



**Australian
Competition &
Consumer
Commission**

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Our Ref: A91147-A91149 & A91168-A91169
Contact Officer: Jaime Martin
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28 October 2009

Via email

Dear Sir / Madam

Applications for authorisation [A91147–A91149 and A91168–A91169] lodged by Port Waratah Coal Services, Newcastle Coal Infrastructure Group and Newcastle Port Corporation — draft determination

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in relation to the above mentioned applications for authorisation.

As you may recall, Port Waratah Coal Services, Newcastle Coal Infrastructure Group and the Newcastle Port Corporation (the Applicants) are seeking authorisation for the proposed Capacity Framework Arrangements at the Port of Newcastle. The proposed Capacity Framework Arrangements form part of the long term solution to the ongoing capacity constraints in the Hunter Valley coal chain.

Draft determination

A copy of the ACCC's draft determination is attached. The draft determination will also be available from the ACCC's website www.accc.gov.au/AuthorisationsRegister.

For the reasons set out in Chapter 5 of the draft determination, the ACCC proposes to grant authorisation to the Capacity Framework Arrangements until 30 June 2020.

Next steps

Written submissions

You are invited to make a written submission in response to the ACCC's draft determination. Submissions should be lodged by **Friday, 13 November 2009**.

As outlined in the draft determination, the ACCC specifically invites interested parties to provide any further information about the progress of contractual alignment work, including any outstanding operational concerns.

Attached is a summary of the authorisation process, including information about how to make a submission to the ACCC.

Opportunity to request a conference

Once the ACCC issues a draft determination, the Applicants or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you would like the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **Wednesday, 11 November 2009**.

In the event a conference is requested, it is likely to be held in Sydney during the week commencing 16 November 2009.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Submissions will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

Timetable

The ACCC will continue to progress its assessment of these applications in a timely manner. An updated indicative timetable is set out below for your information.

28 October 2009	Draft determination.
October/November 2009	Public consultation on draft determination, including holding a conference if requested.
December 2009	Final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter please contact David Hatfield on (02) 6243 1266 or Jaime Martin on (03) 9290 1477.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch

**Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group and
Newcastle Port Corporation – applications for authorisation A91147-A91149 and
A91168 – A91169**

Interested parties – draft determination

1. Anglo Coal Australia Pty Ltd
2. Austar Coal Mine Pty Limited
3. BHP Billiton - Energy Coal
4. Bloomfield Collieries Pty Limited
5. Centennial Coal Company Limited
6. Coal & Allied (Rio Tinto Coal Australia Pty Ltd)
7. Donaldson Coal Pty Ltd
8. Gloucester Coal Limited
9. Idemitsu Australia Resources Pty Limited
10. Integra Coal Operations Pty Ltd
11. Peabody Pacific Pty Limited
12. White Mining Limited
13. Whitehaven Coal Ltd
14. Xstrata Coal Australia Pty Ltd
15. Werris Creek Coal Sales Pty Ltd
16. Peabody Coal Trade Australia
17. Ashton Coal Mines Limited
18. NSW Minerals Council
19. Australian Rail Track Corporation
20. Hunter Valley Coal Chain Logistics Team
21. SCT Logistics
22. Asciano Limited
23. QR National Coal
24. Genesee & Wyoming Australia Pty Ltd (on behalf of Fenwick Elliot Grace)
25. The Treasury (Energy, Transport and Communications Unit)
26. Australian Government Department of Resources, Energy and Tourism (Minerals Branch)
27. Australian Government Department of Infrastructure, Transport, Regional Development and Local Government (Infrastructure Investment)
28. Mr Ian McNamara, Policy Advisor for The Office of the Hon. Joe Tripodi MP, Minister for Ports and Waterways
29. Infrastructure Australia
30. National Transport Commission
31. NSW Department of Planning (Major Project Assessments Division)
32. NSW Department of Primary Industry (Mineral Resources Division)
33. NSW Maritime
34. Australian Transport Safety Bureau
35. Maritime Union of Australia
36. United Mine Workers Federation
37. The Hon Nick Greiner AC
38. Rail Corporation NSW
39. NSW Ministry of Transport
40. China Shenhua Energy Company Limited