

RESTRICTION OF PUBLICATION CLAIMED

DONALDSON COAL PTY LIMITED

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

SUPPLEMENTARY (CONFIDENTIAL) SUBMISSION IN
OPPOSITION TO AUTHORISATION APPLICATIONS LODGED BY
PORT WARATAH COAL SERVICES LIMITED, PACIFIC
NATIONAL (NSW) PTY LIMITED AND QR LIMITED (A91068 – A
91070)

DATED: 30 NOVEMBER 2007

REDACTED VERSION



RESTRICTION OF PUBLICATION CLAIMED

SUPPLEMENTARY (CONFIDENTIAL) SUBMISSION IN OPPOSITION TO AUTHORISATION APPLICATIONS LODGED BY PORT WARATAH COAL SERVICES LIMITED, PACIFIC NATIONAL (NSW) PTY LIMITED AND QR LIMITED (A91068 – A 91070)

1. Introduction and nature of information provided

This submission is made by Donaldson Coal Pty Limited (“**Donaldson**”).

This submission (“**supplementary submission**”) forms part of and is supplementary to a submission (“**primary submission**”) filed by Donaldson, Idemitsu Australia Resources Pty Limited and Whitehaven Coal Pty Limited (collectively the “**Producers**”) in opposition to the application for authorisation of a Vessel Queue Management System (“**the VQMS**”) proposed by Port Waratah Coal Services Limited (“**PWCS**”), Pacific National (NSW) Pty Limited (“**PN**”) and QR Limited (“**QR**”) in their joint application for authorisation (A91068-A91070) (“**the Application**”).

This supplementary submission includes confidential and commercially sensitive information relating to Donaldson’s financial position and its contractual obligations with third parties [REDACTED]

For the reasons set out in section 6 below, Donaldson requests that certain information contained in this supplementary submission be excluded from the public register.

Information which it is claimed should be excluded from the public register is redacted in a confidential version of this supplementary submission.

2. Primary reasons for opposition to the VQMS

Donaldson’s reasons for the opposition to the VQMS are more fully set out in the primary submission simultaneously filed with this supplementary submission with the Commission.

This supplementary submission is in support of the position put in the primary submission.

In brief, the primary submission makes the case that the Application should fail, both as it seeks interim authorisation and final authorisation, for reasons set out therein.

In support of the primary submission, this supplementary submission outlines the harm which Donaldson will suffer on the introduction of the VQMS, either on an interim or a final basis.

3. Background

To understand the impact of the VQMS on Donaldson in 2008, regard must be had to the consequence it has on the port allocation of Donaldson.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The VQMS operates, broadly, based on a concept of a "lesser of port or rail" allocation system.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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4. Harm caused by the VQMS to Donaldson

As mentioned above, Donaldson does not know its allocation for 2008 under the VQMS and no firm allocation beyond this period has ever been confirmed by PN.

Under the VQMS of course, Donaldson's "firm" rail commitment for 2008 is as determined by PN and not Donaldson. PN works out the "Contracted Volume" of its customers, which sets the "Rail Allocation". The VQMS also grants PN an indemnity to cover its decision.

In these circumstances, Donaldson submits that the harm to Donaldson must be assessed on the PN view.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For the periods where no VQMS is in place, the scenarios assume that the allocation available to Donaldson is its port nomination for 2008 with a reasonable scale back to take account of the capacity constraints at the port.

[REDACTED]

[REDACTED]

[REDACTED]

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(a) Harm to Donaldson if the VQMS is implemented from 1 January 2008 under an interim authorisation and final authorisation is not granted.

(i) If the VQMS is introduced **between January 2008 and March/April 2008**, and Donaldson receives an **annual allocation of 0 tonnes** under the VQMS this will have the following effect on Donaldson:

Employees

In January 2008, 10 Donaldson employees will be retrenched with jobs being re-offered in April 2008.

Donaldson expects that from 1 January 2008 an estimated 200 employees [REDACTED] will be retrenched. These jobs would be re-offered progressively from April 2008.

These employees cannot just be absorbed back into the industry or the region. This loss of employment is expected to have the usual flow on effects, including further loss of employment in the region.

Mines

On 1 January 2008 both the Donaldson and Tasman mining operations will be suspended. The Donaldson mine will be re-opened in April 2008 and the Tasman mine will be re-opened subject to further financing. The planned capital expenditure plans for the Tasman mine for 2008 would be deferred.

During January to March/April 2008, the following activities will still need to be carried out at the mine site:

- In the case of the Tasman mine all equipment would cease operating and ventilation in the mine will need to be maintained.
- Mining equipment will need to be periodically run on a weekly basis.

Cancellation of contracts

Contracts for the following services will need to be terminated or require scaling back to accommodate reduced coal production:

[REDACTED]

Some of these contracts are for fixed terms or are a “take or pay” structure.

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Cancellation or delay of future mine development

Further development work on the Abel mining operations which was due to commence in March 2008 would be delayed and the current plans on extensive capital expenditure for 2008 would be deferred. As a consequence there would be no coal production for the Abel mine for 2008.

Donaldson's on-going exploration program for 2008 would be deferred.

Termination of Sale Contracts

A total of approximately [REDACTED] of coal has been sold under contractual arrangements in 2008.

Donaldson will incur a heavy penalty if it is to terminate or not perform under these sale contracts.

Debt Facilities

Given the severe financial strains on Donaldson there is the potential for banks to recall loans. Equally, the cessation of business may also trigger a repayment of Donaldson's loan facilities.

[REDACTED]

[REDACTED]

The financial impact of this scenario, along with some further explanatory notes, is outlined in Annexure 7, Part A.

- (ii) If the VQMS is introduced **between January 2008 and March/April 2008**, and Donaldson receives an annual allocation of **800,000 to 1 million tonnes (ie 200,000 to 250,000 tonnes for the relevant period)** under the VQMS this will have the following effect on Donaldson:

Employees

In January 2008, 10 Donaldson employees will be retrenched with jobs being re-offered in April 2008.

Donaldson expects that from 1 January 2008, 100 employees [REDACTED]

[REDACTED] will be retrenched. These jobs would be re-offered progressively from April 2008.

These employees cannot just be absorbed back into the industry or the region. This loss of employment is expected to have the usual flow on effects, including further loss of employment in the region.

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Mines

On 1 January 2008, Donaldson mining operations will be reduced so that it operates at [REDACTED] of its normal capacity. The Tasman mining operations will be suspended.

During January to March/April 2008, the following activities will still need to be carried out at the mine site:

- In the case of the Tasman mine all equipment would cease operating and ventilation in the mine maintained.
- Mining equipment will need to be periodically run on a weekly basis.

Scaling back of contracts

Contracts for the following services will require scaling back to accommodate reduced coal production:

[REDACTED]

Some of these contracts are for fixed terms or are a “take or pay” structure.

Cancellation or delay of future mine development

Further development work on the Abel mining operations which was due to commence in March 2008 would be delayed and the current plans on extensive capital expenditure for 2008 would be deferred. As a consequence there would be no coal production for the Abel mine for 2008.

Donaldson’s on-going exploration program for 2008 would be deferred.

Debt Facilities

Given the severe financial strains on Donaldson there is the potential for banks to recall loans. Equally, the cessation of part of the business or the scaling back of operations may also trigger an accelerated repayment of Donaldson’s loan facilities.

[REDACTED]

[REDACTED]

The financial impact of this scenario, along with some further explanatory notes, is outlined in Annexure 7, Part B.

- (b) Harm to Donaldson if the VQMS is implemented from 1 January 2008 under an interim authorisation and final authorisation is granted.

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- (i) If the VQMS is introduced **between January 2008 and December 2008**, and Donaldson receives an **annual allocation of 0 tonnes** under the VQMS this will have the following effect on Donaldson:

Employees

On 1 January 2008, 10 Donaldson employees will be made redundant followed by another 10 in April 2008.

Donaldson expects that from 1 January 2008 an estimated 200 employees [REDACTED] will be retrenched.

These employees cannot just be absorbed back into the industry or the region. This loss of employment is expected to have the usual flow on effects, including further loss of employment in the region.

Mines

On 1 January 2008 both the Donaldson and Tasman mining operations will be suspended. The planned capital expenditure plans for the Tasman mine for 2008 would be deferred.

During January to December 2008, the following activities will still need to be carried out at the mine site:

- In the case of the Tasman mine all equipment would need to cease operating and ventilation in the mine will need to be maintained.
- Mining equipment will need to be periodically run.

Cancellation of contracts

Contracts for the following services will need to be terminated:

[REDACTED]

Some of these contracts are for fixed terms or are a "take or pay" structure.

Cancellation or delay of future mine development

Further development work on the Abel mining operations would be delayed and the current plans on extensive capital expenditure for 2008 would be deferred. As a consequence there would be no coal production for the Abel mine for 2008.

Donaldson's on-going exploration program for 2008 would be deferred.

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Termination of Sale Contracts

A total of approximately [REDACTED] tonnes of coal has been sold under contractual arrangements in 2008.

Donaldson will incur a heavy penalty if it is to terminate or not perform under these sale contracts.

Debt Facilities

Given the severe financial strains on Donaldson there is the potential for banks to recall loans. Equally, the cessation of business may also trigger a repayment of Donaldson's loan facilities.

[REDACTED]

[REDACTED]

The financial impact of this scenario, along with some further explanatory notes, is outlined in Annexure 8, Part A.

- (ii) If the VQMS is introduced **between January 2008 and December 2008**, and Donaldson receives an **annual allocation of 800,000 to 1 million tonnes** under the VQMS this will have the following effect on Donaldson:

Employees

In January 2008, 10 Donaldson employees will be retrenched with another 10 employees in April 2008.

Donaldson expects that from 1 January 2008, 100 employees [REDACTED]

[REDACTED]

[REDACTED] will be retrenched.

These employees cannot just be absorbed back into the industry or the region. This loss of employment is expected to have the usual flow on effects, including further loss of employment in the region.

Mines

On 1 January 2008, Donaldson mining operations will be reduced so that it operates at [REDACTED] of its normal capacity. The Tasman mining operations will be suspended.

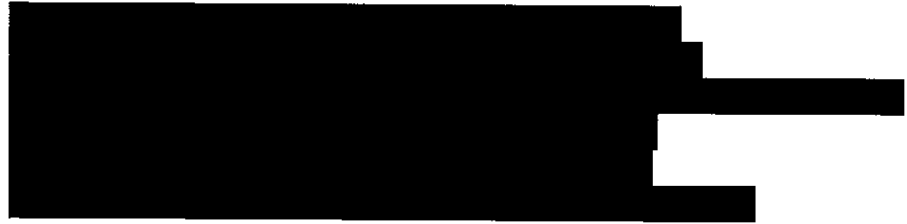
During January to December 2008, the following activities will still need to be carried out at the mine site:

- In the case of the Tasman mine all equipment would cease operating and ventilation in the mine maintained.
- Mining equipment will need to be periodically run on a weekly basis.

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Scaling back of contracts

Contracts for the following services will require scaling back to accommodate reduced coal production:



Some of these contracts are for fixed terms or are a “take or pay” structure.

Cancellation or delay of future mine development

Further development work on the Abel mining operations which was due to commence in March 2008 would be delayed and the current plans on extensive capital expenditure for 2008 would be deferred. As a consequence there would be no coal production for the Abel mine for 2008.

Donaldson’s on-going exploration program for 2008 would be deferred.

Termination of Sale Contracts

A total of approximately [redacted] tonnes of coal has been sold under contractual arrangements in 2008.

Donaldson will incur a heavy penalty if it is to terminate or not perform under these sale contracts.

Debt Facilities

Given the severe financial strains on Donaldson there is the potential for banks to recall loans. Equally, the cessation of part of the business or the scaling back of operations may also trigger an accelerated repayment of Donaldson’s loan facilities.



The financial impact of this scenario, along with some further explanatory notes, is outlined in Annexure 8, Part B.

- (c) Harm to Donaldson if the interim authorisation is not granted but the VQMS is implemented from March/April 2008 under a final authorisation.
 - (i) If the VQMS is introduced **between March/April 2008 and December 2008**, and Donaldson receives an **annual allocation of 0 tonnes** under the VQMS this will have the following effect on Donaldson:

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Employees

On 1 April 2008, 20 Donaldson employees will be retrenched.

Donaldson expects that from 1 April 2008 an estimated 200 employees

will be retrenched.

These employees cannot just be absorbed back into the industry or the region. This loss of employment is expected to have the usual flow on effects, including further loss of employment in the region.

Mines

On 1 April 2008 both the Donaldson and Tasman mining operations will be suspended for the rest of 2008. The planned capital expenditure plans for the Tasman mine for 2008 would be deferred.

During March/April to December 2008, the following activities will still need to be carried out at the mine site:

- In the case of the Tasman mine all equipment would need to cease operating and ventilation in the mine will need to be maintained.
- Mining equipment will need to be periodically run.

Cancellation of contracts

Contracts for the following services will need to be terminated or scaled back due to reduced coal production:

[REDACTED]

Some of these contracts are for fixed terms or are a "take or pay" structure.

Cancellation or delay of future mine development

Further development work on the Abel mining operations which was due to commence in March 2008 would be delayed would be delayed and the current plans on extensive capital expenditure for 2008 would be deferred. As a consequence there would be no coal production for the Abel mine for 2008.

Donaldson's on-going exploration program for 2008 would be deferred.

Termination of Sale Contracts

A total of approximately [REDACTED] tonnes of coal has been sold under contractual arrangements in 2008.

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Donaldson will incur a heavy penalty if it is to terminate or not perform under these sale contracts.

Debt Facilities

Given the severe financial strains on Donaldson there is the potential for banks to recall loans. Equally, the cessation of business may also trigger a repayment of Donaldson's loan facilities.

[REDACTED]

[REDACTED]

The financial impact of each of this scenario, along with some further explanatory notes, is outlined in Annexure 9, Part A.

- (ii) If the VQMS is introduced between **March/April 2008 and December 2008**, and Donaldson receives an annual allocation of **800,000 to 1 million tonnes (ie 200,000 to 250,000 tonnes for the relevant period)** under the VQMS this will have the following effect on Donaldson:

Employees

Donaldson expects that from 1 April 2008, 50 employees [REDACTED]

[REDACTED]

will be retrenched.

These employees cannot just be absorbed back into the industry or the region. This loss of employment is expected to have the usual flow on effects, including further loss of employment in the region.

Mines

On 1 April 2008, Donaldson mining operations will be reduced so that it operates at [REDACTED] of its normal capacity.

Scaling back of contracts

Contracts for the following services will require scaling back to accommodate reduced coal production:

[REDACTED]

Some of these contracts are for fixed terms or are a "take or pay" structure.

Cancellation or delay of future mine development

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Further development work on the Abel mining operations which was due to commence in March 2008 would be delayed and the current plans on extensive capital expenditure for 2008 would be deferred. As a consequence there would be no coal production for the Abel mine for 2008.

Donaldson's on-going exploration program for 2008 would be deferred.

Termination of Sale Contracts

A total of approximately [REDACTED] tonnes of coal has been sold under contractual arrangements in 2008.

Donaldson will incur a heavy penalty if it is to terminate or not perform under these sale contracts.

Debt Facilities

Given the severe financial strains on Donaldson there is the potential for banks to recall loans. Equally, the cessation of part of the business or the scaling back of operations may also trigger an accelerated repayment of Donaldson's loan facilities.

[REDACTED]

[REDACTED]

The financial impact of this scenario, along with some further explanatory notes, is outlined in Annexure 9, Part B.

5. Additional concerns of Donaldson

Donaldson is concerned that PWCS is implementing the VQMS pre any authorisation from the Commission.

Donaldson believes that PWCS has sought to introduce the VQMS from 21 November 2007. PWCS claims that it is acting so as to gather information only, but Donaldson is of the view that the actions undertaken by PWCS go further than that.

Donaldson submits that this is evidenced by the following correspondence:

- (a) A "customer notice" issued by PWCS.

On 19 November 2007, PWCS issued a Customer Notice relating to an update to the liquid office application form. The notice stated that under the current Coal Handling Services Agreement ("CHSA"), PWCS is entitled to require each Customer to provide information concerning the transportation of coal to the Terminals. PWCS announced that it had updated the application form to include a new section relating to transportation details. That being:

"Failure to identify a firm transportation commitment has consequences akin to not receiving port allocation."

A copy of the Customer Notice is attached at Annexure 10.

- (b) The response to the "customer notice" by Donaldson.

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On 22 November 2007, Donaldson Coal addressed a letter to PWCS advising PWCS of its position relating to the Customer Notice.

Donaldson is of the view that the update to the liquid office application form is not necessary given the extensive information already given under the CHSA to PWCS, and the change cannot unilaterally be made under the CHSA without consultation.

A copy of the letter dated 22 November 2007 is attached as Annexure 11.

- (c) The response to the Donaldson letter by PWCS.

On 28 November 2007, PWCS responded to Donaldson's letter of 22 November 2007.

A copy of the letter dated 28 November 2007 is attached as Annexure 12.

Donaldson persists with the view that the introduction of the amendment sought under the customer notice 19 November 2007 has the effect of introducing the key and fundamental aspect of the VQMS namely, that port allocations will not be granted unless there is at least equal rail capacity in place by the shipper.

6. Request that this information be excluded from the public register

Donaldson requests that pursuant to section 89(5A)(iii) and section 89(5A)(b) of the Trade Practices Act 1974 ("**the Act**") as read with Regulation 24 of the Trade Practices Regulations 1974 the Commission exclude certain information in this supplementary submission from the Register kept under sub-section 89(3) of the Act.

This supplementary submission includes certain:

- (a) Commercially sensitive information (including of a financial nature) relating to Donaldson and its businesses as well as information relating to contractual arrangements regarding Donaldson's mining arrangements, production and transportation of coal. Release of the information in this supplementary submission, as it goes to the future plans of Donaldson, may also cause concern amongst Donaldson's employees, customers and suppliers.
- (b) Details of the litigation pending between Donaldson and PN including correspondence between the litigants' respective lawyers. Such information is provided in response to contrary assertions made about the status of contractual arrangements between Donaldson and PN. Donaldson understands that such information has also been requested from PN, and that other than to the extent the information forms part of the public record in the proceedings currently between Donaldson and PN it constitutes private information of Donaldson and PN.

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Annexure 1



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Annexure 2



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Annexure 3



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Annexure 4



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Annexure 5



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Annexure 6



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Annexure 7

[REDACTED]

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Annexure 8



<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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RESTRICTION OF PUBLICATION CLAIMED

Annexure 9



RESTRICTION OF PUBLICATION CLAIMED

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Annexure 10

Customer Notice



CUSTOMER NOTICE

19 NOVEMBER 2007

CUSTOMER INTERFACE – UPDATE TO LIQUID OFFICE APPLICATION FORM

There has been much discussion recently regarding contracts for the haulage of coal to the Port. In order to assist with the efficient planning and operation of the Coal Handling Facility PWCS needs to ensure that, for each Shipment Contract, Customers have the ability to deliver the coal to the Coal Handling Facility.

Under the current Coal Handling Services Agreement ('CHSA'), PWCS is entitled to require each Customer to provide information concerning the transportation of coal to the Terminals.

PWCS has updated the Liquid Office Application Form to include a new Section 1D – Transportation Details. Under this section, Customers will be required to confirm and agree that:

- (a) The Customer has access to contracted volume with the transport provider sufficient to deliver to PWCS' Terminals the Shipment Contract Tonnes prior to the estimated time of commencement of loading of the vessel at the Terminal ('ETL'); and
- (b) The Customer will promptly advise PWCS if it receives any information that might or will affect the Customer's ability to deliver to PWCS' Terminals the Shipment Contract Tonnes prior to the ETL.

Section 1D must be confirmed 'Yes' each time the Application form is submitted to PWCS.

When signing the Application form, Customers will also be required to certify that arrangements are in place for the transportation of coal to PWCS in accordance with Section 1D.

This update to the Liquid Office Application form will be deployed after 5pm on Wednesday 21st November 2007 and is expected to take around 30 minutes to complete.

Customers are also reminded that the CHSA provides that:

- All information required on the Application must be complete and accurate in all respects (clause 3.2.1).
- PWCS may refuse to receive coal and is under no obligation to provide Coal Handling Services where the Customer has failed to provide information requested by PWCS concerning the transportation of coal (clause 3.5.5(c)(ii)).
- PWCS may change the order of loading of a vessel in certain circumstances, including in the event Coal is not available at the Coal Handling Facility to load the vessel according to the order of loading (clause 3.3.5(b)).

If any Customer has any questions in relation to this form, please contact Bruce Patchett on 02 4907 2285, PWCS' Customer Services Officer on 02 4907 2323 or e-mail the Customer Services mailbox (customer.services@pwcs.com.au).

JONATHAN VANDERVOORT
CHIEF FINANCIAL OFFICER

RESTRICTION OF PUBLICATION CLAIMED

Annexure 11



RESTRICTION OF PUBLICATION CLAIMED

Annexure 12



RESTRICTION OF PUBLICATION CLAIMED

Annexure 13

