

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL on 04/04/2016 4:13 pm AEST and has been accepted for lodgment under the Interim Practice Direction dated 21 August 2015. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: INT (Toll) – Statement SCOTT WOODWARD – PUBLIC
(REDACTED)

File Number: ACT 2 of 2016

File Title: Application by Sea Swift Pty Ltd under s 95AU of the *Competition and Consumer Act 2010* (Cth) for an authorisation under s 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Registry: NEW SOUTH WALES – AUSTRALIAN COMPETITION
TRIBUNAL

Dated: 04/04/2016 4:13 pm AEST



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a '4'.

Deputy Registrar

Important Information

As required by the Interim Practice Direction dated 21 August 2015, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Tribunal. Under the Tribunal's Interim Practice Direction the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4:30 pm local time at that Registry) or otherwise the next working day for that Registry.



IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT of 2015

RE PROPOSED ACQUISITION OF CERTAIN ASSETS OF TOLL MARINE FREIGHT OPERATIONS IN THE NORTHERN TERRITORY AND FAR NORTH QUEENSLAND

STATEMENT OF SCOTT WOODWARD

INDEX

1. Introduction 3
2. Job title and position 3
3. Contents of this statement..... 4
4. Brief overview of TML's operations in the NT and FNQ..... 4
Toll's acquisition of Perkins Shipping Group..... 4
TML's past operations..... 5
TML's current operations..... 6
Supply of charter services..... 7
Supply of fuel 7
5. Nature of demand for coastal and community shipping services in the NT and FNQ 8
Location of communities and coastal towns in the NT and FNQ 8
Routes and port destinations in the NT and FNQ 10
Regularity and frequency of scheduled services..... 11
Supply of charter services..... 12
6. Assets and inputs used in coastal and community shipping services..... 12
Vessels suitable for coastal and community shipping services 13
Costs to maintain and run vessels 16
Landing facilities and shore side infrastructure and equipment..... 16
TML's facility in Darwin..... 17
TML's facility at Gove 18
Existing section 87B undertaking relating to access at Gove 20
Shore side infrastructure and equipment 21
Summary of assets in each region to be transferred 24
7. Customers for coastal and community shipping services 25

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8.	Suppliers of coastal and community shipping services.....	33
	<i>Entry by international providers in future.....</i>	38
9.	Recent competitive interaction between Sea Swift and TML	39
	<i>Recent competition between Sea Swift and TML</i>	39
	<i>Sea Swift entry into NT.....</i>	40
	<i>Toll's initial response to Sea Swift entry into NT</i>	40
	<i>Toll expansion in FNQ through entry into OTSI/</i>	40
	<i>Toll's subsequent strategies</i>	41
10.	TML's costs, revenues and performance	42
11.	TML's recent financial performance	46
	<i>Significant reduction in volumes</i>	46
	<i>Significant reduction in revenues.....</i>	47
	<i>Profitability / negative EBITDA results</i>	48
	<i>Significant cash losses being generated</i>	48
	<i>Failure to meet internal performance benchmarks</i>	49
	<i>Hypothetical stay in business assessment</i>	51
12.	TML's recent restructuring efforts	52
	<i>Limited ability to increase revenues.....</i>	53
	<i>Limited ability to further reduce fixed costs.....</i>	53
13.	The future of the TML business without the proposed transaction	54
	<i>Communication to customers regarding proposed transaction</i>	54
	<i>Steps to be taken by Toll on exit.....</i>	54
	<i>Financial benefit of winding up.....</i>	57
	<i>TML's other operations</i>	58
14.	Additional information	59
15.	Information provided by Toll for the purposes of RBB Report.....	60
16.	INDEX OF ANNEXURES TO STATEMENT OF SCOTT WOODWARD.....	61

STATEMENT OF SCOTT WOODWARD

I, Scott Woodward, of 2 Adra Court, Secret Harbour, Perth Western Australia (WA) 6173, General Manager, say as follows:

1. Introduction

- 1.1 I am the General Manager of Toll Energy, which incorporates Toll Marine Logistics Australia (TML) and Toll Marine Logistics Asia. These businesses are part of the Toll Group of Companies (Toll Group). Toll Holdings Ltd (Toll) is the ultimate Australian parent company for the Toll Group. I am authorised to make this statement on behalf of Toll.
- 1.2 In this statement, the **proposed transaction** means the proposed acquisition by Sea Swift Pty Ltd (Sea Swift) of two entities and certain assets associated with Perkins Shipping Pty Ltd trading as *Toll Marine Logistics'* marine freight business in the Northern Territory (NT) and Far North Queensland (FNQ), as detailed in the Form S relating to the application for merger authorisation (**Application**).
- 1.3 I make this statement from my own knowledge as General Manager of Toll Energy and TML and from having consulted and made enquiries of relevant staff and the records of TML and Toll.
- 1.4 Unless otherwise defined in this statement, terms used in this statement have the same meaning as defined in the Form S to which this statement relates.

2. Job title and position

- 2.1 I have held the role as General Manager of Toll Energy since June 2015, when TML moved within the Toll Energy business.
- 2.2 Prior to this, I held the role of Director of TML for two years.
- 2.3 As General Manager of Toll Energy, I am overall responsible for the running of TML, leading the senior management team in all daily operations, including short term and longer term strategic business planning. I report to the Chief Executive Officer of the Toll

Resources and Government Logistics division (**TRGL**) (formerly Toll Global Resources (**TGR**)), David Charles Jackson.

- 2.4 Prior to working in my current role, I worked in the former TGR division for 18 months as Fleet Marine Manager, taking an overview of all of TML's operations in Australia and Asia. I previously worked for BP Shipping for 15 years, in various roles from being a seafaring officer achieving the rank of Captain and the position of Master of an oil tanker, to a regional chartering manager based in Singapore. I believe I possess a broad knowledge and understanding of ships and shipping company operations.

3. Contents of this statement

- 3.1 The part of the TML business that is the subject of the proposed transaction provides coastal and community shipping services (being the sea-borne delivery of freight or 'marine freight') on a scheduled basis and charter basis in the NT and FNQ.
- 3.2 In this statement, I address the following matters:
- (a) an overview of TML's operations in the NT and FNQ;
 - (b) the nature of demand for coastal and community shipping services in the NT and FNQ;
 - (c) the key assets and inputs used by Toll in providing coastal and community shipping services in the NT and FNQ;
 - (d) Toll's performance in this sector (including financial results) and the extent of recent competitive interaction with Sea Swift; and
 - (e) what Toll will do if the Tribunal does not grant authorisation for the proposed transaction.

4. Brief overview of TML's operations in the NT and FNQ

Toll's acquisition of Perkins Shipping Group

- 4.1 On 1 July 2009, Toll acquired Perkins Shipping Group Pty Ltd (**Perkins**). Perkins provided coastal and community shipping services to remote communities and coastal towns in the NT and to a lesser extent FNQ (largely limited to servicing the Cairns-Weipa

route). These services were provided on a scheduled basis and as charters. Perkins also provided some international liner shipping services in South East Asia, specifically on the Darwin-Dili-Singapore route.

- 4.2 Prior to this acquisition, Toll had no involvement in coastal and community shipping services in the NT and FNQ other than as a customer.
- 4.3 When originally purchased, Perkins was managed in Toll's NQX business unit. It was subsequently transferred into the division now known as TRGL, where it expanded into providing logistics services to the oil and gas sector. It remains within TRGL.
- 4.4 '*Toll Marine Logistics*' is a business name, established in 2012 within Toll to operate the Perkins and other marine logistics business and to promote the name of Toll.

TML's past operations

- 4.5 From 2009 until around January 2014, TML provided coastal and community shipping services predominantly in the NT. Its operations in FNQ were predominantly limited to servicing the Cairns-Weipa route pursuant to two customer contacts (with Rio Tinto and Woolworths) that it inherited through the acquisition of Perkins. Until recently, TML therefore only served a coastal route along, or adjacent to, the mainland in FNQ but no communities routes in FNQ (ie no routes in the Outer Torres Straits Islands (**OTSI**)).
- 4.6 In addition to these coastal and community shipping services in the NT and FNQ (which represent the portion of the TML business subject to the proposed transaction), TML continued to run Perkins' international liner service on the Darwin-Dili-Singapore route. This part of the TML business was sold in August 2014 to ANL as part of a planned restructure and turnaround the performance of the TML business as a whole. TML no longer provides any international liner services into or out of Australia.
- 4.7 TML also undertakes marine logistics work for the oil and gas sector in Queensland (from Gladstone) and Western Australia, and operates vessels for coastal shipping and charter services outside of the NT and FNQ. These parts of TML's business are excluded from the proposed transaction.

TML's current operations

- 4.8 TML now operates using what we term a 'full service' model with respect to the provision of coastal and community shipping services in the NT and FNQ. TML provides scheduled services on both coastal mainland or trunk routes and to a wide range of remote islands and communities, providing services to both contracted and uncontracted customers. The services are provided with regular frequency (typically on a weekly basis) to most or many port destinations in the NT and FNQ on a scheduled basis.
- 4.9 This 'full service' model operated by TML also involves providing coastal and community shipping services on an 'integrated' logistics basis. That is, TML provides the entire logistics task from freight receipt, consolidation, carriage from departure port to destination port, deconsolidation and delivery. To support this 'depot to door' offering, the TML business provides various ancillary and incidental services. This includes warehousing / storage and stevedoring services in some locations (Darwin, Gove and Groote Eylandt in the NT and in Cairns, Thursday Island and Horn Island in FNQ) and off-site receiving (**OSR**) in Darwin, Gove and Groote Eylandt. OSR services in Gove and Groote Eylandt are provided for the purposes of TML meeting customer contractual obligations in each of those locations.
- 4.10 To provide these scheduled coastal and community shipping services in the NT and FNQ to customers, the TML business uses the following assets:
- (a) two vessels in FNQ and three vessels (two of which are chartered) in the NT, which comprise landing craft and general cargo vessels;
 - (b) various landing facilities which are largely common user facilities (Toll only operates private wharf facilities in Darwin and at Gove in the NT);
 - (c) various owned or leased supporting infrastructure (such as a depot or warehouse) and equipment (such as shipping containers and forklifts) at some of the port destinations serviced by TML; and
 - (d) staff.

Supply of charter services

- 4.11 In addition to providing scheduled services, the TML business provides coastal and community services on an ad hoc, project or charter basis. This is sometimes also referred to as project freight. In this statement, I refer to these as **charter** services. Charter services are typically provided in support of large scale infrastructure, building or mining projects which require services in order to bring in heavy equipment, machinery and general supplies. Customers for charter services are largely building companies, mining companies, contractors and government organisations.
- 4.12 The degree to which the TML business undertakes charter work in the NT and FNQ depends on demand for this type of work, the nature of the project / work, fleet availability and whether TML is able to win the contract for this work.

Supply of fuel

- 4.13 In conjunction with the provision of coastal and community shipping services, TML supplies diesel fuel to customers in the NT and FNQ. These fuel sales are considered to be a non-core value-add service that TML offers to customers. These fuel sales are to be distinguished from the fuel we carry as freight for customers.
- 4.14 Historically, TML operated a fuel distribution business in Gove which purchased fuel directly from Rio Tinto. This changed in 2013 when Rio Tinto changed their policy on selling fuel to third parties. Toll was no longer able to purchase fuel in the small quantities that it required and so therefore set up its own fuel storage facility in Gove. We continue to supply the local area as well as some fishing vessels that call at TML's facility in the Port of Gove from time to time. Typically, fishing vessels purchase the majority of their fuel from bulk suppliers in either Darwin or Cairns (where it is substantially cheaper), and use Toll's facility as a top up mid-season to save steaming back to Cairns or Darwin.
- 4.15 The other bulk fuel storage capability that Toll has is on Horn Island where we have placed a 60,000L self-bunded storage tank. This was previously located on Thursday Island. TML also sells a small amount of fuel directly from the vessel's hull.
- 4.16 There are a wide range of other providers of diesel fuel in FNQ and the NT, including major fuel suppliers such as BP, Shell, Australian Fuel Distributors trading as PUMA

Energy (**PUMA**) and Caltex, as well as other suppliers (such as Bunawal in Gove). Now shown to me and marked **SW-1** is a list of various suppliers of fuel in the NT and FNQ.

5. Nature of demand for coastal and community shipping services in the NT and FNQ

- 5.1 In this section, I discuss the nature of demand for TML's coastal and community shipping services in the NT and FNQ.
- 5.2 Coastal and community shipping services involve regular, scheduled sea-borne deliveries of freight to customers in remote island communities and coastal towns. These services are also sometimes referred to as the provision of:
- (a) 'community barging' or 'communities' services to remote island communities; and
 - (b) 'coastal shipping' – for example, services to larger mining or resource bases and townships, such as Gove and Groote Eylandt (in the NT) and Weipa (in FNQ).

Location of communities and coastal towns in the NT and FNQ

- 5.3 In the NT, the communities and coastal towns are predominantly located along a relatively long and thin stretch of coastline to the north and east of Darwin, and around into the Gulf of Carpentaria. They are located on both the mainland and islands. There are some communities (such as Port Keats / Wadeye) located to the west of Darwin. Truscott, Troughton Island and Kalumbaru are located in north east WA, but are serviced from Darwin. The port destinations that TML currently services within the NT are accessible within 7 days on a round trip voyage from Darwin. TML does not currently service Port Keats (to the west of Darwin) but this is accessible within 4 days on a round trip voyage from Darwin.
- 5.4 In FNQ, the communities and coastal towns are located at the top of the Cape York peninsula, both on the mainland and off the coast, around to Weipa in the Gulf of Carpentaria. Weipa, Bamaga / Seisia, Thursday Island and Horn Island are located close together on or just off the coast of the mainland near Cape York. A vessel journeying from Cairns to Weipa would therefore pass by (and could visit) most of these locations in FNQ. Thursday Island and Horn Island comprise the inner islands of the Torres Strait. The outer islands of the Torres Strait consist of several groups of islands running across

the Torres Strait from Cape York to the bottom of Papua New Guinea. Some of these are located very close (only several kilometres) to the coast of Papua New Guinea.

Reliance on delivery of freight by sea

- 5.5 The geographic areas to which coastal and community shipping services are provided in the NT and FNQ have no or limited other means of access.
- 5.6 Some locations on the coast of the mainland can receive access by road (as an alternative to sea) during the drier parts of the year. This includes Gove / Nhulunbuy, Ports Keats / Wadeye and Numbulwar in the NT. In FNQ, this includes Weipa and Bamaga-Seisia, as well as Aurukun. During monsoonal seasons (December to April), areas that may ordinarily be accessible by road are no longer accessible as the roads are often flooded and closed. Darwin and Cairns are accessible by road all year.
- 5.7 Freight and cargo shipped to the remote and coastal communities include essential goods that are vital to the health, wellbeing and livelihoods of the people of these communities. Such freight includes food, fuel and gas supplies, medical and pharmaceutical items, educational supplies, vehicles, building materials and other basic supplies.
- 5.8 The freight delivered to these towns and communities may also include a range of general and refrigerated cargo, vehicles, transportable housing, essential mining consumables and heavy earthmoving machinery to support the building of infrastructure projects such as wharves, roads, hospitals, schools and airstrips. This freight also supports the growth and operation of mining operations, power and desalination plants and other industry sectors in northern Australia. This type of freight may be required to be transported on a scheduled basis and/or on a charter basis (depending on customer requirements). This freight is typically delivered to mining and energy companies, building contractors and government organisations.
- 5.9 Different types of freight have different requirements, and can be classified into some broad categories:
- (a) general freight, either 'dry' or 'refrigerated' (including freezer and chilled cargo);
 - (b) dangerous goods;

- (c) vehicles; and
- (d) bulk fuel.

Freight is forward bound

- 5.10 Given the nature of the demand in communities located in remote islands and towns, most of the freight is forward bound, that is, delivered or discharged into the port destination. There are limited volumes of general freight to be carried out from port destinations served by TML. Freight largely carried out consists of waste products and machinery (particularly for coastal mining towns).
- 5.11 Utilisation rates for the return journeys or back leg from these locations are therefore typically poor. This means that the forward leg of the journey underpins the costs, and profitability, of servicing these locations. Declines in forward bound volumes therefore have a significant impact on the costs and profitability of running the service.
- 5.12 Now shown to me and marked **SW-2** is information relating to the proportion of freight that is forward bound and that which is back leg. This table shows a comparison between FY2015 and FY2013. In FY2015, forward bound volumes comprised [REDACTED] of volume while back leg (return) comprised [REDACTED] in both NT and FNQ. Although this table records an increase in back leg volumes in NT compared to FY2013, this is due to the closure of Rio Tinto's alumina refinery in Gove and the resulting shipping out of personal effects. This has now ceased, and TML is forecasting a return to the historical proportion of forward bound/back leg freight.

Routes and port destinations in the NT and FNQ

- 5.13 Coastal and community shipping services in the NT typically originate in Darwin, ie the routes are all ex-Darwin. Services in FNQ commence from Cairns, ie the routes are all ex-Cairns. A 'route' refers to a series of port destinations that are serviced sequentially. The port destinations are the specific locations to which services are provided, sometimes referred to as 'calls'. There are a substantial number of different combinations of port destinations that can be combined into a vessel route (or routes).

Regularity and frequency of scheduled services

- 5.14 TML's full service model provides scheduled services to port destinations on a regular, set basis. The frequency of the scheduled services that TML provides is typically determined by the requirements of contracted customers as explained below. These customer contracts may also have key performance indicators linked to the frequency of deliveries and therefore services need to be provided, irrespective of the volumes being carried.
- 5.15 Due to the nature of much of the freight (ie fresh produce and other perishable items), and customer requirements, TML services most destinations on a weekly basis. TML services a small number of port destinations in the NT on a communities route on a fortnightly, rather than weekly, basis due to the relatively low level of customer demand.
- 5.16 An exception to TML's regular services is in the OTSI where its vessel only calls at a particular port destination on a particular voyage if it has sufficient contracted volume to make the call economically viable. If there is no or very limited freight for a particular port destination, the vessel will not call at the destination on that voyage. The schedule for this OTSI service therefore states 'TBA' as a way of indicating that a call to the port destination (and when that occurs) will be confirmed.
- 5.17 For some locations, tidal and environmental factors influence the frequency with which destinations can be serviced. In particular, tides and strong currents affect safe navigation and may restrict services at specific times of the day or month to some communities. Stephen Island in the OTSI, for example, is enclosed by a reef system and as such is only capable of being accessed when the tide is at a sufficiently high level. This occurs approximately once a month. I understand that Sea Swift services Stephen Island once per month, when the tide permits this to occur. TML does not service Stephen Island because of the lack of demand for freight. This is due to the very limited size of its population. I understand that Stephen Island is home to a very small number of people (around 30 to 40 people).
- 5.18 Now shown to me and marked **SW-3** is a table which sets out the port destinations served by TML in the NT and FNQ, and the frequency with which they are visited. This also provides an indication of the current scheduling of various routes operated by TML and vessels currently used to service the routes.

Supply of charter services

- 5.19 Charter services typically involve a one-off or sporadic delivery, or deliveries over a set (contracted) period. These charter services can sometimes 'top up' the freight being delivered to a particular port destination through a scheduled service. Charter services are generally confined to the delivery or carriage of freight, and do not typically involve receipt, consolidation or deconsolidation of that freight.
- 5.20 In the NT and FNQ, TML has provided charter services using spare or hired vessels or the spare capacity of vessels providing scheduled services. For example, a vessel servicing a route two days per week on a scheduled basis would be available for charter work on the remaining five days.
- 5.21 There are different ways in which charters can be conducted. Voyage charters typically involve the customer hiring the vessel and crew for a particular voyage between the home port and destination port. Payment is typically based on the voyage being performed. They can also be conducted as, and charged on, a time charter basis where the charter provider supplies and operates a fully crewed, dedicated vessel on behalf of a customer and the customer is invoiced based on the number of days they require the use of the entire vessel, irrespective of the volume of freight being carried or the voyage undertaken.

No overlap between the NT and FNQ

- 5.22 TML does not operate any routes which cut across or connect the NT and FNQ.
- 5.23 Toll's systems operationally segregate the business in FNQ from the business in the NT. Separate supply chain networks are used in the respective regions – all customers in the NT are serviced out of Darwin while customers in FNQ are serviced out of Cairns. TML also configures vessel allocations, scheduling and routes for each region and reviews its business performance separately for each region.

6. Assets and inputs used in coastal and community shipping services

- 6.1 In this section, I discuss the assets and inputs used by TML to provide coastal and community shipping services in the NT and FNQ. I also explain which assets and

facilities are to be transferred to Sea Swift under the proposed transaction and the availability of alternate assets and facilities.

Vessels suitable for coastal and community shipping services

- 6.2 The vessels used by TML to provide coastal and community shipping services are roll on roll off landing craft/barge (of varying sizes) or multi-purpose / general cargo coastal vessels (of varying sizes). General cargo vessels are sometimes 'lift on lift off' but can be hybrid (with roll on roll off capability as well).
- 6.3 There are a number of different types or combinations of vessels that can be deployed to undertake a freight shipping task. Vessel selection will depend on factors including freight demand (and capacity required), the port destinations being visited, the preferred operating model of the provider and customer requirements, and the speed of the vessel. For remote island ports, a landing craft or barge is often used because the landing facilities typically consist of a concrete or mud landing ramp or the beach.
- 6.4 To provide coastal and community shipping services on a scheduled basis, the TML business currently uses the five vessels listed below. Now shown to me and marked **SW-4** is a table providing details of these TML vessels, including capacity and crew numbers:
- (a) In the NT:
- (i) the *Coral Bay* (a landing craft / barge owned by Toll);
 - (ii) the *Territorian* (a landing craft / barge chartered by Toll); and
 - (iii) the *Bimah Tujuh* (a landing craft / barge chartered by Toll);
- (b) In FNQ:
- (i) the *Fourcroy* (a landing craft / barge owned by Toll); and
 - (ii) the *Warrender* (a general / multipurpose cargo vessel owned by Toll).
- 6.5 An additional vessel owned by the TML business, the *Biquele Bay*, was previously used by TML to provide coastal and community shipping services in the NT. It has not been used to provide any scheduled services since around August or September 2014. Since

that time it has been generally laid up in Darwin and has performed some charter services and freight overflow services. Sea Swift recently chartered this vessel on a temporary basis due to the docking of one of its vessels.

- 6.6 Toll currently charters the *Bimah Tujuh* from Barge Express (formerly Sealink) (**Barge Express**) on a time charter basis. Barge Express supplies the vessel and crew, and provides the coastal and community shipping services on behalf of TML under TML's supervision and direction. Toll has also chartered the *Sealink Darwin* vessel from Barge Express on an ad hoc basis. Toll also currently charters the *Territorian* from Australian Offshore Solutions under a bare boat charter. Toll uses its own crew to operate the vessel and provide the services.
- 6.7 As part of the proposed acquisition, the *Biquele Bay*, the *Coral Bay* and the *Fourcroy* will be transferred to Sea Swift. The other vessels currently used by Toll will not be sold or transferred to Sea Swift. In relation to the *Bimah Tujuh* and the *Territorian*, Toll will commit to terminating or not renewing the charter arrangements relating to these two vessels and the vessels will be handed back to their respective owners. In relation to the *Warrender*, Toll intends to sell the *Warrender* vessel in a timely manner and at fair market value and accordingly is proposing to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Now shown to me and marked **SW-5** is a copy of these proposed commitments by Toll.
- 6.8 The vessels used in the TML business are not custom-designed for port destinations in either the NT or FNQ, nor are they custom-designed for, or specific to, the transportation of general freight or the provision of coastal and community shipping services. The vessels are suitable for use for a wide variety of marine logistics and related applications. The types of vessels being deployed are commonly used in Australian waters and in nearby international waters for a variety of applications. In my experience, alternative or replacement vessels to the vessels currently used by the TML business which are proposed to be transferred to Sea Swift are generally available.
- 6.9 Now shown to me and marked **SW-6** is a table that Toll has prepared which provides details of some alternative equivalent or comparable vessels which, at the time of preparing the table, were available. This was prepared from publicly available

information on vessels and market intelligence. They are described beneath the Toll vessel to which they are most closely equivalent or comparable. Although the *Warrender* is not being transferred to Sea Swift under the proposed transaction, it is included for completeness. The table does not purport to be a comprehensive listing of all equivalent or comparable vessels potentially available.

6.10 In my view, the vessels described in this table are all:

- (a) functionally and operationally equivalent or substantially equivalent to each of the Toll Vessels in terms of size (length), capacity and capability to provide coastal and community shipping services to the destinations serviced by TML – that is, they can do the job;
- (b) suitable to provide coastal and community shipping services in the NT and FNQ on the routes currently serviced by TML, with no modification. I understand that many of these alternative vessels have in fact been used for work in the NT and FNQ trading waters before. Seven vessels (specifically, the *MDT Trader*, *Territorian*, *Bimah Tujuh*, *Hiri Chief*, *Victoria 8*, *Victoria Tujuh*, *Sealink Darwin* and *Lauren Hansen*) have been previously chartered or are currently chartered to Toll and have been used by the TML business to provide coastal and community shipping services in the regions, which demonstrates they are suitable for work in those environments;
- (c) suitable to use at all landing facilities in the NT and FNQ used by the TML business, with no modification;
- (d) readily available for purchase or charter at the time the table was prepared; and
- (e) located in ports or wharves in Australia or Asia which would enable them to be readily deployed in the NT and FNQ. For example, for vessels located overseas in Miri (Borneo), the transit time to the NT / FNQ is less than four days.

6.11 Now shown to me and marked **SW-7** is a table providing a summary of four alternative operating models which could replicate the existing TML service in the NT and FNQ using vessels that are available today or will be available in the near future. This is not an exhaustive list. It does not include the *Warrender* which, post acquisition, would also be available.

Costs to maintain and run vessels

- 6.12 TML's vessels require day to day maintenance and upkeep, as well as more comprehensive scheduled maintenance or 'docking' approximately every few years. Docking may also be required as needed to repair damage to a vessel.
- 6.13 The vessels also require fuel to run. This is a significant cost of operating TML's business. To support the fuel needs of its vessels, TML sources bulk diesel fuel from suppliers in the NT and FNQ.

Landing facilities and shore side infrastructure and equipment

- 6.14 Providing coastal and community shipping services on a scheduled basis requires waterfront access at the home port (ie Darwin or Cairns) and a port, wharf, landing ramp or beach at the destination port so that the vessel can call at the destination and deliver the freight. These are referred to as '**landing facilities**'.
- 6.15 With the exception of Darwin and Gove, all of the landing facilities that TML uses to provide coastal and community shipping services in the NT and FNQ are 'common user'. By this I mean that TML business has no exclusive or preferential rights to such facilities and they are open and available to all providers of coastal and community shipping services on the same terms of access as TML. These landing facilities at regional and remote ports are largely owned or managed by the parties to whom the shipping services are being provided, ie mining companies or aboriginal / indigenous communities. There is limited (if any) port / wharf infrastructure in the remote communities, and providers use a landing ramp (where one exists) or land directly on the beach.
- 6.16 In FNQ, the landing facilities used by TML at Cairns, Thursday Island and Horn Island are common user facilities managed by Ports North, the relevant port authority. Ports North is a government department. In Weipa, TML uses a common user facility managed by North Queensland Bulk Port Corporation, also a government department. Third parties are able to access this facility. Seisia/Bamaga is also a common user facility. Landing facilities in remote communities in the OTSI are also common user, and are managed by the Torres Strait Island Regional Council (**TSIRC**).

- 6.17 In the NT, landing facilities (and related shore side infrastructure) at Groote Eylandt are owned and managed by GEMCO (part of South 32, which was recently spun out of BHP Billiton) and, in addition to the contracted provider of shipping services to GEMCO, third parties are able to access the facility. Landing ramps used by TML in the remote communities in the NT are common user, with barge or beach landings controlled by the traditional owners of each port destination. Each destination is represented by their respective land council.
- 6.18 Access to the above landing facilities can be gained by submitting a booking request to the manager of the landing facility in respect of each call to the port destination, or by arranging a standing booking with that manager. There are no ongoing or long term access arrangements in place.
- 6.19 TML pays fees to access these landing facilities, typically through payment of an access fee or 'harbour dues' and/or volumetric charge (based on the amount of freight being discharged). Some charge for freight being discharged (or imported), others charge for both discharging and loading out (ie export) of freight. The quantum of these fees varies by the particular landing facility. Now shown to me and marked **SW-8** is a confidential table providing a summary of the fees or charges paid by TML to various port managers in FY2015 to access landing facilities in the NT and FNQ.
- 6.20 There will be no transfer of any access rights to these facilities as part of the proposed transaction. Toll will simply cease to access the landing facilities to provide scheduled services post-acquisition. I expect Sea Swift would continue to submit a booking request if it wished to use one of these facilities.

TML's facility in Darwin

- 6.21 In Darwin, TML uses a private landing facility at Frances Bay which is on land that is partly owned and partly leased by Toll. The lease is with Fannie Bay Investments Pty Ltd. The proposed transaction does not involve the transfer of the Frances Bay facility or land to Sea Swift (which will remain with Toll). [REDACTED]
- 6.22 Other providers of coastal and community shipping services possess private landing facilities in Darwin. Sea Swift has its own landing facilities at Hudson Creek in Darwin

which I understand it will continue to use post-transaction. The Port of Darwin (managed by the Darwin Port Corporation) also provides common user landing facilities for a range of shipping and cargo applications, for example East Arnhem port. There are also a number of other common user landing facilities in or around Darwin.

TML's facility at Gove

- 6.23 In Gove, the TML business manages one of several existing wharf facilities in Nhulunbuy on the Gove peninsula. I discuss the alternatives to Toll's facility later in this statement. Toll's use of this specified area of land in Melville Bay at the Port of Gove is governed by a long term lease between the Arnhem Land Aboriginal Land Trust and Perkins Properties which will expire in 2024 (**Gove Lease**). The Gove Lease is administered by the Northern Land Council (**NLC**) on behalf of the traditional owners. The Gove Lease will be transferred to Sea Swift as part of the proposed transaction.
- 6.24 The Gove Lease provides Toll (as owner of Perkins Properties) with an exclusive right to use the leased area 'as a wharf and freight handling / warehouse facility for the storage of fuel and other goods imported into or exposed from the Nhulunbuy / Gove area by way of barge or coastal transport and other ancillary purpose as agreed'. The facility is approximately 12km from the town of Nhulunbuy.
- 6.25 Within its leased area at the Port of Gove, the TML business manages three primary pieces of infrastructure at Gove Wharf (collectively, the **facility**):
- (a) the Northern Territory Department of Lands and Planning public wharf facility (**Public Wharf**). The Public Wharf is available to the general public. It was used predominantly by fishing vessels and for refuelling but is now considered not safe for use. Accordingly, Toll redirects vessels seeking to use the Public Wharf to the Heavy Lift Wharf. There is no fee charged for use of the Heavy Lift Wharf in these cases. Toll's management of the Public Wharf is governed by a deed between the Northern Territory government and Perkins Properties entered into in 1984, at or around the same time as the Gove Lease;
 - (b) the heavy lift wharf (**Heavy Lift Wharf**). The Heavy Lift Wharf was constructed by Alcan (now Pacific Aluminium, part of Rio Tinto), using the original land filled wharf. The Heavy Lift Wharf is a load-on / load-off facility. Toll previously used

the Heavy Lift Wharf when it operated its scheduled services in the NT using a geared vessel. Toll does not currently use the Heavy Lift Wharf on a regular basis, although it uses the wharf to discharge freight from landing craft vessels on occasion when the tides make this easier than using the Landing Ramp. Third party vessels use the Heavy Lift Wharf on an ad hoc basis, predominantly fishing vessels and for refuelling; and

- (c) the roll-on roll-off barge landing ramp (**Landing Ramp**). The Landing Ramp was constructed by Rio Tinto at the time of constructing the Heavy Lift Wharf and is designed as a single user ramp. It can only accommodate one vessel at a time. It is used by TML to provide coastal and community shipping services on scheduled basis in the NT. It is also accessed by other parties on an ad hoc basis, including providers of coastal and community shipping services.

- 6.26 The leased area also includes a container lay down area, a warehouse and office accommodation and a mud ramp which is used and managed by the Nhulunbuy Regional Sports Fishing Club, under a licence agreement with Toll. This ramp is used only by the fishing club. This fishing club ramp was constructed by the Northern Territory government. Now shown to me and marked **SW-9** is a diagram showing the TML facility and the fishing club ramp.
- 6.27 TML uses the Toll facility at Gove to provide scheduled services on a route which calls at Gove and Groote Eylandt. It serves these particular port destinations because it has contracts with Rio Tinto and GEMCO in Gove and Groote Eylandt respectively. It also calls at Gove when servicing a route which calls at several East Arnhem communities near Gove (such as Elcho Island) because it is convenient to do so.
- 6.28 Unlike Darwin or Cairns, Gove is not a home port for TML. I believe it is possible to provide scheduled services to many port destinations in the NT without calling at Gove and a variety of routes could be served by a provider which would not involve calling at Gove. The other NT communities route in East Arnhem serviced by Toll does not call at Gove. Shorebarge previously serviced communities in East Arnhem without calling at Gove. The Tiwi Islands route and Port Keats route serviced by Teras also do not call at Gove.

Existing section 87B undertaking relating to access at Gove

- 6.29 On 22 December 2003, the ACCC accepted an undertaking in accordance with section 87B of the *Trade Practices Act 1974* (as it then was) from Perkins Shipping Pty Ltd with regard to access to certain facilities at the Port of Gove and maintaining levels of customer service (**Gove Original Undertaking**).
- 6.30 The Gove Original Undertaking was accepted in 2003 in the context of the ACCC's review of Perkins Shipping's acquisition of Gulf Freight Services, then a supplier of scheduled services in FNQ and the NT. The ACCC decided not to take further action after accepting the section 87B undertaking relating to access at Gove and the publication of a service charter. Now shown to me and marked **SW-10** is a copy of the ACCC's press release of 23 December 2003 relating to this acquisition.
- 6.31 The Original Undertaking was varied with the ACCC's consent on 7 July 2005 (**Gove Existing Access Undertaking**) to reflect the authorisation granted by the ACCC to Perkins Shipping to provide priority use with respect to a new heavy lift wharf at the Port of Gove to Rio Tinto for three years. Now shown to me and marked **SW-11** is a copy of the Gove Existing Access Undertaking.
- 6.32 While the scope of the Gove Existing Access Undertaking does not extend to the Landing Ramp, the TML business provides access to the Landing Ramp. Sea Swift and other parties have requested and accessed the Landing Ramp within the past 24 months on an ad hoc basis. Now shown to me and marked **SW-12** is a table showing third party access since 2013.
- 6.33 Now shown to me and marked **SW-13** is a copy of the current fee schedule for accessing the Landing Ramp.
- 6.34 For the TML business to provide access to a third party to the facility on the leased area, it must first seek the consent of the traditional owners through the Northern Land Council in relation to the requested access. This is because it is a condition of the Gove Lease that Toll may not transfer, assign, license, sublet, or part with any part of the said land or any part thereof without the consent of the lessor.
- 6.35 The TML business is also obliged to obtain the consent of the relevant Minister pursuant to section 19(8) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) prior to

granting third party access. TML has obtained overarching consents in this respect so that consent is not required in each instance of access.

- 6.36 In addition to the TML facility, there are several other landing facilities at Gove which are currently available:
- (a) the Rio Tinto Cargo Wharf. This wharf, which is adjacent to the Rio Tinto plant, has been opened by Rio Tinto for general, non-exclusive use as part of its commitment to the local community. This is a 'load on, load off' facility. Access can be gained by submitting a booking request to Rio Tinto. This wharf is located on Melville Bay road, east of the TML facility and approximately 13km from the town of Nhulunbuy;
 - (b) the Gove Yacht Club. The Yacht Club provides access to its boat ramp for commercial use. This access ramp is currently being used by Sea Swift. Sea Swift has successfully used this access point to successfully tender for, and provide services under, several larger customer contracts for scheduled services in the NT which involve a call to Gove. This includes the Woolworths contract previously serviced by TML. I believe this demonstrates the ramp's suitability as an alternative landing facility with respect to the provision of coastal and community shipping services in the NT if a provider wished to use it. This ramp is a roll on roll off facility, suitable for most landing craft vessels. This landing ramp is approximately 10.5km from the town of Nhulunbuy;
 - (c) the 'Catalina' ramp. There is a landing ramp on the other side of the Port of Gove known as the 'Catalina' ramp. This was built during World War II to serve as a base for Catalina flying boats. This ramp is approximately 14km from the town of Nhulunbuy. Consent from the landowner would be required to use the ramp on a commercial basis, for example, to provide coastal and community services.

6.37 Now shown to me and marked **SW-14** is a map showing the location of the various landing facilities in Gove.

Shore side infrastructure and equipment

6.38 TML operates certain shore side facilities and equipment to receive, consolidate, deconsolidate and otherwise handle and store cargo.

- 6.39 Due to the forward nature of the freight being delivered, more substantial shore side facilities are needed in the home port (ie Darwin or Cairns), or ports where freight is being transhipped (if the freight provider adopts a transshipping model). Shore side facilities (such as depots and storage areas) are found less frequently in the remote communities. This is because customers typically visit the landing facility (ie on the beach) upon arrival of the vessel and collect their freight.
- 6.40 In the NT, the TML business owns or leases laydown areas and sheds in Darwin and Gove. It uses a GEMCO-owned common user laydown area and shed in Groote Eylandt. TML provides warehousing and stevedoring services in Darwin, Gove and Groote Eylandt in the NT. TML has no specific infrastructure or equipment in remote communities it services in the NT.
- 6.41 In FNQ, the TML business uses leased or common user depots and sheds in port destinations on the mainland or close to the mainland (namely, Cairns, Weipa, Seisia / Bamaga, and Horn Island and Thursday Island). In some of these locations, it leases or owns a residential house to accommodate the manager of the depot. TML has no specific infrastructure or equipment in remote communities it services in the FNQ.
- 6.42 Now shown to me and marked **SW-15** is a table setting out details of:
- (a) the landing facility at the locations to which TML provides coastal and community shipping services in the NT and FNQ on a scheduled basis;
 - (b) the basis on which TML accesses the landing facility;
 - (c) the basis on which third parties can access the landing facility; and
 - (d) the infrastructure and equipment in terms of warehousing / depots and mobile equipment used by the TML business at each landing facility.
- 6.43 This table also sets out what assets (if any) and supporting infrastructure / equipment in each location is proposed to be transferred to Sea Swift as part of the proposed transaction. In summary these comprise:
- (a) a small number of leases to depot facilities and leases or freehold title to residential houses (used as staff accommodation) in various locations in the NT

and FNQ to which the TML business provides coastal and community services on a scheduled basis; and

- (b) the following rights under leases or title to specific assets relating to or comprising equipment used by the TML business to provide coastal and community shipping services on a scheduled basis in the NT and FNQ:
 - (i) Toll's rights under a number of leases for miscellaneous equipment such as vehicles, container handlers, forklifts, and transportable demountable buildings (used as offices);
 - (ii) Toll's rights under various leases for the supply of containers; and
 - (iii) various pieces of small plant and equipment, including vessel equipment (eg onboard computer systems), forklifts, work platforms and trucks or trailers.
- 6.44 In my experience, alternative depots, warehouses / sheds or similar storages areas to those currently used by the TML business to handle and store freight in Darwin, Cairns and the various port destinations that TML services (where applicable) are available for purchase, lease or use on a common user basis in some locations. Similarly, in my experience, the equipment used by TML to handle and store freight (such as forklifts and containers) is readily available (either for hire or purchase) and has application in a wide range of industries (that is, it is not limited to the supply of coastal and community shipping services). Examples of suppliers of this equipment are set out in the table showing contact details of TML suppliers which I discuss below.

Labour

- 6.45 The TML business employs staff across the NT and FNQ to provide its coastal and community shipping services. This includes:
- (a) management and administrative staff in Darwin,
 - (b) terminal managers and support staff (such as engineers) in Darwin and Cairns;
 - (c) material handling officers and other staff to operate depots and handle freight in various locations; and

(d) crew who man the vessels used to provide the services (other than for the *Bimah Tujuh* where the vessel owner, Barge Express, provides its own crew).

6.46 Most of TML's labour force in the NT and FNQ is subject to enterprise bargaining agreements agreed with relevant unions. In its operations in the NT and FNQ, TML also uses casual labour hired through Toll Personnel, mostly as depot yard staff.

6.47 No employees are to be transferred as part of the proposed transaction.

Suppliers

6.48 Now shown to me and marked **SW-16** is a confidential table setting out the names and contact details of 10 suppliers to the TML business in each of the NT and FNQ. It includes the nature of the input supplied, the location supplied and the estimated value of the supply. For the purposes of Form S of the Application, this table also outlines the supply or purchasing arrangement in place with these suppliers and whether and how this would change post-acquisition.

6.49 For the purposes of Form S of the Application, now shown to me and marked **SW-17** is a confidential spreadsheet prepared by Toll showing the value (ie costs) of the inputs of the TML business (for NT and FNQ combined) as a proportion of the total revenue and total costs of the business.

Summary of assets in each region to be transferred

6.50 Now shown to me and marked **SW-18** is a table that summarises, in brief terms, the assets proposed to be transferred to Sea Swift in each of FNQ and NT.

6.51 For clarity, I note that the proposed transaction does not involve any transfer to Sea Swift of:

- (a) the *Warrender* vessel (which is currently used by the TML business to provide scheduled services on the Cairns-Weipa route in FNQ);
- (b) the two chartered vessels (the *Territorian* and the *Bimah Tujuh*) currently being used by the TML business to provide coastal and community shipping services on a scheduled basis in the NT;

- (c) the terminal facility and berths (including access) located at and adjacent to Frances Bay in Darwin (although there is a transitional licence agreement between the parties for the use of the Frances Bay terminal in Darwin for a period of 3 months from completion);
- (d) any of Toll's freehold property at Frances Bay in Darwin or in Gove;
- (e) Toll's operations in Gladstone and Western Australia (which operate as part of the broader TML business);
- (f) the coastal shipping business operated by Toll in any other location other than NT and FNQ;
- (g) any maritime or logistics business of Toll in support of any oil, gas, or bulk mining development or upstream operations; or
- (h) the vessels being used in relation to Toll's Gladstone, Western Australia, oil and gas or mining operations.

7. Customers for coastal and community shipping services

- 7.1 Provision of full service coastal and community shipping services on a scheduled basis, is a high fixed-cost business. In order to provide a full service offering it is necessary to acquire and maintain a fleet of vessels and appropriate landing and shore side facilities. This requires considerable ongoing capital investment and an ongoing high fixed cost structure. A full service provider such as TML must secure a base load volume and revenue in order to operate profitably a regular, scheduled depot to door offering to the remote and coastal communities in the NT or FNQ.
- 7.2 TML provides coastal and community shipping services in the NT and FNQ to a mix of contracted customers and non-contracted customers. Now shown to me and marked **SW-19** are confidential tables showing that approximately [REDACTED] of TML's revenue comes from contracted customers, with the remainder from non-contracted customers. The proportion of contract revenue for TML in the NT is higher [REDACTED] than it is in FNQ [REDACTED]. The tables included in **SW-19** also show that the proportion of TML's total revenues in the NT and FNQ earned by TML from charter customers is relatively small, at approximately [REDACTED].

7.3 There are broadly two customer segments with respect to the supply of scheduled coastal and community shipping services:

- (a) a small number of larger customers that require regular, scheduled services on a contracted basis;
- (b) a large number of smaller customers that tend to acquire services on an ad hoc uncontracted, or contracted, basis and which rely on the scheduled services to larger customers for regular deliveries to their location. These customers generally acquire services on an uncontracted basis (although some customers may be contracted).

Larger customers and their freight requirements

7.4 The needs and requirements of larger customers for coastal and community shipping services in the NT and FNQ differ. I would classify larger customers into the following categories:

- (a) large mining and resource corporations (namely Groote Eylandt Manganese Company (**GEMCO**), formerly part of BHP Billiton and now part of South 32, and Rio Tinto) requiring delivery of equipment, building materials, vehicles, mining consumables, heavy machinery, and basic supplies. These customers require scheduled services but can also acquire charter services to supplement these deliveries or to support particular projects;
- (b) large national supermarket corporations (namely Woolworths) requiring delivery of perishable items and basic supplies, including refrigerated cargo;
- (c) community organisations representing remote communities which acquire services on a collective basis (namely Islanders Board of Industry and Service (**IBIS**), Torres Strait Island Regional Council (**TSIRC**), Arnhem Land Progress Association (**ALPA**) and Island & Cape) and require delivery of perishable items and basic supplies including refrigerated cargo; and
- (d) corporations that are involved in the provision of fuel services to remote communities which require the transportation of bulk diesel or containerised fuel.

This includes Australian Fuel Distributors trading as PUMA Energy (**PUMA**) (on behalf of NT Power & Water), Caltex (on behalf of Ergon Energy) and BP Air.

- 7.5 These larger customers acquire services involving delivering either significant volumes of freight to a single port destination, or delivering freight to multiple port destinations which are collectively significant in terms of the freight being moved. These larger customer contracts provide predictable and higher volumes for single or multiple port destinations.
- 7.6 Larger customers provide sufficient 'base load' volume to support the sustainable provision of a full service offering. The loss of large customer contracts can therefore have a significant impact on the ability to provide a full service offering. The impact is magnified as smaller uncontracted customers move to the new provider, ie there are significant flow on or 'knock-on' effects with the loss of a larger customer. The loss of smaller customers occurs because the new provider has a strong incentive to compete vigorously for the smaller, incrementally profitable customers in order to increase volumes and improve vessel utilisation, and thereby reduce its overall costs. I consider that these knock-on or consequential effects from losing or winning a large contract strengthens the countervailing power held by such customers.
- 7.7 In FNQ, the large multi-destination customers are IBIS, TSIRC, Island & Cape and Caltex (on behalf of Ergon Energy). IBIS, which is the trading name of the Island Industries Board, operates approximately 19 stores in the Torres Strait. TSIRC is one of two local councils found in the Torres Strait and represents fifteen outer island communities. Island & Cape (whose retail operations are owned by ALPA) has 9 stores in FNQ. Caltex (on behalf of Ergon Energy) supplies fuel to various communities in FNQ.
- 7.8 Rio Tinto and Woolworths are the two large single port destination customers, which both acquire services on the Cairns-Weipa route (into Weipa). Rio Tinto owns and operates a bauxite mine in Weipa. Woolworths operates a supermarket in Weipa. BP Air is a single port destination in Horn Island, providing supplies of fuel to the airport on the island.
- 7.9 In the NT, the large multi-destination customers are ALPA and PUMA (on behalf of NT Power & Water). ALPA is a co-operative of community stores in NT and FNQ. Its members are the Indigenous people who live in or are culturally connected to the Arnhem Land communities of Galiwin'ku, Gapuwiyak, Minjilang, Milingimbi and Ramingining. ALPA operates company owned stores in each of these communities, in

addition to providing other services. ALPA also operates 11 other community stores in the NT on behalf of Indigenous Corporations and Regional Councils. PUMA supplies fuel to various communities in the NT, as part of contractual arrangements between PUMA and the NT Power & Water, a government department.

- 7.10 In the NT, GEMCO (South 32), Rio Tinto and Woolworths are the large single port destination customers on the Darwin-Groote Eylandt route (in the case of GEMCO (South 32)) and the Darwin-Gove route (in the case of Rio Tinto and Woolworths). Rio Tinto, through Pacific Aluminium, owns and operates a bauxite mine and until recently also operated an alumina refinery in Gove. Woolworths operates a supermarket in Gove. GEMCO operates a manganese mine in Groote Eylandt. BP Air is a single port destination customer in the NT, providing supplies of fuel to the Gove airport. The Port Keats Store is also a large single port destination (for Port Keats).
- 7.11 TML's voyage schedule is typically designed to meet the requirements of its larger contracted customers, including in terms of frequency and scheduling of a vessel's arrival. Any surplus capacity is then made available to smaller (uncontracted or otherwise) ad-hoc customers, and the requirements of these customers are met having regard to the requirements of larger customers. [REDACTED]
- 7.12 Absent a larger customer contract and the volumes they provide, it is difficult to profitably and sustainably service port destination(s) or route(s) due to the unpredictability and irregularity of the volumes of small customers. This can be seen from the performance of TML in FNQ (which I discuss later) where, because we now lack larger customer contracts, we operate at a significant loss. It can also be seen from the Toll *Fourcroy* servicing the port destinations on its OTSI route only when there are sufficient volumes to warrant calling at particular port destination.

Contracts with larger customers

- 7.13 Contracts with larger customers are usually for terms of between 1-3 years or 5 years duration. Often these contracts do not require the customer to acquire services exclusively from the provider. Some contracts may also have a termination-without-cause or termination-for-convenience clause as a right of the customer. [REDACTED]
[REDACTED] In these cases, a customer could therefore terminate the contract and re-tender if it is not satisfied with the incumbent provider's prices or services, or otherwise award its contract to another provider at the time of renewal.
- 7.14 Now shown to me and attached as **SW-20** is a table summarising these larger customers, the supplier currently servicing the customer, as well as Toll's understanding of the last time the contract was tendered.
- 7.15 Most contracts with larger customers are awarded by way of periodic competitive tender or a similar process. I have been involved in a number of these negotiations. In my experience, large customers exercise significant countervailing power in these negotiations and typically try to generate competitive tension and pressure for their tenders by inviting a number of different bidders.
- 7.16 Even where a formal tender is not underway, in my experience, larger customers frequently 'test the market' during the term of a contract. By this, I mean that larger customers assess the competitiveness of a contract through discussions and obtaining comparable quotes from other providers. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 7.17 In my experience, winning a contract(s) with a larger customer(s) can assist entry or expansion in the market in the NT and FNQ. A recent example is Sea Swift's entry and expansion in the NT. After buying Tiwi Barge, Sea Swift's expansion into the NT was assisted by Caltex with respect to the NT Power and Water Contract (which was then held by Caltex, and is now held by PUMA). Once Sea Swift was present in the NT

market, I understand that it was strongly encouraged to tender for the Gove contract by Woolworths following Woolworths moving its contract relating to Weipa from TML to Sea Swift in November 2013. Sea Swift had also recently won the Rio Tinto Weipa contract from TML. Sea Swift expanded its operations in the relevant markets on the back of these larger contracts with Caltex, Woolworths and Rio Tinto (in Weipa).

Self-supply by large customers

- 7.18 In addition, I consider there is potential for larger customers for coastal and community shipping services to bypass existing providers to establish their own services or self-supply the services, either directly or indirectly (for example, pursuant to a time charter arrangement). An example of self-supply occurred when Teras, which I understand had no prior experience in providing coastal and community shipping services in the region, began using two landing craft vessels to provide scheduled coastal and community shipping services from Darwin to the Tiwi Islands in order to support the port that it was establishing at Port Melville in the Tiwi Islands. Teras then expanded its provision of scheduled services to Port Keats.

Other customers and freight requirements

- 7.19 There are a large number of smaller customers who require coastal and community services on an ad hoc or infrequent basis typically to a single port destination where the customer is located. These smaller customers typically require delivery of basic supplies and specific items such as vehicles or appliances.
- 7.20 In my experience, the vast majority of these customers do not enter into contractual arrangement with providers. Where these customers do acquire services on contracted basis, in my experience, the contracts are of relatively short to medium term duration (up to 3 years).
- 7.21 The volumes (and corresponding revenues) supplied by these smaller customers are by their nature ad hoc and significantly less predictable than the volumes supplied by larger customers. The volumes are nevertheless important to a provider. TML typically seeks to service a particular port destination to meet the requirements of a larger contracted customer and seeks to maximise vessel utilisation and reduce costs by also carrying freight for smaller customers.

7.22 Now shown to me and attached as **SW-21** is a confidential table setting out the names and contact details of a cross-section of customers of the TML business to whom coastal and community shipping services are provided in the NT and FNQ. Where applicable, this includes the approximate expiry date for any contracts (absent any renewal or extension by the customer) and thereby provides an indication as to the likely time at which the contract would come up for competitive tender.

Pricing to customers

7.23 Rates for TML's scheduled services in the NT and FNQ are determined by factors such as voyage frequency, port destination, cargo type, volume and costs. TML has 'general' or scheduled rates which apply to uncontracted customers seeking services on a spot basis, [REDACTED]

7.24 Pricing for contractual customers in respect of scheduled services is set and protected by the contractual arrangements. TML has no ability to increase price during the contract term (other than as contractually provided for). Changes to pricing at the end of a contract is subject to, and constrained by, any competitive tendering process undertaken by customers. Contractual provisions enabling the customer to 'test the market' during the term may see prices change during the term.

7.25 Now shown to me and marked **SW-22** is a table showing TML's current general rates in respect of scheduled services acquired on a spot basis in the NT and FNQ. This reflects rates for general freight and does not reflect rates for charter services. Now shown to me and marked **SW-23** is a table showing these general rates over the past five years.

TML customer contracts to be transferred as part of the proposed transaction

7.26 The proposed transaction involves the transfer or novation of certain customers contracts held by the TML NT FNQ business to Sea Swift, subject to the customer consenting to such a novation.

7.27 Now shown to me and marked **SW-24** is a table summarising the customer contracts to be transferred to Sea Swift (**TML customer contracts**) under the proposed transaction. This table also includes a number of contracts to be transferred which involve the rental of container(s), as distinct from the supply of coastal and community shipping services.

7.28 Four contracts with larger customers in the NT are proposed be novated to Sea Swift:

(a) Two are multi-destination contracts. These are with ALPA and PUMA. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] TML currently does not go to Port Keats and accordingly arranges for Sea Swift to carry this freight for the purposes of the PUMA contract; and

(b) The two other contracts with larger customers in the NT are single port contracts. These contacts are with Pacific Aluminium (Rio Tinto) in Gove and GEMCO (South 32) in Groote Eylandt. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7.29 In FNQ, there is one larger customer contract proposed to be transferred to Sea Swift to be novated. This contract is with IBIS. [REDACTED] Toll first approached IBIS in late 2013 and successfully tendered for this contract in the first half of 2014. The contract with IBIS was signed before the proposed transaction with Sea Swift was entered into, but was not due to commence until later in 2014. Once the contract with Sea Swift was signed, it became apparent to Toll that, in the circumstances, it was not viable to mobilise the additional vessel and equipment required to commence providing the service. To meet its customer requirements, Toll has therefore subcontracted the performance of this contract to Sea Swift since its commencement. TML has no other larger customer contracts in FNQ.

7.30 With one exception, the TML contracts with smaller customers that are proposed to be novated all relate to customers in the NT. These contracts (with respect to those that relate to the NT) represent a very small proportion of TML's FY2014 total revenue in the NT, representing [REDACTED]. The contract in FNQ represents a very small proportion of TML's FY2014 revenues, approximately [REDACTED]. [REDACTED] Most of these small customer contracts involve the provision of services to a single port destination (largely to Gove or Groote Eylandt).

7.31 The transfer process as part of the proposed transaction involves seeking consent from the relevant customer and entry into appropriate novation arrangements as between the customer and Sea Swift. Whether the relevant contract, on its current terms, is or will be 'transferred' to Sea Swift is therefore at the customer's complete discretion. Where the customer agrees to the transfer, I consider that the proposed transfer of the TML customer contracts to Sea Swift as part of the proposed acquisition will avoid potential disruption for our customers and ensure the continuity of the scheduled services being provided, and allow Toll to achieve an orderly exit. Customers will have certainty that their contract will be taken over on its existing terms and that services will continue to be provided.

7.32 [REDACTED]

8. Suppliers of coastal and community shipping services

Full service offering model

8.1 TML currently provides coastal and community shipping services in the NT and FNQ on a scheduled basis using a full service offering.

8.2 Until recently, the TML business had been the primary full service operator in the NT and Sea Swift had been the full service operator in FNQ. This situation changed in 2013 when Sea Swift began providing services in the NT and in 2014 when TML began providing services in the OTSI in FNQ. This led to there being two full service operators in each of the NT and FNQ.

- 8.3 From time to time, there has been the entry and exit of other coastal and community shipping service providers supplying either multi-destination routes or, for a period, a full service offering. Historically, however, there have therefore only been limited, temporary periods of more than one supplier of full service coastal and community shipping services in each of FNQ and the NT – ie there has typically been only one primary full service provider in each region.
- 8.4 Now shown to me and marked **SW-25** is a table setting out an overview of the history of entry and exit in FNQ and the NT over time, as understood by Toll, in terms of (i) full service providers, (ii) providers of coastal and community shipping services operating on specific routes or a more limited basis, and (iii) providers of charter services. This is drawn from Toll's understanding of the activities of providers over time, records (including records of Perkins), market intelligence and publicly available information. I note that these entry and exit dates are approximate.

Ability of other suppliers to commence or expand scheduled services

- 8.5 In addition to TML and Sea Swift, there are a number of other providers of charter and some scheduled coastal and community shipping services in the NT or FNQ. None of these currently provides a 'full service' offering.
- 8.6 Now shown to me and marked **SW-26** is a table prepared by Toll in respect of these other providers. This information contained in this table is based on Toll's understanding of the businesses of these providers. My understanding of the operations of these providers is as follows:
- (a) **Carpentaria Freight** is a road freight and coastal and community shipping service operator in FNQ. It has a consolidation depot in Cairns and a land side facility in Kurumba in FNQ. Carpentaria Freight provides regular weekly supplies of food and fuel to Mornington Island and services to Aurukun and isolated Gulf communities during the wet season. Carpentaria Freight coordinates freight from Brisbane, Mt Isa and Cairns to Mornington, Sweers and Bentinick Islands.
 - (b) **Carpentaria Contracting** provides coastal and community shipping services in FNQ through Carpentaria Marine Services (as well as other services), providing a weekly scheduled service (in the wet season) between the communities of Weipa

and Aurukun, and various charter services. It has offices in Weipa, Cairns, Thursday Island and the Squadron River in FNQ. It offers various tug and barge combinations and workboats, and currently has a fleet of seven vessels. It has landing facilities and a land base for freight consolidation in Cairns and Skadon River.

- (c) **Palm Island Barge Company** provides coastal and community shipping services in FNQ. It provides a daily barge service and daily return vehicle ferry service from Lucinda to Palm Island (Monday to Friday), as well as logistical services from Townsville to Palm Island in FNQ and marine freight services to Orpheus Island Resort, James Cook University Research Station on Orpheus Island, Bedarra and Dunk Island.
- (d) **Barge Express** (formerly Sealink Barge Transport) provides marine services in the NT, including coastal and community shipping services. This includes charter services, time charters and other vessel charters. It provides time charter services to TML under which it provides coastal and community shipping services to the NT communities on behalf of TML, conducting the delivery operations under TML's supervision and direction using its own vessel (currently the *Bimah Tujuh*) and crew to deliver general freight to end customers. Barge Express previously provided scheduled services to Port Keats in its own right (that is, not by way of charter). Barge Express has an office and terminal in Darwin in Hudson Creek (adjacent to Sea Swift) with waterfront access, with a large hard standing / yard area, covered warehousing and barge landing ramp. It also operates a large array of depot equipment including forklifts of varying capacity to semi-trailers and prime movers. I understand that Barge Express recently acquired the *MDT Trader* (a landing craft vessel) from Bhagwan Marine. In addition to its two existing vessels, the *Bimah Tujuh* (which is currently chartered to the TML business) and the *SeaLink Darwin*, Barge Express now has a total of four 500 tonne landing craft vessels in the NT which are suitable for coastal and community shipping services. I note that this is more vessels than that currently used by the TML business in the NT.
- (e) **Teras** (formerly Ezion), which was part of a Singaporean group and is now part of AusGroup, provides coastal and community shipping services in the NT. It also

provides offshore marine logistics and support services to the offshore oil and gas industries. After entering into a long term lease agreement with Port Melville (an entity of the Tiwi Land Council), Teras Australia is responsible for the construction and development of Port Melville and its associated fuel distribution facilities. To support development, Teras started running two small barges from the Tiwi Islands to Darwin to provide coastal and community shipping services. It currently provides twice weekly scheduled services from the Hudson Creek to the Tiwi Islands along with weekly service to Port Keats. Teras has a roll on roll off marine loading and wharf facility with a 4 hectare laydown area in Darwin. Teras owns a fleet of vessels.

- (f) **Shorebarge** began as a provider of charter services but expanded into scheduled services to Troughton Island and Truscott Air Base (in which it has an interest) in north eastern WA, which it provided from Darwin. It commenced these services itself after becoming dissatisfied with the then provider, which I understand was Perkins. It subsequently provided scheduled services to remote communities services across East and West Arnhem in the NT from mid-2011 for a period. It redeployed its vessels in 2013 after Sea Swift entered the NT to provide scheduled services to Truscott, Troughton Island and Kulumbaru in north eastern WA from Darwin once again. Shorebarge has its own terminal in Darwin with waterfront access, with hard stands, covered warehousing and barge landing ramp.
- (g) **Bhagwan Marine** provides charter services and time charter services, and supplies charter vessels in WA, the NT and Queensland. Bhagwan currently has a fleet of more than 150 vessels and marine assets, including landing craft, tugs and deck barges suitable for coastal and community shipping services. Bhagwan Marine has waterfront access and an office in Darwin.

- 8.7 In my view, the providers listed above (including those that currently only provide charter services) have the capability to commence or expand their provision of coastal and community shipping services on a scheduled basis if they wished to do so.
- 8.8 Depending on the business model they adopt, the entry or expansion of these providers might consist of seeking to service targeted routes or targeted customers in particular port destinations. It might also (but need not necessarily) involve seeking to compete for

the role as the primary full service provider of coastal and community shipping services in the NT and / or FNQ by competing for the necessary larger customer contracts to provide the requisite base load volumes.

- 8.9 In my view, these providers already possess significant marine logistics expertise and skills in relation to operating vessels in remote environments and difficult conditions. They thereby possess the necessary expertise to conduct scheduled services. Such expertise, while useful, is nevertheless not essential, as demonstrated by Teras' commencement of scheduled services in the NT.
- 8.10 I consider that these providers also all currently possess or could readily obtain:
- (a) Vessels suitable for the provision of coastal and community shipping services on a scheduled basis. I understand that some of these providers already possess, or have access to, vessels that are unutilised or underutilised at present and that could readily be deployed to provide coastal and community shipping services, in the form of scheduled services, in the NT or FNQ. The table of vessels in **SW-6** includes vessels possessed by some of these actual or potential providers;
 - (b) Systems supporting the provision of coastal and community shipping services, such as a consignment booking service;
 - (c) Access to landing facilities in either Darwin or Cairns, being the port destinations from which voyages commence;
 - (d) Access to landing facilities at port destinations that they seek to service, given the common user nature of such facilities (or, in the case of Gove, the availability of several other access points);
 - (e) Shore side infrastructure and equipment if / where required (whether on a common user, lease or owned basis) to provide coastal and community shipping services on a scheduled basis;
 - (f) Customers, by reason that:
 - (i) a significant proportion of the customer base in both markets is uncontracted; and / or

- (ii) the customers volumes are contestable having regard to an absence of exclusivity or similar provision in the contract; and / or;
- (iii) they can compete for the 'market' by conducting a periodic competitive tender process for particular customer contracts.

8.11 Operators such as Carpentaria Contracting and Teras already provide coastal and community shipping services in FNQ or the NT on a scheduled basis that require them to receive, consolidate and ship general freight. These scheduled services would already require existing shore-side infrastructure and the use of a consignment booking service. The existing infrastructure and systems that such operators already have in place would be readily scalable in order to expand the scope of services being provided, if they wished to do so.

8.12 Further, while some of these providers currently service only one or two port destinations, I believe that most would also have the capability to meet the requirements of multi-destination customers if they wished to do so. Some have previously serviced multi-destination customers. For example, I understand that Shorebarge previously serviced the NT Power & Water (PUMA) contract to multiple port destinations in the NT.

Entry by international providers in future

8.13 The Australian Government has been considering a relaxation of the 'cabotage' laws, which would enable more international operators to participate in the domestic shipping industry. This regulatory change would introduce the prospect of entry by international operators into the coastal and community services sector in FNQ and the NT.

8.14 On 20 May 2015, the Government formally announced reforms to coastal shipping and stated that legislation is currently being prepared to implement the reforms. Presently, the licensing system established by the *Coastal Trading Act 2012* (Cth) that regulates the activities of Australian and foreign ships, provides an advantage to Australian ships by allowing them unrestricted access to coastal trade along with the opportunity to compete for voyages proposed to be conducted by foreign ships. Under the proposed reforms, the Australian Government will remove the existing contestability provisions and will introduce a single permit system for coastal shipping. This single permit regime will provide unrestricted access to coastal shipping for all vessels (both Australian and

foreign) for up to 12 months. The permit will enable a vessel to undertake unrestricted voyages around the coast for the approved period. The effect of these reforms will be to permit foreign ships with foreign crews (or largely foreign crews) to operate on the Australian coast, including on the coast of the NT and FNQ.

- 8.15 International operators typically have a much lower cost base (due to wages, regulation, safety requirements etc) with costs apportioned across international routes into and out of Australia, enabling them to carry that cost base into coastal shipping services, potentially on a full service basis or by servicing higher volume coastal and community ports and communities.
- 8.16 The vessels used by international operators will depend on their particular freight operations. Even if some vessels currently used by international operators for particular international operations are not suitable for provision of coastal and community shipping services, suitable vessels for such services are readily available (as I have described above) for purchase, lease or charter.

9. Recent competitive interaction between Sea Swift and TML

Recent competition between Sea Swift and TML

- 9.1 Until the last two years, there was limited competitive overlap between Sea Swift and TML with respect to the provision of coastal and community services. Sea Swift operated solely in FNQ and the TML business operated predominantly in the NT (although when Toll acquired Perkins in 2009, the TML business inherited two customers on, and therefore serviced, the Cairns-Weipa route in FNQ).
- 9.2 The competitive overlap between Sea Swift and TML increased in the last two years after Sea Swift commenced services in the NT in 2013 and TML expanded its services in FNQ, beyond the Cairns-Weipa route into the OTSI in around early 2014.
- 9.3 TML has only operated in the OTSI, and has only operated as a full service provider in FNQ, for a short period. Our expansion into the OTSI has not been successful, as I discuss below.

Sea Swift entry into NT

- 9.4 Sea Swift entered the NT in 2013, through the acquisition of Tiwi Barge, based at Hudson Creek in Darwin. Tiwi Barge had operated in the NT for some time providing a scheduled service to the Tiwi Islands.
- 9.5 Sea Swift's expansion in the NT in 2013 was supported and assisted by Caltex, which awarded its NT Power & Water contract (which was then held by Caltex) to Sea Swift. In addition to losing the NT Power & Water Contract to Sea Swift, TML later lost another large base load customer contract in the NT to Sea Swift, being the Woolworths Gove contract in early 2014. Just prior to losing the Woolworths Gove contract, TML's other major customer in Gove – Rio Tinto – announced in November 2013 it was closing its alumina refinery in Gove. Over this period, in FNQ, TML also lost the Rio Tinto Weipa contract to Sea Swift in or around July 2013, and soon after lost the Woolworth Weipa contract in or around November 2013. These were the only large customer contracts that TML held in FNQ.

Toll's initial response to Sea Swift entry into NT

- 9.6 Now shown to me and marked **SW-27** is a true copy of a confidential strategy paper prepared by TML staff and I in October 2013 which explored a number of options to respond to the entry of Sea Swift in the NT and sought to protect Toll's investment in the TML business.
- 9.7 At that point in time, Toll determined that the most timely and effective option (including in terms of cost) would be to respond vigorously, including by competing in Sea Swift's core Torres Strait market. [REDACTED]

Toll expansion in FNQ through entry into OTSI

- 9.8 In addition to revising our pricing or price matching to remain competitive with Sea Swift in an attempt to retain our customer base, TML's subsequent response to Sea Swift's entry also involved Toll deciding to expand TML's services in FNQ, specifically into the OTSI, in or around January 2014.

- 9.9 This OTSI expansion ultimately resulted in TML tendering for and winning IBIS as a customer, which was one of Sea Swift's key customer contracts. TML first approached IBIS in late 2013 and successfully tendered for the IBIS in the first half of 2014. The contract commenced in late 2014. As I noted above, this contract has been subcontracted to Sea Swift. Servicing this contract by way of subcontracting is, however, a loss-making exercise. That is, it is costing us more to have Sea Swift perform the contract than we generate in revenue. We are making a net loss of approximately [REDACTED]. I refer to the profit and loss statements provided later in this statement which provide the basis for this figure.
- 9.10 Toll has not been successful in winning any other larger customer contracts in FNQ and therefore lacks the predictable 'base load' volumes provided by these larger customer contracts and its FNQ operations are heavily loss making. The service performed by our *Fourcroy* vessel in the OTSI has no base volumes provided by a larger customer contract. While it operates a weekly service, it visits some port destinations in the OTSI when there are sufficient volumes to warrant doing so. We would not call at a destination if there was no or very little freight for that port.
- 9.11 In FY2014, TML's operations in FNQ incurred a net loss of [REDACTED] (taking into account revenues, vessel costs and shore side costs but not overheads) while in FY2015 we incurred a net loss of [REDACTED]. By comparison, in FY2013, when we still held the Rio Tinto and Woolworths Weipa contracts and had not expanded into the OTSI, we made a net profit of [REDACTED] (taking into account revenues, vessel costs and shore side costs but not overheads). I refer to the profit and loss statements provided later in this statement which provide the basis for these figures.
- 9.12 We are obliged to continue to operate services in FNQ under the Toll Interim Undertaking provided to the ACCC, pending a decision by the Tribunal.

Toll's subsequent strategies

- 9.13 An internal analysis of the impact of, and TML's potential responses to, Sea Swift's entry and deployment of capacity into the NT was canvassed in a confidential strategy presentation to Toll's Managing Director, Brian Kruger, dated 31 March 2014. This presentation was prepared as part of the Toll Group's annual strategic planning process. The presentation outlined a strategic plan for the overall TML business at that time,

including with respect to operations in the NT and FNQ. Now shown to me and marked **SW-28** is a true copy of this presentation.

- 9.14 Having regard to the matters referred to above and below (including the high fixed costs of operating marine freight businesses, the nature of demand in these markets and TML's recent financial performance), I do not consider that the situation in which both TML and Sea Swift are full service providers operating services to most or many port destinations in the NT and FNQ on a scheduled basis is sustainable.
- 9.15 In September 2014, I was informed of the proposed transaction with Sea Swift by David Jackson.

10. TML's costs, revenues and performance

Costs of operating the TML business

- 10.1 The main cost drivers associated with TML's provision of coastal and community shipping services in the NT and FNQ are as follows:

Vessel related costs

- (a) In terms of vessel related costs, we incur costs associated with vessel ownership (namely depreciation) and costs associated with chartering or hiring vessels, as well as related costs for vessel insurance and registration. These costs are fixed and incurred regardless of vessel usage or the volumes being carried.
- (b) In addition to these costs, the main costs for operating a vessel which provides coastal and community services on a regular schedule are vessel maintenance charges, fuel costs, labour costs (ie crew salaries), and access charges for landing facilities (sometimes called maritime fees) and harbour / pilot fees (where applicable).
- (c) Labour or crew costs primarily depend on the how many vessels are in operation. Crew costs would only change if TML added or removed a vessel to or from our fleet. Crew numbers on a particular vessel do not generally vary because health and safety regulations require minimum number of crews on particular vessels. These costs are independent of the volume carried by the vessel on a particular voyage.

- (d) While vessel maintenance costs may vary, there is typically a base amount of maintenance that must be carried out (irrespective of vessel usage) because regular planned / scheduled maintenance is required. Additional maintenance is required if the vessel is damaged or if it is being used more frequently and incurring more wear and tear.
- (e) Fuel costs primarily depend on the how many vessels are in operation and their usage. Fuel consumption may change if a vessel is used less frequently or if a route changes. The fuel costs for each voyage however are incurred regardless of the volumes being carried.
- (f) There are also related vessel costs such as oil and other vessel consumables, crew supplies / provisions, and communications.

Shore side costs

- (g) There are various fixed costs associated with owning or renting a depot (eg property costs) and maintaining a depot, including related costs such as insurance. These costs would only change if an existing depot were no longer needed and could be closed down, or if a new depot would need to be opened to serve customers in a new port destination. These costs are not dependent on the volumes of freight moving through the depot or the frequency of vessel visits.
- (h) There are costs relating to owning or renting mobile equipment (such as forklifts) used at the depot to handle freight. A base level of equipment is required, with additional equipment dependant on the volumes of freight being handled. There are also fuel and related costs to operate and maintain that equipment (eg fuel required to operate forklift machinery). There are also hire or rental costs for containers, refrigerated container (reefers) and storage boxes. These costs will vary depending on the level of freight being handled.
- (i) There are also labour costs in respect of the staff who operate the depot and handle freight. A base level of labour is required, with additional labour dependant on the volumes of freight being handled.

Overheads

- (j) There are various direct and allocated administrative, management and related overheads incurred in the provision of coastal and community services. The TML business is allocated a proportion of Toll Group corporate overheads, and TML management or corporate overheads are allocated across the different lines of the TML business (for example, as between coastal and community shipping and oil & gas) based on a proportion of revenues.

Summary of costs

- 10.2 I refer to annexure **SW-17** which includes a confidential table prepared by Toll summarising TML's key categories of costs in FY2015, as well as a description of the nature of those costs. While many of these costs are fixed, they are not necessarily sunk costs. I also refer to the profit and loss spreadsheets provided later in this statement which detail costs in each of the NT and FNQ.

TML revenue sources

- 10.3 The primary source of revenue for the TML business in the NT and FNQ is through the carrying of cargo freight, ie the provision of coastal and community shipping services. The other sources of revenues are incidental and ancillary to this service. For example, fuel sales generate relatively little net revenue. In FY2015, these fuel sales generated net revenue of [REDACTED] in the NT and [REDACTED] in FNQ.
- 10.4 Revenues from other ancillary and incidental services provided as part of its provision of coastal and community shipping services are also relatively small. They generate little net revenue. The provision of OSR services to Rio Tinto in Gove and GEMCO in Groote Eylandt, for example, generated total net revenue of [REDACTED] in FY2015.

TML financial records

Profit and loss statements

- 10.5 Now shown to me and marked **SW-29** are true copies of confidential profit and loss spreadsheets for FY2011 and FY2012 prepared by Toll. This covers both scheduled services and charter services. I note that prior to FY2013, TML's profit and loss data was presented in a different format and used a different system. To assist the Tribunal, Toll

has nevertheless provided and profit and loss data for FY2011 and FY2012. I note that, because of the different systems, this cannot be consistently compared with more recent profit and loss information.

- 10.6 Now shown to me and marked **SW-30** are true copies of confidential profit and loss statements (management accounts) for the NT and FNQ portion of TML business for each of FY2013, FY2014, and FY2015. This covers both scheduled services and charter services.
- 10.7 Now shown to me and marked **SW-31** is a true copy of a confidential profit and loss statement for FY2015 broken down by month. This covers both scheduled services and charter services.
- 10.8 Toll has not prepared a full year forecast for the TML business in NT and FNQ for the current FY2016 financial year. However, it has prepared a forecast through until 30 November 2015, ie for approximately so long as the TML business continues to operate while the application is considered by the Tribunal and the Toll Interim Undertaking is in place.
- 10.9 Now shown to me and marked **SW-32** is a true copy of a confidential profit and loss spreadsheet showing this partial forecast for FY2016 (**P&L 2016 Partial Forecast**). This covers both scheduled services and charter services.

Cash flow records

- 10.10 Toll does not ordinarily prepare cash flow statements for the NT and FNQ portion of TML business in its own right. Toll considers that the profit and loss statements (including EBITDA information) for the TML business the NT and FNQ provide an accurate proxy for the business' cash flow and financial position.
- 10.11 However, to assist the Tribunal, Toll has prepared and supplied cash flow statements for the NT and FNQ portion of TML business. Now shown to me and marked **SW-33** is a true copy of a confidential cash flow summary prepared by Toll summarising the EBITDA and cash flow positions for TML in the NT and FNQ between FY2011 and FY2015 (**Historical Cash Flow Summary**).

11. TML's recent financial performance

11.1 As noted above, Toll acquired Perkins in 2009. Since that time, the TML business has financially performed very poorly against its original business case, in particular, in relation to the provision of coastal and community shipping services on a scheduled basis in the NT and FNQ. This performance of the TML business has further deteriorated significantly over the last few years.

Significant reduction in volumes

11.2 There has been a significant reduction in TML's volumes in recent years:

[REDACTED]

11.3 The volumes in FNQ for FY2015 incorporate volumes under the IBIS contract which commenced in December 2014. This contract is subcontracted to, and performed by, Sea Swift. The FY2015 figures thereby overstate the volumes actually carried by the TML business in the FNQ.

11.4 Now shown to me and marked **SW-34** is a true copy of a confidential summary table prepared by Toll using data from Toll's freight management system, which shows the shifts in TML's volume over FY2011 to FY2015.

11.5 The reduction in TML's volumes and revenue has been caused by a number of factors, including the following:

- (a) In some locations in the NT and FNQ, the reduction in volumes has been contributed to by contraction in mining activities (and associated reduction in construction and expansion projects). For example the closure of the Rio Tinto alumina refinery in Gove, and the flow on effects (in particular the decline in the number of residents in Gove) means that TML has seen a significant drop in its Gove volumes and continues to face a downward trend in demand and associated cargo volumes in relation to Gove in the NT. In the past, we operated two vessels on the Darwin-Gove-Groote route. The drop in volumes in Gove

(including through loss of the Woolworths Gove contract) meant that we could no longer sustain two vessels on the route. We therefore no only have one vessel. Now shown to me and marked **SW-35** is a true copy of a confidential table prepared by Toll using data from Toll's freight management system which shows TML's volumes for Gove over the past five years. The increase in back leg freight in 2014 reflects the movement of significant volumes of personal effects from Gove as a result of the reduction in residents.

- (b) This shift in volume direction also contributed to further declines in revenue.

TML's major contract at Gove is with Rio Tinto. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This

transport of personal effects has largely completed now, so the freight volumes have return to more being forward volumes again, albeit significantly reduced compared to prior to the shut down taking place.

- (c) A major cause of the declining volumes has been the loss of larger customer contracts. This escalated markedly in 2013 following the entry by Sea Swift into scheduled services in the NT in early 2013 and its subsequent expansion, followed by TML's entry into FNQ, as I discussed above.

Significant reduction in revenues

11.6 The corresponding reduction in TML's revenues with respect to its NT and FNQ operations has been substantial.

- (a) Total revenues in FY2013 of approximately [REDACTED] fell to approximately [REDACTED] in FY2014, a drop of [REDACTED]. Revenues in FY2015 have dropped slightly from FY2014 levels to [REDACTED].

(b) In the NT, TML generated total revenues of [REDACTED] in FY2014. These dropped to [REDACTED] in FY2015. In FNQ, TML generated total revenues of [REDACTED] in FY2014. These increased to [REDACTED] in FY2015. This FNQ revenue increase is largely attributable to TML winning the IBIS contract, although as I noted above, Toll has subcontracted this contract and is actually making a net loss with respect to the performance of that contract.

11.7 I refer to the confidential profit and loss spreadsheet prepared by Toll which summarises TML's financials with respect to its NT and FNQ operations between FY2013 to FY2015 in **SW-30**, referred to above.

Profitability / negative EBITDA results

11.8 This reduction in revenue has had a devastating effect on the business's overall performance. The P&L Summary I refer to above shows that TML's earnings before interest, tax, depreciation and amortization (**EBITDA**) with respect to its NT and FNQ operations was [REDACTED]

11.9 As noted above, Toll has not prepared a full year forecast for the TML business in NT and FNQ for the current financial year. However, we expect that these losses are forecast to continue in FY2016 for so long as the TML business continues to operate. The P&L 2016 Partial Forecast shows a forecast EBITDA, until 30 November 2015, of [REDACTED]

Significant cash losses being generated

11.10 In terms of cash flow, TML's NT and FNQ operations have generated significant cash losses in recent years. I refer to the confidential Historical Cash Flow Summary prepared by Toll summarising the EBITDA and cash flow positions for TML in the NT and FNQ between FY2011 and FY2015 in **SW-33**.

11.11 The Historical Cash Flow Summary shows that TML's NT and FNQ operations:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Failure to meet internal performance benchmarks

11.12 Toll has financial standards or 'hurdles' that its business units must meet. Now shown to me and marked **SW-36** is a true copy of Toll's Capital Expenditure Manual (version 2.0) dated 1 August 2012 (**Capital Expenditure Manual**). This manual sets out Toll's internal requirements of justification of capital expenditure decisions within Toll.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.16 In considering the historical financial performance of the TML FNQ and NT businesses, I have reviewed financial statements of the businesses including cash flow summaries which have been prepared on a number of different bases.

11.17 In particular, I refer to the Historical Cash Flow Summary I described above. This cash flow summary uses a capital value of [REDACTED] which represents Toll's initial

investment in TML (after taking account of the proceeds of the divestment of the Perkins international liner service) and reflects an appropriate basis to assess the historical financial performance of the business against the initial investment.

11.18 Now shown to me and marked **SW-37** is a true copy of a confidential cash flow summary prepared by Toll summarising the cash flow positions for TML in the NT and FNQ between FY2011 and FY2015 which uses an alternative capital value of [REDACTED] rather than the [REDACTED] capitalised value (**Cash Flow Summary (Exit Value)**). The capital value of [REDACTED] represents the adjusted realisable cash value for the TML business if wound up and the assets sold, ie the exit value. This has been calculated for the purpose of assisting Toll assess whether future sustaining capital investment in the loss making TML business in the NT and FNQ meets our financial performance benchmarks if 'sunk' or 'unrecoverable' past capital investment in the business is ignored.

11.19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Failure to meet 'break even' cost of capital thresholds

11.20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11.21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cumulative cash losses significant

11.22 I further observe from these cash flow summaries that the cumulative cash losses with respect to the TML business in the NT and FNQ are substantial. When calculated on the

basis of Toll's initial [REDACTED] investment in the TML business (after taking account of the proceeds of the divestment of the Perkins international liner service) which I consider an appropriate approach to be adopted with respect to historical losses, cumulative cash losses totalled approximately [REDACTED] in FY2015.

Hypothetical stay in business assessment

11.23 Now shown to me and marked **SW-38** are true copies of two confidential cash flow summaries prepared by Toll (**Hypothetical Cash Flow Summaries**) which seek to illustrate the size of the returns that TML's operations in the NT and FNQ would need to meet Toll's performance benchmarks if – hypothetically – Toll sought to use the [REDACTED] [REDACTED] of adjusted realisable capital in TML in its current use, rather than exit and realise this value. I note that this modelling is primarily included to illustrate the magnitude of the financial improvements and turnaround that would be required for the TML business in the NT and FNQ to exceed our required hurdle rates from its current heavily loss making position.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11.24 These illustrative examples further demonstrate the fundamentally unattractive and unsustainable financial position of TML in the NT and FNQ and reinforces why, absent the proposed transaction, I have recommended that this business be wound up.

12. TML's recent restructuring efforts

12.1 As a result of TML's poor financial performance, Toll has implemented a range of restructuring measures since 2013 designed to improve the profitability of the TML business. These measures have been principally targeted at reducing costs and increasing efficiencies particularly as regards the shipping operations in the NT and FNQ.

12.2 The measures have included:

- (a) rationalising vessels and optimising vessel routes, which facilitated a reduction in TML's fleet in the NT from five to four vessels (through the sale of the *Caledon Bay* vessel) which was followed by the sale and replacement of the *Melville Bay* vessel with the chartering of the more efficient *Territorian*, and then a further reduction in the number of operative vessels when the *Biquele Bay* was removed from regular scheduled services around August or September 2014;
- (b) changes to vessel loading and discharging times to stop unnecessary out of hours stevedore overtime;
- (c) switching operating models from the labour intensive 'lift on lift off' model to the more efficient roll on roll off model;
- (d) consolidating and rationalising freight terminals;
- (e) renegotiating supplier contracts;
- (f) entering into a transaction to sell TML's loss making international shipping service to ANL which completed in August 2014;
- (g) undertaking a complete overhaul of vessel / yard maintenance methodology, closing the in house repair facility and moving to a more sustainable subcontract model; and

(h) undertaking significant internal restructures to streamline management.

12.3 These measures have seen a reduction in TML's costs with respect to its NT and FNQ operations, principally to shore side costs and indirect operational overheads. These restructuring efforts have reduced the scale of TML's losses, but have not been able to – and in my view, will not – restore TML to a break-even position or acceptable profitability.

Limited ability to increase revenues

12.4 Taking into account limited demand for scheduled services and over capacity in the relevant markets referred to above, in my view, TML has limited ability to significantly increase its revenues in the NT and FNQ in the foreseeable future. Given customers sensitivity to price, any attempts to increase volumes typically come as a result of price reductions which has a negative or limited impact on overall revenue.

12.5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This assumes that there would be no shift in volume away from TML as a result of such a price rise (which is completely implausible). In my view, such a price uplift is impossible to implement.

Limited ability to further reduce fixed costs

12.6 Given the restructuring already undertaken, in my view, TML has no practical ability to reduce the scope or extent of its costs in a way that could meaningfully affect its profitability in the NT and FNQ. As noted above, the provision of a full service model involves high fixed costs. The only way to meaningfully reduce these fixed costs is to reduce the frequency of scheduled services. However, TML also has no ability to further reduce the frequency of its scheduled services without compromising security of supply and its contractual commitments. In addition, since the communities rely on the service

to provide a fresh supply of produce, any attempt to reduce the frequency of services from TML would see TML's current customers seek alternative shipping options.

12.7 TML also has no ability to further reduce its labour costs, [REDACTED]

13. The future of the TML business without the proposed transaction

13.1 For the reasons described in this statement and in particular the unsustainability of a loss-making operation, I have recommended to Toll's Managing Director, Brian Kruger, that the TML business in the NT and FNQ be wound up if the proposed transaction does not proceed.

Communication to customers regarding proposed transaction

13.2 To ensure that key stakeholders were appropriately apprised of the future with or without the proposed transaction with Sea Swift, I prepared and sent a letter to TML's customers in the NT and FNQ dated 26 February 2015, which explained why Toll's two options are either to proceed with the proposed transaction or wind up the business. This letter also explained why an undertaking was offered to the ACCC in connection with the proposed transaction and the benefit it offers as against the alternative of winding up the TML business in the NT and FNQ. Now shown to me and marked **SW-39** is a true copy of the letter I prepared and sent to customers dated 26 February 2015.

Steps to be taken by Toll on exit

13.3 Below I set out the steps that Toll currently intends to take to shut down TML's coastal and community shipping business in NT and FNQ in the event that the proposed transaction with Sea Swift does not proceed.

13.4 If the Tribunal does not grant authorisation, Toll's intention is that it will exit the relevant markets the relevant markets as soon as possible after the Tribunal's decision. Exiting will effectively involve Toll taking steps to cease TML's existing operations in the NT and FNQ and seeking to sell, dispose or redeploy each individual asset used by the TML business in the relevant markets.

Customer contracts

13.5 Toll is still considering is approach in relation to customer contracts in the event the proposed transaction does not proceed. [REDACTED]

13.6 [REDACTED] Toll's approach in this scenario has not yet been developed as it will depend on the circumstances of each case. [REDACTED]

13.7 In my view, in the event that the proposed transaction does not proceed, Toll's customers will face uncertain supply arrangements. [REDACTED]

[REDACTED]

[REDACTED] In contrast, the proposed transaction will ensure a smooth transition for customers and guaranteed continuity of services in the market.

Assets

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.9 In my view, and based on my knowledge of the nature of the relevant assets, there is no certainty that these assets will remain in the relevant markets in the NT and FNQ for use in the provision of scheduled services. In the case of vessels, for example, there is no certainty that they will be used by buyers to provide scheduled coastal and community shipping services in either the NT or FNQ. Due to the inherently mobile nature of vessels, there is no certainty that they remain in waters in the NT or FNQ or that they will even remain in Australian waters. Two vessels previously used by the TML business, namely the Caledon Bay and Melville Bay, were sold in recent years to buyers who Toll understands intended on using the vessels in Asian waters. This experience indicates to me that the likely market for these vessels is both Australian and overseas buyers.

Financial benefit of winding up

13.10 Toll has undertaken a detailed internal analysis of the likely costs and net impact of shutting down TML's operations in the NT and FNQ compared to a 'stay in business' scenario. Now shown to me and marked **SW-40** is a true copy of a confidential shut down analysis prepared by Toll, along with supporting materials, which sets out the estimated 'shut down' costs associated with winding up TML's operations in the NT and FNQ.

13.11 I can identify from this shut down analysis that:

- (a) From a cash flow perspective, Toll estimates that winding up the TML coastal and community shipping business in the NT and FNQ would generate the following cash impacts:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (b) From a profit and loss (P&L) statement perspective, Toll estimates that winding up the TML coastal and community shipping business in the NT and FNQ would have the following net impacts:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.12 From a financial perspective, these wind up figures indicate to me that there will be significant benefits to Toll flowing from the proposed transaction in terms of realising a value from the relevant assets of the TML NT FNQ business which is substantially greater than the likely value of those assets that would be achieved when broken up in a wind up.

TML's other operations

- 13.13 Post transaction or post wind up (as the case may be), Toll will continue to operate a marine logistics business in Australia and overseas.
- 13.14 These operations will include the provision of shipping services on a time charter basis to customers in Australia and overseas. These time charter services involve the provision of a fully crewed, dedicated vessel to a customer which is operated by TML on behalf of and at the customer's direction to facilitate the delivery of the customer's freight. The charter services do not typically involve the provision of any shore side services to the customer. The time charters that Toll will focus on will be for a duration of several months or years. The charters provide a fixed revenue stream with payment on a daily or weekly basis for the provision of the vessel, irrespective of freight volume. That is, revenues will not vary according to freight volumes. This allows better matching of costs and revenues.
- 13.15 Toll's marine logistics business will also continue to involve oil and gas marine logistics operations, such as those currently carried out in Gladstone by the TML business.

14. Additional information

14.1 In this section, I provide some additional information for the purposes of the Form S relating to the Application.

Extent of pre-existing relationships between TML and Sea Swift

14.2 There are limited vertical or horizontal relationships or arrangements currently in place between the TML business and Sea Swift. These are:

- (a) Sea Swift has accessed the facility at Gove managed by the TML business on an ad hoc basis. Access has been on commercial terms and on the standard rates for access currently offered by the TML business;
- (b) Sea Swift has chartered the *Biquele Bay* vessel for a temporary period due to the docking of one Sea Swift's vessels;
- (c) Toll has subcontracted the performance of a customer contract held by the TML business in FNQ, with IBIS, to Sea Swift;
- (d) Toll arranges for Sea Swift to carry freight to Port Keats for the purposes of TML's PUMA contract;
- (e) Toll and Sea Swift have subcontracted or outsourced the provision of coastal and community shipping services to each other on an ad hoc basis in order to ensure the continued provision of services to customers – for example, during periods in which a vessel needs to be docked or inspected, or in the event of equipment or vessel breakdown, failure or maintenance;
- (f) Toll and Sea Swift have a reciprocal slot rate arrangement in place which allows for each party to carry the other party's freight in the event of emergency, or breakdown etc. This provides an essential backup for unforeseen events and allows for remote ports to continue to receive essential supplies.

Other cooperative agreements in coastal and community shipping services

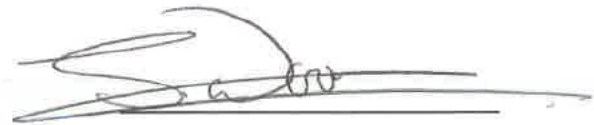
14.3 Other than as explained above, to my knowledge, Toll is not a party to any cooperative agreements or alliances in relation to the provision of coastal and community shipping services in the NT and FNQ.

15. Information provided by Toll for the purposes of RBB Report

15.1 I understand that Darren Rowland, who works for the TML business, provided certain financial and related information relating to TML's operation in the NT and FNQ, on Toll's behalf, to RBB for the purposes of preparing their updated report. I understand this material was drawn from Toll or TML records. I further understand this updated RBB report will be filed with or following the Application and that the information provided to RBB by Toll will be provided with that report.

I verify that I have read the contents of this statement and the documents referred to in it and that I am satisfied that to the best of my knowledge, information and belief, it is true and correct in every particular.

DATED 16th Sept 2015



Scott Woodward

16. INDEX OF ANNEXURES TO STATEMENT OF SCOTT WOODWARD

Annexure	Title	Confidentiality
SW-1	Suppliers of fuel in NT and FNQ	
SW-2	Forward nature of freight	Restriction of publication of whole document claimed
SW-3	TML shipping schedule	
SW-4	TML vessels	
SW-5	Proposed Toll commitments	Restriction of publication of part claimed
SW-6	Alternative available vessels	
SW-7	Alternative vessel combinations	
SW-8	Landing facility charges paid by TML in FY2015	Restriction of publication of whole document claimed
SW-9	TML facility at Gove	
SW-10	ACCC press release of 23 December 2003	
SW-11	Gove Existing Access Undertaking	
SW-12	Access by third parties at Gove	
SW-13	Current Gove Pricing	
SW-14	Landing facilities in Gove (map)	
SW-15	TML landing facilities and depot infrastructure & equipment in NT and FNQ	
SW-16	Selection of TML suppliers	Restriction of publication of part claimed
SW-17	Inputs / assets as proportion of revenue and nature of costs	Restriction of publication of whole document claimed
SW-18	Summary of assets to be transferred in each region	
SW-19	Revenue earned from contracted / non-contracted customers and charter customers	Restriction of publication of whole document claimed
SW-20	Larger customers	Restriction of publication of part claimed
SW-21	TML customer contact details	Restriction of publication of whole document claimed
SW-22	TML general rates as at 1 September 2015	Restriction of publication of whole document claimed
SW-23	TML general rates FY2011-FY2015	Restriction of publication of whole document claimed

Annexure	Title	Confidentiality
SW-24	TML contracts to be transferred	Restriction of publication of part claimed
SW-25	Historical exit and entry	
SW-26	Other providers	
SW-27	Toll Marine Logistics Northern Australia Strategy 14 October 2013	Restriction of publication of whole document claimed
SW-28	Toll Group – Strategic Plan – Marine Logistics 31 March 2014	Restriction of publication of whole document claimed
SW-29	Profit and loss statements for FY2011 and FY2012	Restriction of publication of whole document claimed
SW-30	Profit and loss statements FY2013, FY2014, FY2015	Restriction of publication of whole document claimed
SW-31	Profit and loss statement FY2015 – by month	Restriction of publication of whole document claimed
SW-32	Profit and loss statements FY2016 Partial Forecast	Restriction of publication of whole document claimed
SW-33	Historical Cash Flow Summary	Restriction of publication of whole document claimed
SW-34	TML volumes in NT and FNQ – FY2011 to FY2015	Restriction of publication of whole document claimed
SW-35	TML Gove volumes	Restriction of publication of whole document claimed
SW-36	Capital Expenditure Manual (v 2.0) 1 August 2012	Restriction of publication of whole document claimed
SW-37	Cash Flow Summary (Exit Value)	Restriction of publication of whole document claimed
SW-38	Hypothetical Cash Flow Summaries	Restriction of publication of whole document claimed
SW-39	Letter sent to customers dated 26 February 2015	
SW-40	Shut down analysis	Restriction of publication of whole document claimed