

Port Waratah Coal Services  
Limited  
Newcastle Coal Infrastructure  
Group Pty Limited and  
Newcastle Port Corporation

Response to questions raised by  
the Australian Competition and  
Consumer Commission on  
15 September 2009

Dated 21 September 2009

# Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group Pty Limited and Newcastle Port Corporation

## Response to questions raised by the Commission on 15 September 2009

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### **1 Introduction**

#### **1.1 Purpose of submission**

The purpose of this submission is to:

- (a) explain and provide further information in relation to the variations to the applications for authorisation submitted by the Applicants to the Commission on 14 September 2009; and
- (b) set out the Applicants' response to the questions raised by the Commission in its letter dated 15 September 2009.

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### **2 Questions raised by the Commission**

#### **2.1 Introduction**

The Applicants' responses to the specific questions raised by the Commission in its letter dated 15 September 2009 are set out below. As the Commission's letter has been placed on the public register, the Applicants have not sought to repeat each question below, but have rather used the numbering set out in the Commission's letter.

Capitalised expressions have the same meaning as in the applications for authorisation and in Attachment 1.

#### **2.2 The amended Capacity Framework Arrangements**

##### *Introduction*

The marked up version of Attachment 1 to the letter from Mallesons Stephen Jaques dated 14 September 2009 reflects a number of changes to the Capacity Framework Arrangements that have been negotiated between the Applicants since the initial applications for authorisation were submitted to the Commission on 29 June 2009.

The changes negotiated between the Applicants largely involve clarifications and practical changes necessary to give effect to the long term solution for capacity expansions for the export of coal from the Port of Newcastle, as approved by NPC and the NSW Government. Many of the changes seek to vary the mechanics of the relevant arrangements, or otherwise seek to address practical issues identified by the Applicants during the contract negotiation process.

A number of the marked-up changes to Attachment 1 also reflect matters which, in and of themselves, may not require authorisation. However, given the detailed description of the conduct set out in Attachment 1 and the highly interconnected

nature of the long term solution, the Applicants wish to ensure that the Commission is provided with accurate and up-to-date details of how the Capacity Framework Arrangements will operate.

***The conduct for which authorisation is sought (as varied) satisfies the statutory criteria for authorisation***

The Applicants consider that the changes to Attachment 1, and the variations to the applications for authorisation provided to the Commission on 14 September 2009, do not have any material impact on the Commission's assessment of public benefits and detriments as set out in the Supporting Submission dated 29 June 2009.

If anything, the variations to Attachment 1 reflect the fact that the relevant conduct has now been agreed between the Applicants in greater detail and with greater precision, both from a commercial and operational perspective. The resulting increase in certainty for the Applicants, coal producers and other coal chain service providers also involves a significant increase in the public benefits associated with the arrangements for which the Applicants have sought authorisation.

In addition, certain other variations, in providing for the enhanced operation of the long term framework, are also intended to facilitate greater access to capacity for producers and to ameliorate any anti-competitive impact which might otherwise arise from long term contractual arrangements. These include the dual nomination process and the cap on fees for assigning Contracted Allocations.

The Applicants consider that these matters also increase the public benefits and reduce any public detriments associated with the conduct for which authorisation is sought.

***Response to the Commission's specific questions***

The Applicants' response to the specific questions raised by the Commission is set out below.

***Question 1(a) - Explanation of the amendments to Attachment 1***

Schedule A to this submission sets out further information in relation to each of the amendments to Attachment 1 (the conduct for which authorisation is sought). This includes an explanation of why the amendments were introduced and what issues the amendments seek to address.

Schedule A provides an explanation in relation to each of the specific amendments identified in Question 1(a) of the Commission's letter.

***Question 1(b) - The Capacity Transfer System***

The Capacity Framework Agreement provides that the Capacity Transfer System Working Group will comprise:

- (a) one nominated representative of each of the Applicants;
- (b) one representative of each of Hunter Valley Coal Chain Coordinator Limited ("HVCCC") and Australian Rail Track Corporation ("ARTC"); and

- (c) at least 5 additional persons who represent an appropriate cross section of Producers to be appointed by agreement of the nominated representatives of the Applicants.

The Applicants cannot confirm at this stage that the documentation relating to the Capacity Transfer System will be finalised by 30 November 2009. As the Commission is aware, there have been some delays to the timetable which anticipated the signing by all parties by 31 August 2009 and the continuation of the interim authorisation granted by the Commission. This is likely to have some impact on the timing for completion of work in relation to the Capacity Transfer System.

The Applicants are hopeful that, as the Capacity Framework Documents have now been signed by all parties, they will be able to convene the Capacity Transfer Working Group on an expedited basis to develop and (if interim authorisation is granted) finalise and implement the Capacity Transfer System.

## **2.3 Contractual alignment**

### Question 2(a) and (b)

The spreadsheet in Schedule B to this submission provides details in relation to the outcome of the contractual alignment discussions between PWCS and ARTC. This spreadsheet has been prepared by both PWCS and ARTC. NPC and NCIG have not been involved in these discussions.

As requested, the spreadsheet identifies “*potential areas of concern and how they are proposed to be addressed*”. It also identifies outstanding issues and the further work proposed to address those issues.

PWCS is continuing to work with ARTC to facilitate contractual and operational alignment. As set out below, the contractual arrangements and operating protocols also seek to create an environment to facilitate greater alignment of contracts with coal chain capacity.

As work progresses between all parties on System Assumptions and standards between services providers and producers, contractual alignment will be further progressed and refined.

### Question 3

The Applicants note that the ARTC Hunter Valley Access Undertaking is yet to be finalised. This is a key component in facilitating contractual and operational alignment. Accordingly, PWCS (as the only current Terminal Operator) is continuing to engage in detailed discussions with ARTC in relation to operational and other “system” matters.

In this regard, PWCS envisages that the majority of required changes to current procedures to cater for contractual and operational alignment will be implemented through the ongoing development and refining of operating protocols.

Importantly, the Capacity Framework Arrangements have involved a number of very significant steps forward to the facilitate alignment of contracts and capacity across the coal chain. These steps include:

- (a) discussions and developments in relation to System Assumptions and system standards. This is the first time that a comprehensive body of work has been undertaken across the coal chain to understand system assumptions and capacity and operational constraints;
- (b) basing contractual entitlements on Load Point by Load Point allocations (which, again, provides much greater certainty in relation to the impact of coal delivered to the Terminals on other parts of the coal chain); and
- (c) the proposed introduction of long term ship or pay contracts. This provides significantly improved certainty and incentives for producers to commit to Load Point Allocations, and therefore far greater investment certainty for coal chain service providers.

Together, these developments ensure that there is far greater information and certainty in relation to the operation of the system as a whole, and a solid contractual basis for ensuring compliance on a Load Point by Load Point basis.

PWCS has also incorporated various measures into its Long Term Ship or Pay contracts and the Terminal Access Protocols to further facilitate contractual alignment. These measures include the following:

- (a) each producer is required to have sufficient contractual entitlements for the delivery of coal to the PWCS Terminals prior to access to services being granted by PWCS (LTSOP, clauses 4.1 and 4.4);
- (b) producers will have performance standards. Lost capacity of the Terminals due to the performance of the producer not meeting its performance standards will be treated as a “quarantined allocation”. That is, the Producer will bear the loss of that capacity (LTSOP, clauses 8.3 and 8.4);
- (c) the System Assumptions will be taken into consideration in transfers and assignments so that the impact on the capacity of the Terminals is captured and the transferred or assigned allocation appropriately adjusted (LTSOP, clauses 10.2(e) and 11.3(c)); and
- (d) the development status of the relevant mine is one of the priority rules for determining the ranking of Nominations at the time of issue of Load Point Allocations (TAP, clauses 6.2 and 9.3).

These are significant developments compared to the industry environment only 12 months ago. The “ship or pay” arrangements in themselves - based on individual Load Point Allocations - are a significant step forward to facilitating contractual alignment.

The relevant contracts, System Assumptions and operating protocols also each contain a degree of flexibility to enable service providers (including PWCS, NCIG and ARTC) to continue discussions and further refine the mechanisms for contractual and operational alignment over the short to medium term.

## **2.4 The timetable for ongoing work (Question 4)**

In order to fully implement the Capacity Framework Arrangements by 1 January 2010, the following work will need to be undertaken and completed:

- (a) PWCS will need to make the Base Tonnage Offers and call for nominations for expansion capacity (“**Nominations**”) from eligible producers. This step includes the execution by producers of the Long Term Ship or Pay Contracts and the submission of their security to PWCS;
- (b) PWCS will need to process the acceptances and Nominations in order to issue Load Point Allocations to the producers in accordance with clause 6 of the Terminal Access Protocols;
- (c) after all Nominations have been received by PWCS, HVCCC will finalise the System Assumptions and then PWCS, in consultation with the Producers, will be able to set appropriate performance standards;
- (d) NCIG will need to establish the successful Non-NCIG producer applicants and issue contracts. This step may require PWCS to allocate the NCIG Stage 2 capacity in the event the 12 Mtpa is oversubscribed. Contracts are to be signed by producers only and placed in escrow until financial close for NCIG Stage 2 is achieved, at which point they will be countersigned by NCIG;
- (e) the Capacity Transfer System Working Group will need to be convened to develop, finalise and implement the Capacity Transfer System;
- (f) the Levy Working Group will need to be convened to develop the criteria for selecting an Administrator, to draft the contract between the parties and the Administrator and to settle the detailed operating framework and financial model for use by the Administrator;
- (g) PWCS will need to establish the terms of reference for the Terminal 4 Agreement for Lease subcommittee, appoint the independent chair and invite nominations for producer representatives to that subcommittee; and
- (h) PWCS will need to finalise its Operating Protocols. Ongoing contractual alignment discussions with ARTC, other service providers and producers may impact on the Operating Protocols and require changes to existing procedures. Finalisation is likely to require customer consultation on the proposed amendments.

With the benefit of interim authorisation, the Applicants will be able to proceed with and finalise this work.

As the Commission is aware, there have been some delays to the timetable and the interim authorisation has been revoked. This is likely to have some impact on the timing for completing each of the matters set out above. It is, however, difficult to quantify the extent of any potential delay at this stage.

## **2.5 Other issues (Question 5)**

### ***The Contractual Alignment Principles***

As set out in Attachment 1, the Applicants seek authorisation for certain conduct in accordance with certain specific provisions set out in the Contractual Alignment Principles provided at Attachment 2 to the Supporting Submission dated 29 June 2009.

The Applicants do not seek authorisation of each matter set out in the Contractual Alignment Principles document. Rather, section 9 of Attachment 1 identifies specific parts of that document which identify specific “contractual alignment” principles or conduct for which authorisation is sought.

### ***The Levy Protocols***

The Applicants confirm that, in accordance with section 8 of Attachment 1 (as varied), they are seeking authorisation of the Levy Protocols.

The Levy Protocols have now been provided to the Commission and are set out in Schedule 1 of Attachment 1 (which, in turn, sets out the conduct for which authorisation is sought). The Levy Protocols can be placed on the Commission’s public register.

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## **3 Further issues**

If the Commission has any further questions, the Applicants would be pleased to assist.

**Port Waratah Coal Services Limited  
Newcastle Coal Infrastructure Group Pty Limited  
Newcastle Port Corporation**

21 September 2009

## Schedule A - The amendments to Attachment 1

### PORT WARATAH COAL SERVICES LIMITED, NEWCASTLE COAL INFRASTRUCTURE GROUP PTY LIMITED & NEWCASTLE PORT CORPORATION

#### SUMMARY OF AMENDMENTS TO ATTACHMENT 1

	Attachment 1 reference	Description of amendment
1	Introduction	The amendment makes it clear that the Capacity Framework Arrangements set out in Attachment 1 do not apply to coal delivered by road transport to PWCS' Carrington Terminal. Coal delivered by road to the Carrington Terminal will continue to be handled on arrival in accordance with PWCS' Road Transport Protocols. No other terminal receives coal by road transport.
2	Part B, 1(a)	The amendment makes it clear which part of the 2010 PWCS Base Tonnage is available for NCIG Producers (other than the Excluded NCIG Producers) as at 31 August 2009. This figure can be implicitly calculated from the 97.4 Mtpa referred to in section 1(a) and from the allocation methodology. However, it has been inserted expressly for greater clarity. The concept of "Excluded NCIG Producers" is explained in Item 17 below.
3	Part B, 1(b)	In response to feedback from unlisted producers that they are not required by the ASX to obtain JORC Code compliant statements, PWCS has agreed to provide greater flexibility by accepting "a statement generally prepared in accordance with the JORC Code" for these producers.  As a commercial matter, PWCS will also require producers to confirm that the reserves are available for shipping through PWCS (i.e. they are not already allocated to domestic supply contracts or shipping through the NCIG Terminal). Producers also need to sign a long term ship or pay contract with PWCS in order to export coal through the PWCS Terminals.
4	Part B, 2(a)	Section 2(a) provides a mechanism for excess capacity in the period 1 January 2010 to 30 June 2010 to be released to existing producers at PWCS on a pro rata basis based on their respective Base Allocations. This deals with additional allocations <i>across all users</i> .  The amendments are intended to provide an additional level of detail -- namely, how that excess capacity will be allocated across each individual producer's load points. Allocation on a load point by load point basis is intended to facilitate contractual alignment.  The amendments make it clear that, if a producer does not accept the additional allocation, the capacity can be re-offered using the same process.
5	Part B, 2A(c)	The amendments to section 2A(c) are each intended to provide greater clarity. They do not involve any material change. The only new issue relates to the "Dual Nomination" process. Further explanation of the "Dual Nomination" process is set out in Item 13 below.
6	Part B, 2A(e)	This amendment is purely mechanical in nature. It provides that, if a Producer voluntarily reduces a Load Point Allocation and that amount reduced is re-allocated to another Producer, the first Producer's Load Point Allocation will be reduced by that amount. Conversely, if it (or any part of it) is not re-allocated, the first Producer remains liable for the amount that is not allocated to others.  This amendment is intended to provide greater clarity concerning the alteration of contractual commitments, and also to ensure that an expansion is not triggered prematurely if there has been a reduction in the overall underlying demand for capacity.
7	Part B, 2A(f)	This sentence is deleted because, as a practical matter (and as contractual alignment discussions have progressed), PWCS will not conduct a formal review with ARTC as the availability of track is not a precondition at the time of nomination. Rather, confirmation of sufficient track access is a precondition to access to the Terminals at the time the services are required by the Producer.



	Attachment 1 reference	Description of amendment
8	Part B, 2A(g)	<p>The amendments are intended to provide greater clarity about the start date of allocations for particular Load Points. The start dates are set out in section 6(b). However, an alternate or suspended start date may apply where either the obligation to expand is suspended or the time for completion of an expansion has been extended by the Reviewer.</p> <p>The new second paragraph is necessary as it will not be possible, as a practical matter, to confirm start dates for certain years until after the Dual Nomination process has been concluded. Further explanation of the “Dual Nomination” process is set out in Item 13 below. However, in summary, until the Dual Nomination Process has been concluded it will not be possible for PWCS to determine precisely the total Load Point Allocations that will need to be serviced by PWCS. Accordingly, the start dates for the affected years are suspended, and PWCS will confirm start dates once the Dual Nomination process has concluded.</p>
9	Part B, 2A(h)(ii)	<p>The amendment provides greater detail in relation to how nominations will be prioritised according to the development status of the relevant mine. It prioritises mines that are more developed for extraction of marketable coal.</p>
10	Part B, 2A(i)	<p>The amendments are intended to provide greater clarity about how capacity will be delivered and how the start dates for allocations will operate (e.g. if the capacity is delivered part way through a year, it can be released immediately and adjustments made to reflect the allocation for a part year). At a high level, the amendments are intended to ensure that capacity is made available as soon as practicable and that, in certain circumstances, producers will have an opportunity to bring forward the start dates for their Load Point Allocations.</p> <p>Section 2A(i)(viii) reflects that contractual alignment processes are based on System Assumptions for each Load Point. There may be a need for some adjustment of the actual quantity to account for the impacts of the transfer of the allocation on the overall capacity of the Terminals. If the allocation of one Producer in the Northern region is compressed by x Mtpa, the operation of the System Assumptions means that x Mtpa may not necessarily be available for the transferee producer in the Western region.</p>
11	Part B, 2A(j)	<p>This amendment reflects that Producers will have an ability to cancel their nominations if, because of demand, they are allocated less than 80% of what they want (for an individual Load Point), or the start date for that Load Point Allocation is significantly delayed. If the Producer cancels the nomination for the relevant Load Point, the capacity can be re-allocated to another Producer, and the first Producer will lose its priority in respect of those tonnes.</p> <p>This arrangement provides greater flexibility to Producers to manage their operations. The intention is to give a Producer the opportunity to withdraw a nomination if the capacity allocated to it is not sufficient to ensure the economic viability of the source mine.</p>
12	Part B, 2A(k)	<p>From an operational perspective, it is necessary to break down each Producers’ Load Point Allocations into periods within which they can use that allocation. For example, it would not be workable if each Producer sought to use its entire yearly Load Point Allocation in the last month of the year.</p> <p>Accordingly, Producers will have the right to export a specified part of their Load Point Allocation (plus any tolerance amounts as set out in PWCS’ Operating Protocols) in specified “Allocation Periods”. An “Allocation Period” will be monthly or quarterly depending on the volume of coal exported by the relevant Producer.</p> <p>The amendments also refer to “Quarantined Allocation”. “Quarantined Allocation” is essentially capacity at the terminals that has been lost. Where the Producers do not meet their respective performance standards and this results in lost capacity at the terminals then the responsible producer will bear the consequence of that lost capacity.</p>

	Attachment 1 reference	Description of amendment
13	Part B, 2A(l)	<p>The Dual Nomination process is intended to address a timing gap in the nomination for tonnages at PWCS and NCIG Committing to the completion of NCIG Stage 2.</p> <p>Producers will be required to submit binding nominations for tonnes at PWCS in Q4 2009. They will also be required to submit binding nominations for tonnes at NCIG. However, they will not know what (if any) tonnes they will have in NCIG Stage 2 until NCIG Stage 2 is Committed and NCIG completes its allocation process. Put another way, if a Non-NCIG Producer seeks 3Mtpa in NCIG Stage 2, it will not know whether it will be allocated all or some of that nomination until well after it is required to nominate for tonnes at PWCS.</p> <p>To avoid the situation that a Producer is not allocated tonnes at either PWCS or NCIG Stage 2, the Dual Nomination process provides a mechanism for Producers to apply for tonnes at both PWCS and NCIG, but for the PWCS nomination to fall away to the extent that the relevant tonnes are accepted for NCIG Stage 2.</p> <p>Section 2A(l) also provides details in relation to a number of mechanical arrangements which are necessary to ensure that the Dual Nomination process works (e.g. start dates of Load Point Allocations, a “Sunset Date” etc). To minimise the burden on Producers, Producers are not required to provide security to PWCS in respect of Dual Nominations unless and until the relevant tonnes are confirmed as PWCS tonnes at the end of the Dual Nomination process.</p> <p>The express inclusion of a Dual Nomination process will facilitate accurate nominations by Producers and ensure the efficient allocation of available capacity.</p>
14	Part B, 2A(m)	<p>The amendment reflects the mechanical provisions in PWCS’ contracts relating to the allocation of start dates in circumstances where they have been suspended.</p>
15	Part B, 2B	<p>The amendments to section 2B are largely intended to provide greater clarity. In relation to specific issues:</p> <ul style="list-style-type: none"> <li>• the concept of “Excluded NCIG Producers” is explained in Item 17 below; and</li> <li>• paragraph (iv) sets out the priority rules that will apply in the event that Excess Capacity is available because the Load Point Allocations of NCIG Producers have been reduced in accordance with section 2D.</li> </ul> <p>Paragraph (v) also makes it clear that, if after applying the priority rules, there remains Excess Capacity, that Excess Capacity will be available on a first come first served basis.</p>
16	Part B, 2C(b)	<p>Previously, section 2C(b) provided that NCIG Producers could not nominate for tonnes (above their Base Allocations) at PWCS until the later of 1 January 2010 and when NCIG Stage 2 is “Committed”. This section has been amended to deal with circumstances where NCIG Stage 2 may not result in the NCIG terminal being fully expanded and where the full expansion of the NCIG terminal is achieved through a series of expansion tranches. As a consequence, the amendments further require that, before NCIG Producers can nominate for tonnes (above their Base Allocations) at PWCS either:</p> <ul style="list-style-type: none"> <li>• NPC notifies PWCS that NPC has approved a specification and construction program for an expansion of the NCIG terminal which will result in the full expansion of that terminal; or</li> <li>• NPC notifies PWCS that: (1) NPC has approved a specification and construction program which involves multiple expansion tranches; (2) the first expansion tranche is the largest practicable at that time having regard to physical and operational constraints to a full expansion; and (3) NPC considers the conditions imposed on its approval will ensure that the full expansion of the NCIG terminal will be achieved.</li> </ul>

	Attachment 1 reference	Description of amendment
		<p>As set out in section 2C(b), the intention of this clause (as amended) is to ensure that:</p> <ul style="list-style-type: none"> <li>• NCIG is committed to the full expansion of its terminal before the NCIG Producers can access expansion capacity at PWCS; and</li> <li>• NCIG Producers cannot access expansion capacity at PWCS while there is available capacity (existing or potential) at NCIG, except where access by NCIG Producers is otherwise specifically contemplated.</li> </ul>
17	Part B, 2D	<p>Section 2D sets out the arrangements which will apply if an NCIG Party is in breach of the Deed of Undertaking or Capacity Framework Agreement. This clause is intended to ensure that NCIG Parties comply with their obligations under those agreements, and provide a practical consequence if they do not.</p> <p>The new section 2D(iii) makes it clear that the consequences specified in section 2D do not apply to an “Excluded NCIG Producer”. An “Excluded NCIG Producer” is limited to Gloucester Coal and its subsidiaries. The concept has been included to address the unique situation where Gloucester, during the negotiation process for the framework arrangements, came under the control of Noble, which has a controlling interest in Donaldson, one of the NCIG shareholders.</p> <p>The new section 2D(v) is intended to provide greater clarity in relation to the rectification periods for any breaches by an NCIG Party.</p> <p>The new section 2D(vi) contemplates that the NCIG Parties may agree among themselves in the Deed of Undertaking the proportion of the tonnage reduction that they may each bear as a consequence of their breach.</p> <p>The new clause 2D(viii) clarifies that, if directed by NPC, PWCS will restore an NCIG Producers’ Load Point Allocations prior to the expiry of the penalty period of not less than two years only to the extent that Excess Capacity is available.</p>
18	Part B, 3	<p>The amendment to Step 5 of the NCIG nomination and allocation process reflects that, if a Producer does not wish to accept its allocation at NCIG Stage 2, PWCS may (on behalf of NCIG) allocate that Producer’s allocation to another Producer. This is intended to ensure that available capacity is efficiently distributed.</p> <p>The changes to Steps 6 and 7 reflect that there needs to be certain minor differences in the contracts, as NCIG Producers are shareholders in NCIG and, in one case, contribute project finance.</p>
19	Part B, 4	<p>The new section 4(c) reflects the fact that NCIG will need to communicate with, and coordinate with, PWCS in relation to the management of the Dual Nomination process. Further details in relation to the Dual Nomination process are set out in Item 13 above.</p>
20	Part B, 4A	<p><b>Section 4A(a)</b></p> <p>The new section 4A(a) reflects that Producers will be offered capacity at both PWCS and NCIG on the basis of an agreed form of PWCS long term contract and NCIG long term contract. As previously discussed with the Commission, it was necessary for each of PWCS and NCIG to review each others’ proposed contracts (redacted to protect any confidential information) to ensure that all issues set out in the Capacity Framework Arrangements / Implementation Memorandum were appropriately addressed in those contracts.</p> <p>It was also necessary to ensure that Non-NCIG Producers were not disadvantaged relative to NCIG Producers in relation to the use of the NCIG Terminal, and NCIG Producers were not disadvantaged relative to Non- NCIG Producers in relation to the use of the PWCS Terminals.</p> <p><b>Section 4A(b)</b></p> <p>The new section 4A(b) reflects a requirement by NPC that neither PWCS nor NCIG can assign or “outsource” the implementation and management of their contracts with Producers without NPC’s consent.</p>

	Attachment 1 reference	Description of amendment
		<p><b>Section 4A(c)</b> The new section 4A(c) reflects requirements in the PWCS leases and the NCIG Deed of Undertaking that PWCS and NCIG respectively comply with and implement the relevant terms of their long term ship or pay contracts which give effect to the capacity framework.</p> <p><b>Section 4A(d)</b> The new section 4A(d) reflects that the Deed of Undertaking and NCIG Producer Deed Poll contain obligations which are important to the operation of the broader Capacity Framework Arrangements and that, NCIG Producers will not be able to access the PWCS or NCIG Terminals unless they execute those documents.</p>
21	Part B, 5(b)	<p>The amendments refer to “Qualified Contracted Allocation”. The “Qualified Contracted Allocation” is the allocation of the Producers prior to the application of compression or transfers. This concept was required as PWCS adjusts the ‘contracted allocation’ of each Producer on an ongoing basis for these items. The intention of the Applicants is that the compression arrangements will apply to the tonnage initially contracted by the Producer and not to the fluctuating actual contracted allocation. However, an assignment of an entire Load Point Allocation or voluntary reduction (an annual decision) will be taken into consideration as these are long term adjustments.</p> <p>The amendments to clause 5(b) also make it clear that, unless otherwise agreed, compression of a Producer’s allocation will be applied pro rata across each of its Load Point Allocations.</p>
22	Part B, 5(ba)	This amendment involves a minor clarification. The compressed allocations will be “un-compressed” once additional capacity is available.
23	Part B, 5(c)	<p>The amendments to section 5(c) include reference to a new expression -- namely, “NCIG Capacity Deficit”. This expression has been introduced to make it clear that if only part of the “Non-NCIG Stage 2 Allocations” cannot be satisfied because of a NCIG Stage 2 Delay or NCIG Stage 2 Shortfall, then compression only occurs <i>to the extent of the deficit</i>. Previously, section 5(c) referred only to satisfaction of the entire “Non-NCIG Stage 2 Allocations”.</p> <p>The Table and following paragraph also provide greater clarity in relation to:</p> <ul style="list-style-type: none"> <li>the timeframes within which NCIG Producers will be compressed (and by what amounts) if there is a NCIG Stage 2 Delay or NCIG Stage 2 Shortfall; and</li> <li>the proportions for compression which will apply as between the NCIG Producers.</li> </ul> <p>This is a level of detail that was not available at the time of the initial applications for authorisation.</p> <p>The rationale for adjustments for System Assumptions and pro-rating across individual Load Point Allocations is set out in Items 10 and 4 above.</p>
24	Part B, 5(h)	These amendments reflect mechanical changes to the arrangements agreed by the Applicants. They are set out in Attachment 1 for completeness.
25	Part B, 6(b)	<p>The amendments to section 6(b) are primarily made for clarity and so they more accurately reflect the arrangements agreed between the Applicants. Section 6(b)(iii) reflects that PWCS will need to advise NCIG and NPC of any delays or expansion shortfalls as this may have an impact on the operation of allocations under the framework arrangements.</p> <p>The previous section 6(b)(iii) has been deleted as it is now reflected (with appropriate amendments) in section 6(e).</p>

	<b>Attachment 1 reference</b>	<b>Description of amendment</b>
26	Part B, 6(c)	This amendment reflects the requirement for NCIG, in designing and constructing NCIG Stage 2, to minimise any interference with PWCS' construction and operation of T4, and to consult with PWCS in relation to potential interference.
27	Part B, 6(d)	Section 6(d)(iii) reflects that NCIG will need to advise PWCS and NPC of any delays or expansion shortfalls as this may have an impact on the operation of allocations under the framework arrangements.
28	Part B, 6(e)	<p>During contractual negotiations, it became apparent that there was some ambiguity in how the review arrangements were intended to operate. Section 6(e) has been re-drafted to reflect how those arrangements will operate. In summary, the key issues that needed clarification were:</p> <ul style="list-style-type: none"> <li>• the availability of review for Force Majeure Events irrespective of the relevant expansion being undertaken;</li> <li>• the effect of a delay in giving a notice of a Force Majeure Event to NPC;</li> <li>• the calculation of extension periods for different events; and</li> <li>• the obligations of the terminal operators in the event an extension of time is granted.</li> </ul>
29	Part B, 7	<p>The changes to section 7 reflect:</p> <ul style="list-style-type: none"> <li>• the establishment of a Capacity Transfer System Working Group to further develop the Capacity Transfer System, and the appointment of a CTS Administrator to administer the system;</li> <li>• that the Capacity Transfer System Working Group or CTS Administrator may require Producers to pay a fee for using or registering with the Capacity Transfer System (based on costs incurred);</li> <li>• that PWCS may decline to accept a transfer of Load Point Allocations having regard to the recommendations of HVCCC, the System Assumptions and operating protocols and alignment of contractual entitlements. PWCS may also adjust transferred allocations to account for any variation in System Assumptions (see Item 10 above). These are each matters that are intended to facilitate contractual alignment; and</li> <li>• that capacity at the Terminals which is "lost" as a result of a transfer will be borne by the transferor, unless otherwise agreed between the transferor and transferee.</li> </ul>
30	Part B, 7A	<p>The new section 7A reflects that the same arrangements that apply to transfers of Load Point Allocations / Contracted Allocations also apply to "assignments" of the entire Load Point Allocation / Contracted Allocation. That is, to ensure consistency and to avoid circumvention of the rules which apply to transfers of capacity through the use of an assignment of that capacity, the same rules that apply to the transfer of capacity also apply to the assignment of that capacity.</p> <p>This is consistent with the intention of the Implementation Memorandum and Capacity Framework Arrangements.</p>
31	Part B, 7B	The new section 7B reflects that the 12 Mtpa in NCIG Stage 2 is available for Non-NCIG-Producers and that the terms of the "T Class Ship or Pay" contracts provide the same commercial outcome for Non-NCIG Producers as the terms of the other classes of contract at the NCIG terminal for NCIG Producers. Accordingly, the "T Class Ship or Pay" contracts involve pre-emptive rights in respect of that capacity for other Non-NCIG Producers. The commercial intent of the arrangements is to ensure that the NCIG Producers do not have pre-emptive rights over the 12 Mtpa that is contracted by Non-NCIG Producers.
32	Part B, 8	As the Levy Protocols have now been developed, the Applicants seek authorisation of those Levy Protocols. The changes to section 8 are all consistent with the Levy Protocols.

	Attachment 1 reference	Description of amendment
		The changes also reflect the need to establish and operate a Levy Working Group, and for the Applicants and others to share information in order to give effect to the Levy Protocols, including calculating the amount of any Levy.
33	Part B, 9(c)	See Item 20 above.
34	Part B, 9(d)	The new section 9(d) reflects that there may be circumstances where there is “lost” capacity at the Terminals. These circumstances include the impact of expansion works, the Terminals not meeting the assumptions set out in the System Assumptions, weather impacts and other force majeure events. In these situations, PWCS needs to have an ability to adjust allocations on a Load Point basis. In doing so, PWCS may consult with HVCCC and will have regard to the System Assumptions.  This level of flexibility is necessary in order to manage the system and to allow alignment of supply with demand from Producers.
35	Part B, 9(e)	The amendments to section 9(e) reflect that PWCS cannot control the rate of arrival of vessels under the turn of arrival system. It is not uncommon to have both low and high weeks in terms of the number of vessels arriving. If the number of vessels in a week is below the number of vessels that could have been serviced by PWCS then PWCS will lose capacity as berths will be idle. This capacity cannot be “regained”. Should a queue arise in the same Allocation Period then PWCS will have an ability to reduce the allocations of the Producers utilising the turn of arrival system by the amount of that lost capacity. This will have the effect of restricting the growth of the vessel queue.
36	Part B, 10	This amendment reflects the requirement for PWCS, in designing and constructing T4, to minimise any interference with NCIG’s construction and operation of NCIG Stage 2, and to consult with NCIG in relation to potential interference.
37	(Previous Part B, 11)	This section has been removed as the Commission indicated in its interim decision dated 22 July 2009 that it is too broad for authorisation to be granted.
38	Part B, 11	As Lessor, NPC has required that the PWCS leases contain an obligation for PWCS to charge the same amounts to customers for like services at each PWCS Terminal. The leases do not set the amount of any charges and do not restrict PWCS’ ability to vary its methodology for charging. This requirement replaces and clarifies the previous requirement not to discriminate between customers included in the prior “common user” clauses.
39	Part B, 12	This amendment reflects that the Applicants and the Reviewer will need to disclose certain information to each other in order to give effect to the conduct described in Part B of Attachment 1. The Applicants are only seeking authorisation for such information to the extent that it is required to facilitate the arrangements which are described in detail in Part B of Attachment 1.
40	Part C - Dictionary	The Applicants have amended an updated a number of definitions, so that they more accurately and clearly describe the commercial arrangements between the parties (as described above).



## Schedule B - Summary of contractual alignment discussions

### Hunter Valley - Analysis of Terminal and Track Contractual Alignment Issues

#### Purpose

This paper sets out the outcomes from discussions between ARTC and PWCS on 10 August and 24 August 2009 regarding contractual alignment issues between ARTC's Hunter Valley access documents and the long term capacity arrangements at PWCS.

#### Summary

The key issue is that it is not necessary for the track and terminal arrangements to have identical capacity mechanisms (which is not possible given the different nature of the infrastructure) provided that the two regimes have sufficient flexibility and transparency so that they can operate consistently and provide for practical outcomes.

ARTC and PWCS consider that the current and proposed PWCS arrangements already provide a large degree of working alignment in key areas identified by industry which are discussed in the table following

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
<b>Issue 1: Contracting Expansion Capacity</b>			
<ul style="list-style-type: none"> <li>PWCS is obliged to contract for these nominations and expand (with several exceptions)</li> <li>Start date may be varied in some circumstances</li> <li>Nominations are satisfied in the order prescribed by the Nomination and Allocation Procedure</li> <li>No requirement to prove track or train capacity when nominating for PWCS capacity</li> </ul>	<ul style="list-style-type: none"> <li>There are two primary ways that expansion will occur being:               <ul style="list-style-type: none"> <li>(i) capacity sought and endorsed through the HVCCC, and</li> <li>(ii) capacity sought by an Applicant</li> </ul> </li> <li>In the case of (i) commercial viability will normally be based upon endorsement by the RCG and sufficient TOP commitments, and in the case of (ii) where capacity is requested by an individual or group there are a number of mechanisms that can be agreed to fund the expansion</li> </ul>	<ul style="list-style-type: none"> <li>If a producer receives terminal capacity, there is no guarantee it will receive track capacity. This may leave producers with misaligned contracts.</li> <li>No certainty regarding delivery date of ARTC expansion capacity.</li> <li>ARTC should commit to making best efforts to satisfy 'mutually exclusive' applications, even if one or more of the applications may need to have a delayed start date.</li> </ul>	<p><b>Track expansion commitment process</b></p> <ul style="list-style-type: none"> <li>ARTC's policy is to carry out track expansion to meet planned terminal expansion so there is always sufficient track access rights.</li> <li>The preparation of the HV Coal Chain Master Plan as well as ARTC involvement in the HVCCC should provide ARTC with sufficient details to maintain adequate capacity to meet terminal capacity.</li> <li>Coal chain master planning will be an input into ARTC's Corridor Capacity Strategy which is updated annually and will give a forward program of works necessary to meet future demand.</li> <li>The RCG process in the HVAU, which incorporates the HRATF's comments, provides a mechanism by which producer representation endorse and are informed of each stage of a track expansion project through an "open book" process.</li> </ul>

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
	<p>(s 6.2 and 6.3 of the HVAU)</p> <ul style="list-style-type: none"> <li>ARTC required to use its best endeavours to complete the projects by the Start date (see clause 6(b) of the Train Path Schedule)</li> </ul>		<p><b>Delivery of track expansions</b></p> <ul style="list-style-type: none"> <li>ARTC is required under the AHA to use its “<i>best endeavours to complete the listed and new projects by the Start Date</i>” (see the Train Path Schedule). Like all large infrastructure projects, an expansion to track is subject to potential delays should unforeseen events occur.</li> <li>Similarly uncertainty exists at PWCS with regard to Start Date variation.</li> <li>Participants to recognise that a commitment to perfect alignment of expansion completion dates at PWCS and ARTC is not feasible. ARTC policy is to have track expansions in place ahead of terminal. See next row regarding under or late delivery.</li> </ul> <p><b>Mutually exclusive applications</b></p> <ul style="list-style-type: none"> <li>The policy on mutually exclusive applications (s 3.13 of the HVAU) relates to where two or more requests for access to <u>existing</u> capacity cannot both be met. ARTC’s policy is to meet all requests for capacity expansion provided it is commercially viable.</li> <li>The purpose of the ‘Initial Review’ is for ARTC (and other service providers) to provide the applicant with sufficient information to the HVCCC to enable the HVCCC to advise the applicant as to whether there is sufficient coal chain capacity to deliver the rights requested and the train paths required to satisfy the access request. The Indicative Access Proposal (IAP) provided to the applicant will outline the works required and the cost of such works (section 3.10(a)).</li> <li>The applicant then has the ability to contract for the delivery of that additional capacity subject to RCG endorsement or through some other agreed funding mechanism (eg for a producer specific expansion). There is no need for a best endeavours mechanism - ARTC is committed to providing the applicant with the</li> </ul>



PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
			relevant information for new capacity in the IAP and obliged to negotiate track expansion with the potential for binding arbitration.
<b>Issue 2: Under delivery of Expansion Capacity</b>			
<ul style="list-style-type: none"> <li>Limited compression of existing Large producers as per Terminal Access Protocols to provide capacity to the holders of expansion capacity in accordance with priority rules</li> </ul>	<ul style="list-style-type: none"> <li>Where there is a delay in the completion of Additional Capacity but some of the Additional Capacity becomes available, that capacity will be allocated among the access holders who have entitlements to the Additional Capacity on an equitable prorate basis. (s5.4 HVAU)</li> <li>Access rights to existing capacity will be unaffected</li> </ul>	<ul style="list-style-type: none"> <li>Potential for misalignment if there is partial compression at both PWCS and ARTC</li> </ul>	<ul style="list-style-type: none"> <li>Simultaneous unrelated events that cause partial compression at PWCS and delayed expansion at ARTC are extremely unlikely.</li> <li>In the situation that an event does occur, an access holder is required to have sufficient network exit capability (port capacity) before its entitlement to track access rights will arise (see cl 5a and 6a of the Train Path Schedule to the AHA)</li> </ul> <p>See attached scenario analysis as to outcomes of track and terminal expansions coming on line at different times.</p>
<b>Issue 3 Alignment requirements</b>			
<ul style="list-style-type: none"> <li>No requirement to show track/train entitlements when nominating for terminal allocation</li> <li>When producer applies to utilise contracted allocation for the loading of a particular vessel, PWCS will check whether contractual entitlements are in place for track and train. If these are not in place, application may be refused or a contract ETA will apply</li> </ul>	<ul style="list-style-type: none"> <li>Access seeker must hold sufficient Network Exit Capability when applying for capacity. A copy of terminal contract may be required(s3.7(a)(ix)(A) HVAU)</li> <li>Application may be accepted if access seeker can prove they are in negotiation with a terminal for capacity (s3.7(b) HVAU).</li> </ul>	<ul style="list-style-type: none"> <li>It is likely (given the Nomination and Allocation process) that producers who have nominated for capacity with PWCS may not receive the nominated capacity and/or start date at the time requested. If in these instances ARTC provide capacity to the access seeker during negotiation, misalignment may occur.</li> </ul>	<ul style="list-style-type: none"> <li>In the instance that a producer has nominated with a terminal, ARTC will liaise with PWCS to confirm viability of producer's nomination.</li> <li>ARTC s3.7(b) was drafted to provide the access seeker some flexibility in terms of timing. This does not mean that an applicant can obtain track access rights without terminal capacity.</li> <li>PWCS to contract allocations in accordance with the PWCS Nomination and Allocation procedure.</li> <li>Negotiations with a producer will cease if the producer is unable to provide ARTC evidence of network exit capability (s3.12(b)(vi))</li> <li>There is a condition precedent in the Train Path Schedule to the AHA that an applicant provide evidence of network exit capability before it is entitled</li> </ul>

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
			to access rights (cl 5(a) and 6(a) in the Train Path Schedule)
<b>Issue 4 Relinquishment</b>			
<ul style="list-style-type: none"> <li>No 'resumption' of contracts, but existing contracts may be compressed in the instance of Expansion Delay or Shortfall if usage is under 95% for 18 months</li> <li>Decompression will apply when the Expansion Delay or Shortfall is resolved</li> <li>Producers are obliged to transfer unused allocations</li> </ul>	<ul style="list-style-type: none"> <li>ARTC may resume paths where usage is below 90% for 3 months</li> </ul>	<ul style="list-style-type: none"> <li>If ARTC enacted its right to resume paths, misalignment between terminal and track contracts may occur</li> </ul>	<ul style="list-style-type: none"> <li>ARTC will only "resume" access rights where ARTC is able to obtain sufficient take or pay commitment from another producer for those access rights - and the other producer has the network exit capability (i.e. terminal capacity) to enable it to use those resumed access rights.</li> <li>See scenario analysis in the Attachment regarding terminal compression and track response.</li> </ul>
<b>Issue 5: Unexpected Delays/ Constraints</b>			
<ul style="list-style-type: none"> <li>Where unanticipated capacity constraints occur, PWCS may make downward adjustments to allocations to reflect any lost capacity. Pro-rata, unless specific circumstances justify alternative approach (e.g. quarantining of allocations for not meeting assumptions or performance standards)</li> </ul>	<ul style="list-style-type: none"> <li>If less than 7 days, it is up to ARTC</li> <li>In this period ARTC is required to take into account its contractual obligations and the efficient utilisation of rail capacity and Coal Chain Capacity (s5.3(a) HVAU)</li> <li>If greater than 7 days, ARTC will prorate on 'an equitable basis' (s5.3(b) HVAU)</li> </ul>	<ul style="list-style-type: none"> <li>If compression due to unexpected constraints is not consistent between ARTC and PWCS, misalignment may occur. Users may end up with terminal allocation and no track allocation, and vice versa</li> </ul>	<ul style="list-style-type: none"> <li>Misalignment for short term events unlikely as ARTC is required to take into account the efficient utilisation of Coal Chain Capacity - as well as the Hunter Valley Network capacity and contractual obligations.</li> <li>In practice, ARTC will reference HVCCC to assess impacts on Coal Chain Capacity and the 7 day rule is to enable flexibility to manage shortfall to support system outcome.</li> </ul>

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
<b>Issue 6: Daily Planning</b>			
<ul style="list-style-type: none"> <li>• Cargo assembly plan prepared by HVCCC</li> <li>• Coal delivery schedule prepared by HVCCC or rail operators</li> </ul>	<ul style="list-style-type: none"> <li>• AHA provides for daily planning to be carried out by ARTC</li> <li>• ARTC required to have regard to any relevant input provided by the HVCCC as well as the Master Train Plan (which takes into account the Hunter Valley corridor capacity strategy) in preparing the daily plan (s7.2 HVAU)</li> </ul>	<ul style="list-style-type: none"> <li>• HVCCC should manage all planning and scheduling processes to ensure alignment and optimisation</li> </ul>	<ul style="list-style-type: none"> <li>• HVCCC cannot manage all of ARTC's operations since ARTC's operations include non-coal services</li> <li>• ARTC acknowledges HVCCC's input into the ARTC planning process in s7.2 of the HVAU.</li> </ul>
<b>Issue 7: Allocation Period and System Assumptions</b>			
<ul style="list-style-type: none"> <li>• For 2010 and 2011: Monthly where aggregate allocation &gt; 5 Mtpa Quarterly where aggregate allocation &lt;= 5 Mtpa</li> <li>• For 2012 onwards: Monthly where aggregate allocation &gt; 3 Mtpa Quarterly where aggregate allocation &lt;= 3 Mtpa</li> </ul>	<ul style="list-style-type: none"> <li>• Monthly for all producers</li> <li>• Months with planned maintenance will correspond with lower allocations, months with no maintenance will have higher allocations</li> <li>• ARTC will consult with the HVCCC before determining the months when maintenance will take place and the number of paths lost due to maintenance on those months (cl 3.2 AHA)]</li> </ul>	<ul style="list-style-type: none"> <li>• Misalignment due to planned maintenance adjustment.</li> <li>• No mechanism to require ARTC and PWCS to use same System Assumptions</li> <li>• Quarterly allocation at PWCS does not match monthly at ARTC</li> </ul>	<p><b>Maintenance</b></p> <ul style="list-style-type: none"> <li>• PWCS will also sculpt periodic allocations to match maintenance and interaction in system components as per HVCCC system capacity modelling.</li> <li>• ARTC will determine its annual maintenance schedule in consultation with HVCCC and PWCS.</li> <li>• ARTC capacity cannot be completely adjusted to reflect terminal maintenance since not all ARTC access holders utilise terminal capacity.</li> <li>• PWCS and ARTC of the view that tolerance and trading mechanisms should be sufficient to enable producers to manage TOP around mine maintenance.</li> </ul> <p><b>System assumptions</b></p> <ul style="list-style-type: none"> <li>• Prior to receiving an application for access, ARTC is obligated to review system requirements with HVCCC, producer(s) and other service providers if requested, see section 3.6 of the HVAU</li> <li>• ARTC contracts include track related system assumptions, ie expansionary investments, axle loads,</li> </ul>

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
			<p>train length, section run times and maximum speed.</p> <ul style="list-style-type: none"> <li>• PWCS contracts contain relevant terminal system assumptions. PWCS contracts take into account load point assumptions.</li> <li>• A producer is able to verify the outputs of the system review process with assumptions identified in the respective contracts</li> </ul> <p><b>Monthly / Quarterly</b></p> <ul style="list-style-type: none"> <li>• ARTC’s AHA provides for operational tolerance and additionally allows trading and utilisation of ad hoc paths if available</li> <li>• This matter has been raised during the ACCC process. ARTC will consider the impact of alternate contractual models but notes that the existing rail infrastructure cannot support all producers with quarterly allocations at the terminal seeking to use “quarterly” committed paths within the one month <u>and</u> the monthly commitments to the other producers.</li> </ul>
<b>Issue 8: Allocation Units</b>			
<ul style="list-style-type: none"> <li>• Volume of coal handling services in tonnes of coal</li> </ul>	<ul style="list-style-type: none"> <li>• Train Path Usages for each Train Path</li> </ul>	<ul style="list-style-type: none"> <li>• Allocation usage is not necessarily aligned; that is, if a producers actually performance deviates from system assumptions, that producer may exhaust their PWCS allocation before their ARTC allocation.</li> </ul>	<ul style="list-style-type: none"> <li>• It is the producer’s responsibility to ensure that sufficient train paths are contracted to service their capacity and that their above rail provider operates to nominated system assumptions.</li> </ul>
<b>Issue 9: Flex/Tolerance</b>			
<ul style="list-style-type: none"> <li>• A vessel is permitted to slip two days into the next month and still have that quantity allocated to the previous month (provided the vessel is nominated in the month).</li> <li>• If have &gt;50% of allocation for the cargo, then can use</li> </ul>	<ul style="list-style-type: none"> <li>• 10% of monthly path usages or 13 path usages (per month), whichever is greater per zone for each Access Holder.</li> </ul>	<ul style="list-style-type: none"> <li>• Are flex / tolerance mechanisms aligned?</li> </ul>	<ul style="list-style-type: none"> <li>• ARTC’s tolerance system provides sufficient flexibility to meet potential Terminal variations. This assumes that producers agree a monthly tolerance cap for each zone which is large enough to accommodate PWCS flex mechanism.</li> </ul>

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
allocation from the next period for the balance of the cargo.			
<b>Issue 10: Term</b>			
<ul style="list-style-type: none"> <li>• 10 year evergreen contract</li> <li>• Each year must extend the contract for a year to maintain evergreen rights</li> <li>• If a Producer's right to renew has expired, then any time up to and including the fifth year of the remaining term, the Producer may elect to extend the Load Point Allocation for a period of up to 3 years</li> <li>• Parties can enter into less than 10 year contracts where there is excess capacity. Shorter term contracts do not have renewal rights.</li> <li>• PWCS allows for transfers and assignments of allocation</li> </ul>	<ul style="list-style-type: none"> <li>• 10 year evergreen contract</li> <li>• May terminate on 5 years notice but notice cannot take effect until expiry of first 10 years.</li> <li>• Parties can enter into shorter term or longer contracts.</li> </ul>		<ul style="list-style-type: none"> <li>• Under ARTC HVAU contractual terms can be negotiated</li> </ul> <p>In the event that this does not occur then there are a number of mechanisms through which this can be managed -</p> <ul style="list-style-type: none"> <li>• ARTC's AHA provides for long term trades to be undertaken</li> <li>• If track capacity is not being utilised then ARTC can resume this and relieve producer of TOP obligations if another producer is able to provide an equivalent TOP commitments</li> </ul>
<b>Issue 11: Trading</b>			
<ul style="list-style-type: none"> <li>• Capacity Transfer System to be developed</li> <li>• In accepting a transfer PWCS will have regard to and is entitled to rely on recommendations of the HVCCC in relation to the impact of the transfer on other Customers, System</li> </ul>	<ul style="list-style-type: none"> <li>• Safe Harbour Principles: <ul style="list-style-type: none"> <li>• Two weeks notice</li> <li>• Trades west to east</li> <li>• Trading party retains commercial obligations</li> <li>• Trading party warrants no impact on system capacity</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that trading mechanisms align</li> </ul>	<p>ARTC will, via the Capacity Transfer System Working Group, input into the development of the Capacity Transfer System to be applied at the Terminal .</p> <p>There will also be HVCCC and Producer representation on the Capacity Transfer System Working Group</p>

PWCS Policy	ARTC Policy	Potential Concerns	Clarification/ Resolution
<p>Assumptions and alignment of contractual entitlements for the delivery of coal to the Terminal</p> <ul style="list-style-type: none"> <li>• Transfer must be submitted to PWCS within sufficient time to enable PWCS to assess the matters</li> </ul>	<ul style="list-style-type: none"> <li>• ARTC needs to be advised of the trade</li> <li>• ARTC will act reasonably to consider a trade outside of these parameters</li> <li>• These are the maximum bounds - ARTC is obliged to work with the HVCCC to come up with more flexible and timely trading mechanisms.</li> </ul>		

## Attachment - Scenario analysis of expansion underdeliveries

Scenario 1	Scenario 2	Scenario 3
<p><b>Track expansion late - terminal expansion occurs first</b></p>	<p><b>Terminal expansion late - track expansion occurs first</b></p>	<p><b>Both track and terminal expansions are late</b></p>
<ul style="list-style-type: none"> <li>• Track is the bottleneck so track allocation mechanism applies (see 5.4 of the HVAU).</li> <li>• Users whose track rights are relying on the expansion project do not obtain any additional track rights until project completed. That is, existing users' contracted track entitlements are not affected or compressed.</li> <li>• If project partially available, then that additional capacity is allocated pro rata among the expansion users.</li> <li>• Expansion users' TOP obligations to ARTC only apply on project commissioning or to the extent the additional capacity is made available.</li> <li>• RCG reporting process designed to ensure that producers aware at an early stage of delays so that shipping nominations can be managed.</li> <li>• Expansion users' will bear ship or pay obligations at terminal as terminal has made expansion capacity available even though not capable of use. Note producers may be able to trade that terminal capacity if there are other producers who can take advantage of it because they are unaffected by the project delay (eg closer in mine).</li> </ul>	<ul style="list-style-type: none"> <li>• Terminal is the bottleneck so compression mechanism applies.</li> <li>• Existing users potentially compressed and expansion users given some terminal allocation.</li> <li>• Existing users and expansion users both have track entitlements but users only allocated paths by HVCCC to meet users' shipping nominations accepted by the terminal. That is, practically train paths will be allocated to follow terminal allocations.</li> <li>• Existing and expansion users' will bear full track take or pay obligations as ARTC has made contracted track capacity available for use to all users.</li> </ul>	<ul style="list-style-type: none"> <li>• For a potential misalignment to occur both terminal and track are simultaneously late and there is no additional track capacity available equivalent to the amount that existing terminal users could be compressed – this is an unlikely occurrence.</li> <li>• If the terminal compression mechanism is applied [ie 5%] then it could mean expansion users are provided with terminal capacity, without track capacity.</li> <li>• In order to address this the users that have been compressed could trade unused track capacity which would reduce their TOP obligations, or ARTC could sell paths on ad hoc basis to those with excess terminal capacity.</li> </ul>