

**FOR PUBLIC
REGISTER**

Port Waratah Coal Services Limited

Supplementary submission in support of
the applications for authorisation
A91110 - A91112

Dated 10 February 2009

Port Waratah Coal Services Limited

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1 Introduction

Port Waratah Coal Services Limited ("PWCS") appreciates the opportunity to make a further submission to the ACCC in relation to the applications for authorisation A91110 - A91112 lodged by PWCS and Newcastle Coal Infrastructure Group Pty Limited ("NCIG"), following the ACCC's decision to grant interim authorisation for the PWCS Tonnage Allocation Stage 1.

The purpose of this submission is to provide further comments on the submissions received by the ACCC from Centennial Coal Company Limited ("Centennial"), having regard to the conditions attaching to the interim authorisation granted by the ACCC and having regard to the terminal access framework announced by Mr Joe Tripodi MP on 12 December 2008.

2 Further comments on issues raised in the submission by Centennial

As set out in PWCS and NCIG's previous submission, Centennial's submission dated 8 December 2008 appears to support the authorisation of an industry solution to manage access to coal loading services at the Port of Newcastle. However, Centennial advocates a different method of allocation to apply from 1 January 2009 as a proposed condition of the authorisation.

In PWCS' view the PWCS Tonnage Allocation Stage 1 accurately reflects the agreed methodology for access outlined in Mr Greiner's letter to Minister Tripodi dated 1 July 2008. PWCS was not party to producer discussions regarding the agreed methodology.

PWCS has not calculated individual figures for producers using the method of allocation advocated by Centennial. However, it would inevitably change individual figures for some producers as well as the aggregate. This would have a flow on effect to the allocations for all producers. PWCS also notes that it is not privy to separate commercial arrangements between producers regarding purchases and sales of coal and transfers of allocation as referred to by Centennial.

PWCS believes that the references to highest throughput in Minister Tripodi's letter dated 12 December 2008 are not determinative and are not intended to involve an alternative calculation as the total allocation figure referenced by Minister Tripodi for 2009 of 96.7 Mtpa is consistent with the PWCS Tonnage Allocation Stage 1 set out in the Applicants submission dated 19 November 2008.

As previously submitted, the proposal put forward by Centennial to back load trains would appear to have the effect of changing one input into the allocation methodology and assumptions relating to coal chain capacity which could have consequential impacts on other producers and service providers. There are a wide range of other factors that need to be considered in reviewing proposals of this nature including availability of stockyard space, the vessel queue and train sizes. PWCS therefore

considers that any such proposal needs to be evaluated in a co-ordinated manner across the Coal Chain.

Centennial's submission also appears to suggest that it is up to PWCS and NCIG as the Applicants to demonstrate that Centennial's position does not detrimentally affect other producers. However, Centennial has not demonstrated that its proposal would have no other impact on the operation of the Coal Chain or other producers.

Centennial also does not appear to give weight to the substantial public benefits which may only be achieved by implementing a system which has broad agreement by the producers and that such agreement has only been possible as a result of compromise by all producers.

In PWCS' view it is not appropriate to implement special arrangements for one producer as a condition of authorisation without considering the wider implications of those arrangements across the operation of the Coal Chain for all industry participants.

3 Conclusion

PWCS believes that Centennial has raised issues that should be able to be considered in the context of the long term solution being advanced by the Applicants, Producers and the NSW Government as part of the constructive progress that has been made over the last few months as set out in the 16 January 2009 Report. The work plan proposed provides opportunity for consultation on all aspects of the long term solution.

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