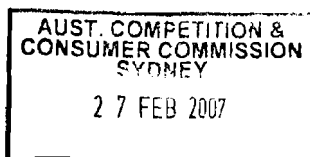


MALLESONS STEPHEN JAQUES



Mr Scott Gregson
General Manager, Adjudication
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

26 February 2007

Attention: Mr David Hatfield / Ms Jaime Martin

FILE No
DCC
MARS/PRISM

Dear Mr Gregson

Port Waratah Coal Services Limited - Application for revocation and substitution of authorisations under section 91C

As the Commission is aware, we act for Port Waratah Coal Services Limited ("PWCS").

1 Application for revocation and substitution of authorisations

Pursuant to section 91C of the *Trade Practices Act 1974* (Cth) ("TPA"), PWCS applies for the revocation of authorisations numbered A30236, A30237 and A30238 (granted by the Commission on 15 April 2005), and substitution of new authorisations for any contract, arrangement or understanding involving 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 revised medium term capacity balancing system ("CBS") that is described in the attached Submission and which may constitute:

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

2 Application for urgent interim authorisation

PWCS also seeks an urgent interim authorisation. Substantial demurrage costs are being incurred by the industry, with a current ship queue of over 60 vessels. Hunter Valley coal producers, together with PWCS, have recognised the need for a solution and formulated a revised CBS to urgently reduce and manage the vessel queue. The revisions to the CBS are minimal and the proposed solution is interim in nature, with authorisation sought only for the term of the existing authorisations, namely until 31 December 2007. In these circumstances, PWCS submits that this is an urgent matter,

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F +61 2 9296 3999

being of a kind with respect to which it is appropriate for the Commission to grant interim authorisation.

3 Supporting materials

We enclose:

- (a) Form FC, the application form prescribed by regulation for revocation of a non-merger authorisation and substitution of a new authorisation;
- (b) a confidential supporting Submission, of which Confidential Annexures 1 and 2 contain commercially sensitive information, which PWCS requests be excluded from the public register;
- (c) a non-confidential version of the supporting Submission for the public register, from which Confidential Annexures 1 and 2 have been withheld; and
- (d) a cheque for \$2,500.

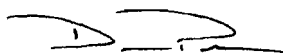
4 Confidentiality

As noted, Confidential Annexures 1 and 2 to PWCS' Submission contain commercially sensitive and confidential information. Pursuant to section 89(5) of the TPA, PWCS requests 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).

PWCS requests the Commission place only this letter, Form FC, and the non-confidential version of the Submission (with Confidential Annexures 1 and 2 removed) on the public register.

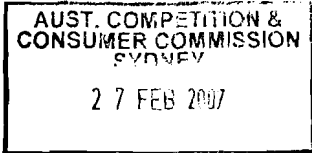
Should you have any questions relating to this application, please contact me, or Hugh Treharne on (02) 9296 2364.

Yours sincerely



Dave Poddar
Partner
Direct line +61 2 9296 2281
Direct fax +61 2 9296 3961
Email dave.poddar@malleasons.com

Encl 4



Form FC

Commonwealth of Australia

Trade Practices Act 1974 - subsection 91C (1)

**APPLICATION FOR REVOCATION OF A
NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW
AUTHORISATION**

A 91033
A 91034
A 91035

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1 Applicant

- (a) Name of applicant
(Refer to direction 2)

Port Waratah Coal Services Limited ("PWCS")

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

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle in New South Wales. PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the storage of coal and loading or coal into vessels for export.

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

c/- Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

2 Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

A30236 - Authorisation 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 the TPA;

- 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 the TPA.

A30237 - Authorisation to:

- make a contract 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 the TPA;
- give effect to a provision of a contract, arrangement or understanding, a provision of which has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the TPA

A30238 - Authorisation to:

- engage, in concert with other persons, in conduct that may prevent or substantially hinder, a third person from supplying goods or services to, or acquiring goods or services from, a fourth person; and
- engage, in concert with other persons, in conduct that 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.

(b) Provide details of the basis upon which revocation is sought:

The service to which the Authorisations A30236, A30237 and A30238 relate is the capacity balancing system ("CBS"), 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. The CBS includes a mechanism by which the Industry (as defined in the CBS) can vote to suspend the operation of the CBS (in clause 9.1 of Annexure 4F to the ACCC Determination dated 15 April 2005). Such a vote to suspend the CBS occurred in September 2006. Now, however, a substantial deadweight vessel queue (of over 60 vessels) has reformed off Newcastle, causing substantial demurrage costs to the industry.

Accordingly, revocation of Authorisations A30236, A30237 and A30238 is sought in order that they be substituted by authorisations that permit the CBS to be reinstated with effect until 31 December 2007 (the term of the current authorisations).

3 Substitution of authorisation

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

A copy of the revised CBS (Annexure 4F to the Coal Handling Services Agreement) is attached to the supporting submission.

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

The service to which this application for revocation and substitution relates is the CBS designed to address the imbalance between demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain.

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

Authorisation is sought until 31 December 2007. This reflects the term of current Authorisations A30236, A30237 and A30238.

4 Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

Any producer of coal for export through the Port of Newcastle or exporter of coal from the Port of Newcastle may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include the shareholders in PWCS and Newcastle Coal Shippers Pty Limited listed in Schedule 4 of the supporting submission, as well as other coal companies in the Hunter Valley in New South Wales producing coal for export.

- (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)

N/A

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

N/A

5 Public benefit claims

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

Please refer to the supporting Submission.

(See Direction 6 of this Form)

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

Please refer to the supporting Submission.

6 Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) 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):

- (a) A global market for coal.
- (b) A market for the provision of coal loading services for bulk coal carrying ships in eastern Australia (or at least in New South Wales).

(See Direction 7 of this Form)

7 Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

Please refer to the supporting Submission.

(See Direction 8 of this Form)

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

Please refer to the supporting Submission.

8 Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) 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 substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/A

(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

N/A

(See Direction 5 of this Form)

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

N/A

9 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 incorporated joint venture between the companies listed in Schedule 4 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

10 Further information


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

Mr Jonathan Vandervoort
Chief Financial Officer
Port Waratah Coal Services Limited
PO Box 57
Carrington NSW 2294
Tel: +61 2 4907 2000

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Email: Dave.Poddar@mallesons.com
Tel: +61 2 9296 2281

Dated 27 February 2007

Signed by/on behalf of the applicant



(Signature)
DAVE PODDAR

(Full Name)
MALLESONS STEPHEN JAKUES

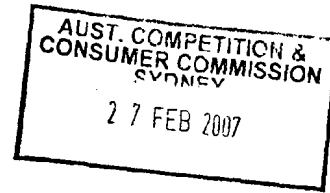
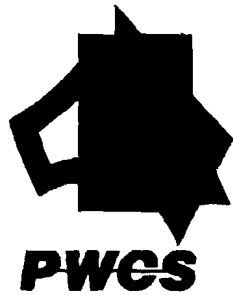
(Organisation)
PARTNER

(Position in organisation)

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
27 FEB 2007

DIRECTIONS

1. 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. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) To the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing— provide a true copy of the writing; and
 - (b) To the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing— provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision— provide details of that provision.
5. Where substitute 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 contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), 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 substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). 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.



Non-Confidential Version

Port Waratah Coal Services Limited

2007 Amendments to the Medium Term Capacity
Balancing 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

Submission in support of the application for revocation
and substitution under section 91C of the *Trade Practices
Act 1974* (Cth) and application for an interim
authorisation

Dated 26 February 2007

Port Waratah Coal Services Limited

2007 Amendments to the Medium Term Capacity Balancing 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

Submission in support of the application for revocation and substitution under section 91C of the *Trade Practices Act 1974* (Cth) and application for an interim authorisation

1 Background and executive summary

1.1 The medium term authorisation

On 15 April 2005, the Australian Competition & Consumer Commission ("ACCC") granted authorisation to applications (numbered A30236, A30237 and A30238) lodged by Port Waratah Coal Services Limited ("PWCS") subject to certain reporting conditions. The authorisations related to the Medium Term Capacity Balancing System ("CBS" or "Scheme") in Attachment A to the ACCC's authorisation determination. The authorisations came into force on 7 May 2005 and will end on 31 December 2007.

1.2 The CBS

Under the terms of the CBS, the Scheme (as described in the CBS) applies in respect of the calendar year 2005 (subject to the authorisations coming into force) and is extended beyond the 2005 calendar year on condition that Industry Support for the extension is obtained in September of the preceding year.

1.3 The issue

In September 2006, the Industry voted to discontinue the CBS for 2007. At that time, it was thought that the Hunter Valley Coal Chain capacity would be sufficient to meet actual demand for the 2007 calendar year, without causing excessive queuing of vessels at the Port of Newcastle. The CBS therefore ceased to operate for the calendar year 2007. Since then, however, a queue of vessels has re-formed off the Port of Newcastle at unprecedented levels.

In October 2006, Producers were given the opportunity to revise down their existing demand nominations for calendar year 2007. Aggregate demand nominations (excluding road coal) reduced from 118 million tonnes to 106 million tonnes. The overall Coal Chain capacity for 2007 is limited to approximately 90 million tonnes.¹

As a result of this limitation in the Coal Chain and the high demand for coal, as at 25 February 2007, there was a queue of 69 vessels off the Port of Newcastle.

In January 2007, Hunter Valley Coal Producers formed a Working Group to urgently consider options to reduce and manage the vessel queue. Nine

¹ PWCS notes that it has substantially completed its expansion to a rated loading capacity of 102 Mtpa, more than nine months ahead of schedule.

Hunter Valley Coal Producers were represented on this Working Group. The Working Group's recommendations included that PWCS apply to the ACCC to reinstate the CBS for 2007 with some minor amendments.

PWCS believes that, having regard to the imbalance between demand and Coal Chain capacity and in the absence of a mechanism for matching demand and Coal Chain capacity, the queue will persist or even grow throughout 2007. In these circumstances, unless the CBS is reinstated, the queue is estimated by Producers to cause in the order of A\$460 million in deadweight demurrage costs in 2007.

1.4 The proposed amended CBS

As the terms of the CBS do not provide for the Scheme to be reinstated once it is discontinued, PWCS is unable to reinstate the Scheme for calendar year 2007, without amending the terms of the CBS and obtaining ACCC authorisation for such an amended CBS, even if the changes are not considered material.

1.5 Executive summary

In order to facilitate the reinstatement of the CBS on an urgent basis, and at the suggestion of Hunter Valley Coal Producers, PWCS is seeking authorisation for an Amended CBS with minor changes from the previously authorised CBS.

2 Amendments to the Medium Term CBS

2.1 Overview of amendments for 2007

Following Industry consultation, PWCS proposes, subject to authorisation from the ACCC, to amend the terms of the Medium Term CBS in the manner set out in **Schedule 1** (“Amended CBS”). The amendments seek to change the Medium Term CBS in relatively minor respects, so that it can operate effectively and efficiently from 1 January 2007 until 31 December 2007 (the term of the current authorisations) to reduce the excessive vessel queue, while retaining sufficient flexibility to ensure maximum coal loading throughput.

PWCS does not believe that the Amended CBS will result in any decrease in coal exports at the Port of Newcastle (particularly as the Coal Chain restrictions are not at the terminal) and the benefits in demurrage cost reduction arising from the CBS and queue management will outweigh the detriments (if any).

In summary, in addition to reinstating the CBS from 1 January 2007 with effect until 31 December 2007, the amendments for which PWCS now seeks authorisation would:

- (a) move “Large Producers” to a monthly allocation system, to ensure a more even allocation mechanism within quarters to address the current end of quarter vessel queue peaking pattern. PWCS does not believe that the introduction of a monthly allocation system for Large Producers will hinder the trading of allocation across Producers. Monthly allocation will be able to be traded for quarterly allocation (and vice versa) and take or pay will continue to provide an incentive to trade; and
- (b) double the “buffer” provided by the “Flexibility Amounts” in schedule 6, paragraph 1, to 180,000 tonnes, to recognise legitimate fluctuations in demand and allow greater flexibility to Producers. Increasing the flexibility will also assist to smooth the transition back to a CBS, particularly for smaller Producers.

The operation of the CBS is from 1 January 2007 which is intended to eliminate any potential stacking of the queue that could occur if a prospective implementation was adopted. As a transitional arrangement, actual usage of Quarter 1 2007 loading allocation will be taken into account when applying queue reduction mechanisms in Quarter 2 2007.

2.2 Working Group recommendations

In addition to recommending that PWCS apply to the ACCC to reinstate the CBS for 2007 with some minor amendments, the Working Group also recommended that:

- (a) PWCS be “kept whole”. A CBS would reduce PWCS revenue and therefore PWCS would need to increase coal handling charges in

order to cover the costs of its current operations and recent expansion.

- (b) PWCS offers individual Producers the immediate opportunity to reduce their Take or Pay obligations for any quarter of 2007 in order to reduce the queue. Any reduction to current Take or Pay obligations would be then subject to the provisions of the Amended CBS.
- (c) The Working Group continue to develop systems to address potential demand and capacity imbalances for 2008 and beyond.

The PWCS Board has determined that subject to the reinstatement of the CBS, its coal handling charge will increase by 25 cents per tonne to \$2.95 per tonne effective from 1 April 2007. The PWCS Board has also agreed that Producers be given a further opportunity to voluntarily reduce their existing Take or Pay obligations for 2007.

PWCS does not seek authorisation from the ACCC with respect to these matters, which are included in this Submission for the sake of completeness.

2.3 Greater transparency

There has been significant discussion amongst Hunter Valley Coal Producers for there to be greater transparency regarding the performance of individual Producers to improve the operation and effectiveness of the CBS. Whilst the CBS is in place, the Administrator will periodically report to each Producer (on a confidential basis) on performance in respect of loading allocation and usage for each individual Hunter Valley Coal Producer. This information will be reported at an aggregate level for each Producer / Producer group and is ancillary to this authorisation.

3 Request for revocation and substitution

3.1 Request for revocation

PWCS requests that the ACCC grant a revocation of its authorisations of 15 April 2005 (“Existing Authorisation”) and the substitution of a new authorisation as in the Form FC attached to this Submission.

3.2 Why revocation of previous authorisation and substitution

A revocation is requested as although in many respects the amendments are not substantive, they would arguably go beyond mere typographical corrections. Therefore, it is considered appropriate to revoke the Existing Authorisation and seek the substitution of a new authorisation of an Amended CBS.

Pending the ACCC’s consideration of the request for revocation and substitution, PWCS requests that the ACCC grant an interim authorisation which will come into force as soon as possible, if possible, prior to the commencement of the second quarter of the calendar year 2007. Substantial demurrage costs are currently being incurred by the industry (estimated at more than A\$1 million per day, with a vessel queue of approximately 60 vessels). In these circumstances, PWCS submits that this is an urgent matter, being of a kind with respect to which it is appropriate for the ACCC to grant interim authorisation, particularly where the factual basis and economic impact of the CBS is relatively well known to the ACCC.

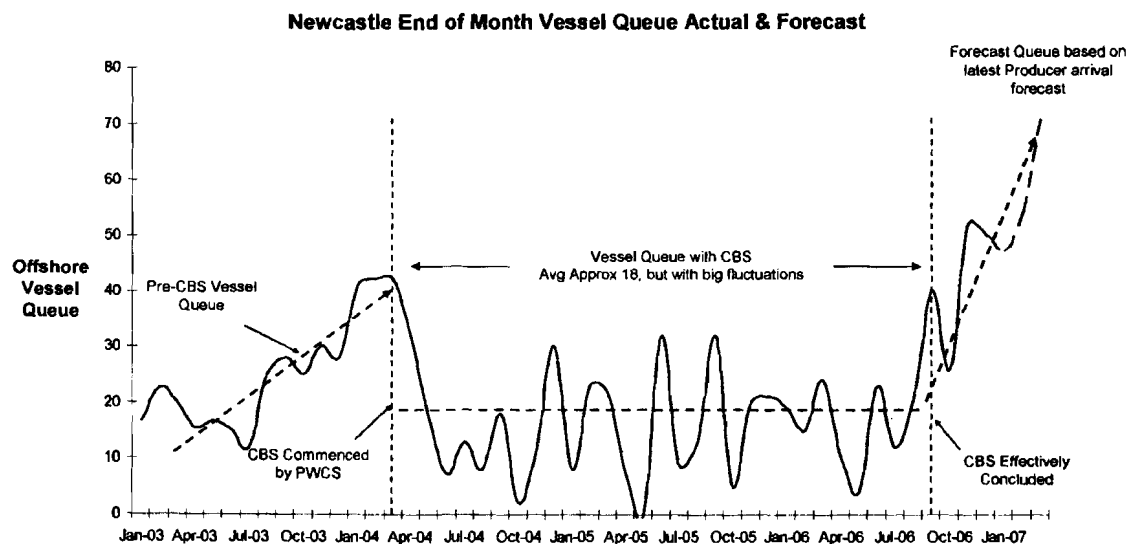
Furthermore, the Working Group has conducted considerable consultation with Hunter Valley Coal Producers regarding the reinstatement of the CBS and the minor amendments proposed. PWCS has also received significant support from Hunter Valley Coal Producers for PWCS’ application to the ACCC for the reinstatement of the CBS. Further details regarding the industry vote are set out in section 4.5.

4 Rationale for reinstating the Scheme and doing so on an urgent interim basis

4.1 Why has the vessel queue reformed?

PWCS has previously reported to the ACCC on operational aspects of the CBS in respect of 2005 and 2006. For each year, these reports cover the volumes of coal exported through the Port of Newcastle, Coal Chain capacity, the volume of allocation available and utilised and vessel queues.

The following chart depicts the actual and forecast end of month vessel queues at the Port of Newcastle:



Source: Hunter Valley Coal Chain Logistics Team

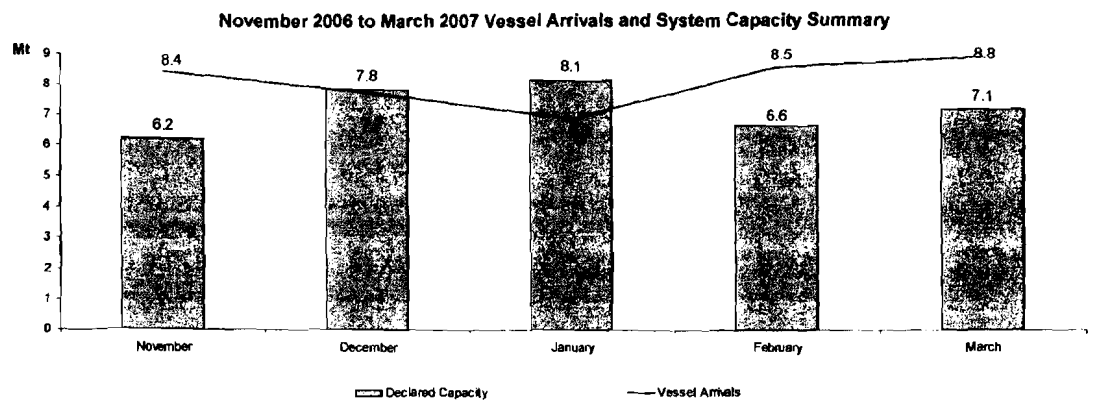
From September 2006, higher vessel queues began to form. Unplanned capacity losses across the Coal Chain contributed to an increase in the vessel queue from 24 to 39 vessels during Quarter 3. In Quarter 4, a combination of excess arrivals and unplanned capacity losses contributed to further increase the vessel queue from 39 to 51 vessels across Quarter 4. The biggest impact on the queue was as a result of vessel arrivals exceeding Coal Chain capacity by more than 2 million tonnes during the month of November 2006. As a result, the vessel queue increased from 29 vessels to 53 vessels during this month.

Forced operational allowances were not applied to Producers during Quarter 4 to reduce the queue. In this respect, PWCS was guided by the industry's decision to not continue the CBS in 2007. Furthermore, a number of Producers had indicated their intentions to use the flexibility provisions to access their Quarter 1 loading allocation in Quarter 4 which would have potentially countered the effect of any operational allowance.

Vessel arrivals are continuing to significantly exceed Coal Chain capacity. A further increase in the vessel queue is being forecast by Producers for

February and March 2007, with forecast vessel arrivals approximately 3 million tonnes in excess of declared Coal Chain capacity for these months. This is likely to result in a vessel queue well above 60 at the end of Quarter 1. Current indications are that wait times for vessels in the queue will increase to almost a month such that vessels arriving after 4 March 2007 are not likely to load until Quarter 2. In the absence of the CBS, there is no mechanism to balance vessel arrivals with Coal Chain capacity.

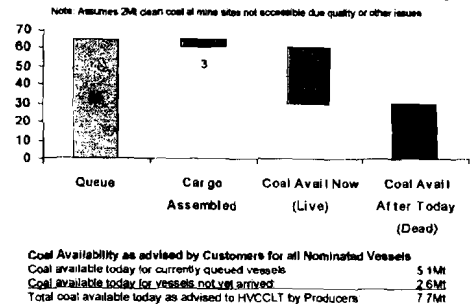
The following chart summarises vessel arrivals and Coal Chain capacity for the period November 2006 to March 2007:



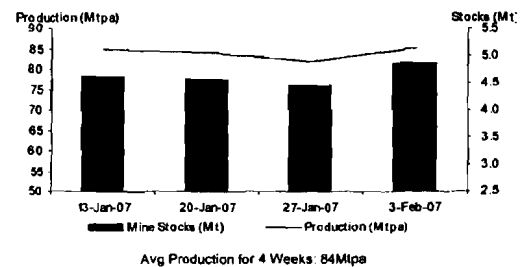
Source: Hunter Valley Coal Chain Logistics Team

Information provided by the Hunter Valley Coal Chain Logistics Team suggests that the current high vessel queues are exacerbated by an expectation of continued high vessel queues. The following charts demonstrate that vessels are being added to the queue for which coal is not currently available with the expectation that coal will be produced by the time the vessel is due to load.

Coal Availability at Mine Site for Currently Queued Vessels
(HVCCLT Estimate Based on Clean Coal Mine Stocks at right)



Clean Coal Availability at Mine Site:
For Week Ending: 3 February 07
Mine Stocks: 4.8 Mt
Production Rate: 85 Mtpa



Source: Hunter Valley Coal Chain Logistics Team

PWCS does not believe that the reinstatement of the CBS will have a negative impact on the total volume of coal exported through the Port of Newcastle or the production of coal by Hunter Valley Coal Producers for the reasons outlined in its previous authorisation applications.

4.2 Submission in support of revocation and substitution

By granting the revocation of the Existing Authorisation and substitution of a new authorisation, the ACCC is authorising reinstatement of the CBS with relatively minor amendments, which are essentially procedural in nature.

The rationale for reinstating the Scheme is substantially the same as the rationale for the ACCC's authorisation of the Medium Term CBS in April 2005. In particular:

- (a) the Industry continues to confront capacity constraints in respect of the Hunter Valley Coal Chain;
- (b) the consequence of these constraints is that a significant queue of over 60 vessels has re-formed at the Port of Newcastle, giving rise to demurrage costs in the region of A\$460 million; and
- (c) PWCS anticipates that the queue will persist and grow throughout 2007 unless the Scheme is reinstated.

For the reasons referred to below, PWCS submits that the Scheme, if reinstated and amended in the manner proposed, will deliver significant public benefits that outweigh any public detriments. It is noted that, as the ACCC has had the benefit of previous submissions, this Submission does not go into extensive detail on the background issues.

4.3 Significant public benefits resulting from the Amended CBS

Schedule 2 sets out the estimated demurrage costs that the Industry would face over 2007 if the Scheme is not reinstated (i.e., the counter-factual). According to Schedule 2, the demurrage costs are estimated to be A\$460 million in aggregate over the calendar year 2007.

If the ACCC authorises the reinstatement and amendment of the Scheme, the Scheme will deliver a public benefit in terms of avoiding or at least substantially decreasing the deadweight demurrage costs estimated in Schedule 2. In addition, the Scheme will deliver the following public benefits:

- (a) improved international reputation and international competitiveness of the Port of Newcastle and the Hunter Valley Coal Industry;
- (b) assists in the queue operating at a more efficient level and the consequent demurrage cost savings;
- (c) certainty to Producers regarding the volume of coal they can ship, loading times and vessel schedules, which will enable Producers to manage production more efficiently; and
- (d) allowing a transition to a long term solution for the Hunter Valley coal logistics operations.

4.4 Amended CBS unlikely to give rise to public detriments

PWCS submits that any public detriment from reinstating the Amended CBS is likely to be low for the reasons identified in the ACCC's final determination to grant authorisation on 15 April 2005, and will be exceeded by significant public benefits. In particular, the following aspects of the Medium Term CBS are designed to ensure that any restriction of aggregate coal exports from the Hunter Valley as a result of the Amended CBS will be negligible:

- (a) the audit process;
- (b) the upper flexibility amount (which would be doubled by the proposed amendments to provide Producers with an additional "buffer") and the conditional allocation provisions; and
- (c) the ability to trade loading allocation.

PWCS also submits that the Amended CBS will not have the effect of delaying investment in capacity in the Hunter Valley Coal Chain. PWCS has previously reported to the ACCC on rail, port and other capacity expansion initiatives undertaken by participants in the Hunter Valley Coal Chain for 2005 and 2006. **Schedule 3** sets out infrastructure initiatives to increase Coal Chain capacity over the next 3 years. PWCS previously invested in additional capacity and has delivered that investment on or before the estimated time. PWCS does not believe that there is now any suggestion it is under-investing in loading capacity. In any event, Authorisations A30236, A30237 and A30238 authorise PWCS to operate a substantially similar scheme until 31 December 2007 as was previously authorised.

4.5 Industry vote

On 14 February 2007 PWCS issued requests for Producers to vote on the Amended CBS to ensure that having "switched off" the CBS, the Industry was now in favour of the Amended CBS to address the vessel queue that had re-formed. Only one out of 15 Producers did not support PWCS applying to the ACCC for authorisation to reinstate the CBS for 2007. 11 out of 15 Producers unconditionally supported its reinstatement. There was conditional support from an additional 2 Producers. The remaining Producer elected to abstain from voting. Further details of the vote are set out in Confidential Annexure I.

4.6 Reasons for request for urgent interim authorisation

PWCS together with the Hunter Valley Coal Industry recognise that there is an urgent need to address the excessive and substantial vessel queues off the Port of Newcastle that has arisen since September 2006. It is industry consensus that contrary to previous expectations, because of high demand and limitations in the Coal Chain, the vessel queue will continue at similar numbers throughout at least 2007.

Hunter Valley Coal Producers together with PWCS have recognised the need for a solution and formulated a revised CBS to urgently address the excessive vessel queue.

The proposed solution is an interim solution involving minimal changes to the previous authorised CBS which only extends to the end of 2007, the end of the period previously authorised.

As the ACCC previously authorised the CBS to the end of 2007, the Amended CBS involves minor changes granting Producers additional flexibility and monthly allocation for Large Producers to provide a smoother allocation mechanism.

As such the Amended CBS has a similar benefit / detriment basis to that previously assessed by the Commission, if not additional benefits as the Amended CBS involves increased flexibility for Producers. There is also additional certainty that in the absence of the CBS there will be an excessive vessel queue as it has re-formed.

5 Conclusion

PWCS together with the Industry has proposed an Amended CBS which has minimal changes from that previously authorised by the Commission and which only proceeds until the end of 2007, the period previously authorised.

Therefore, given the ACCC previously authorised the CBS until 2007 it is hoped that the ACCC's assessment of benefits and detriments should be the same, in favour of granting authorisation.

In addition:

- the Amended CBS has been revised with Producer support to grant greater flexibility to Producers; and
- there is a clearer counterfactual as to there being a substantial vessel queue and substantial demurrage costs in the absence of the Amended CBS,

such that the balance of benefits and detriments should be even clearer in favour of granting the authorisation.

Port Waratah Coal Services Limited
26 February 2007

Schedule 1 - Amended Medium Term Capacity Balancing System

Attachment A

ANNEXURE 4F

MEDIUM TERM CAPACITY BALANCING SYSTEM OBJECTIVES, PRINCIPLES & PROTOCOLS

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PART A - GENERAL CONDITIONS OF CAPACITY BALANCING SYSTEM

1. Defined Terms & Interpretation

- 1.1 Any terms that are defined in the Dictionary at Schedule 1 of this Annexure or the Dictionary at Annexure 4E shall, when used in this Annexure, have the meaning given to that term in the Dictionary. If there is any inconsistency between the meaning given to a term in either Dictionary, the meaning in the Dictionary at Schedule 1 of this Annexure shall apply.
- 1.2 The Schedules form part of this Annexure.

2. Scope

- 2.1 The Board will as soon as possible in its absolute discretion appoint the Administrator, who will be independent of any Producer or Customer.
- 2.2 The Administrator will administer the Scheme according to the objectives, principles and protocols set out in this Annexure.
- 2.3 The objectives of the Scheme are to:
- (a) achieve minimum vessel demurrage consistent with maximum export Coal throughput;
 - (b) comply with all relevant legal requirements;
 - (c) efficiently distribute the available Coal Chain Capacity, in so far as it relates to the Coal Handling Facility, among Producers in an equitable, transparent and accountable manner; and
 - (d) not adversely affect the efficient operation of the Coal Handling Facility.
- 2.4 The Scheme shall apply:
- (a) to all Coal that is the subject of an Application for Coal Handling Services which is delivered to the Terminal by rail and, subject to clause 3.167 of Annexure 4E, road from midnight on the day before the Commencement Date; and
 - (b) to all Coal Handling Services provided to each Customer by PWCS in respect of each such shipment of Coal.
- 2.5 The Scheme will not come into operation and this Annexure will have no force or effect until such time that authorisation or interim authorisation is granted under the *Trade Practices Act 1974* in relation to applications to the Commission numbered A30236-A30238 dated 1 October 2004.

3. Capacity Declaration

- 3.1 The Coal Chain Capacity and desired Operational Allowance for the Relevant Year will be calculated in accordance with the procedures stated in Schedule 2.

4. Forecast Requirement

- 4.1 The Forecast Requirement for each Producer and the Forecast System Demand for the Relevant Period will be calculated and determined in accordance with the procedure stated in Schedule 3.
- 4.2 The Forecast Requirement for any New Mine will also be calculated and determined in accordance with the procedure stated in Schedule 3.

5. Demand and Supply Balancing

- 5.1 The need for demand and supply balancing will be assessed and, if required, carried out in accordance with the procedure stated in Schedule 4.

6 Capacity Distribution

- 6.1 The Available Capacity during the Relevant Year will be distributed amongst Producers on a pro-rata basis, in proportion to the Forecast Requirement of each Producer, which may be adjusted through the conduct of a demand reduction auction facilitated by the Administrator in accordance with paragraph 6 of Schedule 4.
- 6.2 The Loading Allocation for each Producer will be calculated by the Administrator for the Relevant Period and then notified to PWCS and each Producer in accordance with Schedule 5.

7. Disruptions to a Producer

- 7.1 If, notwithstanding the other provisions of this Annexure or the provisions of Annexure 4E, a Producer is unable at any time to use its Monthly Loading Allocation or Quarterly Loading Allocation, whichever is appropriate in the context, or if the Producer is a Restricted Producer, the provisions of Schedule 6 will apply.

8. Amendments to Scheme

- 8.1 The Administrator will monitor the operation of the Scheme and consult with Producers and Customers regularly regarding the operation and outcomes of the Scheme. This consultation process will provide a forum by which participants in the Scheme can provide feedback, guidance and suggestions on the operation of the Scheme.
- 8.2 Throughout the duration of the Scheme the Administrator may formulate and make recommendations to the Board on proposals for variations to the operational aspects of the Scheme as set out in Part B of this Annexure that it determines are necessary or desirable to meet the Objectives or to facilitate the Scheme's effective operation.
- 8.3 Any decision by the Board to vary the operational aspects of the Scheme as set out in Part B of this Annexure will take into account any recommendations submitted to the Board by the Administrator in relation to that amendment.

- 8.4 No material change will be made to the Scheme as described in Annexure 4F unless it is reasonably necessary in order to achieve the Objectives and except with the consent or authorisation of the Commission.
- 8.7 If the Commission imposes any Authorisation Conditions in respect to, relating to or affecting any provision of the Scheme, a variation may be made to this Annexure to accommodate those conditions by resolution of the Board and, despite clause 2.12 of the Coal Handling Services Agreement, without the need for PWCS to consult with any Customers concerning the variation.
- 8.8 PWCS will notify all Customers of any variation to this Annexure.

9. Commencement, Extension and Duration of Amendments to the Scheme

- 9.1 ~~Subject to clauses 2.4 and 2.5 of this Part A, the Scheme will apply in respect of the 2005 calendar year. During September of each Relevant Year the Scheme will be reviewed to determine whether it should continue for part or all of the following calendar year. Any decision to continue the Scheme will take into account any Authorisation Conditions, recommendations made by the Administrator and any submissions received from Producers or Customers prior to 1 September of the Relevant Year.~~

In any case, any extension of the Scheme beyond the 2005 calendar year will for each Relevant Year require Industry Support amendments to the Scheme made in February 2007 will be taken to have applied retrospectively from 1 January 2007 (except where the Administrator decides that it is only practical to implement them from the date authorised).

- 9.2 The Scheme, as amended, will continue until 31 December 2007.

- 9.3 In respect of the period from 1 January 2007 until the time of authorisation of the Scheme in 2007 in accordance with clause 2.5 (“**transitional period**”), the Administrator will make decisions regarding the transitional operational arrangements to give effect to the Scheme consistent with the Objectives. This will include the following transitional arrangements:

- (a) So as to enable each Producer to manage use of Loading Allocation in the transitional period, as soon as reasonably possible and prior to interim authorisation being granted by the Commission, the Administrator will calculate and notify each Producer of its estimated Monthly Loading Allocation or Quarterly Loading Allocation, whichever is appropriate in the context.
- (b) Subject to this clause 9.3, in respect of the first Calendar Quarter 2007 each Producer’s maximum usage of Loading Allocation in accordance with clause 3.8 of Annexure 4E is limited to the amount of Loading Allocation that the Producer would otherwise have held, as determined under Annexure 4E, if a Scheme did not apply.
- (c) Once a Producer’s final Loading Allocation is determined in accordance with Schedule 5 of this Annexure 4F, that Loading Allocation shall apply retrospectively from 1 January 2007.

(d) For the avoidance of doubt, in respect of first Calendar Quarter of 2007 any over-use of Loading Allocation by a Producer arising from the application of the interim arrangement in clause 9.3(b) will be deducted from the Quarterly Loading Allocation of the Producer in the second Calendar Quarter of 2007.

~~9.2 A key indicator as to whether the Scheme should continue during part or all of the following calendar year will be whether the Coal Chain Capacity, in so far as it relates to the Coal Handling Facility, is sufficient to meet the demand without causing excessive queuing of vessels at the Port of Newcastle.~~

10. Dispute Resolution

10.1 In making or completing any determination, declaration, calculation or audit in accordance with any provision of this Annexure, the Administrator, the Auditor or independent expert (whoever is relevant in the context) is acting as an expert and not as a mediator or arbitrator. Any determination, declaration, calculation or audit by the Administrator, Auditor, Arbiter or independent expert in accordance with any provision of this Annexure will in the absence of manifest error be final and binding on PWCS and each Producer and Customer and may not be the subject of the dispute resolution procedures contained in Section 2.15 of the Coal Handling Services Agreement.

10.2 The provisions of clause 2.15 of the Coal Handling Services Agreement shall, subject to paragraph 10.3 of this Part A, apply exclusively in the event that there are any disputes or issues relating to the Scheme, other than in relation to any determination, declaration, calculation or audit by the Administrator, Auditor, Arbiter or independent expert as described in paragraph 10.1 of this Part A.

10.3 Any mediator or arbitrator appointed in accordance with clause 2.15 of the Coal Handling Services Agreement must have regard to this Protocols Document if the dispute is in relation to the Scheme or arises from its application.

11. Limitation of Liability

11.1 Notwithstanding any other provision of this Annexure or in the Coal Handling Services Agreement or otherwise, to the extent permitted by law, neither the Administrator, the Demand Auditor, the Capacity Auditor or the Arbiter will be liable (and any such liability that may exist is hereby excluded) for any loss or damage suffered or incurred by any Producer or Customer caused by or arising from or relating to:

- (a) their participation in or use of the Scheme;
- (b) any calculation, determination or decision made by the Administrator, PWCS, any of the Auditors or the Arbiter under the Scheme or under Annexure 4E;
- (c) the exercise or non exercise by the Administrator, PWCS, any of the Auditors or the Arbiter of any power relating to the Scheme, whether given to them under this Annexure or otherwise;
- (d) any failure to achieve the objectives of the Scheme;

- (e) the administration by the Administrator, PWCS, any of the Auditors or the Arbiter of any administrative responsibility provided to any of them in relation to the Scheme or in relation to Annexure 4E and whether under this Annexure or otherwise;
- (f) any failure on the part of PWCS to load the quantity of Coal determined as the Forecast Requirement or Loading Allocation of a Customer onto vessels or to provide the level of Coal Handling Services necessary to load that quantity of Coal in any Relevant Period; ~~or~~
- (g) any failure on the part of the Administrator, PWCS, any of the Auditors or the Arbiter to make any determination, exercise any power or carry out any administrative act in relation to the Scheme or in relation to Annexure 4E and whether under this Annexure or otherwise; or
- (h) subject to authorisation by the Commission, the re-introduction of the Scheme in 2007, as amended;

unless

- (h) the event giving rise to the loss or damage is caused by the wilful misconduct or fraudulent act on the part of the party against whom the claim is made; or
- (i) the particular liability is not able to be excluded or limited pursuant to the provisions of the *Trade Practices Act* 1974 and reciprocal State legislation.

11.2 The Customer must not make any claim or demand or take any action or proceeding against the Administrator, the Demand Auditor, the Capacity Auditor, the Arbiter or the Independent Expert in respect of, arising from or relating to any of the causes, matters or events in respect of which liability is excluded or limited in accordance with paragraph 11.1 of this Part A.

11.3 Notwithstanding any other provision of this Annexure or in the Coal Handling Services Agreement or otherwise, but subject to clause 2.14.1 of the Coal Handling Services Agreement and to the extent permitted by law, PWCS will not be liable (and any such liability that may exist is hereby excluded) for any loss or damage suffered or incurred by any Producer or Customer caused by or arising from or relating to:

- (a) its participation in or use of the Scheme;
- (b) any calculation, determination or decision made by the Administrator, PWCS, any of the Auditors or the Arbiter under the Scheme or under Annexure 4E;
- (c) the exercise or non exercise by the Administrator, PWCS, any of the Auditors or the Arbiter of any power relating to the Scheme, whether given to them under this Annexure or otherwise;
- (d) any failure to achieve the objectives of the Scheme;
- (e) the administration by the Administrator, PWCS, any of the Auditors or the Arbiter of any administrative responsibility provided to any of them in relation to the Scheme or in relation to Annexure 4E and whether under this Annexure or

otherwise;

- (f) any failure on the part of PWCS to load any particular quantity of Coal into vessels or to provide Coal Handling Services in respect to any particular quantity of Coal in any Relevant Period; or
- (g) any failure on the part of the Administrator, PWCS, any of the Auditors or the Arbiter to make any determination, exercise any power or carry out any administrative act in relation to the Scheme or in relation to Annexure 4E and whether under this Annexure or otherwise;

unless:

- (h) the event giving rise to the loss or damage is caused by the negligence, wilful misconduct or fraudulent act of PWCS; or
- (i) the particular liability is not able to be excluded or limited pursuant to the provisions of the *Trade Practices Act 1974* and reciprocal State legislation.

For the avoidance of doubt, nothing in this clause affects the liability of PWCS under clause 2.14.1 of the Coal Handling Services Agreement.

PART B - THE SCHEDULES

SCHEDULE 1 - DICTIONARY

2005 Year	The calendar year commencing 1 January 2005
Allocation Holder	A Producer who has allocated to it a Loading Allocation for the Relevant Period.
ACCC Authorisation	Any authorisation or interim authorisation granted by the Commission under the <i>Trade Practices Act 1974</i> in relation to applications to the Commission in relation to the Scheme.
Annual Capacity Factor	The multiplier defined in accordance with paragraph 4 of Schedule 4.
Annual Pro-Rata Allocation	The capacity allocation of each Producer after the Forecast Requirement has been adjusted in accordance with Schedule 2 and after the application of the Annual Capacity Factor in accordance with Schedule 4.
Arbiter	The person or entity appointed to determine the Arbiter's Determined Amount in accordance with paragraph 4 of Schedule 3.
Arbiter's Adjustment	The difference between the Producer's Forecast Requirement for the relevant Calendar Quarter and the Arbiter's Determined Amount for that quarter.
Arbiter's Determined Amount	This term is defined in paragraph 4 of Schedule 3, subject to paragraph 2 of that Schedule.
Auction Clearing Price	The auction price at which the cumulative tonnage reduction bid into the Demand Reduction Auction is equal to the required reduction amount.
Auditors	The Capacity Auditor (if required) and the Demand Auditor.
Authorisation Conditions	Any conditions imposed by the Commission on the Scheme and contained within the ACCC Authorisation.
Authorisation Date	The first date that the ACCC Authorisation is effective, as determined by the Commission.
Available Capacity	The forecast amount of Coal, expressed in tonnes, less the Carryover Tonnage, to be loaded onto vessels at the Terminal in the Relevant Period such that an operational queue is maintained as determined in accordance with paragraph 4 of Schedule 2.
Board	The board of directors of PWCS.
Capacity Auditor	The professional audit firm(s) appointed (if required) to conduct an audit of PWCS's calculation of the Coal Chain Capacity in accordance with Schedule 2.

Capacity Profile	The distribution of annual Coal Chain Capacity across the Relevant Year expressed as quarterly percentages of the annual Coal Chain Capacity.
Capacity Tonnage	The amount of Coal loaded onto vessels at the Terminal in the Relevant Year using Loading Allocation from the year immediately prior to the Relevant Year.
Coal Chain Capacity	The forecast capacity of the Export Coal Chain in the Relevant Period to transport Coal to the Terminal and load the Coal onto vessels, expressed in tonnes.
Coal Handling Services Agreement	The agreement so titled between PWCS and each Customer for the provision by PWCS to the Customer of coal handling and other services.
Commencement Date	The date that the Scheme commences a, being the latter of either 1 January 2005 or 14 days after the date that notice of the decision of the Board to amend the Coal Handling Services Agreement to adopt the Scheme has been given by PWCS to Customers or 14 days after the Authorisation Date. <u>The date that the Scheme is deemed to commence as set out in clause 9.1 of Part A of this Annexure.</u>
Commission	The Australian Competition and Consumer Commission.
Conditional Allocation	This term is defined in paragraph 2 of Schedule 5.
Customer	A party to a Coal Handling Services Agreement, other than PWCS, who receives Coal Handling Services from PWCS.
Days	Calendar days unless stated otherwise.
Demand Auditor	The professional audit firm(s) appointed to conduct an audit of a Producer's Demand Nomination in accordance with Schedule 3.
Demand Profile	The percentage of the Final Demand Amount for each Calendar Quarter of the Relevant Year.
Demand Reduction Auction	The demand reduction auction facilitated by the Administrator in accordance with paragraph 6 of Schedule 4.
Excess Demand	The amount by which the Forecast System Demand for the Relevant Year exceeds the Available Capacity.
Final Demand Amount	The total demand of a Producer for Coal Handling Services for the Relevant Period, determined in accordance with paragraph 8 of Schedule 3.
Final Notice	A notice identifying each Producer's final Quarterly Loading Allocation for the Relevant Year.
Forecast System Demand	The aggregate forecast demand for Coal Handling Services during

the Relevant Period, determined in accordance with paragraph 1 of Schedule 4.

<u>Forecast Requirement</u>	<u>The total amount of Coal, expressed in tonnes, that the Producer forecast in its revised Demand Nomination submitted to PWCS in respect of the calendar year 2007 in October 2006 or any lesser amount submitted to and accepted by PWCS in 2007.</u>
HVCC Logistics	Hunter Valley Coal Chain Logistics Team.
Industry Support	Support by more than 75% of currently exporting Producers calculated by volume of export Coal tonnes (determined from the Forecast Requirement of each Producer) or support by more than 50% of currently exporting Producers calculated by number of Producers shipping by rail using the Export Coal Chain.
<u>Large Producer</u>	<u>A Producer listed as a Large Producer in Attachment A.</u>
Loading Allocation	The volume of Coal Handling Services, expressed in tonnes, allocated to a Producer during the Relevant Period, determined in accordance with paragraph 1 of Schedule 5 and adjusted in accordance with other provisions of this Annexure.
Lower Flexibility Amount	The Lower Flexibility Amount as determined in accordance with subparagraph 1(a) of Schedule 6.
Lower Flexibility Limit	The <u>Monthly Loading Allocation or Quarterly Loading Allocation of a Producer, whichever is appropriate in the context</u> , minus its Lower Flexibility Amount.
<u>Monthly Loading Allocation</u>	<u>The Loading Allocation that is allocated to the Allocation Holder for the relevant Calendar Month in accordance with paragraph 1A of Schedule 5.</u>
the Objectives	The objectives stated in paragraph 2.3 of Part A.
Operational Allowance	A queue of vessels at the Port of Newcastle determined in accordance with paragraph 2 of Schedule 2.
Quarterly Loading Allocation	The Loading Allocation that is allocated to the Allocation Holder for the relevant Calendar Quarter <u>in accordance with paragraph 1 of Schedule 5.</u>
Railed Tonnes	The actual amount of Coal, expressed in tonnes as measured by the transport provider, that is received by rail by PWCS from a Producer to be loaded on behalf of a Customer onto a vessel by PWCS under a Coal Handling Services Agreement.
Restricted Producer	This term is defined in paragraph 7 of Schedule 3.
Schedule	A schedule to this Annexure.
Scheme	The Capacity Balancing System described in this Annexure.

Small Producer	A Producer listed as a Small Producer in Attachment A.
Total Demand	The aggregate of all Forecast Requirements for the Relevant Year.
Unrestricted Producer	A Producer who is not a Restricted Producer.
Unused Portion	The amount (if any) by which the quantity of Coal delivered to the Terminal by the Producer in the relevant <u>Calendar Month or Calendar Quarter, whichever is appropriate in the context</u> , is less than the Lower Flexibility Limit.
Upper Flexibility Amount	The Upper Flexibility Amount as determined in accordance with subparagraph 1(b) of Schedule 6.

SCHEDULE 2 - CAPACITY DECLARATION

1. PWCS, with assistance from HVCC Logistics, will calculate the Coal Chain Capacity for each Calendar ~~Quarter~~ Month in the Relevant Year in accordance with the following procedures:
 - (a) Actual delivery performance data for a relevant historical period will be used to determine a base volume for capacity for the Relevant Year and for each Calendar ~~Quarter~~ Month during the Relevant Year.
 - (b) The volume will be adjusted for major planned outages (e.g. ARTC possessions, major projects) and anticipated non-operating days.
 - (c) Adjustment will be made for expected performance gains
2. PWCS, with assistance from HVCC Logistics, will declare the volume of the Operational Allowance, expressed in tonnes, consistent with meeting the Objectives, specifically to minimise vessel demurrage consistent with maximum coal chain throughput.
3. Following the calculation by PWCS of the Coal Chain Capacity and if requested in writing by a majority of Producers, PWCS may arrange for the Capacity Auditor to audit PWCS's calculation of the Coal Chain Capacity. The decision rationale and all supporting information used by PWCS and HVCC Logistics will be made available to Producers for inspection.
4. The Administrator will determine the Available Capacity for the Relevant Period taking into account the Coal Chain Capacity, Operational Allowance and Carryover Tonnage.
5. The Administrator and PWCS, with the assistance of HVCC Logistics, will continue to monitor the performance of the Export Coal Chain throughout the Relevant Period. Following advice from PWCS, the Administrator may from time to time revise the Available Capacity for the balance of the Relevant Year in order to achieve the Objectives.
6. In order to ensure that PWCS does not make available on a take-or-pay basis more Coal Handling Services than it and the Export Coal Chain can reasonably provide, if at any time there is, or there is reasonably forecast by the Administrator to be, a material, objectively demonstrable change in the Available Capacity for a Relevant Period, the Administrator may make adjustments to the Loading Allocation of each Producer for the Relevant Period in a manner that reasonably reflects that change. Prior to implementing the adjustment, the Administrator will advise each Producer of its calculations of the adjustment.

SCHEDULE 3 - FORECAST REQUIREMENT

1. The Administrator will determine in accordance with guidelines prepared by PWCS and the Administrator in consultation with the industry which, if any, of a Producers' mine-by-mine Forecast Requirement will be subject to audit by the Demand Auditor. The Administrator will notify the Producer of its determination.
2. The Producer may notify the Administrator within 5 days of the date of the notification provided in accordance with the previous paragraph that it declines the audit, in which event:
 - (a) the Producer will be exempt from an audit;
 - (b) the Producer's Final Demand Amount will be equal to its Forecast Requirement;
 - (c) for the purpose of calculating the Arbiter's Adjustment, the Arbiter's Determined Amount shall be zero; and
 - (d) the conditions in paragraph 7 of this Schedule shall apply.
3. The Demand Auditor will, for each Producer that is subject to audit, determine the Relevant Quantity for each Calendar Quarter and the quantity so determined, along with supporting evidence, shall then be notified to the Arbiter and the Producer. For the purposes of this paragraph, "**Relevant Quantity**" means the quantity of Coal that the Producer has the capacity and intent to produce and export through the Export Coal Chain in each Calendar Quarter of the Relevant Year.

Each Producer will supply to the Demand Auditor such information as may be reasonably required by the Demand Auditor in order to ~~fulfill~~fulfill its role as the Demand Auditor. If a Producer does not provide that information, the Demand Auditor will determine the Relevant Quantity based on the information available to it and by reference to the capacity of the Producer that has already been demonstrated by its past, sustained shipping performance.
4. The Arbiter will consider the Demand Auditor's determination of the Relevant Quantity and the supporting evidence provided by the Auditor to determine both quarterly and annual amounts ("**the Arbiter's Determined Amount**"), which most accurately reflect the definition of "Relevant Quantity" in paragraph 3. The Arbiter will notify the Administrator and the Producer of its determination.
5. In the event the Arbiter's Determined Amount is less than the Forecast Requirement for the Producer and the Producer disagrees with the determination by the Arbiter of the Arbiter's Determined Amount, the Producer may by notice to the Administrator within 5 days of the date of the notification provided in accordance with the previous paragraph ("**the Relevant Date**") reject the Arbiter's Determined Amount and retain its Forecast Requirement as its Final Demand Amount, in which event for the purpose of calculating the Arbiter's Adjustment, the Arbiter's Determined Amount for that Producer shall be zero.
6. A Producer whose Forecast Requirement has been audited and who does not provide a notice to the Administrator within 5 days of the Relevant Date in accordance with the previous paragraph will be deemed to have accepted the Arbiter's Determined Amount.

7. A Producer who has chosen to decline an audit or to reject the Arbiter's Determined Amount (such Producer hereafter referred to as a "**Restricted Producer**") will be subject to the following conditions:
- (a) A Restricted Producer may only participate in the disposal (either by a transfer or exchange) of Loading Allocation in accordance with clause 4 of Annexure 4E if, by so doing, the quantity of its Annual Loading Allocation does not fall below that of its Forecast Requirement;
 - (b) A Restricted Producer may participate in the Demand Reduction Auction as a buyer only, and thus will be excluded from bidding beyond its pro-rata reduction;
 - (c) In the event that the Restricted Producer has an Unused Portion in respect of a Calendar Month or Calendar Quarter, whichever is appropriate in the context, the Restricted Producer must provide compensation to other Producers in accordance with paragraph 7 of Schedule 6; and
 - (d) In order to secure the obligations of the Restricted Producer under paragraph 7 of Schedule 6, within 30 days of the date that the Restricted Producer declines an audit or rejects the Arbiter's Determined Amount in respect of a Relevant Year, the Restricted Producer must provide to PWCS an irrevocable, unconditional bank guarantee, or equivalent security acceptable to PWCS, in such form and from such institution as is acceptable to PWCS, for the amount being not less than the Relevant Sum (as defined in subparagraph 7(a) of Schedule 6) multiplied by the average of the Restricted Producer's Arbiter's Adjustment for each Calendar Quarter of the Relevant Year, to a maximum amount of \$50 million. If the Restricted Producer does not provide such security to PWCS, then notwithstanding any other provision of the Coal Handling Services Agreement, PWCS may refuse to provide Coal Handling Services to the Producer. The security will be returned to the Restricted Producer by 31 January in the year following the Relevant Year, unless prior to that time PWCS has drawn down on the security in accordance with this subparagraph and paragraph 7 of Schedule 6.
8. The Administrator will determine the Final Demand Amount as follows:
- (a) If the Arbiter's Determined Amount is greater than the Forecast Requirement, or if the Producer has not been audited, the Final Demand Amount shall equal the Forecast Requirement;
 - (b) If the Arbiter's Determined Amount is less than the Forecast Requirement and the Producer accepts the Arbiter's Determined Amount, the Final Demand Amount shall equal the Auditor's Determined Amount; and
 - (c) If the Auditor's Determined Amount is less than the Forecast Requirement and the Producer rejects the Arbiter's Determined Amount, the Final Demand Amount shall equal the Forecast Requirement and the Producer will be subject to the conditions stated in paragraph 7 of this Schedule.

SCHEDULE 4 - DEMAND AND SUPPLY BALANCING

1. The Forecast System Demand for a Relevant Year shall be the aggregate of all Final Demand Amounts for that year, as determined by the Administrator.
2. If at least one month prior to the commencement of the Relevant Year it is determined that the Forecast System Demand for the Relevant Year is equal to or less than the forecast Available Capacity plus 3 million tonnes for the Relevant Year:
 - (a) The Loading Allocation of each Producer for the Relevant Year shall be equal to its Final Demand Amount for that year;
 - (b) Provided that sufficient additional Coal Chain Capacity is available, any Producer may apply to the Administrator for additional Loading Allocation, which will be issued on a first-come, first-served basis;
 - (c) If at any point during the year PWCS determines that the Objectives are not being met due to excess demand, then it will direct the Administrator to implement the Scheme for the remainder of the year in accordance with this Annexure. Under the Scheme each Producer will be given its pro-rata allocation of the available capacity for the year according to its Forecast Requirement, less amounts already delivered to the Terminal by the Producer in the year, distributed on a quarterly basis; and
 - (d) The remainder of this Schedule will not apply, unless the circumstances described in the previous subparagraph apply.
3. If the Forecast System Demand exceeds the Available Capacity by 3 million tonnes or more in the Relevant Year, the Administrator will determine the Annual Pro-rata Allocation of each Producer through capacity balancing in accordance with this Schedule.
4. The Annual Pro-rata Allocation for each Producer will be determined by the Administrator as follows:
 - (a) The Administrator will calculate the factor ("**Annual Capacity Factor**") that, when multiplied by the Forecast System Demand for the Relevant Year, will produce an amount that is equal to Available Capacity; and
 - (b) The Annual Pro-rata Allocation will be calculated for each Producer by multiplying the Annual Capacity Factor by the Producer's Final Demand Amount.
5. Each Producer must notify the Administrator ("**Producer Notice**") that it:
 - (a) Accepts the Annual Pro-rata Allocation as determined by the Administrator to be its Annual Loading Allocation; or
 - (b) Wishes to participate in the Demand Reduction Auction (each such Producer so participating hereafter referred to as a "**Participating Producer**").
6. If sufficient interest exists, the Administrator may facilitate the Demand Reduction Auction. The conduct of the Demand Reduction Auction and the subsequent

determination of Annual Loading Allocations will be agreed between the Administrator and Participating Producers prior to commencement of the auction, however will include the following features:

- (a) Participating Producers will be required to submit a series of bids indicating their willingness to reduce demand by more or less than their required pro-rata reduction at specified per tonne prices;
 - (b) The auction clearing price will be determined by the Administrator;
 - (c) The Administrator will facilitate any redistribution of Loading Allocation around Participating Producers' pro rata allocations as required by the auction outcome. That is, Participating Producers whose required pro-rata reduction is less than their accepted bids will transfer allocation to Participating Producers whose required prorata reduction exceeds their accepted bids, with all transactions completed at the auction clearing price; and
 - (d) Settlement of the auction will take place as agreed between Participating Producers prior to its conduct.
7. If a Producer can demonstrate that its Final Demand Amount can be shipped without affecting the amounts exported by other Producers (for example use of a different delivery method), PWCS may instruct the Administrator that the Loading Allocation of the Producer for the Relevant Year shall be equal to its Final Demand Amount for that year.

SCHEDULE 5 - CAPACITY DISTRIBUTION

1. The Administrator will in respect to the Relevant Year determine Quarterly Loading Allocations for each Producer in a manner which seeks to match both the capacity profile and individual Producers' demand profiles as closely as possible.

1A. The Administrator will allocate the Loading Allocation of a Producer in the following manner:

<u>(a) where the Producer is a Large Producer (as listed in Attachment A)</u>	<u>on a monthly basis by converting the Producer's Quarterly Loading Allocation to a Monthly Loading Allocation (by a pro-rata distribution based on monthly declared Coal Chain Capacity); and</u>
<u>(b) where the Producer is a Small Producer (as listed in Attachment A)</u>	<u>on a quarterly basis equal to the Producer's Quarterly Loading Allocation.</u>

2. At the start of each Relevant Year each Producer will be provided an additional allocation ("**Conditional Allocation**") for each Calendar Quarter of that year equal to 5% of the Producers' Quarterly Loading Allocation, which may only be utilised by each Producer after it has utilised:

- (a) All of its Quarterly Loading Allocation for the relevant Calendar Quarter; and
- (b) Any portion of Quarterly Loading Allocation available for use from adjoining Calendar Quarters in accordance with clause 3.5 of Annexure 4E.

A Producer may only make an Application utilising a particular Calendar Quarter's Conditional Allocation during that quarter and after it has lodged Applications utilising its Quarterly Loading Allocation.

Once an Application has been accepted by PWCS using Conditional Allocation, that portion of Conditional Allocation that has been so used will be converted from Conditional Allocation to the Producer's Quarterly Loading Allocation for the relevant Calendar Quarter. This means that the Producer's Conditional Allocation will be decreased by the amount used in the nomination and its Quarterly Loading Allocation will be increased by the same amount. Once Conditional Allocation is converted to Quarterly Loading Allocation, it will be subject to the Take-or-Pay obligations in clause 6 of Annexure 4E.

If the vessel queue at the Port of Newcastle exceeds an average of 25 vessels over a three week period, the Administrator will notify Producers that Conditional Allocation can no longer be used. The Administrator will reinstate the use of the Conditional Allocation if the average vessel queue falls below 15 over a three week period.

The three week period in each case will include one week of actual queue data and two weeks of forward queue data.

For the purposes of this paragraph, the queue shall be calculated excluding vessels for

which unavailability of Coal at the loadpoint is restricting vessel loading.

In the event that the Administrator advises Producers that Conditional Allocation can no longer be used, PWCS will not accept Applications that include any Conditional Allocation amount, however PWCS may not cancel any existing Shipment Contract that includes a Conditional Allocation amount, subject to the other provisions of the Coal Handling Services Agreement.

Conditional Allocations may not be exchanged or transferred between Producers.

For the avoidance of doubt, Conditional Allocations will be determined on a quarterly basis for both Large Producers and Small Producers in the manner described above.

3. Notwithstanding any other provision of this Annexure or in the Coal Handling Services Agreement or otherwise, any amount determined by the Administrator for the Forecast Requirement or Loading Allocation of a Producer, or Forecast System Demand, Coal Chain Capacity or Operational Allowance for a Relevant Period, is not a guarantee by PWCS, the Administrator, any of the Auditors, the Arbiter or any other party that PWCS will be able to load that quantity of Coal onto vessels in the Relevant Period or that it will be able to provide the level of Coal Handling Services necessary to load that quantity of Coal in the Relevant Period.

SCHEDULE 6 - DISRUPTIONS TO A PRODUCER

1. For the Purposes of the Scheme:

(a) the Lower Flexibility Amount will be determined as follows -

ξ for Producers with a Loading Allocation for the Relevant Year equal to or in excess of 1,000,000 tonnes, the Lower Flexibility Amount will be ~~90,000~~ 180,000 tonnes;

ξ for Producers with a Loading Allocation for the Relevant Year less than 1,000,000 tonnes, the Lower Flexibility Amount will be reduced proportionally. For example if a Producer's Loading Allocation is 500,000 tonnes (50% of 1,000,000 tonnes), its Lower Flexibility Amount will be ~~45,000~~ 90,000 tonnes (50% of ~~90,000~~ 180,000); and

(a) the ~~Upper~~ Higher Flexibility Amount will be determined as follows -

ξ for Producers with a Loading Allocation for the Relevant Year equal to or in excess of 1,000,000 tonnes, the ~~Upper~~ Higher Flexibility Amount will be ~~90,000~~ 180,000 tonnes; and

ξ for Producers with a Loading Allocation for the Relevant Year less than 1,000,000 tonnes, the ~~Higher~~ Upper Flexibility Amount will be reduced proportionally. For example if a Producer's Loading Allocation is 100,000 tonnes (10% of 1,000,000 tonnes), its ~~Upper~~ Higher Flexibility Amount will be ~~9,000~~ 18,000 tonnes (10% of ~~90,000~~ 180,000).

2. If during the Relevant Period there is a change in the groupings of Producers from that described in Attachment A, the Administrator may, in order to achieve the Objectives, determine that the flexibility amounts referred to in the previous paragraphs of this Schedule be changed to a different amount.

3. If a Producer ("**Relevant Producer**") with:

(a) a Monthly Loading Allocation has, at midnight on the 5th day after the conclusion of any Calendar Month ("**Relevant Month**"), an Unused Portion for that Relevant Month; or

(b) a Quarterly Loading Allocation has, at midnight on the 5th day after the conclusion of any Calendar Quarter ("**Relevant Quarter**"), a ~~Producer ("**Relevant Producer**")~~ has an Unused Portion for that Relevant Quarter,

-then subject to the other provisions of this Schedule the Relevant Producer must, in the manner provided below, compensate those other Producers who do not themselves have an Unused Portion for the Relevant Month or Relevant Quarter as the case may be (such Producers referred to hereafter in this Schedule as "**Participating Producers**"), for the opportunity they have lost in not being able to use the Unused Portion.

Physical compensation if the Relevant Producer is an Unrestricted Producer

4. If the Relevant Producer is an Unrestricted Producer and has not, prior to the start of the Relevant Month or Relevant Quarter, notified the Administrator in accordance with clause 4.3 of Annexure 4E of its inability to use the Unused Portion, then an amount equivalent to the Unused Portion will be deducted from the Producer's Loading Allocation for the next Calendar Month or Calendar Quarter and shared among those Participating Producers who are prepared to accept the allocation and the obligations attaching to that allocation during that next Calendar Month or Calendar Quarter, as determined by the Administrator.
5. The extra Loading Allocation will be shared pro-rata amongst the Participating Producers in accordance with their respective Loading Allocations at the end of the Relevant Month or Relevant Quarter.
6. If the ~~next~~ Calendar Month or Calendar Quarter immediately following the Relevant Month or Relevant Quarter, whichever is appropriate in the context, falls in the following calendar year and a Scheme exists in that year, then the deduction of Loading Allocation will be applied in that next Calendar Month or Calendar Quarter, whichever is appropriate in the context.

Financial compensation if the Relevant Producer is a Restricted Producer

7. If the Relevant Producer is a Restricted Producer, then the Producer must compensate all Participating Producers in the following manner:
 - (a) The Relevant Producer must pay to PWCS an amount ("**Financial Compensation Amount**") calculated on the quantity (in tonnes) that is the lower of either the Unused Portion or the Arbiter's Adjustment for the Relevant Month or Relevant Quarter, multiplied by the sum ("**the Relevant Sum**") of \$20.00.
 - (b) The Board may prior to the commencement of each Relevant Year in its absolute discretion vary the Relevant Sum, to apply in the Relevant Year, to reflect changes in the value of the lost opportunity for Participating Producers in not being able to use the Unused Portion in each case.
 - (c) After calculating the Financial Compensation Amount, PWCS will issue an invoice to the Restricted Producer for that amount, which must be paid to PWCS within 30 days of the date of the invoice. The provisions of clause 2.3.6 to 2.3.9 inclusive of the Coal Handling Services Agreement will apply in respect of the amount so invoiced.
 - (d) If the Restricted Producer fails to pay to PWCS the Financial Compensation Amount within the time provided in accordance with the previous subparagraph, PWCS may immediately draw down upon the bank guarantee provided by the Restricted Producer in accordance with paragraph 7 of Schedule 3, in payment of the Financial Compensation Amount.
 - (e) Any Financial Compensation Amount paid to PWCS in accordance with this paragraph will be distributed by PWCS to all Participating Producers in proportion to their respective Loading Allocation at the end of the Relevant Month or Relevant Quarter.

- (f) Subject to the following subparagraph, should the Unused Portion exceed the Arbitrator's Adjustment for the Relevant Month or Relevant Quarter then the amount of that excess will be deducted from that Producer's Loading Allocation for the ~~next~~ Calendar Month or Calendar Quarter immediately following the Relevant Month or Relevant Quarter, whichever is appropriate in the context, and pro-rata shared among the Participating Producers, in the same manner as described in paragraphs 4, 5 and 6 of this Schedule; and
- (g) In the event that a Restricted Producer notifies the Administrator in accordance with clause 4.3 of Annexure 4E of its inability to use the Unused Portion, the compensation obligations described in the previous subparagraph will not apply to the Producer in respect of the Relevant Month or Relevant Quarter, even if the Administrator is unable to redistribute the Unused Portion during the Relevant Month or Relevant Quarter. Nothing in this subparagraph shall affect the obligation of the Restricted Producer to pay the Financial Compensation Amount in accordance with this paragraph 7.
8. If in a Relevant Period there is a Unused Portion in respect of a Restricted Producer and PWCS determines in accordance with clauses 6.7 and 6.8 of Annexure 4E that part or all of the Unused Portion was not able to be delivered to the Terminal during the Relevant Period due to an Event of Force Majeure (as defined in Annexure 4E), the Producer will not, in respect of the amount so determined, be required to pay the Financial Compensation Amount otherwise payable under paragraph 7 of this Schedule.
9. The Producer may not invoke the operation of clause 2.11.4 of the Coal Handling Services Agreement to:
- (a) affect the application or operation of this Schedule or any calculation or determination made under this Schedule; or
- (b) avoid any obligation applying to the Producer in accordance with this Schedule, or to delay the performance of that obligation.
10. By issuing invoices to Restricted Producers, receiving payment of Financial Compensation Amounts and paying those amounts to Participating Producers in accordance with this Annexure, PWCS is acting as agent for Participating Producers.

For the purposes of the GST law:

- (a) PWCS will be treated as making the supplies to the relevant Restricted Producer or acquiring the supplies from the relevant Restricted Producer or both;
- (b) the relevant Participating Producers will be treated as making corresponding supplies to PWCS or acquiring the supplies from PWCS or both; and
- (c) in the case of supplies to the relevant Restricted Producer:
- (1) PWCS will issue to the Restricted Producer, in PWCS's own name, all the tax invoices and adjustment notes relating to those supplies; and

- (2) the relevant Participating Producers will not issue to the Restricted Producer any tax invoices and adjustment notes relating to those supplies.

For the purposes of this paragraph, "GST law" means the law in Australia applying to goods and services tax, including under A New Tax System (Goods and Services Tax) Act 1999 (Cth).

ATTACHMENT A

LIST OF PRODUCERS AND ASSOCIATED MINES

Producer	Mine
<u>Large Producer:</u>	
<u>BHP Billiton</u>	<u>Mt Arthur</u> <u>Mt Arthur Underground ⁽¹⁾</u>
<u>Coal & Allied</u>	<u>Hunter Valley</u> <u>Mount Thorley Warkworth</u> <u>Bengalla</u>
<u>Peabody Pacific</u>	<u>Wambo</u> <u>Wilpinjong Open Cut</u>
<u>Xstrata Coal Australia</u>	<u>Cumnock</u> <u>United</u> <u>Liddell</u> <u>Bulga</u> <u>West Wallsend</u> <u>Mt Owen</u> <u>Ulan</u>
<u>Small Producer:</u>	
<u>Anglo Coal Australia Pty Ltd</u>	<u>Drayton</u>
<u>Austar Coal Mine Pty Ltd</u>	<u>Austar</u>
<u>Bloomfield Collieries</u>	<u>Bloomfield</u> <u>Rix's Creek</u>
<u>Centennial Coal Company</u>	<u>Newstan</u>
<u>Donaldson Coal</u>	<u>Donaldson</u> <u>Tasman</u> <u>Abel ⁽¹⁾</u>
<u>Gloucester Coal</u>	<u>Stratford Mine</u>
<u>Idemitsu Australia Resources</u>	<u>Boggabri</u> <u>Muswellbrook Coal Co No. 1 & No. 2</u>
<u>Integra Coal</u>	<u>Camberwell Open Cut</u> <u>Glennies Creek Underground</u> <u>Glennies Creek Open Cut ⁽¹⁾</u>
<u>Resource Pacific Ltd</u>	<u>Newpac</u>
<u>White Mining Limited</u>	<u>Ashton</u>
<u>Whitehaven Coal Mining Limited</u>	<u>Whitehaven</u> <u>Werris Creek</u> <u>Tarrawonga</u> <u>Sunnyside ⁽¹⁾</u>

(1) Indicates a New Mine with an estimated commencement quarter in 2007.

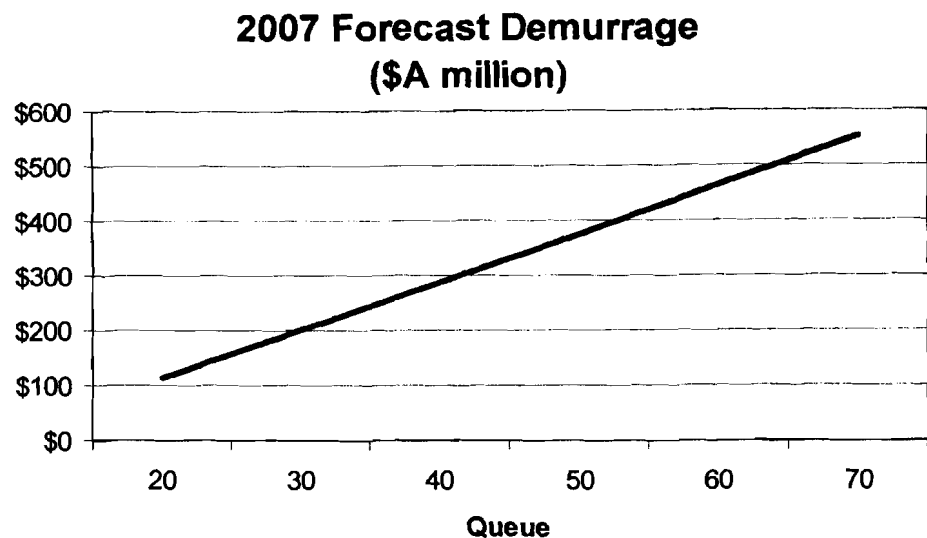
and Associated Mines
(as per September 2005 Demand Forecasts)

Note: * Indicates a new mine commencing production during calendar year 2005

**Schedule 2 - Estimated demurrage costs if the
Amended Medium Term CBS is not implemented**

Estimated Demurrage Costs:

The following chart illustrates PWCS' estimate of demurrage for 2007 under various queue scenarios. This estimate has been compiled from information provided by some of its Customers. Further detail in relation to the demurrage calculations are provided in Confidential Annexure 2.



In the absence of a CBS, and assuming that a level of approximately 60 vessels will remain queued for the balance year, demurrage costs could be in the order of A\$460 million.

Assuming that under a CBS it would take until July 2007 to reduce the queue to a level of around 20 vessels, the total demurrage cost to the industry could be in the order of A\$245 million. It is possible that queue reductions could be achieved more quickly resulting in further demurrage savings to the industry.

The comments below have also been reported in relation to demurrage costs to the Hunter Valley Coal Industry:

McCloskey's Coal Report 12 January 2007 – "The latest HVCC information showed average demurrage for December at A\$4.23/t (\$3.29), but shippers say demurrage can approach \$10/t on spot cargoes caught in the queue where average waiting time has blown out beyond three weeks."

McCloskey's Coal Report 26 January 2007 – "... a return to some form of rationing at the terminal appears the only action likely to have a short term effect on the chronic congestion which pushed average demurrage above A\$5/t (\$4/t) this month."

McCloskey's Coal Report 9 February 2007 – "Any further queue increase would likely push up average demurrage costs currently estimated at A\$4.28/t (\$3.35/t)."

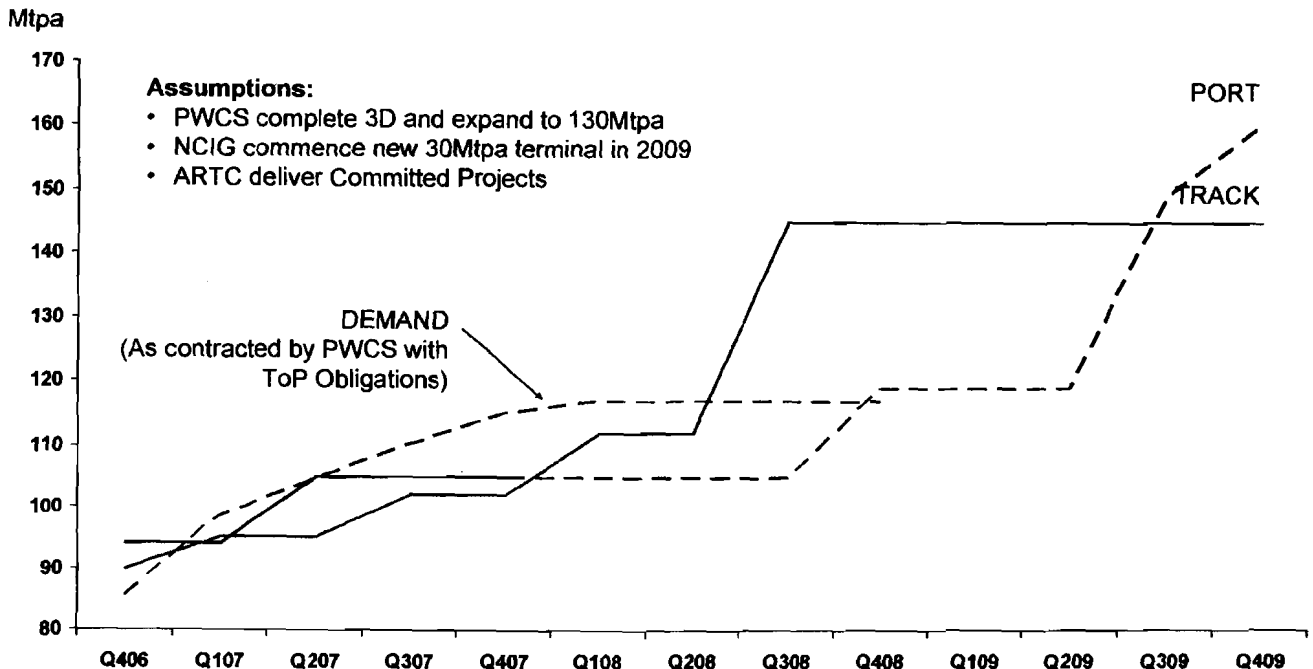
**Schedule 3 - Capacity Expansion Initiatives on
the Hunter Valley Coal Chain for 2007
(implemented and planned)**

Increasing Coal Chain Capacity in 2007 – Infrastructure Initiatives

Planned Infrastructure Investments, Status and Capacity Benefits			Q1 06	Q2 06	Q3 06	Q4 06	Q1 07	Q2 07	Q3 07	Q4 07	Q1 08	Q2 08	Q3 08	Q4 08	Q1 09	Q2 09	Q3 09	Q4 09			
Port PWCS: <ul style="list-style-type: none"> Project 3D Phase 1 Expansion Option Phase 2 Expansion Option NCIG <ul style="list-style-type: none"> Phase 1 	Status: Commenced Planned Under Eval.	Capacity: 105 Mtpa 119 Mtpa 129 Mtpa	[Gantt chart bars for Port section]																		
	Planned	+30 Mtpa	[Gantt chart bars for Port section]																		
	Track: ARTC V5: <ul style="list-style-type: none"> Sandgate Grade Separation Ulan CTC, passing loops 5 Gunnedah paths/day M'Brook Yard Duplication Stage 1 Part M-A Duplication (Antiene-G'trees) 7 Gunnedah paths/day <ul style="list-style-type: none"> Murulla Loop Loop x 3 Loop x 7 Full M-A Duplication (St H-M'Brook) Ulan additional passing loop 	Complete Commenced Complete Commenced Committed Commenced Committed Planned Committed Planned	102Mtpa 112Mtpa 145Mtpa	[Gantt chart bars for Track section]																	
Trains: PN: - 330 additional wagons on order QRN: - 4 th consists operational Eliminate refuelling @ KCT (i.e. 6 Dep. Rds)	Commenced Complete Committed	~*110Mtpa ~** 120Mtpa	[Gantt chart bars for Trains section]																		

■ Under Eval: Being modelled/ designed or evaluated, but not yet at commitment
 ■ Planned: Final board approval, funding & other approvals in place
 ■ Commenced: Construction is underway
 ■ Completed: Project completed and commissioned

Note(*): Rolling stock system capacity at end of 2007 is approx 110 Mtpa in a stand alone configuration as modelled by HVCCLT
 Note(**): Refuelling at KCT currently constrains throughput at ~95-100 Mtpa



Source: Hunter Valley Coal Chain Logistics Team

Schedule 4 - Shareholders in PWCS and Newcastle Coal Shippers Pty Limited

PORT WARATAH COAL SERVICES LIMITED
SHAREHOLDERS

SHAREHOLDER NAME	%	NO. OF SHARES
Newcastle Coal Shippers Pty Limited	36.9491%	49,001,000
Coal & Allied Industries Limited	16.0018%	21,221,250
R W Miller (Holdings) Limited	13.9982%	18,564,000
Tomen Panama Asset Management S.A.	10.0000%	13,261,750
Japan Coal Development Co., Ltd.	4.1039%	5,442,500
Bloomfield Collieries Pty Limited	3.4611%	4,590,000
Nippon Steel Australia Pty Ltd	3.3171%	4,399,108
Mitsui & Co., Ltd	2.8861%	3,827,500
Mitsubishi Corporation	1.9862%	2,634,100
Sojitz Corporation	1.1745%	1,557,592
JFE Steel Corporation	2.1874%	2,900,880
Sumitomo Metal Australia Pty Ltd	1.0452%	1,386,180
Itochu Coal Resources Australia Pty Limited	1.0171%	1,348,900
Kobe Steel, Ltd.	0.6022%	798,660
Nisshin Steel Co. Ltd.	0.2146%	284,580
Taiheiyo Cement Corporation	0.1759%	233,250
Kanematsu Corporation	0.1173%	155,500
Marubeni Corporation	0.1173%	155,500
Sumitomo Corporation	0.1173%	155,500
Tokyo Boeki Ltd.	0.1173%	155,500
Ube Industries, Ltd.	0.1173%	155,500
Sumitomo Osaka Cement Co., Ltd	0.0879%	116,625
Idemitsu Kosan Co., Ltd.	0.0586%	77,750
Mitsubishi Materials Corporation	0.0586%	77,750
Nippon Oil Corporation	0.0586%	77,750
Tokuyama Corporation	0.0293%	38,875
Total Capital	100.0000%	132,617,500

**NEWCASTLE COAL SHIPPERS PTY LIMITED
SHAREHOLDERS**

SHAREHOLDER NAME	%	NO. OF SHARES
Oakbridge Pty Limited	20.2321%	6,398,719
Anglo Coal (Drayton Management) Pty Limited	20.0000%	6,325,320
Ulan Coal Mines Limited	15.9742%	5,052,110
Coal & Allied Industries Limited	11.4102%	3,608,650
Warkworth Coal Sales Limited	11.2681%	3,563,705
Port Waratah Coal Services Limited	8.9640%	2,835,000
Bloomfield Collieries Pty Limited	2.8170%	890,926
Camberwell Coal Pty Limited	2.1306%	673,850
Mt Arthur Coal Pty Limited	1.7479%	552,800
Muswellbrook Coal Company Limited	1.6902%	534,556
Powercoal Pty Limited	1.5809%	500,000
Wambo Coal Pty Limited	1.1268%	356,371
United Collieries Pty Limited	0.6429%	203,313
Liddell Coal Marketing Pty Limited	0.1804%	57,050
Cumnock No.1 Colliery Pty Limited	0.0361%	11,410
Hunter Valley Coal Corporation Pty Limited	0.0361%	11,410
Oceanic Coal Australia Limited	0.0361%	11,410
Bengalla Coal Sales Company Pty Limited	0.0316%	10,000
Centennial Coal Company Limited	0.0316%	10,000
Gloucester Coal Ltd	0.0316%	10,000
Namoi Mining Pty Ltd	0.0316%	10,000
Total Issued Capital	100.0000%	31,626,600