

# Proposed Users of the Wiggins Island Coal Terminal

Application for Authorisation -  
A91241 - lodged by various  
Wiggins Island Coal Terminal  
users

Response to submission by  
Asciano

Dated 27 July 2010

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## Application for Authorisation - A912241 lodged by various Wiggins Island Coal Terminal users

### Response to submission by Asciano

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We refer to the submission dated 21 July 2010 by Asciano in relation to the application for interim authorisation by the Applicants. The Applicants' response to each issue raised by Asciano is provided below.

**1 *Effective separation of QR - Asciano's concern that the negotiations between the Applicants and QR Network may also address non-QR Network related issues, particularly above rail operations***

Asciano has expressed a concern that if an interim authorisation is granted to allow the Applicants to negotiate collectively with QR Network in relation to below-rail access, those negotiations might include or may address issues relating to above-rail access.

The Applicants have outlined in detail, in both the Form B and the Supporting Submission, the particular conduct for which they are seeking authorisation to negotiate collectively with QR Network. In this regard, the Applicants are seeking authorisation to collectively negotiate in respect of access to identified *below-rail* infrastructure necessary to support the Wiggins Island Terminal ("**Terminal**"), and services associated with such below-rail access, as outlined in **Annexure 4** to the Supporting Submission.

The Applicants submit that any interim authorisation which is granted, as well as any final authorisation, will only enable the Applicants to negotiate collectively in relation to *below-rail* access as described in the authorisation application. Therefore, the Applicants' conduct will be limited to discussions and negotiations relating to below-rail, as permitted by any authorisation determinations.

Asciano has not explained what above rail issues it is concerned with and it is, therefore, difficult to provide further information in relation to this issue.

**2 *Asciano's concern that the Identified Below Rail Infrastructure is too broad***

Asciano has expressed concerns that the definition of the Identified Rail Infrastructure is too broad and should be linked to rail capacity needed to service the Terminal.

The authorisation application has identified particular below-rail systems which will likely need to be expanded or enhanced in order to support the Terminal project. Therefore, the Applicants intend for the collective negotiations to relate to infrastructure which is necessary to support the Terminal. Accordingly, the identification of expansions to the Blackwater and Moura systems, in order to support the transportation of coal to the Terminal, is not considered by the Applicants to be too broad but is in fact intended to cover infrastructure linked to the Terminal project.

In addition, as explained in the Supporting Submission, collective negotiations may be necessary in light of the reallocation of capacity from the Barney Point Coal Terminal (“**Barney Point**”), pursuant to the decision to terminate coal exports from Barney Point and to reallocate existing contracted capacity to the Terminal and to the RG Tanna Coal Terminal. As indicated in the Supporting Submission, this reallocation of capacity to the Terminal may result in insufficient existing below-rail capacity on the network, or part thereof, leading to the Terminal. This infrastructure is, therefore, considered by the Applicants to be associated with the Terminal.

Furthermore, as indicated in the Supporting Submission, the development of the Surat Basin Rail project may result in insufficient existing below-rail capacity on the Moura network, or part thereof, due to an increase in the transportation of coal from the Surat Basin region to the Terminal. It is, therefore, submitted that insofar as upgrades and expansions to the Moura System are necessary for the purpose of transporting coal to the Terminal, these are considered to be associated with the Terminal and should form part of the Identified Rail Infrastructure.

For these reasons, the Applicants do not agree that the definition of the Identified Rail Infrastructure is too broad.

**3 *Asciano’s concern regarding the duration of an authorisation period for 20 years being too long***

As indicated in the Supporting Submission, QR Network has proposed a 20 year term for any access agreements which are to be concluded in relation to the Request For Proposal in connection with capacity expansions and upgrades associated with the Terminal project. The 20 year period will commence from the scheduled date for the first provision of access.

While it is uncertain at this stage what particular terms will be included in such access agreements to be concluded, it is possible (if not likely) that there will be certain reset/review mechanisms (i.e. price) at intervals throughout the term. As a result, certain aspects of the provision of access in support of the Terminal may require ongoing collective discussion and negotiation during the term of the agreements. The Applicants, therefore, submit that it is practical and necessary to seek authorisation for a 20 year period.

In addition, construction and development of Stage 1 and Stage 2 of the Terminal is anticipated to take place over a period of several years. Moreover, additional future expansions to the Terminal may occur if justified by increased demand from industry over time. Such expansion is likely to require associated and coordinated expansions in relation to below-rail infrastructure which supports the Terminal and, accordingly, an authorisation for a 20 year period is not considered inappropriate in the circumstances.

Furthermore, it may be necessary for the Applicants to negotiate system optimisation initiatives with QR Network throughout the term of the access agreements. This would involve ongoing changes to below-rail configurations in order to achieve throughput targets in the most efficient manner.

The Applicants also wish to highlight the significant public benefits which are likely to arise as a result of the authorisation being granted, which include efficient investment in the supply chain, alignment of supply chain capacity in order to achieve a more efficient operating supply chain, increased exports of coal from Queensland, as well as the potential for resultant increases in employment opportunities in the Queensland coal industry. Therefore, the significant public benefits flowing from a 20 year authorisation period outweigh any minimal (if any) impact on competition which may result.

In this regard, it is unclear the basis on which Asciano (a party directly affected by the proposed collective negotiation process) appears to be suggesting that a 20 year period is too long.

**4 *Asciano's concern regarding identity of the potential future owner of the below-rail infrastructure***

Asciano has expressed concerns that in the event that Queensland Coal Industry Rail Group ("QCIRG") is successful in its bid to acquire parts of QR Network, there would not be an effective separation of all of the components of the coal supply chain. In addition, Asciano is concerned that an authorisation allowing the Applicants to collectively negotiate with a subset of coal producers who own the infrastructure would result in potentially discriminatory behaviour and inappropriate investment in infrastructure.

In response, firstly, the consortium members of QCIRG comprise only a subset of the Applicant group. Therefore, many of the Applicants and users of the Terminal will not be members of QCIRG. Therefore, the grant of an authorisation will not result in all of the users of the Terminal negotiating with themselves as suggested by Asciano.

Secondly, any authorisation to collectively negotiate is voluntary and no individual Applicant would, therefore, be obliged to collectively negotiate with QCIRG if it decided it was not in its interests to do so. In which case, any negotiations would take place on an individual basis as between QCIRG and an individual producer.

Thirdly, the Applicants note that the model proposed by QCIRG is, in principle, similar to the models underpinning industry-owned port infrastructure in New South Wales, including PWCS and NCIG.

Further, the Applicants submit that there will be on-going regulatory protection against the potential issues raised by Asciano in any undertaking accepted by the Queensland Competition Authority, as well as regulatory oversight by the Queensland Competition Authority. To the extent that QCIRG were to engage in any anti-competitive or discriminatory behaviour, competitors or customers would be protected by provisions of the Queensland Competition Authority Act. In this regard, information exchange protocols could be incorporated in order to secure sensitive information provided by producers (as customers) to QCIRG, as well as suitable ring-fencing mechanisms which could be implemented.

In these circumstances, the Applicants consider that the issues raised by Asciano are not directly related to the Applicants' request for interim

authorisation, or final authorisation, to engage in collective negotiations in relation to below-rail access supporting the Terminal.

The Applicants would be pleased to discuss the contents of this response further if that would be of assistance.

**27 July 2010**