Methodology as was published by the PRSA March 2020.

(b) Fairness;

Significant strides have been made by the PRSA to ensure fairness within the Authority's tariff processes. Whilst this is noted, much more work is to be done to ensure transparency and fairness.

(c) The avoidance of discrimination, save where discrimination is in the public interest;

This is supported by the NPCC. It is difficult to monitor the Authority's application of same.

(d) Simplicity and Transparency;

There is a need to further simplify tariffs and enhance a greater level of transparency. This noting the Authority being a division of Transnet and by default being linked to the challenges within the Transnet Group.

(e) Predictability and stability;

The NPCC notes improvement in collaboration establishing predictability, and stability in respect of forecasts, actual volumes and industry participation. Underscoring the importance of ongoing collaboration.

(f) The avoidance of cross-subsidisation, save where cross-subsidisation is in the public interest; The Tariff Strategy has set out the manner in which cross-subsidisation will be addressed.

The NPCC maintains support for cross-subsidisation in the public's interest within the Port system. Similarly, the difficulty to monitor the degree to which the Authority may or may not be subsidizing Transnet Group or other Transnet divisions. This is an area which the PRSA must investigate.

(g) The promotion of access to ports and efficient and effective management and operations in ports.

The NPCC has several concerns in this regard. These concerns include:

The Authority's lack of oversight exercising its role as an independent Ports Authority which include S56, 57 and 79 Licences respectively as articulated in the Ports Act of 2005 amongst others.

- Its delegation of Authority Framework linked to the Transnet Delegation of Authority Framework which is inconsistent with the Ports Act. This has a direct impact on decision making, Capex spending and efficiencies within the port system. This remains an area of contention resulting in increased cost of doing business in SA. Anecdotal evidence suggests that little progress has been made in this regard, notwithstanding the Authority's "Game Changer Strategy".
- The NPCC maintains that as a division within Transnet, the Authority is constrained in exercising its oversight role as envisaged in the Ports Act of 2005 and Port Regulations of 2007. Its capacity to exercise its oversight role is further compromised, resulting in it not being able to effectively regulate terminal operators amongst other, negatively impacting port efficiencies and the overall port system.
- The Authority's year-on-year lack of CAPEX spend is a further challenge linked to its capacity to manage the port system adequately. This has a direct impact on economic development and missed economic opportunities.

3.1.2 NPCC's recommendations

As highlighted above NPCC supports that the PRSA considers issues highlighted above and how same impacts the effectiveness of the Port system. Furthermore, consideration for the strides made by the Authority.

In conclusion whilst there has been an improvement in respect of Compliance with the Act, Regulations, Directives and the Record of decision for 2019/2020, the Authority is hamstrung in its current form and similarly the port system and community at large whilst awaiting the corporatization of the Authority.

3.2 Contents and Completeness of the proposed 2021/22 Tariff Application

The NPCC acknowledges progress has been made in respect of contents and completeness. Further information is required as per our recommendations throughout this submission.

NPCC's Recommendations:

The NPCC maintains its recommendation that the PRSA investigates all land and water rentals. In doing so it is recommended to appoint an independent valuator to accurately benchmark land use and evaluate market-related rentals in line with international standards.

3.3 Methodological Consistency

3.3.1 It is again acknowledged that significant strides were made by the PRSA. The PRSA published its Regulated Asset Base Valuation Methodology March 2018 which became applicable 1 April 2019. This proposed submission is consistent with the Tariff Methodology including the updated Asset Valuation published by the PRSA effective 1 April 2020. As outlined earlier, the NPCC is mindful of the concession made by the PRSA allowing the Ports Authority to use the TOC instead of the hybrid model in the RAB valuation. This further highlight that the sustainability of the NPA was at no point at risk as proposed by the Ports Authority.

a. The NPCC acknowledges the Methodological consistency including the conditional concession in applying the TOC and not the Hybrid model.

b. Whilst in breach of the Ports Act of 2005 and Regulations of 2007 and not corporatized, the NPA as a division of Transnet is recognised as not being a borrowing entity. This requires that the NPA articulates its financial ratios from a risk perspective in line with its credit metrics. During the PRSA NPA Tariff Application virtual Roadshow held 31 August 2020 – 1 September 2020 the NPA was requested to clarify its risk factors in line with the NPA's loan book activities. This is still to be clarified with the PRSA and to advise the NPCC.

3.3.2 The NPCC Recommendation:

Whilst awaiting corporatisation of the Ports Authority, the NPCC requests and recommends that the NPA clarify its risk factors and how this relates to Transnet.

4. Pricing Application

The intention of the Tariff Strategy is to ensure sustainable system-wide pricing. The objectives of the pricing strategy as articulated by the PRSA is supported. The progressive move to cost-reflective tariff structures as guided by the PRSA, together with the development of an efficient pricing system, is supported.

4.1 Real Estate

The Tariff Strategy intends to ensure sustainable system-wide pricing. Objectives of the pricing strategy as articulated by the PRSA is supported.

4.1.1 Introduction

The vision of the Authority's Real Estate business acknowledged ensuring that the property portfolio is managed adequately, efficiently, effectively as per the Act and policies of the Authority.

Rental from port land is an integral contributor to the Ports Authority profits for many years at the expense of the growth of the industry in the maritime sector. Some companies have relocated their offices elsewhere and only undertake services and other activities on rental premises in the port on a short-term basis.

EBH is but one example of a ship repair company who operates in Cape Town and Durban and wanted to have a floating dock facility to undertake ship repair because the Ports Authority infrastructure did not cope with the volume of work coming to these ports. Ship Repair companies had to turn business destined for SA ports away. The Ports Authority did not accept the EBH proposal. EBH then went to Walvis Bay and incorporated a company EBH (Namibia) with NAMPORT a 52.5% shareholding. EHB (Namibia) now has three (3) floating docks and capturing the market from South Africa and Angola. (Refer to Benguela Current Convention). Ship Repair activity volumes currently handled in the port of Walvis Bay constitutes a business loss in SA ports.

Figure 1 Floating Dry-Docks in the Port of Walvis Bay

The vision under Transnet is to maximise profits and squeeze port users as much as possible. The commercial ports are the gateways to international trade poised to bring economic growth to South Africa and labour opportunities in contributing towards reducing unemployment. Under Ports Authority, this is not possible.

A corporatized Ports Authority aim would be to similarly enhance the economic development and growth of the marine industry offering labour opportunities. Until this shift materializes the commercial ports will remain the same squeezing port users as much as possible for profits that will subsidize other Divisions of Transnet in the absence of transparency.

The NPCC submission falls into the following categories:

- Base Rental of facilities in other locations
- Confidentiality of rental agreements
- Length of rental agreements
- The escalation in rental agreements
- Renewal of Rental Agreements

I. Confidentiality of Rental Agreements

The Ports Authority insist that rental agreements must be confidential. Companies in Cape Town pay up to three times the rental of Durban in certain categories of operation. This makes competition for local services uncompetitive. The NPCC maintains the rental agreements should be transparent and available to all port users.

II. Duration of Rental Agreements

The rental agreements run from five (5) years to fifteen (15) years. The NPCC believe that the duration of the rental agreements should be at least ten (10) years so that the investments can be written off in that period. Shorter rental agreements make port users uncompetitive to service local and international clients. The NPCC is aware that there are leases with a longer tenure. An example of this is the Transnet Port Terminals leases agreements where lease tenure are renewed without the challenges the ordinary Port Users (outside of Transnet) face. The Ports Authority should adjust the tenure of the rental agreement to the port user's investment in the facility.

III. Escalation of Rental Agreements

Ports Authority has pegged the escalation of rental of nine (9) per cent irrespective of the various indicators in the South African economy. It also appears that this rate is not standard and some tenants pay different escalations. The NPCC believes that the escalation should follow the South African economy. Any increases should be at best pegged to the actual escalation of costs. The current approach is a direct reflection of misusing the monopolistic position of the Authority.

IV. Renewal of Lease Agreements

The lease agreement states that fixed improvements become the property of Ports Authority upon expiry of the lease. The Ports Authority then recalculates the m^2 to reflect the added value of the improvements so that the next tenant pays a higher rate. The NPCC believes that the depreciated value of the improvement should be used.

In the case of renewal, the Ports Authority uses this calculation to increase the rent resulting in the same tenant that invested in the fixed improvements paying a second time, and repeatedly every lease renewal. The NPCC proposes that for renewal of a rental agreement to the same port user, the depreciated value of the improvements should be used.

V. Land use subsidised in the public's interest

Non-Profit Organisations within the port boundaries servicing the Maritime Industry offering holistic support to seafarers visiting SA shores whilst on duty. Similar services are offered internationally financed through donations and grants. SA seafarers have the benefit of this service at their disposal when travelling regionally and abroad.

Covid19 highlights the plight of seafarers amongst others and the continuous support they required all around the world. The NPCC supports that NPOs such as the Mission to Seamen should pay subsidised rentals, which in this instance is in the interest of the public. This would allow them to continue to offer much-needed services to seafarers within the port boundaries and not be priced out of the port system.

The NPCC recommends that the clause enabling subsidisation the publics' interest be implemented supporting NPO's such as the Mission to Seamen within the SA Port system.

5.1.2.1 Mossel Bay, Saldanha, Cape Town, Richards Bay, Durban, East London, PE and Ngqura

This part of the submission discusses both the Port of Cape Town and the Port of Saldanha respectively. Following the recommendations above. Below is a comparative overview.

I. Base Rental of Facilities in other locations compared to South Africa

A comparison was made in 2007 of a contractor who had fabrication premises in Nigeria and the Mossgas site in Saldanha Bay.

By way of example, the Nigerian site consisted of 90 000m^2 with a complete jetty, hard laydown area, workshops, offices, roads, the necessary infrastructure of water, electricity, sewage and communications, and residential accommodation for 400 people with kitchens and bathrooms. The site was secured by the ports authority due to rebels that were active in the area.

Figure 2: Layout of the Nigerian Fabrication Facility

The Saldanha (Mossgas site) Figure 3 below measured 220 000m2 with hard standing and some prefabricated offices and only access to the quay, a small amount of electricity supply, communications, water and sewerage connection.

Figure 3: Original Fabrication layout before 2007 developments

The price comparison between the two sites is given below ignoring escalation, rates & taxes, water and sewerage costs and the capital spend on similar fabrication equipment: Rate of Exchange at that stage was:

€1	=	R8, 00
US$1	=	R6, 00

ITEM	NIGERIA	SALDANHA BAY
Rent	R2.14/m^2	R6.00/m^2
Rent for offices	Nil	R25/m^2/month
Turnover Rent on Profits	Nil	2% on nett profits
Quay Apron	Nil	R182.00/ linear meter of the quay
Quay Operational Area	Nil	R42.00m^2
25m behind the Quay Operational Area	Nil	Rent to be determined
Capex to build facilities	Nil	R122 544 732.00

Table 1 Comparing Mossgas site with Nigerian Fabrication site

Figure 4: Mossgas Fabrication Facility Port of Saldanha development post-2007

II. Rental in other Countries

Local companies have several yards around the world and they have an exercise to calculate the price per square metre for those yards that they don't own but rent. The average m^2 price is 10 – 12 times less than what they pay in the Port of Cape Town. The monthly rental in Cape Town is equivalent to one year's rent for a European rental.

Port	Rates (p anum / p m2)
Ghana / Tema port	0.50 $ -1 $
Gambia / Banjul	7.5-10 $
Netherlands / Rotterdam	3-5$
Singapore	16 $
Ivory coast / Abidjan	10 $
Nigeria / Port Harcourt	6 $
South Africa / Cape Town	41 $
South Africa / Durban	17 $

Table 2: Rentals Rates Comparison

The table below benchmarks Ports Authority shipbuilding and repair lease terms and conditions against international leases that were available via desktop research done for Aerospace Maritime and Defense Industries Association. (Lumec Pty Limited, 2019)

Lease Category	PORTS AUTHORITY Shipbuilding & Repair Leases	International Leases & Lease Policy
Lease period	5 years	**Gujarat:** For shipyards with the capacity to build vessels greater than 30,000 DWT the period is a maximum of 30 years. For less than 30,000DWT the period is a maximum of 15 years. **Portland:** 25 years **Melbourne:** 25 years **San Diego:** 25 years **Mumbai:** 30 years.

The table above and below demonstrates how the international ports operate with leases and rentals. It is evident that for shipbuilding the lease must be extended so that work on shipbuilding can be completed before the lease expired. As a result, the lease must cater to this and international ports require 15 years to depreciate the facility cost and allow the port user to make a sustainable business and profit. In the case in South Africa, the Ports Authority does not have the notion of sustainable business with a 5 year lease period before going out on tender.

Ship repair and rig repair can take 3 months to 12 months. For a 5 year lease period, the port user can only undertake 5 to 20 ship and rig repairs before the lease runs out. This is not a sustainable business and will put employment opportunities at risk and generate opposition from Labour Unions.

Renewal of leases internationally recognises that the original lease period of 25 years puts the port user in sustainable business. The NPA does not recognise that a 5-year lease is unsustainable for a business unless the renewal on the same terms is implemented to the port user without going on tender again.

The NPCC maintains that if the Ports Authority would be a private company with a 5-year lease it would not be a sustainable business given all the assets and capital expenditure in its portfolio at the end of its 5 lease period. The same applies to port users in South Africa and the Ports Authority must urgently examine this strategy.

The rental price has been demonstrated in Figure 2 above.

The escalation rates are significantly lower than those of NPA 9 %. If escalation rates are used then the escalation rates are pegged at CPI. This demonstrates that NPA should revise its policy on escalation rates.

Improvements to the facilities must be taken into the lease arrangements, particularly if the leases are renewed.

See the table below how International ports operate in leases, rentals and escalation.

Lease Category	**PORTS AUTHORITY Shipbuilding & Repair Leases**	**International Leases & Lease Policy**

Renewal and termination	No option to renew in all except 1 lease, which has an option to renew for an additional 1-5 years. 3 leases showed that both the landlord and tenant can terminate with notice, 2 showed that neither party may terminate the lease agreement, and 2 showed that only PORTS AUTHORITY could cancel the lease agreement.	**Los Angeles:** The port should solicit competitive proposals for the land, however, it has the discretion to negotiate with existing tenants instead of soliciting new proposals as it is the policy of the board to 'continue to build long term relationships with existing tenants. **Melbourne:** Maximum lease terms stipulated in the Port Charter and cannot be exceeded. **Mumbai:** Option to renew for additional 20 years. Both landlord and tenant can terminate the lease agreement for any reason, as long as notice is given. But if the termination is not due to reasons attributable to the other party (except breach of contract and bankruptcy), the terminating party shall be liable for penalties to other parties.
Rental price	Ranging from R20 to R50/m2 per month with an average of R40/m2 per month, which is R480/m2 per annum (**$34/m2 per annum**). Price determinant not included in the lease agreement. Additional costs include a once-off admin fee, municipal rates monthly charges, sewage and refuse removal monthly charges and a refundable deposit (equivalent to up to 6 months of rental).	**Gujarat:** Rs.2,000 per metre of waterfront per annum **($28.89/m per annum)**. Land lease rental is 10% of the land cost incurred to the port landlord for the acquisition of the land per annum. **Melbourne:** Price determined by the market standard. The pricing order issued by the ports regulator includes a rent capping mechanism that prevents the exercise of monopoly power in relation to leases. **Los Angeles:** Price determined by "the most probable rent that a property should bring in a competitive and open market" and the ports' return on investment goals. Pricing decreases as the distance from the waterfront increases. **San Diego:** 45 cents/ square foot/ year (**$4.86/ m2/ annum)**. Price determined by the market - for vacant land being rented for maritime industrial related uses. **Massachusetts:** Rent determined by 'fair market price' which should be determined taking all factors that would be taken into account by a real estate appraiser. **Tema:** Long lease ground rent: **$0.50 to $1.00/ m2/ annum**, depending on the location of the plot. Ground rent for the paved area at the operational area of the port: **$48 to $72 /m2 /annum** depending on usage **Mumbai:** Rental price not based on the area but rather on the business potential at the port. The landlord takes an annual fee and profit share.
Escalations	9% flat rate annually for full lease term for all leaseholders.	**Gujarat:** Escalation of 10% every three years (**3.3% per year)**. **Portland:** Escalates according to the consumer price index **CPI**

Lease Category	**PORTS AUTHORITY Shipbuilding & Repair Leases**	**International Leases & Lease Policy**

	Escalation determinant not included in the lease agreement and no leaseholders reported that they were aware of the methodology used to determine the escalation.	**Melbourne**: Capped at consumer price index **(CPI)** **Los Angeles:** Escalates according to the consumer price index **(CPI)**. Resets required no less than every five years. **San Diego:** No annual escalation. Price re-adjustment every 5 years according to the consumer price index **(CPI)** average over the previous 3 years, capped at 7% per annum or 35% per adjustment period (5 years). **Massachusetts:** Predetermined annual costs for the first 20 years. Adjustments are every 20 years thereafter based on 'fair market rent', which cannot be 5% less or 25% more than the lease of the previous year. Furthermore, 5-yearly adjustments from the 25th year onwards based on the cumulative change in the consumer price index over the five preceding years. **Mumbai: 3%** annually for Mumbai, **no escalation** in Kolkata but the fee is reviewed every 7 years.
Improvements	Improvements are at the tenants' cost, no matter the state that the land/structures were in on occupancy. The lessee shall not remove any improvements to the site made by the lessee unless authorised by PORTS AUTHORITY. PORTS AUTHORITY will not compensate the lessee for the value of improvements. Should the lessee renew the rental agreement then the rental payments will be the market rental for the site, including any value attributable to the improvements.	**Portland:** Lease incentivises cooperation and agreement for future capital improvements. **Los Angeles:** All improvements become the property of the port on termination of the rental agreement. Port may ascertain a need to acquire tenant-owned assets - straight-line depreciation is used to determine asset price. Such a provision should be included in the lease agreement. **San Diego:** Minimum investment required by the lessee as stipulated in the rental agreement. Years to be deducted from the lease should the improvements not take place in the required time frame. Improvements are strictly not to be taken into account when determining rental. **Mumbai:** There are no specific conditions for improvements in the agreement. Since the profit is being shared, the performance of the organisation shall be reviewed periodically for improvement in production.
Dispute resolution	The lease states that the parties shall first endeavour to resolve the dispute by negotiation. If the dispute hasn't been resolved then either party can submit the dispute to the Arbitration Foundation of Southern Africa.	**Melbourne**: Port operator offers a market standard rent review mechanism with dispute resolution by an independent property market expert. Periodic review by the Regulator of whether the Port leaseholder has misused its market power in the setting of rents at the Port. **Los Angeles:** Any deviation from market rates and return on revenue goals must be brought before the Board and approved in open public session. **San Diego:** After notice by either party to the other

Lease Category	PORTS AUTHORITY Shipbuilding & Repair Leases	International Leases & Lease Policy
		requesting arbitration, one arbitrator shall be appointed by each party. The two arbitrators shall immediately choose a third arbitrator to act with them. All of the arbitrators shall be qualified, real estate appraisers. The award shall be the decision of not less than two of the arbitrators. **Massachusetts:** If the proposed rental is not suitable to the tenant but the difference is not more than 5% then the midpoint between the lessor and lessee proposed amounts shall be taken. **Mumbai:** Standard terms stipulated by Ministry of Shipping is applied since all these parties are under the said ministry

Table 3: AMD International Lease Benchmark 2019

III. Rental of Fabrication, Ship and Rig repair on a Short-Term Basis.

Rental of fabrication, ship and rig repair on a short-term basis is also uncompetitive because the costs associated to rent space on a short-term basis must be written off on the project due to the nature of projects. The Port Authority will provide land in the port with minimal infrastructure. The fabricator or ship repairer must provide:

a. Temporary offices
b. Temporary workshop
c. Electrical power in the form of a generator for 60Hz power instead of 50Hz that could be available
d. Toilets and washrooms
e. Canteen facilities
f. Connection to water
g. Communication infrastructure
h. Floodlighting if required

The costs are to erect and dismantle the facilities after use as above, office infrastructure is out of the facility causing delays and costs, movement of critical equipment that is situated at home base as it is used for multiple projects and expensive to move (Rolling Machines at a cost of R20 million), mobile cranes instead of workshop cranes, delays at the security gates of the Port, compensation to workers for travelling expenses and time and many more indirect costs.

Under the above circumstances, Fabricators and Ship Repairers are unable to be competitive in the International market, given the cost of rental arrangements. The Saldanha facility lays dormant and the fabricator pulled out of this sub-contract agreement. A similar story emerged in Cape Town where the lessor handed back the facility to the Ports Authority has spent R35 million in upgrading A berth for rig repair and maintenance.

In conclusion, the NPCC supports that dedicated Ship-and-Rig repair-facilities be provided timeously, committing to this sector. In the Port of Saldanha Berth, 205 is set to be available 2027 as outlined in the Ports Authority's presentation during the PCC Port Performance Roadshow held Friday 24th – Thursday 30th July 2020. The NPCC's concern is that this market may have moved altogether, given rapid developments on the continent in this area amongst others. This will negatively impact the Port of Saldanha community, the IDZ and the Port of Saldanha itself.

Considering current drilling opportunities off the coast of Mossel Bay Brullpadda championed by Total presently drilling for 300 days, Gazania championed by African Energy scheduled to drill 2021 on the West coast awaiting Ministerial approval of joint ventures and East coast five wells championed by ENI South of Durban near Richards Bay according to Petroleum Agency South Africa July 2020. The East Coast drilling was initially scheduled for 2019/202 but was delayed due to Covid19.

Servicing the Brulpadda wells, logistics services will be required in Mossel Bay, George and Cape Town requiring Offshore bases. Brulpadda is rated the fifth largest discovery by the Westwood Global Energy Group recognised by the Energy Institute in the UK.

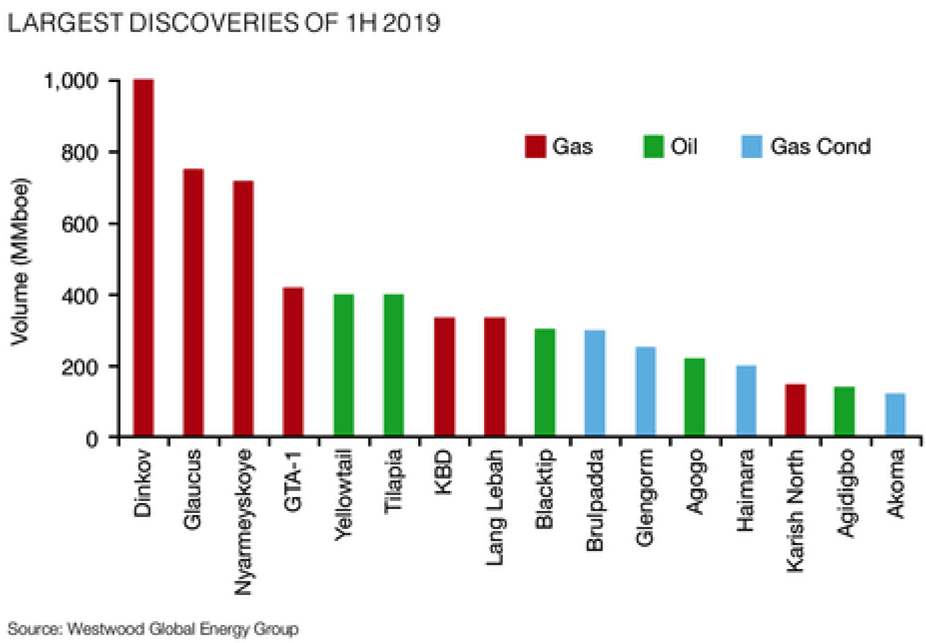

Figure 5 International comparison of the largest Oil and Gas Discoveries

Activities offshore from South Africa requires relevant South African Ports to support offshore exploration and production of Oil and Gas, providing direct and indirect job creation opportunities. At the time of the Mossgas project 1987 to 1992 4000 direct jobs and eight times as many indirect jobs were created, as highlighted in the Central Economic Advisory Service. By way of example preparing for production, where port facilities will be required for fabrication, it is expected to take five to six years. This highlights the need to prioritise dedicated port facilities.

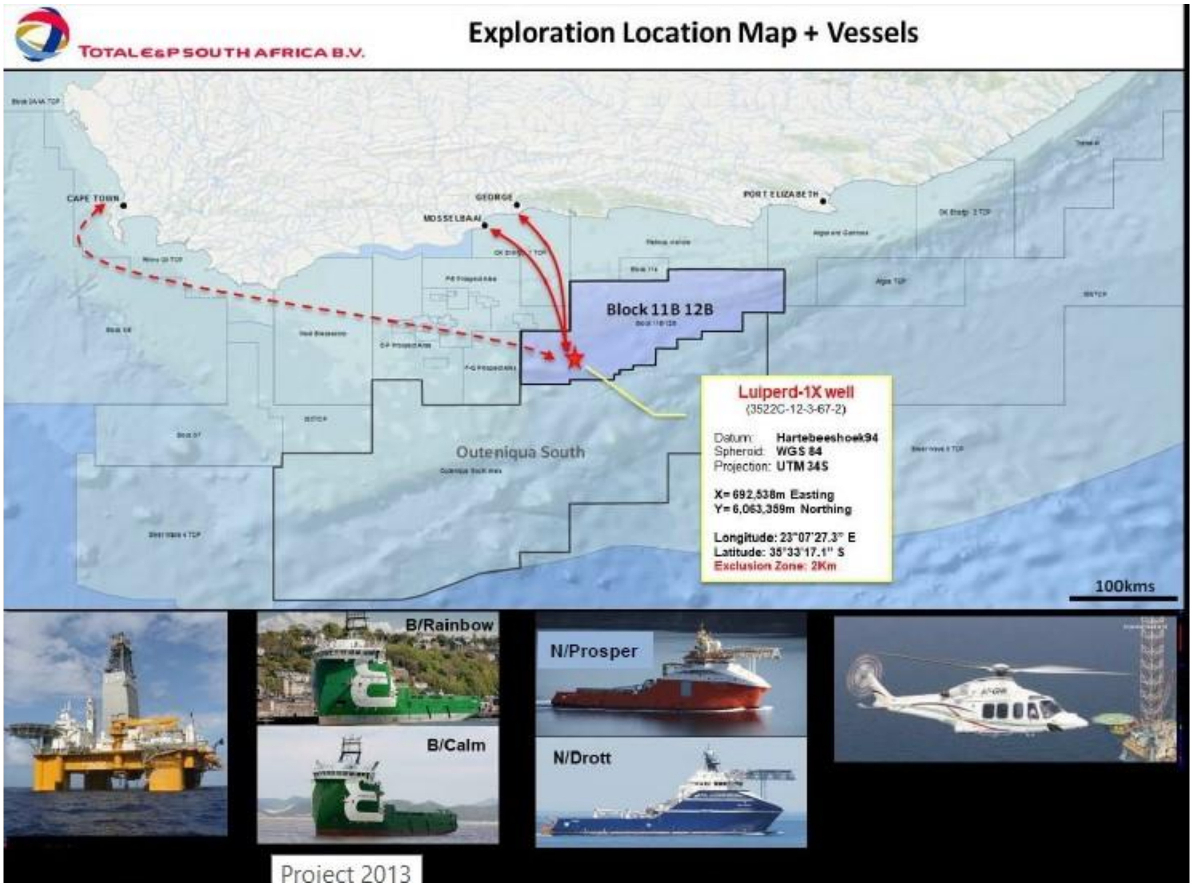

Figure 6 Brulpadda Use concerning Port of Cape Town and Mossel Bay Port Infrastructure

IV. Use of Port Infrastructure

The use of the Ports infrastructure is the only alternative for fabricators and ship repairers which limits the size of the available opportunities. In this respect it would be limited to:

1) Dry Dock facilities
2) Repairs alongside
3) Synchrolift

All other fabrication would have been outside the port area and transported to the Port for installation onto ships, rigs and other Oil & Gas supply vessels. There is no entrepreneurial incentive for the fabricators or ship repairers to increase their offering to the international market.

Because of this intransient attitude of the Ports Authority in terms of investment and cost of doing business in the ports, various companies have moved offshore to countries like Namibia, Angola, Nigeria and Ghana. These countries understand what is required to attract business, grow their industry, earn foreign exchange and offer labour opportunities to their citizens. The same will happen as the East coast of Africa opens up. Companies are already moving to Mozambique.

The NPCC recommends that the Ports Authority prioritizes the creation and use of port infrastructure commensurate with the developments Oil and Gas Industry catering timeously for this market. In the instance of Total, it is not compelled to use SA port facilities to fabricate platforms and or to supply SA with the Oil and Gas produced as outline in the Upstream Petroleum Resources Development Bill 2019 awaiting Government approval.

4.1.2.2 Durban Case Study

The following highlights and supports concerns related to leases and rental agreements within the SA Port system;

This is an example of a port user investing R100m on a quay contributing to permanent port infrastructure. The required investment was declared upfront with the aim to negotiate a suitable lease. The Ports Authority allowed a lease of 5-years only. This resulted in the R100m having to be depreciated over the same five-year period which increased overhead costs to the company impacting the port user's competitiveness locally and internationally.

Consistent with the example, the same port user has to approach the Ports Authority again requesting a lease renewal. No additional capital investment can be made until the tender process has been processed and finalized, leading to business uncertainty and sustainability affecting 1100 direct jobs excluding indirect recipients. Amid this crisis, during Covid19 (when no rental relief was granted by the Ports Authority to the tenant) the Ports Authority offered the port user a water lease, 43% higher compared to the previous water lease arrangement.

Concerns regard rental escalations is consistent with what has been raised throughout this submission.

This example is consistent with issues raised by port users across the port system.

4.1.2.3 Recommendations

The NPCC recommends that the Ports Regulator considers the following which is common to all the ports within the SA Port system:

a. Rejects the 9% escalation ("or whatever it is'' as stated in the Annexure A table 27 The Authority's Tariff definitions page 47). The Ports Authority should charge a rental in line with international terms (escalation and rent) to make South Africa competitive.
b. The PRSA's attention is directed to Page 47 of the Ports Authority's Tariff Application. Table 27 deals with the Authority's Tariff Definitions. The Rental Application definition, "Rental arrangements including escalations are negotiated on a case-by-case basis and are not reflected in the Tariff Book". This definition is vague and could border on rentals based on what the market can bear in principle. The case-by-case basis further suggests inconsistencies within a particular port and across the port system. It is within this context establishing facts, that the NPCC requests a detailed PRSA investigation into the Authority's rentals.
c. The rental agreements must be transparent and consistent across all ports.
d. The durations of rentals must be commensurate with the value of upgrades that the tenants spend on their facility and the sustainability of the service provided. (e.g.

Ship and rig repair and shipbuilding minimum 15 years, Liquid bulk minimum 15 years, Dry-bulk minimum 15 years, cruise terminals minimum 15 years).

e. Renewal of leases to be valued at the depreciated cost. Trade-offs within lease agreements to ensure fair compensation.
f. NPCC request PRSA to investigate all leases, the foundation principles guiding all leases, consistency or variances and how this contributes towards the competitiveness of the port system.
g. Supports that the Ports Authority be corporatized to be empowered to make meaningful decisions, positively benefitting SA's economy.
h. Consistent with the role of the Ports Authority as envisaged in the Ports Act of 2005 and Port Regulations of 2007 it is recommended that the Authority applies its mind from a good governance perspective and the implications for the South African economy.
i. It is further recommended that the PRSA considers practices either resulting in port users withdrawal from the Port system or trapping port users of which neither is beneficial for the economy of SA.
j. The NPCC recommends that the clause enabling subsidisation the publics' interest be implemented supporting NPO's such as the Mission to Seamen within the SA Port system. This is supported by Directive 23 (1): In considering the proposed tariffs in terms of Directive 22, the Regulator must have regard to whether the proposed tariffs reflect and balance the following considerations: -"(f) *the avoidance of cross-subsidisation, save where cross-subsidisation is in the public interest"*. The NPCC supports that this is in the Public's interest.

4.2 Marine Services informing the Tariff Structure

4.2.1 Terminal efficiencies and cost-effectiveness remain foundation components directly impacting tariffs. The threat of losing volumes to any of our neighbouring African countries who are constantly upgrading and investing in their port infrastructures remain. Port such as Namibia's Walvis Bay, Lüderitz, Angola's Port of Lobito and Luanda, Mozambique's Port of Maputo harbour to mention but a few (Refer to the Benguela Current Convention). Poor terminal efficiencies and excessive tariffs discussed throughout this submission, contribute towards increased cost of doing business.

4.2.2 Operations Phakisa – failure of rolling out or implementation of agreed initiatives have had and continue to have a detrimental impact on marine service amongst others. Referring to both superstructure and infrastructure investment across the port system.

4.2.3 Concerns remain regards Ports Authority oversight as it relates to Terminal Operator compliance, including TPT compliance and ramping up installed capacity with additional gangs in an effort to improve terminal performance.

4.2.4 Vessel Surging remains a major concern in specifically Ngqura and Cape Town. The NPCC is aware of the Moor Master in Ngqura. Whilst Capex has been approved rolling out the Moormaster (fixture)/Shore Tension installation (mobile) to the other berths and ports. Little has happened and this remains a challenge.

4.2.5 Deepening of the Durban berths: Noted that berth outages in Durban project has been delayed and execution will now commence in 2021 and is reported to be completed by 2026, a detail update is necessary for the planning of port users and Ports Authority. This highlights the continues date crawls of CAPEX project with huge ramifications to the regional and broader economy. This much-needed capacity creation plan is going to put additional pressure on other ports and in particular Ngqura. The NPCC await the Authority's berth deepening proposed plan deviating cargoes ensuring that SA does not lose any cargo. This plan is still to be shared with the Shipping Lines too. Some shipping lines will have to move from DCT to Pier 1 which is not ideal as some vessels will battle to berth at Pier 1 due to vessels sizes. Update

4.2.6 The NPCC maintains that the cost of doing business in South Africa and in particular calling at Durban, Port Elizabeth or Ngqura and Cape Town is becoming extremely expensive for shipping lines. This is directly related to delays, congestion and inefficiencies, which all add significant non-tariff costs to shipping lines. The status quo requires an investigation further aligning with WEGO.

4.2.7 Diminishing cargoes and vessel calls: the following sliding scale is for the Cruise liners and Break Bulk vessels.

Calls	Incentive	Rationale
0 to 3 calls	0% discount	All vessels
3 to 10 calls	10% discount	Cruise Liners: Contributing towards growing almost decimated maritime / tourism industry; Break Bulk – Encourage breakbulk volumes noting the negative spiral trend.
10 to 20 calls	15% discount	

Table 4 Proposed Sliding Scale Incentives for Multiple Port calls

4.2.8 Deepening of 203, 204 and 205 with current draft restrictions – deepening scheduled to commence 2020/1 when the draft will be depended to 16m. It is recommended that port dues not based on GRT but capped on vessel allowed to load considering draft restrictions; this to be in force until such time that the deepening project in the Port of Durban has been completed as this will have a direct material negative impact on the Shipping lines and their parcel sizes; Maydon Wharf dredged all berth to 11-12m. Channel not deepened.

4.3 Cargo Dues

4.3.1 NPCC maintains that double-billing for utilisation of quayside space between NERSA approved tariffs to recover investment and the Ports Authority tariffs exist *Cargo dues*; a portion of the investment is still apportioned to cargo crossing the quayside; Same charge contention that a portion of cargo dues billed twice in that the cargo owner already pays the tariff set by the Energy Regulator; PRSA to explain and advise how this will be handled between the Authority and the NERSA. Furthermore how this double billing will be corrected.

4.3.2 Transhipment of liquid bulk cargoes is allowed for two months where after the full cargo dues fee become applicable. The port cannot be turned into a storage area by increasing dwell times excessively. Noting this crude oil and heavy fuel oil tend to be in storage for lengthier periods. It is further recommended that storage dwell time be considered consistent with the NERSA allocation mechanism process which allows for a three-month rolling nomination. Scheduling to consider prioritization of investment. Similar concerns were expressed in the Port of Ngqura. Noting this, market pricing and developments must serve to inform incentives and punitive measures. It is proposed that the Authority has the flexibility to use dwell times both as an incentive and punitive measure subject to capacity availability;

5. TNPA Business and Oversight

5.1 Private Sector Participation

The Ports Authority outlined its S56 projects (concessioner programmes) only.

It is recommended that the Ports Authority widens its perspective on PSP including how this aligns with Public Private Participation.

5.2 Capex

Capex spend remains a challenge. The Ports Authority has submitted its Game Changer Programme which intensions aim to ensure that approved projects are executed effectively dealing with the snag list of issues previously hindering Capex.

The status quo of the disempowering and restrictive DOA, which has been a long-standing item, suggest that this may be an academic exercise only. Cross-referencing back to Operation Phakisa where this was raised and committed to being addressed, has shown no progression. The CAPEX underspend success rate during the last ten years signals that an intervention is required superceding commitments made to date.

The Port Performance Roadshow was held Friday 24th July - Thursday 30th July 2020.

PORT	DATE	TIME
Cape Town	Fri 24th July 2020	08H30 – 11H30
Mossel Bay	Mon 27th July 2020	08H30 – 11H00
East London	Mon 27th July 2020	12H00 – 14H30
Port Elizabeth & Ngqura	Tues 28th July 2020	08H30 – 13h00
Richards Bay	Wed 29th July 2020	08H30 – 11H00
Durban	Wed 29th July 2020	12H00 – 14H30
Saldanha	Thurs 30th July 2020	08H30 – 11H30

Table 5 PCC Port Performance Roadshow 2020/2021

All Port Users were invited to participate in the consultation sessions cross the port system. Key focus areas were:

- The Port Development Framework Plan for each port within the Port System;
- The Port Capital Programme reviewing 2020/2021 focussing on 2021/2022 linked to the PDFP and Capex seven-year horizon;
- The Port Operations Performance Standards, Planned and Actual performance and its alignment with the Weighted Efficiency Gains from Operations (WEGO) process.

The questions were submitted to the Ports Authority to which the Authority responded.

5.2.1 Durban

5.2.1.1 Island View Strategy

The NPCC notes that the Authority still has not officially clarified the changes to the Island View Strategy. The finalisation of the initial IV strategy was delayed for many years and eventually was officially released in April 2018. Long before this, industry regularly raised concerns that delays in this strategy, and clarity of its impact on leaseholders, were delaying urgently required investment in maintenance and replacement infrastructure in the precinct.

Several months after the April 2018 release of the strategy and multiple engagements of the Authority with concerned stakeholders, it was advised that a revised strategy would be communicated. It is now almost 2 ½ years later, and the uncertainty re the IV strategy impacts have not yet been addressed. This continues to delay projects requiring significant investments (like piping infrastructure for Berth IV5), and limits essential spend on maintenance which increases operational risk in a National key point which also is classified as a Major Hazard Installation. The risk of a Beirut-type incident happening due to lack of maintenance close to the Bluff communities is something that nobody wants or can afford. Against this backdrop, the Authority continues to project average increases on leases above 9%".

5.2.1.2 Decongestion in the Port of Durban

NPCC acknowledges that great strides are being made in the collaborative efforts between the Authority, industry and Transnet and the various divisions to address this issue. Is encouraging noting that this has been on the PCC Agenda in the Port of Durban since 2011. MPT Terminal in Durban requires similarly focused attention.

5.3 East London

The NPCC notes that the automotive industry contributes 6.4% to GDP 4.0% manufacturing and 2.4% retail and in 2019, the export of vehicles and automotive components reached a record amount of R201.7 billion, equating to 15,5% of South Africa’s total exports. This industry accounts for 27.6% of the country’s manufacturing output.

It is key that the ports can facilitate trade in an efficient and reliable manner to not only assist the manufacturing sectors but the economy at large. Without a suitable port facility, the NPCC notes that automotive manufacturing will not be able to export our products to the existing 151 and soon to increase, international markets around the world. In addition to the terminal CAPEX and equipment (new straddle carriers) replacement program, the NPCC would like to request that the car terminal expansion project of the Port of East London be visible and transparent. On the Capex plans that the authority presented the NPCC are satisfied with the plans, but would further like to see all other ageing infrastructure and replaced. The port entrance channels and deepening and widening project needs to be prioritized along with the relocation of container handling facilities from the East Bank city CBD area to the West Bank industrial area. The relocation of containers will reduce traffic congestion from the City Centre and is supported by the local and provincial government, in addition to ELIDZ and other key port stakeholders. The South African automotive sector is highly dependent on international trade, therefore, the NPCC need the prices of the port logistics reduced, as RSA container and automotive tariffs are high compared to our competing to plants in Germany and around the world, where they pay no cargo dues.

As port users cargo owners, the NPCC is concerned that WEGO measurements deal with the productivity of the vessel, but the NPCC does not see, other than in TOPS vessel Ship Turnaround Time where a measurement of straddle carrier and reach stacker handling efficiency for cargo collections and stacking. The NPCC notes the omission from the calculations because although East London port has a reasonably high vessel turnaround time due to lack of port cranes, completely relying upon ships gear, with the delays and efficiency losses we encounter are 100% attributable to port

TPT landside infrastructure failures. So just as there are efficiency gains to be measured, there should also be efficiency losses to be taken into account and penalties for the lost efficiencies against the terminal operator.

The tourism sector is also in dire need of assistance. The NPCC notes that it can not have vessels docking in the Port of East London, where passengers must walk between containers bays and other cargo operations to get into a transport to be taken on tours around the Eastern Cape. The NPCC notes that there is need for waterfront in the Port of East London. The NPCC notes that the fishing industry should also be revived and that the community needs it and so does our economy. The NPCC has been hearing the Capex plans about the marine training facility but to date, nothing has been commissioned and remains only in plans which the end dates are most often extended.

5.4 NPCC observation and recommendation

CAPEX underspend remains a major concern.

5.5 Dredging

The NPCC is encouraged by the dredging programme as presented at the PCCs and executed with regular updates being provided.

5.6 Operation Phakisa

The NPCC is mindful that the Department of Forestry, Fisheries and the Environment has produced a masterplan titled, “Towards a South African Oceans Economy”, which discusses the same topics as Operation Phakisa.

The NPA's role and initiatives progress within the Marine Transport and Manufacturing Lab require focussed attention:

5.6.1 Initiative 1: Create a supportive funding Model – due date 1 January 2015. To date, there has been little or no feedback or action. Metaphorically the foundation was never established hence Operation Phakisa limped along without making any real difference. The Authority has periodically referred to Initiative 1 with no feedback or action as can be gauged in the port system.

5.6.2 Initiative 2: Saldanha Bay 205 – this should have been completed in 2019 according to the initial timeline. The most recent Port Performance Roadshow highlighted the timeline to be 2027. In the event where the Ports Authority continues to delay the implementation of this Initiative, it may lead to market loss which may negatively influence the IDZ and the broader Saldanha and port environment jeopardising potential employment opportunities and other related economic spinoffs.

5.6.3 Initiative 3: Align on implementation of Government policy: the role of the DPE and DOT required to have been finalised 8 November 2014. This was signed off by all relevant Ministers at the time. Status Quo: There is no indication as to the outcome of this initiative.

5.6.4 Initiative 4: Prioritise Transnet and Ports Authority funding allocation towards marine manufacturing facilities – the target date was November 2014. Transnet investment plan must prioritise marine engineering and Phakisa identified projects. Status quo: There is no indication as to the outcome of this initiative.

5.6.5 Initiative 5: Maintain and refurbish existing facilities – Target date was November 2016. "Execute maintenance and upgrade plan for the existing facilities to increase market share". Maintenance plans were circulated in some of the port PCCs during mid-2018 when PCCs continued to request same.

5.6.6 Initiative 6: Unlock investment in port facilities – due date March 2015. Efficiently appoint operators for existing and new port facilities. Secure shareholder approval on ownership and operating model for existing ship repair facilities. Execute S56 to appoint suitable operators. Build Ports Authority Administrative capability to manage S56 implementation. **Review Ports Authority's Delegation of Authority and streamlines S56 processes**. Set up monitoring and reporting mechanisms to ensure rapid turn-around time. Resolve the allocation of facilities for the support of aquaculture. Status Quo: No action to date or feedback given in this regard as can be gauged within the industry.

5.6.7 Initiative 7: Implement strategic prioritised projects in Richards Bay – due date 2017. Quantify and unlock opportunities in Oil and Gas, Ship and Rig Repair and Maritime vessel building. Enhance container handling capacity. Explore feasibility of Richards Bay establishing a liquid natural gas cluster. Allocate Waterfront land to IDZ in support of Maritime Manufacturing.

5.6.8 Initiative 8: Implement strategic prioritised projects in East London; Refurbishment existing slipway, boat and shipbuilding industry to be provided with incentives in exchange for development commitments. Preferential access for IDZ in exchange for developmental commitments – August 2015

5.7 Operating Expenditure

5.7.1 Labour

i. NPCC supports the R300m increase in the labour budget as explained. It is expected that efficiencies will ramp up consistent with the additional skills employed. Details to be unpacked.

ii. In terms of the OSH Act, there are 21 regulations which must be implemented within the port system. This indicates that the Ports Authority must employ Government Competency Certificate (GCC) engineers in all the ports in compliance with the OSH Act. The metrics involve the storage and use of energy. The OSH Act 181 of 1993 and the 21 Regulations. The recent ROD in the matter between Avedia Energy vs the Ports Authority and Sunrise Energy in the Port of Saldanha illustrates the lack of GCC engineers in the Port of Saldanha way of example.

5.7.2 Energy

NPCC Acknowledges that the cost of energy is rising with ESKOM tariffs. NPCC recommends that the Ports Authority explores self-generation energy options.

5.7.3 Maintenance

The NPCC Supports the increase in Maintenance and questions whether the budget is sufficient for the maintenance required. This links back to the original Operation Phakisa initiatives.

6. Volume Projections

Year on Year understated volumes acknowledged.

7. Tariff Book

NPCC wishes to acknowledge the year on year improvement in the Tariff Book.

8. WEGO

The NPCC recognises the efficiency challenges within the port system fuelled by lack of CAPEX investment. As acknowledged by the Ports Authority", all ports with the exception of Mossel Bay performed below the 10% efficiency cap.

This speaks directly to the oversight role of the Ports Authority amongst others. These measures are being closely monitored by the PCC Subcommittees in each of the ports.

9. Consultation with the PCCs and NPCC

The National Ports Act 2005 Chapter 11 – 81. (3) States that:

"The Authority must consult the Ports Consultative Committee regarding-

(a) any major scheme relating to the expansion or development of a particular port

Experience at the PCCs is that very scant information is provided by the Authority and does not allow for responsible decisions to be made on capital expenditure. The Authority must provide reasonable information to make informed and educated decisions on developments and capital expenditures that will benefit South Africa and its stakeholders.

The Ports Act Chapter 8 Section 72 (2) requires that the Ports Authority must, prior to any substantial alteration of a tariff consult with the National Ports Consultative Committee. This is further supported by the Port Regulations of 2007.

10. NPCC Observations and Recommendations:

It is recommended that the PRSA considers Observations and recommendations made throughout this submission including:

10.1 Valuation of the Regulated Asset Base

NPCC supports the Regulated Asset Base Valuation Methodology which forms the basis for the Revenue Requirement Model. To date, the Authority has not furnished the PRSA with any material information supporting its motivation that the implementation of the Valuation methodology threatens the sustainability of the Authority. This proposal takes into account the Authority's inability, in its current form, to act as an independent Authority. NPCC acknowledges the RAB valuation conditional concession made by the PRSA.

10.2 Ports Authority Oversight

The NPCC maintains considering anecdotal evidence signalling that the Authority has not acted within the prescripts of the Ports Act and Port Regulations in respect of exercising its oversight role. In its capacity as a division within Transnet, it is rendered powerless in ensuring that all port users including Transnet divisions are held accountable through the various agreements legislated instruments. Its lack of Capex spend, long decision processes, which has been on the NPCC Agenda, amongst others, of which the last nine years bears testimony to this. There have been many good intentions on the Authority's side but little progress due to the Authority's current constraints in its current form. The NPCC wish to draw the PRSA's attention to the Operation Phakisa delivery failure, the quantum thereto and implications across the port system and its impact on the economy of South Africa.

10.3 Real Estate:

The NPCC maintains it proposal that the PRSA investigates current agreements and all legal instruments as set out in the Act, Regulations and details in directives and which the Authority is required to both be compliant with and ensure compliance with port users. In doing so consider compliance, fairness and competitiveness within those agreements and the measures required to follow through on areas of non-compliance. NPCC notes that the criteria used by the Authority are not consistent throughout the port system which enforced is not consistent either. The current Delegation of Authority (DOA) has been a discussion point for at least eight years and has not come to ahead. The Authority's ambitious plans to upgrade it DOA is noted. However, it is almost too late. Leases must be sufficiently long-termed to enable economic activity and allow for recouping the investment. DOA must contribute to an enabling environment. This is but one example.

10.4 Efficiencies linked to WEGO

The NPCC supports that the PRSA implements WEGO as it relates to efficiencies and that the PCCs KPI sub-committees form part of this process.

10.5 Full Implementation of the Ports Act: Corporatisation

The NPCC maintains that the many challenges linked to the Ports Authority in its current form necessitates that the Authority become complaint with the Ports Act of 2005 and Regulations of 2007. Current long-standing challenges have a direct bearing on the effectiveness and management of the Port system negatively impacting the competitiveness of the South African economy.

Ports Act Chapter 2; Section 3 (1) (2) (3) (4) has been long delayed and therefore in breach of the Act. The NPCC recommends that the current challenges which have continued with soft periodic Band-Aid interventions be addressed. The NPCC recommends that the processes convert the Authority and in so doing realise the value to the broader SA economy and not to Transnet only, commence as a priority. It is proposed that various scenarios be modelled to look at an end state Transnet without the Ports Authority and what support it may require to operate fully. The NPCC recommends that the contemplation of the Ports Authority corporatisation end state in relation to its value creation to the SA economy be prioritised and ensure that it is fully corporatized with its Board reporting separately to the Department of Public Enterprises as an independent Ports Authority SA (Pty) Ltd as set out in the Act of 2005 Chapter 2 Section 3 and 4.

Noting the complexity and overall breach of the act, the NPCC recommends that this process be inked to timelines.

10.6 Ports Authority lack of oversight

The assessments and recommendations speak to the business of the Ports Authority as stipulated in the Ports Act. The Ports Authority judgement and oversight may be clouded by the management and obligations of Transnet impacting good corporate governance and sound business management to ensure economic growth servicing and growing the market.

It is noted that it is difficult to argue that an increase is allowed when sub-standard services are as evidenced by the WEGO results in most ports. Noted that there is operational expenditure which must be recovered together with the marginal Capex spend in comparison to what was allowed by the PRSA. The Authority's lack of Capex spend and lack of maintenance has and continues to have dire consequences for the SA economy negatively impacting the competitiveness of SA. This whilst many African ports are fast investing in port development and making relevant decisions. The Game Changer initiative is acknowledged.

The NPCC supports that the PRSA considers issues highlighted above and how same impacts the effectiveness of the Port system. Furthermore, consideration for efforts made by the Authority evidenced by its Game Changer Initiative.

The NPCC maintains that the Authority is hamstrung in its current form and similarly the port system, port community at large whilst awaiting the corporatization of the Authority.

The NPCC maintains its recommendation that the PRSA investigates all land and water rentals. In doing so it is recommended to appoint an independent valuator to accurately benchmark land use and evaluate market-related rentals in line with international standards.

The NPCC recommends that the Ports Regulator considers the following which is common to all the ports within the SA Port system:

1. Rejects the 9% escalation ("or whatever it is'' as stated in the Annexure A table 27 The Authority's Tariff definitions page 47). The Ports Authority should charge a rental in line with international terms (escalation and rent) to make South Africa competitive.
2. The PRSA's attention is directed to Page 47 of the Ports Authority's Tariff Application. Table 27 deals with the Authority's Tariff Definitions. The Rental Application definition, "Rental arrangements including escalations are negotiated on a case-by-case basis and are not reflected in the Tariff Book". This definition is vague and could border on rentals based on what the market can bear in principle. The

case-by-case basis further suggests inconsistencies within a particular port and across the port system. It is within this context needing requiring to establishing facts, that the NPCC requests a detailed PRSA investigation into the Authority's rentals.

3. A requirement that rental agreements be transparent and consistent across all ports.
4. The durations of rentals to be commensurate with the value of upgrades that the tenants spend on their facility and the sustainability of the service provided. (e.g. Ship and rig repair and shipbuilding minimum 15 years, Liquid bulk minimum 15 years, Dry-bulk minimum 15 years, cruise terminals minimum 15 years).
5. Renewal of leases to be valued at the depreciated cost. Trade-offs within lease agreements to ensure fair compensation.
6. NPCC request PRSA to investigate all leases, the foundation principles guiding all leases, consistency or variances and how this contributes towards the competitiveness of the port system.
7. Supports that the Ports Authority be corporatized to be empowered to make meaningful decisions, positively benefitting SA's economy.
8. Consistent with the role of the Ports Authority as envisaged in the Ports Act of 2005 and Port Regulations of 2007 it is recommended that the Authority applies its mind from a good governance perspective and the implications for the South African economy.
9. It is further recommended that the PRSA considers practices either resulting in port users withdrawal from the Port system

or trapping port users of which neither is beneficial for the economy of SA.

10. The NPCC recommends that the clause enabling subsidisation the publics' interest be implemented supporting NPO's such as the Mission to Seamen within the SA Port system. This is supported by Directive 23 (1): In considering the proposed tariffs in terms of Directive 22, the Regulator must have regard to whether the proposed tariffs reflect and balance the following considerations: -"(f) *the avoidance of cross-subsidisation, save where cross-subsidisation is in the public interest"*. The NPCC supports that this is in the Public's interest.

Whilst awaiting corporatisation of the Ports Authority, the NPCC requests and recommends that the NPA clarify its risk factors and how this relates to Transnet.

10.7 Tariff: Recommendation

Overall increase proposed to be zero and ETIMC to be used appropriately. The conditional concession granted by the PRSA acknowledged allowing the Ports Authority to apply TOC across the board in respect of RAB treatment. This subject to the full execution of the corporatisation of the Ports Authority as pronounced in Parliament.

Thank you for your consideration.

Submitted for the Chairman's consideration.