



**Australian  
Competition &  
Consumer  
Commission**

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[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: A91072 – A91074  
Contact Officer: Sarah Chubb  
Contact Phone: (02) 6243 1088

5 December 2007

Ms Liza Carver  
Partner  
Gilbert + Tobin  
GPO Box 3810  
SYDNEY NSW 2001

Dear Ms Carver

**Newcastle Port Corporation – applications for authorisation A91072 - A91074 – interested party consultation**

I refer to the above mentioned applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 4 December 2007.

Please find enclosed, for your information, a copy of the letter the ACCC sent yesterday to potentially interested parties as part of its public consultation process.

All publicly available submissions will be posted on the ACCC internet site at [www.accc.gov.au](http://www.accc.gov.au). Alternatively, at the end of the consultation period the ACCC can arrange for you to receive a copy of all publicly available submissions received in relation to the application.

**Request for exclusion from the public register**

I refer to your request to exclude Attachment 3 to the supporting submission from the ACCC's public register.

I have considered your request that the above mentioned material be excluded from the public register.

As you are aware, the ACCC is generally required under section 89 of the *Trade Practices Act 1974* (the Act) to place documents provided to it in relation to an application for authorisation on the ACCC's public register. The Act provides that a person submitting a document in relation to an authorisation application may request that the document or parts

thereof be excluded from the public register by reason of the nature of certain information contained in the document.

As a person authorised to make a decision for and on behalf of the ACCC in relation to such a request, I advise that Attachment 3 to the supporting submission will not be placed on the public register.

### **Timetable**

The ACCC will progress its assessment of the applications for authorisation in a timely manner. An indicative timetable is set out below for your information.

<b>4 December 2007</b>	Lodgement of applications for authorisation and supporting submission. Interim authorisation also requested.
<b>4 December 2007</b>	Public consultation process begins.
<b>11 December 2007</b>	Closing date for submissions on interim authorisation.
<b>December 2007</b>	ACCC decision regarding interim authorisation.
<b>21 December 2007</b>	Closing date for submissions on the substantive applications for authorisation from interested parties.
<b>January 2008</b>	Applicant responds to issues raised in the public consultation process.
<b>February 2008</b>	ACCC issues draft determination.
<b>February/March 2008</b>	Public consultation on draft determination including any conference if requested.
<b>March/April 2008</b>	ACCC issues final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Sarah Chubb on (02) 6243 1088.

Yours sincerely



Scott Gregson  
General Manager  
Adjudication Branch



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Our Ref: A91072 - A91074  
Contact Officer: Sarah Chubb  
Contact Phone: (02) 6243 1088

4 December 2007

Dear Sir/Madam

**Newcastle Port Corporation – applications for authorisation A91072-A91074 – interested party consultation**

On 4 December 2007, the Australian Competition and Consumer Commission (the ACCC) received applications for authorisation A91072-A91074 from Newcastle Port Corporation.

Newcastle Port Corporation is seeking authorisation for a proposed system (the Proposed System) to address the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain in 2008. Newcastle Port Corporation has indicated that the Proposed System is, in all material respects, consistent with the Medium Term Capacity Balancing System (CBS) currently in effect but due to expire on 31 December 2007. Newcastle Port Corporation is seeking authorisation of the Proposed System from 1 January 2008 to 31 December 2008.

A full copy of the applications for authorisation and supporting submission is attached. A copy will also be available on the ACCC's website <[www.accc.gov.au](http://www.accc.gov.au)>.

The applications for authorisation lodged by Newcastle Port Corporation relate to the same issue as the applications lodged by Port Waratah Coal Services Limited (Port Waratah), Pacific National (NSW) Pty Limited (Pacific National) and QR Limited (QR) on 16 November 2007. In both cases, the applicants are seeking authorisation of arrangements designed to address the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain for 2008. However, while the system proposed by Newcastle Port Corporation is to effectively maintain the current CBS arrangement, Port Waratah, Pacific National and QR are seeking authorisation for a new Vessel Queue Management System (VQMS).

On 19 November 2007, the ACCC sent a letter to interested parties seeking their views in relation to the VQMS proposed by Port Waratah, Pacific National and QR. The purpose of this letter is to advise you of the applications lodged by Newcastle Port Corporation, and to seek your views in relation to Newcastle Port Corporation's Proposed System.

## **Interim authorisation**

Newcastle Port Corporation has requested interim authorisation of the Proposed System due to the pending expiration of the authorisation of the CBS.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefits and detriments likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors, including harm to the applicant and other parties if interim is or is not granted, possible benefits and detriments to the public, the urgency of the matter and whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

The ACCC seeks your comments on the request for interim authorisation by **Tuesday, 11 December 2007** – comments can be provided by email or fax to the contacts shown in the attached publication, *Authorisation process – the basics*.

## **Request for submissions**

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the Proposed System.

If you intend to provide a submission in relation to Newcastle Port Corporation's applications for authorisation, please do so by **Friday, 21 December 2007**. As noted above, submissions in relation to the request for interim authorisation should be provided by **11 December 2007**.

Alternatively, if you would like to provide comments orally, please contact Sarah Chubb on (02) 6243 1088 to organise a suitable time.

Submissions, including a record of oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

## Timetable

The ACCC will progress its assessment of the applications in a timely manner. An indicative timetable is set out below for your information.

<b>4 December 2007</b>	Lodgement of applications for authorisation and supporting submission. Interim authorisation also requested.
<b>4 December 2007</b>	Public consultation process begins.
<b>11 December 2007</b>	Closing date for submissions on interim authorisation.
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<b>March/April 2008</b>	ACCC issues final determination.

Please advise if you do not wish to make a submission at this time, but would like to be kept informed about the progress of this matter, including receiving a copy of the ACCC's draft and final determinations. In doing so, please provide the appropriate contact person and email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the applications.

This letter has been placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact David Hatfield on (02) 6243 1266 (or at [david.hatfield@accc.gov.au](mailto:david.hatfield@accc.gov.au)) or Sarah Chubb on (02) 6243 1088 (or at [sarah.chubb@accc.gov.au](mailto:sarah.chubb@accc.gov.au)).

Yours sincerely



Scott Gregson  
General Manager  
Adjudication Branch

## **Newcastle Port Corporation – applications for authorisation A91072 – A91074**

### **Initial consultation – interested parties**

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1. Anglo Coal Australia Pty Ltd
2. Austar Coal Mine Pty Limited
3. BHP Billiton - Energy Coal
4. Bloomfield Collieries Pty Limited
5. Centennial Coal Company Limited
6. Coal & Allied (Rio Tinto Coal Australia Pty Ltd)
7. Donaldson Coal Pty Ltd
8. Gloucester Coal Limited
9. Idemitsu Australia Resources Pty Limited
10. Integra Coal Operations Pty Ltd
11. Muswellbrook Coal Company Limited
12. Resource Pacific Limited
13. Peabody Pacific Pty Limited
14. White Mining Limited
15. Whitehaven Coal Mining Pty Ltd
16. Xstrata Coal Operations Pty Ltd
17. Newcastle Coal Infrastructure Group
18. Australian Rail Track Corporation
19. Hunter Valley Coal Chain Logistics Team
20. Department of Industry, Tourism and Resources
21. NSW Department of Planning
22. NSW Department of Primary Industry (Resources Division)
23. Maritime Union of Australia
24. United Mine Workers Federation
25. NSW Minerals Council
26. Maitland City Council
27. Werris Creek Coal Sales Pty Ltd
28. SCT Logistics
29. Port Waratah Coal Services Limited
30. Pacific National (NSW) Pty Limited
31. QR Limited
32. The Treasury
33. Genesee & Wyoming Australia Pty Ltd
34. Peabody Coal Trade Australia