

Port Waratah Coal Services Limited

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

Response to issues raised by Pacific
National Pty Limited at the Pre-Decision
Conference on 2 April 2009

Dated 24 April 2009

Port Waratah Coal Services Limited

Submission in support of applications for authorisation A91110 - A911120

Response to issues raised by Pacific National at the Pre-Decision Conference

1 Introduction

This submission sets out further comments by Port Waratah Coal Services (“PWCS”) in relation to the issues raised by Pacific National Pty Limited (“Pacific National”) at the Pre-Decision Conference held on 2 April 2009 in connection with applications for authorisation A91110 - A91112, and in the written statement provided by Pacific National at the Pre-Decision Conference.

PWCS notes that it has already addressed many of the issues raised by Pacific National, in its initial application for authorisation, its Supplementary Submission dated 10 December 2008, its Supplementary Submission dated 10 February 2009 and at the Pre-Decision Conference itself. Accordingly, this supplementary submission sets out a brief summary only of PWCS’ position in relation to those issues, having regard to the recent signing of the Implementation Memorandum by PWCS, Newcastle Infrastructure Group Pty Limited (“NCIG”) and Newcastle Ports Corporation (“NPC”).

2 Comments on issues raised by Pacific National

PWCS does not agree with Pacific National’s view that:

- (a) there has been a material reduction in public benefits and a material increase in the public detriments associated with the conduct the subject of PWCS’ and NCIG’s application for authorisation *since the publication of the draft determination*, as suggested in Pacific National’s written statement; or
- (b) the Implementation Memorandum “*will not facilitate the signing of long term contracts*”, as suggested by Pacific National at the Pre-Decision Conference.

Any assessment of public benefits and detriments needs to be viewed in light of the following matters:

- (a) first, PWCS notes that the Implementation Memorandum represents a very substantial step towards the implementation of a binding long term solution, based on long term contracts and clear triggers for capacity expansion. PWCS is committed to continuing work with the NSW Government and the industry to implement the long term solution, based on the Implementation Memorandum by 30 June 2009.

This will necessarily involve further and continuing work in relation to alignment of contracts and operational matters across the coal chain. However, given the very substantial progress that has been made towards developing a long term solution over the past 2-3 months and the level of detail contained in the Implementation Memorandum, PWCS does not accept Pacific National’s assertion that the Implementation Memorandum will not facilitate the further development of

long term contracts. To the contrary, the Implementation Memorandum sets out a framework from which long term contracts can be developed and implemented;

- (b) second, while based on Minister Tripodi's terminal access framework in relation to the Port of Newcastle, the development of the Implementation Memorandum clearly encompasses a process for further developing alignment of contracts and capacity across the coal chain. Pacific National has been directly involved in the contractual alignment working group ("CAG").

The alignment of capacity, contracts and operational matters is a complex issue, involving track access (through the ARTC undertaking), above rail access, potential expansions of both terminal and rail infrastructure and coordination of logistics functions.

It is not apparent from Pacific National's submission how it considers that the further development of contractual alignment principles and practices would be assisted by the Commission rejecting PWCS' and NCIG's application for authorisation of the PWCS Tonnage Allocation Stage 1 until 30 June 2009;

- (c) third, the current application for authorisation -- and therefore the application to which Pacific National's comments must relate -- applies only to the PWCS Tonnage Allocation Stage 1 and, even if granted by the Commission, authorisation will expire by 30 June 2009. It is unclear to PWCS either that:
- (i) the Commission declining to grant authorisation would result in a faster resolution to contractual alignment issues or the long term solution; or
 - (ii) allowing authorisation of the PWCS Tonnage Allocation Stage 1 to continue for a further period of 9 weeks would involve substantial public detriments.

In any event, as relevant aspects of the long term solution will form the basis of a new and separate application to the Commission for authorisation, Pacific National will have a clear opportunity to raise any concerns that may persist in the context of that application.

3 Conclusion

PWCS submits that, particularly in the context of the negotiation and signing of the Implementation Memorandum, the public benefits associated with the conduct the subject of the applications for authorisation continue to outweigh any public detriments, and that it is appropriate for the Commission to grant a final authorisation in relation to that conduct.

PWCS also notes that it is focused on ensuring progress on the development of a long term solution and, in particular, the whole of coal chain issues which are at the heart of the concerns raised by Pacific National. As such, the finalisation of the current authorisation, while not of itself achieving the long term solution, is an important foundation for its delivery.

Port Waratah Coal Services Limited
24 April 2009