

# Blake Dawson

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10 December 2007

Dear Mr Gregson

**Application by Newcastle Port Corporation for authorisation – A91072 - 91074**

**Your reference**  
A91072 - A991074

**Our reference**  
PJA AJT 02-1423-4805

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We act for Idemitsu Australia Resources Pty Limited (**Idemitsu**). Chang, Pistill & Simmons acts for Donaldson Coal Pty Limited (**Donaldson**). Whitehaven Coal Limited has authorised us to write to the ACCC on its behalf (**Whitehaven**).

We refer to the application which has been made by Newcastle Port Corporation (NPC) seeking authorisation and interim authorisation of the system outlined in Attachment 1 to its submission (the **Proposed System**).

In response to the ACCC's request for submissions on Newcastle Port Corporation's application, Idemitsu, Donaldson and Whitehaven (the **Producers**) wish to advise the ACCC that subject to clarification of one minor point (in relation to which, see below), they support the application for interim authorisation of the Proposed System which has been made by Newcastle Port Corporation.

## Clarification of NPC application

The Producers believe that the NPC application contains two minor errors which require correction for the system to work effectively in 2008. These are as follows:

- amend the definition of "Forecast Requirement", so that it refers to the Demand Nominations for the 2008 year given by Producers in October 2006; and
- amend paragraph 1 of Schedule 5 to allow Producers to supply quarterly break-downs or demand profile information to the Administrator. (When the binding Demand Nominations for 2008 were given by Producers, these were not provided.)

## Support for interim authorisation

Subject to clarification of these minor points in the manner identified above, the Producers support the application made by NPC for interim authorisation. The Producers' reasons for supporting the interim authorisation are as follows:

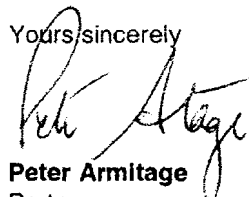
- The Producers consider that it is appropriate to temporarily preserve

the status quo, to allow the ACCC sufficient time to properly consult on the benefits and detriments of the radically different VQMS system which has been proposed by PWCS, Pacific National and Queensland Rail.

- Interim authorisation of the Proposed System is preferable to interim authorisation of the VQMS, as it does not result in the significant public detriments of mine closures and production scale-backs referred to in the Producers' submission opposing the VQMS.
- Further, interim authorisation of the Proposed System (unlike interim authorisation of the VQMS) does not result in the exclusion of new coal producers in the Hunter Valley (due to lack of rail contracts), nor does it result in subversion of the common user requirements.
- Interim authorisation of the Proposed System makes sense, given that coal producers have entered into supply contracts for 2008 based on their entitlements under the CBS (or based on their likely allocation in the event of no capacity management system).
- Interim authorisation of the Proposed System will not operate to exclude potential rail entrants.
- Interim authorisation for 6 months will allow the relevant participants to consult further on a long-term solution to the capacity issues.

Please feel free to contact us on the numbers below or Mark Pistilli and/or Joni Henry at Chang, Pistilli & Simmons on (02) 8922-8001 or (02) 8922-8018 if you have any queries.

Yours sincerely



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