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LAWYERS

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By email

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Dear Dr Chadwick

Consent to amendment to Applications for Authorisation A91275 and A91278 to include Rio Tinto Coal Australia Pty Limited as an applicant

We act for Rio Tinto Coal Australia Pty Limited (**RTCA**). RTCA is a wholly owned subsidiary of Rio Tinto Limited and is the company which manages the group of companies and joint ventures comprising Rio Tinto's Australian coal business, including its Queensland coal assets (**RTCA Group**).

Consent to amendment of authorisations

Further to our recent conversations with ACCC staff, we can confirm that RTCA has been in discussions with the group of Bowen Basin coal producers which are joint applicants for authorisation of collective bargaining arrangements in respect of below rail infrastructure operated by QR Network Pty Ltd (**QR Network**) and which may be used by the applicants to access:

- the proposed T4-7 expansion at Abbot Point Coal Terminal (**APCT**) (Application for Authorisation A91275); and
- the proposed Dudgeon Point terminal at the Port of Hay Point (Application for Authorisation A91278).

RTCA have reviewed the applications and, given the substantial commonality of issues with those with which it is involved at both terminals, RTCA considers that it is appropriate for it to join as an applicant in respect of both applications. The joint producers have indicated that they agree that is it appropriate for RTCA to participate and have accepted RTCA's involvement.

We understand that the joint producers have written to the ACCC requesting amendments to both of their existing applications for authorisation to include RTCA as an additional applicant.

We understand that the amendments proposed by the existing applicants are as follows:

- in respect of Application for Authorisation A91275 – to amend the application to include RTCA as an applicant, and to extend the scope of the authorisation as follows:

*collectively discuss and negotiate terms and conditions with QR Network Pty Ltd (**QR Network**), including price, for access to the below rail infrastructure necessary to service any proposed expansion of the Abbot Point Coal Terminal (**Below Rail Infrastructure**). The Below Rail Infrastructure and proposed expansion of the Abbot Point Coal Terminal (**Terminal**) are described in more detail in the supporting submission;*

- in respect of Application for Authorisation A91278 – to amend the application to include RTCA as an applicant.

RTCA confirms that it consents to being included as an applicant in respect of both applications (as amended) and endorses the reasons provided in the respective supporting submissions filed with the ACCC. For the reasons set out in this letter, RTCA considers that:

- there are substantial commonalities between the rail infrastructure which is the subject of the applications and the rail (and terminal) infrastructure that the RTCA Group currently uses and/or which it is considering using to transport expanded production from its Queensland mines; and
- as such, RTCA's involvement in the collective bargaining group increases a number of the public benefits which were identified in those submissions and therefore strengthens the case for the grant of both authorisations (as discussed below).

Both proposed authorisations provide for future users to be able to join the collective bargaining group, from time to time, as contemplated by s 88(10) of the *Competition and Consumer Act 2010 (CCA)*.

The amendments to include RTCA as an applicant are therefore consistent with the intent of the original applications. However, by including RTCA now, the change will provide the ACCC with greater transparency of the group that, if authorised, would be participating in joint discussions with QR Network.

RTCA Group coal interests in Queensland and use of QR Network rail infrastructure

The RTCA Group participates in a number of joint venture coal operations producing both thermal and metallurgical coal in the Bowen Basin in central Queensland. An overview of the RTCA Group's relevant coal interests and infrastructure requirements is set out in the Annexure. RTCA manages the Blair Athol and Clermont Mines and provides management services to the Hail Creek and Kestrel Mines.

The RTCA Group currently utilises the following QR Network rail systems:¹

- Blackwater System, which services the port of Gladstone and other domestic coal terminals in the vicinity; and
- Goonyella System, which services the ports at Hay Point and Dalrymple Bay.

In addition to its existing production, the RTCA Group is evaluating or developing a number of expansion options in relation to its Queensland operations and resources and has begun, or will shortly commence, commercial discussions to secure rail and port capacity for this production.

¹ RTCA will also commence using the Newlands System (including the GAP extension) from 1 January 2012, which will provide a link to its terminal capacity at APCT (X50) which is due to commence operations from that date.

To this end, RTCA is participating in the current bid process to be a Preferred Developer of a terminal in the T4-7 expansion of APCT. RTCA is also engaged in commercial negotiations with one of the Preferred Developers of Dudgeon Point to secure capacity at that terminal.

Commonalities and public benefits

As noted above, there are substantial commonalities in the interests of the RTCA Group and the existing applicants, including that:

- the RTCA Group holds a number of coal resources in the Bowen Basin region in close proximity to the resources held by the existing applicants;
- RTCA is also currently a bidder for Preferred Developer rights in respect of the development of a terminal as part of the APCT T4-7 expansion;
- RTCA is negotiating for additional capacity at the proposed Dudgeon Point terminal;
- the RTCA Group currently uses the same QR Network systems (Blackwater and Goonyella (with Newlands and the Goonyella to Abbot Point (**GAP**) expansion from 2012) to transport existing tonnage for export to APCT (X50 terminal), Dalrymple Bay and Gladstone; and
- if successful in securing capacity at either or both APCT and Dudgeon Point, RTCA will need to engage in commercial discussions with QR Networks in relation to expansion of the same below-rail systems and infrastructure as the existing applicants.

These commonalities mean that RTCA's involvement in the collective bargaining group will:

- provide additional transaction cost savings associated with the negotiations, including because of the substantial technical expertise which RTCA has in relation to below rail planning, design and access issues;
- improve the efficiency of QR Network's network planning in relation to the Dudgeon Point and APCT T4-7 expansions;
- ensure more timely and efficient negotiation of access terms and conditions and an agreed funding approach across users at each of APCT and Dudgeon Point, which will improve overall investor certainty and potentially translate into shorter development timeframes;
- allow the group (and other future users) to benefit from RTCA's extensive experience in working as part of coordinated supply chain bodies and groups in both the Hunter Valley and Dalrymple Bay coal supply chains; and
- further reduce the bargaining imbalance which would otherwise exist between prospective terminal users at both APCT and Dudgeon Point and QR Network, as the monopoly owner and operator of the below-rail infrastructure.

Over recent years, RTCA has been a leading participant in, and advocate for, the development of improved coal supply chain coordination across the Hunter Valley (Port Waratah) and Dalrymple Bay coal terminals and related systems. RTCA is well aware of the material inefficiencies and lost opportunities that result from poorly coordinated supply chains and infrastructure.

This experience has highlighted to RTCA the substantial public benefits that are associated with properly coordinating and aligning rail and terminal infrastructure (and capacity) with coal production. RTCA considers that, amongst other things, the collective bargaining group will be valuable in ensuring that the substantial expansion of the Bowen Basin and Galilee coal regions over the next few years occurs in a coordinated and efficient manner.

Please contact us if you require any further information in respect of RTCA's proposed involvement as an additional applicant. We would also be grateful if you would include us in any future correspondence in respect of the applications.

Yours sincerely

Gilbert + Tobin

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Annexure - Overview of RTCA Group's Queensland coal interests and rail and coal terminal operations

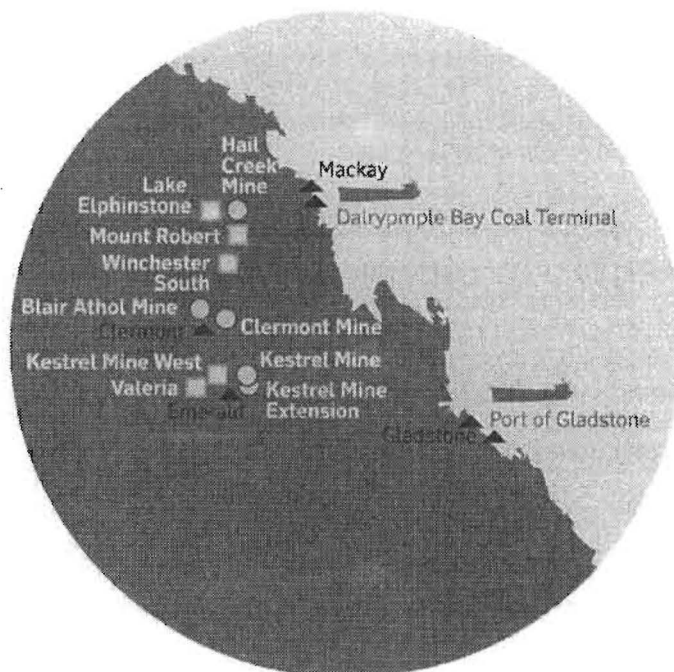
1 RTCA Group mining operations

1.1 Overview of existing resources

The RTCA Group currently includes four coal mines in Queensland.² A brief overview of its mines and the port infrastructure used to export production from each is set out below:

Existing Mines	Coal type	Coal Export Terminal
Blair Athol	Thermal	Dalrymple Bay Coal Terminal and/or Abbot Point Coal Terminal
Clermont	Thermal	Dalrymple Bay Coal Terminal and/or Abbot Point Coal Terminal
Hail Creek	Coking	Dalrymple Bay Coal Terminal
Kestrel	Coking/ Thermal	Gladstone

A map of the locations of the RTCA Group's current and proposed mines is set out below:



1.2 Blair Athol / Clermont mines

Blair Athol Mine is located 20 km north west of Clermont in central Queensland and supplies customers in Asia and Europe with up to 12 million tonnes per annum (**mtpa**) of thermal coal.

² In NSW, RTCA also provides management services to three RTCA Group operations in the Hunter Valley region of New South Wales - Mount Thorley Warkworth, Hunter Valley Operations and Bengalla on behalf of Coal & Allied Operations.

The Blair Athol Mine extracts coal from the Bowen Basin which is then transported 280 km to the Dalrymple Bay Coal Terminal (**DBCT**) for shipping. The Blair Athol Mine is due to close in 2016 when its reserves are completely mined out. Its stockpile and train facilities will be used by the Clermont Mine.

Clermont Mine is located 12 km north west of Clermont. The Clermont Mine extracts coal from the Wolfgang Basin which is then transported to the Blair Athol Mine facilities for onward transportation to DBCT for shipping. The deposit holds 190 million tonnes of thermal coal, and the mine has an expected life of 17 years.

1.3 Hail Creek Mine

Hail Creek Mine is located 90 km south west of Mackay and supplies steel mills in Asia and Europe with up to 8 mtpa of coking coal. The Hail Creek Mine extracts coal from the Bowen Basin which is then transported approximately 175 km to DBCT for shipping.

1.4 Kestrel Mine

Kestrel Mine is located 40 km north east of Emerald and supplies up to 4.2 mtpa of coking and thermal coal for export. The Kestrel Mine extracts coal from the Bowen Basin which is then transported to the Port of Gladstone for shipping.

The mine is currently constructing the US\$1.1 billion Kestrel Mine extension, a project to access the mine's existing resources more efficiently. The extension, due for completion in 2012, will extend the life of the mine by 20 years and increase mine capacity to 6-7 mtpa, some or all of which will be redirected to other terminals.

1.5 Valeria

RTCA is studying the development of the Valeria Coal project located at the western edge of the Bowen Basin, close to the town of Capella. The Valeria Coal project is located in the vicinity of the existing Goonyella rail system. Once the GAP expansion is completed, RTCA's current plans are to export any Valeria production from APCT. Rail capacity for this production could be provided by access to the QR Network rail system, including the GAP expansion to APCT.

1.6 Winchester South

RTCA is currently investigating production from Winchester South. Winchester South is located in close proximity to the Goonyella rail system. The closest port to Winchester South is Hay Point (where DBCT and Dudgeon Point are located), however RTCA can also utilise the other rail systems to transport tonnage to APCT, DBCT, Dudgeon Point or the Port of Gladstone.

1.7 Lake Elphinstone

RTCA is currently investigating production from Lake Elphinstone, located adjacent to Hail Creek. The closest port is Hay Point, although RTCA can utilise the various rail networks to access other terminals, including APCT.

1.8 Mt Robert

RTCA is currently investigating production from Mt Robert, which is also located adjacent to Hail Creek. As for Winchester South and Lake Elphinstone, Hay Point is the closet port, but a choice of rail systems means RTCA can also export from a number of terminals in the region.

2 RTCA Group rail arrangements

The RTCA Group currently has existing above-rail haulage contracts in Queensland with Pacific National and QR Network and which utilise the Goonyella, Newlands and Blackwater systems. These above-rail arrangements currently enable carriage of coal from Hail Creek, Blair Athol, Clermont and Kestrel mines to the various coal terminals, including DBCT, APCT and the Port of Gladstone.

Once the GAP expansion is completed, RTCA is also considering use of QR Network's narrow gauge network including the GAP expansion to deliver its coal to APCT (T4-7), including production from the Valeria Mine.

3 RTCA Group coal terminal capacity

The RTCA Group currently has contracted capacity at three Queensland export coal terminals: RG Tanna (Gladstone), DBCT and terminal 1 (X50) at APCT.

As the ACCC is aware, various Queensland export coal terminals are currently undergoing expansions including APCT (X50 and T4-7), Dudgeon Point and Wiggins Island Coal Export Terminal in the Gladstone region.

RTCA has applied to be a Preferred Developer of one of T4-7 terminals at APCT. RTCA is also in commercial negotiations with one of the Preferred Developers of Dudgeon Point in relation to utilisation of the new capacity at that terminal.