

**13 February 2009  
ACCC Progress Report 2**

## **Introduction**

In accordance with the interim authorisation granted by the Australian Competition and Consumer Commission (ACCC) dated 17 December 2008, Port Waratah Coal Services Limited (PWCS) and Newcastle Coal Infrastructure Group Pty Ltd (NCIG) (collectively the Terminal Operators) are required to submit monthly reports to the ACCC with respect to implementation of a long term solution for infrastructure access.

The initial report was submitted on 16 January 2009.

This report outlines the progress made by the Terminal Operators, in conjunction with the NSW Government in meeting the requirements of the ACCC's interim authorisation for the period 16 January to 13 February 2009.

## **Progress Report**

### **Project Management Group**

The Project Management Group is tasked with the role of reviewing the progress made by each of the workstreams against the endorsed project timetable and where required, coordinating the individual work teams to ensure compliance with the project timetable.

The project plan has been developed consistent with the identified project workstreams (Attachment 1) and defines accountabilities of the respective parties in the completion of the required tasks.

Working Groups have been established for each workstream as the enabler for the development of key principles for the long term solution and associated completion of the necessary documentary framework to embed and support those principles.

Key outcomes from the Project Management Group in the reporting period are:

1. Review and/or clarification of issues identified in the Tripodi Framework by stakeholders. This was commenced in January 2009 as part of the Implementation Memorandum workshop;
2. Development of an implementation timetable which the Terminal Operators have used to realign the sequence of development of key components of the long term solution;
3. Identification of key components and establishment of Working Groups to manage the development of operating principles and associated documentation required to meet the requirements of the long term solution;
4. Ensuring Allocation and Nomination Processes are built into Terminal Access Protocols; and
5. Plan for T4.

## **Implementation Memorandum**

A draft IM has been prepared by NPC and discussion regarding this document ensued between NPC, PWCS and NCIG. We anticipate progress with this aspect of the work and when agreements in principle are in place a number of issues will largely be resolved in this process including:

- Obligation on Terminal Operators to expand to accommodate capacity demand that is supported by long term ship or pay contracts;
- Processes for ensuring timely delivery of expanded terminal capacity;
- Nominations and Allocations processes for the implementation of a long term contractual framework at the Terminals;
- Access arrangements that ensures new and expanding coal producers will have access to export terminal capacity;
- The Levy Regime to support any shortfalls in allocation of expansion tranches; and
- A framework for the development of new terminal capacity at T4 if demand requires.

## **Contractual Alignment**

### Progress

It was noted in the last report that in order to achieve contractual alignment between track and terminal access contracts, rail services providers, producers and Terminal Operators needed to establish a separate working group. Such a group would convene regularly in order to establish several potential mechanisms for implementing contract alignment and manage a consultation process by which a single refined mechanism may be determined.

Consequently the “Contractual Alignment Working Group” (“CAG”) was formed. It will meet weekly and has convened twice to date. The group is made up of senior representatives from the Terminal Operators, producers, ARTC, rail haulage operators and the Hunter Valley Coal Chain Logistics Team (“HVCCLT”). All parties have committed to the principle of contractual alignment. The inclusion of rail haulage operators to the CAG acknowledges that above-track contracts must also be ultimately aligned with track and terminal contacts, however accepting that these are bi-lateral agreements between producers and rail operators which are not governed by regulatory instruments.

An early conclusion of the CAG was the prior need to establish and agree current track and terminal capacity to provide a baseline for comparison. It was also agreed to use the HVCCLT simulation model to estimate that baseline capacity. The model generates system capacity under a range of loadpoint, track, haulage and terminal assumptions and has been adopted by ARTC as a key input tool in determining the train paths that may be required to be contracted at any given time. The HVCCLT presented a framework for performance measures to support alignment of long term contracts.

ARTC's Draft Undertaking which is due to be submitted to the ACCC was distributed to members of CAG and the Project Management Group to highlight the links and alignment between ARTC and other Service Providers.

### The Next Steps

The HVCCLT will provide CAG members with a list of the assumptions used in its model for review and consideration by 13<sup>th</sup> February. CAG will then look to agree a set of “baseline” assumptions and generate a “start point” system capacity which, with committed ARTC expansion plans, can be used to compare terminal and track capacity into the future.

Where the modelling highlights a significant difference between rail and port capacity, particularly in the short term, participants will be motivated to develop a set of protocols to drive contract alignment which are practical, robust and acceptable to coal industry stakeholders and the ACCC alike.

In going forward the CAG has also committed to input its contract alignment schedule, tasks and milestones to the Gantt chart under preparation by the Project Management Group.

## **The Long Term Solution**

The Terminal Operators have made significant progress in the development of Terminal Access Protocols and Long Term Contracts with finalisation dependent upon the development and agreement by the respective stakeholders of, among other things, the principles for Contractual Alignment, Nominations Processes, Implementation of the Coal Levy and the Implementation Memorandum. NPC, NCIG and PWCS are working on the development of this Implementation Memorandum.

Once the development of the Implementation Memorandum has been completed, the Terminal Operators (and NPC on behalf of the NSW Government) propose to make a fresh application for authorisation of the long term framework provided for in the Implementation Memorandum.

Finalisation of the development of these principles, and the associated development of the “detail” to support an effective implementation of these principles, is a significant task but is fundamental to the finalisation of the Terminal Access Protocols and Long Term Contracts by the Terminal Operators.

## **Newcastle Coal Infrastructure Group (NCIG)**

NCIG has established a working group (“NCIG Working Group”) to deliver the key documents for which it is accountable and to contribute and review those documents being drafted by other stakeholders.

The NCIG Working Group is accountable for delivering the following key documents:

- Implementation Memorandum (jointly with NPC and PWCS)
- NCIG Lease – Amended (if required)
- LTSOP contracts for the 12mt
- NCIG 12mt Terminal Access Protocol
- Levy Regime (jointly with PWCS)
- ACCC monthly reports (jointly with PWCS)
- Interface Agreement (jointly with PWCS and rail service providers).

The NCIG Working Group comprises three NCIG directors, senior management, shareholder representatives and external legal counsel.

Since the January report, the NCIG Working Group has given priority to the development of the draft Implementation Memorandum (refer below). In addition, the NCIG Working Group has also made good progress towards the development of working drafts of the LTSOP contracts and Access Protocols for the 12mt of NCIG Stage 2 capacity to be offered to non-NCIG members.

## **Port Waratah Coal Services Limited (PWCS)**

The PWCS Internal Steering Committee meets weekly to review progress against the NSW Government Project Plan with weekly reporting being produced to ensure compliance with the required project timelines.

A project risk assessment has been conducted to identify risks associated with project deliverables and establish corrective actions to achieve the required timelines. To date, PWCS has been able to achieve those elements within its control.

Progress on core deliverables by PWCS may be summarised as follows:

- NPC, PWCS and NCIG are involved in the development of the Implementation Memorandum with the initial draft of this document provided to the Terminal Operators for comment on 6 February. A further workshop was held on 12 February to discuss issues identified by NPC and/or the Terminal Operators with the draft document
- PWCS is continuing to progress its Long Term Contracts and Terminal Access Protocols to the extent where finalisation depends on the provision by NPC of the agreed outcomes from the major work streams to PWCS for incorporation into its documentation
- Work is underway detailing the Nomination and Allocation process related to PWCS
- PWCS in conjunction with Hunter Valley Coal Chain Logistics Team has completed modelling work for the determination of PWCS contractible capacity
- Mallesons Stephen Jaques in conjunction with PWCS and NCIG have submitted an Amendment to the application submitted by the Terminal Operators currently before the ACCC
- PWCS continues to be involved in major working groups to support the development of the long term solution

## **Conclusion**

The establishment of the Project Management Group and associated working groups provides the necessary framework for the development of core operating principles for the long term solution. Progress made to date is significant from the working groups and from the Terminal Operators in the development of the core infrastructure/documentation to meet the requirements of the long term solution.

The Project Management Group and the Terminal Operators are committed to achieving the required outcomes and timelines for the benefit of the Hunter Valley Coal Chain.

If the Commission requires any further information, we would be pleased to assist.

**13 February 2009**



