

**13 March 2009**  
**ACCC Progress Report 3**

## **Introduction**

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

Previous reports were submitted in January 2009 and February 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 Decision and progressing towards the finalisation of the Implementation Memorandum by 31 March 2009, for the period to 13 March 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 their individual work teams to ensure compliance with the project timetable. Key workstreams being monitored by the Project Management Group are::

1. **Implementation Memorandum:** the development of an Implementation Memorandum between NCIG, PWCS and Newcastle Port Corporation (NPC);
2. **Contractual Alignment:** the development of a contractual alignment framework by the Contractual Alignment Working Group;
3. **T4:** the development of commercial arrangements for the development of new terminal infrastructure (T4):

### **Implementation Memorandum**

A "third" draft Implementation Memorandum has been prepared by NPC and distributed to PWCS, NCIG and producers for further comment.

NPC, NCIG and PWCS have held a number of consultation sessions to review outstanding issues on the Implementation Memorandum. That process is ongoing. However, it is considered that there are good prospects of reaching agreement on the terms of the Implementation Memorandum in order to allow for the submission of a new application for authorisation to the ACCC based on the Implementation Memorandum by 31 March 2009.

Some of the key issues addressed in the Implementation Memorandum are:

- the 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;
- the Nominations and Allocations processes for the implementation of a long term contractual framework at the Terminals;
- 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 Working Group**

The Contractual Alignment Working Group (CAG) continues to meet regularly with good support from all parties in the group.

The majority of coal producers have submitted their latest detailed rail loadpoint information to the Hunter Valley Coal Chain Logistics Group (HVCCLT) for input to the system simulation model to further validate model output. In the meantime, model assumptions and the output from several scenario cases have been considered by CAG members.

This work has supported the preparation of a draft of the alignment principles for discussion by the working group. Work is progressing to crystallise key aspects in the working paper for inclusion in the Implementation Memorandum.

## **T4 Terminal**

NPC on behalf of the NSW Government has issued a Term Sheet to PWCS in relation to its proposed commercial, development and operating arrangements for the development of the T4 terminal on land at Kooragang Island. Discussions on those terms are ongoing with PWCS.

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

NCIG continues to be actively involved in the various groups working towards a sustainable long term solution including the Project Management Group, the Contractual Alignment Group and the Implementation Memorandum Working Group.

The progress made by NCIG since the submission of the February Report to the ACCC includes the following:

- Development of a Nomination and Allocation framework for the allocation of up to 12Mtpa of NCIG Stage 2 to non-NCIG Producers, which is well advanced and will be finalised in parallel with the finalisation of the Implementation Memorandum. The draft Nomination and Allocation process has been included in Draft 3 of the IM
- NCIG agrees that an effective long term solution requires alignment between terminal contracts and track access and has been actively involved in the Contractual Alignment Group to develop a long term solution to this alignment issue. To this end, NCIG has recently developed high level guiding principles for consideration by industry to be included in the Implementation Memorandum in order to take account of the requirement for contract alignment
- Development of a draft Long Term Ship or Pay Agreement for NCIG Stage 2
- There remain a number of key issues outstanding with respect to the Implementation Memorandum that will need to be resolved prior to finalisation and agreement on the Implementation Memorandum. These issues have been discussed with NPC and PWCS on several occasions. To facilitate the finalisation of the IM by 31 March 2009, the NCIG Working Group has worked closely with the NCIG Board to develop a number of proposals to resolve the key issues outstanding in relation to the Implementation Memorandum. These proposals have been put to NPC and PWCS for consideration.
- Active involvement in the development of the Implementation Memorandum and input, through meetings and the development of extensive issues lists for discussion.

NCIG notes the timeframe of 31 March 2009 and at this point in time Draft 3 of the Implementation Memorandum is not sufficiently agreed to enable final review and approval by NCIG. NCIG remains committed to the finalisation of the Implementation Memorandum and continues to commit considerable time and resources to achieve resolution by 31 March 2009.

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

PWCS has continued its active involvement in the various groups working towards a sustainable long term solution including the Project Management Group, the Contractual Alignment Group and the Implementation Memorandum Group and PWCS' own internal PWCS Steering Committee. Progress on PWCS' core deliverables may be summarised as follows:

PWCS, NPC and NCIG have progressed the Implementation Memorandum from an initial draft to a third draft which has been distributed broadly to all industry participants including service providers, producers and government. The process has largely been iterative with major and minor points of issue being addressed. PWCS has drafted a Nomination and Allocation Procedure to set out the details of the methodology by which PWCS will provide access to its services at the Carrington, Kooragang and T4 terminals at the Port of Newcastle. This has been presented to NPC, NCIG and the Government from which PWCS has received encouraging feedback to date. This draft has been included in the current Implementation Memorandum.

The Contractual Alignment Group is dealing with the most complex details of the long term solution. This remains an important body of work with the content and structure at a high level on Guideline Principles being redrafted for consideration and inclusion in the Implementation Memorandum.

The Government has issued a high level T4 Term Sheet in relation to its proposed commercial arrangements for access to land to PWCS for feedback and comment. PWCS is analysing the Term Sheet both from an operational and legal perspective. PWCS is also considering the governance structure for T4. Discussions between Government and PWCS are ongoing.

PWCS' Long Term Ship or Pay Contracts are progressing in parallel with the drafting of the IM and the Nomination and Allocation Procedure. Work in this area will advance as progress continues on the Implementation Memorandum, Terminal Access Protocols (including the final Nomination and Allocation Procedure) and Contractual Alignment.

Through meetings and discussions between all parties significant progress has been made on points of difference with PWCS remaining committed to finalising the Implementation Memorandum and associated documents.

### **Conclusion**

There has been significant effort and progress in the February-March period in the development of the Implementation Memorandum and associated elements of the long term solution that include Terminal Access Protocols, the Nomination and Allocation Process and principles for Contractual Alignment.

This has been achieved by each of NPC, PWCS and NCIG working in good faith towards reaching agreement on the Implementation Memorandum.

In the period to 31 March, the focus by all parties will be in finalising the Implementation Memorandum and gaining agreement on the Principles for Contractual Alignment and Terms of Agreement for T4 to meet the requirements for submission to the ACCC by 31 March 2009.