

# MALLESONS STEPHEN JAQUES

Mr Scott Gregson  
General Manager, Adjudication  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

16 November 2007

**Attention:** Mr David Hatfield

Dear Mr Gregson

**Pacific National (NSW) Pty Limited, QR Limited and Port Waratah Coal Services Limited  
- Applications for authorisation under sections 88(1) and 88(7) for a Vessel Queue  
Management System for coal loading at the Port of Newcastle**

Pacific National (NSW) Pty Limited ("PN"), QR Limited ("QR") and Port Waratah Coal Services Limited ("PWCS") (the "Parties") are joint applicants to this authorisation application. Clayton Utz acts for PN and we act for QR and PWCS in respect of the application.

## **1 Applications for authorisation**

The Parties apply for authorisation pursuant to sub-sections 88(1) and 88(7) of the *Trade Practices Act 1974 (Cth)* ("TPA") for the making of, or giving effect to, any contract, arrangement or understanding involving any or all of PN, QR and PWCS, and any producer of coal for export through the Port of Newcastle, or exporter or exporters of coal through the Port of Newcastle (whether they are shareholders in PWCS or not), which relates to or is in any way associated with the proposed Vessel Queue Management System ("VQMS") that is described in the attached Submission and which may constitute:

- a provision having the effect of substantially lessening competition within the meaning of section 45 of the TPA;
- exclusionary provisions within the meaning of section 45 of the TPA; and
- a provision to which sections 45D, 45DA or 45DB of the TPA might apply.

The authorisations are only sought for 2008.

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DX 113 Sydney ABN 22 041 424 954 syd@mallesons.com www.mallesons.com

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## 2 Application for urgent interim authorisation

The existing authorisation from the Australian Competition & Consumer Commission (“**Commission**”) for the PWCS Capacity Balancing System (“**CBS**”) expires on 31 December 2007.

Due to the cessation of the authorisation of the CBS, the Parties also seek an urgent interim authorisation for the VQMS so that it is in place prior to 31 December 2007 and provides commercial certainty that there will be in place a mechanism to manage the vessel queue.

Substantial demurrage costs are being incurred by the industry associated with vessel queues arising from insufficient Coal Chain capacity (as defined and discussed in the accompanying Submission) in the Hunter Valley. Coal Chain capacity is insufficient to meet demand for coal from offshore buyers for coal, which is being exported from the PWCS coal terminal (“**Terminal**”) at the Port of Newcastle.

The Hunter Valley Coal Chain Logistics Team has independently estimated 2008 Coal Chain capacity as 95 mtpa. Port nominations from producers are approximately 116 mtpa for 2008 so that aggregate demand for coal haulage services and for loading capacity at the Terminal will exceed Coal Chain capacity by approximately 21 million tonnes, based on forecast Coal Chain capacity of approximately 95 million tonnes. Demand for rail contracts for 2008 will also exceed 95 million tonnes.

The Parties note the difficult timing constraint placed on the Commission. However, the coal industry strived to the end of October 2007, but was not able to reach a compromise solution to the capacity imbalance for 2008. As a result, a default situation of each coal producer relying on its own individual commercial contracts and arrangements with service providers (the rail haulage companies PN and QR and the Terminal operator PWCS) has resulted. However, this default situation will lead to individual coal companies sending trains and vessels to the Terminal under their respective rail contracts and to the extent this still leads to a capacity imbalance it will lead to rail and Terminal congestion and extensive vessel queues.

In this situation, the service providers, PN, QR and PWCS, have recognised the need for a solution to manage the likely vessel queue and rail congestion and have formulated the proposed VQMS to replace the existing CBS which will expire on 31 December 2007. Given the expiry of the CBS on 31 December 2007, it is necessary to address the potential for producers and customers to send vessels to join the queue in advance of the expiration date as occurred in late 2006, which is likely to lead to it again reaching a substantial number of vessels (estimated to possibly again be over 70 as occurred in 2007), which not only will incur substantial deadweight demurrage costs for producers, but will lead to Terminal congestion at the rail interface and a vessel queue of potentially unmanageable proportions with associated issues for marine navigation, the

marine environment and associated environmental issues. Based on demurrage rate estimates provided by producers, the demurrage payable on an average vessel queue of between 60 and 70 ships during 2008 could exceed AUD500 million to AUD600 million. The actual demurrage payable on sustained high vessels queues in 2008 is likely to be significantly greater than in 2007, due to the increased cost of shipping being experienced in late 2007.

The VQMS, therefore, needs to be subject to urgent implementation to provide certainty for producers and service providers as well as relevant port authorities that the vessel queue will be managed. In these circumstances, the Parties submit that this is an urgent matter, being of a kind with respect to which it is appropriate for the Commission to grant interim authorisation.

The Parties note that there is likely to be some opposition and complaints as to the operation of elements of the VQMS and possibly as to an interim authorisation, as the VQMS will put in place a queue management system from a basis of what is the lesser of port nominations or what PN and QR consider is their respective contractual obligations to haul coal for coal producers for 2008 - that is the Coal Chain capacity numerator of 95 mtpa on the denominator of the lesser of port or rail contractual obligations to haul and load coal (ie contractual obligations is the denominator of N into  $95 - 95/N$ ). This is explained more fully in the Submission.

There are also some additional important changes intended to ensure improved alignment of commercial incentives to expand rail capacity and investment and improve efficiency by bringing greater individual entity accountability and appropriate investment in capacity increases.

### **3 Supporting materials**

We enclose:

- (a) Forms A, B and D, the application forms prescribed by regulation for authorisation of exclusionary provisions, agreements affecting competition and boycotts;
- (b) a confidential supporting Submission, of which Confidential Attachments C and D contain commercially sensitive information, which the Parties request be excluded from the public register;
- (c) a non-confidential version of the supporting Submission for the public register, from which Confidential Attachments C and D have been withheld; and

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- (d) a cheque for \$10,500 (being \$7,500 for lodgment of the application made under Form A and a concessional fee of \$1,500 for each of the related applications made under Form B and Form D).

#### 4 Confidentiality

As noted, Confidential Attachments C and D to the Parties' Submission contain commercially sensitive and confidential information both in terms of commercially confidential information generally, but also information which is confidential as between PN and QR which are rail haulage competitors. It is confidential as between them because the Confidential Annexures contain information as to their respective customer and commercial positions. Pursuant to section 89(5) of the TPA, the Parties request that the Commission exercises its power under section 89(5A) to exclude this information from the register kept by the Commission pursuant to section 89(3).

The Parties request the Commission place only this letter, Forms A, B and D, and the non-confidential version of the Submission (with Confidential Attachments C and D removed) on the public register.

Should you have any questions relating to this application, please contact me, or Kate Newman on (02) 9296 2119.

Yours sincerely



Dave Poddar  
Partner  
Direct line +61 2 9296 2281  
Direct fax +61 2 9296 3961  
Email [dave.poddar@malleasons.com](mailto:dave.poddar@malleasons.com)

# Form A

A 91068

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (1)*

## **EXCLUSIONARY PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### **1. Applicants**

- (a) Name of Applicants:  
*(Refer to direction 2)*

Pacific National (NSW) Pty Limited (“PN”), QR Limited (“QR”) and Port Waratah Coal Services Limited (“PWCS”)

- (b) Description of business carried on by applicants:  
*(Refer to direction 3)*

PN and QR are rail haulage operators who rail coal in New South Wales to the Port of Newcastle from the Hunter Valley and adjacent regions for coal producers.

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle (“Terminal”). PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export.

- (c) Address in Australia for service of documents on the applicants:

**Pacific National (NSW) Pty Limited**

c/- Ms Linda Evans  
Partner  
Clayton Utz  
Levels 19 - 35  
No. 1 O'Connell Street  
Sydney NSW 2000

**QR Limited and Port Waratah Coal Services Limited**

c/- Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
*(Refer to direction 4)*

The making of, or giving effect to, any contract, arrangement or understanding involving any or all of PN, QR and PWCS and any producer of coal for export through the Terminal, or exporter or exporters of coal through the Terminal (whether they are shareholders in PWCS or not) which relates to, or is in any way associated with, the proposed vessel queue management system ("VQMS") as described in the attached supporting Submission.

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:  
*(Refer to direction 4)*

In accordance with the contracts, arrangements or understandings described in 2(a) above, the applicants and the coal companies with whom they may enter into contracts may, from time to time, make and/or give effect to contracts, arrangements or understandings that are, or may be exclusionary provisions within the meaning of section 45 and section 4D of the *Trade Practices Act 1974 (Cth)* in connection with the supply and/or acquisition of coal handling services at the Terminal, and the supply and/or acquisition of rail haulage services to Hunter Valley coal exporters, including the transporting of coal to the Terminal along

various rail access paths (including paths leased to the Australian Rail Track Corporation), in particular arising from the proposed VQMS as described in the Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

- The provision of coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export; and
- The provision of above rail haulage services to Hunter Valley coal exporters, including loading coal at loading points in the Hunter Valley and adjacent regions and transporting the coal to the Terminal,

pursuant to and in accordance with the VQMS.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

1 January 2008 to 31 December 2008. In relation to the grounds supporting this period of authorisation, please refer to the supporting Submission.

### **3. Parties to the proposed arrangement**

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

**Pacific National (NSW) Pty Ltd**

Level 6, 15 Blue Street  
North Sydney NSW 2060

(For a description of PN's business, please refer to the supporting Submission).

**QR Limited**

305 Edward Street  
Brisbane QLD 4000

(For a description of QR's business, please refer to the supporting Submission).

**Port Waratah Coal Services Limited**

PO Box 57  
Carrington NSW 2294

(For a description of PWCS' business, please refer to the supporting Submission).

Additionally, any producer of coal for export through the Terminal or exporter of coal from the Terminal may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include the shareholders in PWCS listed in Attachment B of the supporting Submission, as well as other coal companies in the Hunter Valley in New South Wales producing coal for export listed in Attachment A of the Submission.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

Not applicable.

#### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
*(Refer to direction 6)*

Please refer to the supporting Submission.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the supporting Submission.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2(c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 7)*

Please refer to the supporting Submission.

#### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
*(Refer to direction 8)*

Please refer to the supporting Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to the supporting Submission.

**7. Contracts, arrangements or understandings in similar terms**

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:
- (b) Is this application to be so expressed?  
No.
- (c) If so, the following information is to be furnished:
- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:  
*(Refer to direction 9)*  
N/A.
- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:  
*(Refer to direction 10)*  
N/A.
- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:  
N/A.

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?  
Yes, PWCS is an unincorporated joint venture between the companies listed in Attachment B of the supporting Submission.
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?  
No.
- (c) If so, by whom or on whose behalf are those other applications being made?  
N/A.

**9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicants seeking authorisation to provide additional information in relation to this application:

**Pacific National (NSW) Pty Limited**

Ms Linda Evans  
Partner  
Clayton Utz  
Levels 19-35  
No. 1 O'Connell Street  
Sydney NSW 2000  
Telephone: (02) 9353 4217  
Facsimile: (02) 8220 6700

**QR Limited and Port Waratah Coal Services Limited**

Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone: (02) 9296 2281  
Facsimile: (02) 9296 3961

Dated..... *16 November 2007* .....

Signed by/on behalf of Pacific National  
(NSW) Pty Limited *Linda Evans by*  
*her partner: R Buchanan*  
.....  
(Signature)

*Luke Cameron Buchanan*  
.....  
(Full Name)

Clayton Utz  
.....  
(Organisation)

Partner  
(Position in organisation)

Signed by/on behalf of QR Limited and  
Port Waratah Coal Services Limited  
  
.....  
(Signature)

Dave Poddar  
.....  
(Full Name)

Mallesons Stephen Jaques  
.....  
(Organisation)

Partner  
(Position in organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions.

In providing these details —

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
  10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

**Form B**

A 91069

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (1)*

**AGREEMENTS AFFECTING COMPETITION:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicants**

- (a) Name of Applicants:  
*(Refer to direction 2)*

Pacific National (NSW) Pty Limited (“PN”), QR Limited (“QR”) and Port Waratah Coal Services Limited (“PWCS”)

- (b) Short description of business carried on by applicants:  
*(Refer to direction 3)*

PN and QR are rail haulage operators who rail coal in New South Wales to the Port of Newcastle from the Hunter Valley and adjacent regions for coal producers.

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle (“Terminal”). PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export.

- (c) Address in Australia for service of documents on the applicants:

**Pacific National (NSW) Pty Limited**

c/- Ms Linda Evans  
Partner  
Clayton Utz  
Levels 19 - 35  
No. 1 O'Connell Street  
Sydney NSW 2000

**QR Limited and Port Waratah Coal Services Limited**

c/- Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
*(Refer to direction 4)*

The making of, or giving effect to, any contract, arrangement or understanding involving any or all of PN, QR and PWCS and any producer of coal for export through the Terminal, or exporter or exporters of coal through the Terminal (whether they are shareholders in PWCS or not) which relates to, or is in any way associated with, the proposed vessel queue management system ("VQMS") as described in the attached supporting Submission.

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:  
*(Refer to direction 4)*

In accordance with the contracts, arrangements or understandings described in 2(a) above, the applicants and the coal companies with whom they may enter into contracts may, from time to time, make and/or give effect to contracts, arrangements or understandings that are, or may be exclusionary provisions within the meaning of section 45 of the *Trade Practices Act 1974* (Cth) in connection with the supply and/or acquisition of coal handling services at the Terminal, and the supply and/or acquisition of rail haulage services to Hunter Valley coal exporters, including the transporting of coal to the Terminal along various rail access paths (including paths leased to the

Australian Rail Track Corporation), in particular arising from the proposed vessel queue management system as described in the supporting Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

- The provision of coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export; and
- The provision of above rail haulage services to Hunter Valley coal exporters, including loading coal at loading points in the Hunter Valley and adjacent regions and transporting the coal to the Terminal,

pursuant and in accordance with the VQMS.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

1 January 2008 to 31 December 2008. In relation to the grounds supporting this period of authorisation, please refer to the supporting Submission.

### **3. Parties to the proposed arrangement**

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

**Pacific National (NSW) Pty Ltd**

Level 6, 15 Blue Street  
North Sydney NSW 2060

(For a description of PN's business, please refer to the supporting Submission).

**QR Limited**

305 Edward Street  
Brisbane QLD 4000

(For a description of QR's business, please refer to the supporting Submission).

**Port Waratah Coal Services Limited**

PO Box 57  
Carrington NSW 2294

(For a description of PWCS' business, please refer to the supporting Submission).

Additionally, any producer of coal for export through the Terminal or exporter of coal from the Terminal may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include the shareholders in PWCS listed in Attachment B of the supporting Submission as well as other coal companies in the Hunter Valley in New South Wales producing coal for export listed in Attachment A of the Submission.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

Not applicable.

#### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:

*(Refer to direction 6)*

Please refer to the supporting Submission.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the supporting Submission.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

Please refer to the supporting Submission.

#### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

Please refer to the supporting Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to the supporting Submission.

#### **7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements

or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

No.

(b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:  
(Refer to direction 9)

N/A.

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A.

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A.

#### **8. Joint Ventures**

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes, PWCS is an unincorporated joint venture between the companies listed in Attachment B of the supporting Submission.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

(c) If so, by whom or on whose behalf are those other applications being made?

N/A.

**9. Further information**

- (a) Name and address of person authorised by the applicants to provide additional information in relation to this application:

**Pacific National (NSW) Pty Limited**

Ms Linda Evans  
Partner  
Clayton Utz  
Levels 19-35  
No. 1 O'Connell Street  
Sydney NSW 2000  
Telephone: (02) 9353 4217  
Facsimile: (02) 8220 6700

**QR Limited and Port Waratah Coal Services Limited**

Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone: (02) 9296 2281  
Facsimile: (02) 9296 3961

Dated..... *16 November 2007* .....

Signed by/on behalf of Pacific National  
(NSW) Pty Limited *Linda Evans by*

*her partner: R Buchanan* .....

(Signature)

*Luke Cameron Buchanan* .....

(Full Name)

*Clayton Utz* .....

(Organisation)

*Partner*

(Position in organisation)

Signed by/on behalf of QR Limited and  
Port Waratah Coal Services Limited

*[Signature]* .....

(Signature)

*Dave Poddar* .....

(Full Name)

*Mallesons Stephen Jaques* .....

(Organisation)

*Partner*

(Position in organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

## Form D

A91070

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (7)*

### **SECONDARY BOYCOTTS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (7) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to engage, in concert with other persons, in conduct that hinders or prevents, or may hinder or prevent, a third person supplying goods to services to, or acquiring goods or services from, a fourth person
- to engage, in concert with other persons, in conduct that prevents or substantially hinders, or may prevent or substantially hinder, a third person from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### **1. Applicants**

- (a) Name of Applicants:  
*(Refer to direction 2)*

Pacific National (NSW) Pty Limited (“PN”), QR Limited (“QR”) and Port Waratah Coal Services Limited (“PWCS”)

- (b) Description of business, activity or occupation carried on by applicants:  
*(Refer to direction 3)*

PN and QR are rail haulage operators who rail coal in New South Wales to the Port of Newcastle from the Hunter Valley and adjacent regions for coal producers.

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle (“Terminal”). PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export.

- (c) Address in Australia for service of documents on the applicants:

**Pacific National (NSW) Pty Limited**

c/- Ms Linda Evans  
Partner  
Clayton Utz  
Levels 19 - 35  
No. 1 O'Connell Street  
Sydney NSW 2000

**QR Limited and Port Waratah Coal Services Limited**

c/- Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

**2. Conduct**

- (a) Description of the conduct proposed to be engaged in, for which authorisation is sought:  
*(Refer to direction 4)*

The making of, or giving effect to, any contract, arrangement or understanding involving any or all of PN, QR and PWCS and any producer of coal for export through the Terminal, or exporter or exporters of coal through the Terminal (whether they are shareholders in PWCS or not) which relates to, or is in any way associated with, the proposed vessel queue management system ("VQMS") as described in the attached supporting Submission.

- (b) Number of persons proposing to engage, in concert, in the conduct:

PN, QR and PWCS as well as any producer of coal for export through the Terminal or exporter of coal from the Terminal may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include shareholders in PWCS listed in Attachment B of the supporting Submission, as well as other coal companies in the Hunter Valley in New South Wales producing coal for export listed in Attachment A of the Submission

- (i) Where number of persons stated in item 2 (b) is less than 50, their names and addresses:

**Pacific National (NSW) Pty Ltd**

Level 6, 15 Blue Street  
North Sydney NSW 2060

(For a description of PN's business, please refer to the supporting Submission).

**QR Limited**

305 Edward Street  
Brisbane QLD 4000

(For a description of QR's business, please refer to the supporting Submission).

**Port Waratah Coal Services Limited**

PO Box 57  
Carrington NSW 2294

(For a description of PWCS' business, please refer to the supporting Submission).

**The Newcastle Coal Producers**

For the names and addresses of the Coal Producers, please refer to Attachment A of the supporting Submission.

- (c) Description of the goods or services to which the conduct (whether proposed or actual) relate:

- The provision of coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export; and
- The provision of above rail haulage services to Hunter Valley coal exporters, including loading coal at loading points in the Hunter Valley and adjacent regions and transporting the coal to the Terminal,

pursuant to an in accordance with the VQMS.

- (d) The term for which authorisation of the provision of the conduct is being sought and grounds supporting this period of authorisation:

1 January 2008 to 31 December 2008. In relation to the grounds supporting this period of authorisation, please refer to the supporting Submission.

### **3. Parties**

- (a) Name and address of the third person whose supply or acquisition of goods or services, or whose trade or commerce involving the movement of goods overseas, is to be, or may be, hindered or prevented by the conduct:

In accordance with the contracts, arrangements or understandings described in 2(a) above, the parties referred to above in 2(b) may, from time to time, be hindered or prevented in relation to the transport of coal through the Hunter Valley coal chain by PN and QR and the export of coal through PWCS' coal handling facilities at the Terminal.

- (b) Name and address of person to or from whom, or the place to or from which, supply or acquisition of goods or services is to be, or may be, hindered or prevented by the conduct:

Please refer to 3(a).

- (c) Names and addresses of persons on whose behalf application is made:

Not applicable.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
*(Refer to direction 5)*

Please refer to the supporting Submission.

- (b) Facts and evidence relied upon in support of these claims

Please refer to the supporting Submission.

### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 6)*

Please refer to the supporting Submission.

### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the conduct for which authorisation is sought, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (c) above and the prices of goods or services in other affected markets:  
*(Refer to direction 7)*

Please refer to the supporting Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to the supporting Submission.

**7. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*):

Yes, PWCS is an unincorporated joint venture between the companies listed in Attachment B of the supporting Submission.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?  
N/A.

**8. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicants seeking authorisation to provide additional information in relation to this application:

**Pacific National (NSW) Pty Limited**

Ms Linda Evans  
Partner  
Clayton Utz  
Levels 19-35  
No. 1 O'Connell Street  
Sydney NSW 2000  
Telephone: (02) 9353 4217  
Facsimile: (02) 8220 6700

**QR Limited and Port Waratah Coal Services Limited**

Mr Dave Poddar  
Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone: (02) 9296 2281  
Facsimile: (02) 9296 3961

Dated... 16 November 2007 .....

Signed by/on behalf of Pacific National  
(NSW) Pty Limited Linda Evans by

her partner: Buchanan

(Signature)

Like Cameron Buchanan

(Full Name)

Clayton Utz

(Organisation)

Partner

(Position in organisation)

Signed by/on behalf of QR Limited and  
Port Waratah Coal Services Limited

[Signature]

(Signature)

Dave Poddar

(Full Name)

Mallesons Stephen Jaques

(Organisation)

Partner

(Position in organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the conduct in respect of which authorisation is sought.
4. Provide details of the conduct in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
  6. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  7. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed conduct. Provide quantification of those detriments where possible.