

**Restriction of Publication of Part Claimed
(see Appendix B)**

Rio Tinto Coal Australia Pty Limited
GPO Box 391
Brisbane Queensland 4001
Australia
T +61 (0) 7 3361 4200
F +61 (0) 7 3361 4370

David Hatfield
A/g General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

23 February 2011

Dear Mr Hatfield

Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group and Newcastle Port Corporation authorisation A91147 – A91149 & A91168 & A91169 – request for review by Aston Resources

I refer to your letter dated 10 February 2011.

Background

As the Australian Competition and Consumer Commission (**ACCC**) is aware, Coal & Allied Industries Limited (**C&A**) was supportive of the authorisation referred to above (**Authorisation**).

On 15 December 2010, Aston Resources (**Aston**) made a submission to the ACCC requesting that the ACCC review the Authorisation. C&A has read the recent submissions lodged with the ACCC by the Applicants to the Authorisation in relation to Aston's request, and supports the arguments made by the Applicants in those submissions. Accordingly, C&A does not support Aston's request.

This letter:

- (a) outlines why C&A believes there is no basis for the ACCC to review the Authorisation, and
- (b) provides C&A's response to the specific issues on which the ACCC has requested submissions.

No basis for ACCC review of authorisation

As referred to in your letter, for the ACCC to decide to review the Authorisation under s91C(3) of the *Competition and Consumer Act 2010* (Cth)(**CCA**), the ACCC is **required** to form the view that:

- (a) the Authorisation was based on false or misleading material; or
- (b) a condition of the Authorisation has not been complied with; or
- (c) there has been a material change in circumstances since the authorisation was granted.

C&A does not believe that any of these grounds for review have been satisfied:

- (a) C&A has no reason to believe that the Authorisation was based on false or misleading material. In fact, it does not appear to C&A that Aston is making such an argument in its submissions;

- (b) the Authorisation was not granted subject to any conditions, so this ground for review is not relevant; and
- (c) C&A does not consider that there has been a material change in circumstances since the Authorisation was granted. C&A is of the view that Aston has failed to provide any evidence to satisfy this ground.

On the basis that **none** of the statutory grounds for a review of the Authorisation have been satisfied, C&A submits that the ACCC cannot review the Authorisation at this time.

Additional ACCC questions

C&A provides the following additional information in response to the ACCC's request.

Whether the Capacity Framework Arrangements are operating as intended

C&A agrees with PWCS' submission that the 2009 and 2010 nomination and allocation processes were conducted in accordance with the Capacity Framework Arrangements and that the Capacity Framework Arrangements are operating as envisaged.

As a producer participant in the PWCS nomination and allocation process provided for in the Capacity Framework Arrangements, and also as a 'non-NCIG' producer which has elected to take up capacity at NCIG in accordance with the Capacity Framework Arrangements, C&A has had the very significant benefit of receiving certainty in relation to its allocated capacity under long term contracts. All producers, including 'new entrants' such as Aston, have also benefited from the certainty created by long term contracts for port capacity. In turn, from the perspective of the terminal operators, those long term contracts have facilitated growth and, as contemplated by the ACCC in its Determination, timely decisions in relation to investing in expanded capacity (such as 'T4' in the case of PWCS).

The certainty afforded to C&A by the Capacity Framework Arrangements is reflected in the significant investment decisions which C&A has announced since the ACCC authorised the Capacity Framework Arrangements in December 2009. In summary:

- (a) On 27 January 2010, C&A announced that it had submitted a Statement of Environmental Effects to the Department of Planning for a modification to its Mt Thorley consent, to extract approximately five million tonnes of additional run of mine coal from the existing mine pit;
- (b) On 30 November 2010, C&A announced that it and its joint venture partners had reached agreement on a \$141 million expansion of the Bengalla mine site, which will increase capacity from 7.8mtpa to 9.3mtpa. As noted in that release, the agreement follows from the increasing capacity in the Hunter Valley Coal Chain after the introduction of the long term port access framework under the Capacity Framework Arrangements; and
- (c) On 21 December 2010, C&A announced the decision by the New South Wales Government to grant a mining lease for the Mount Pleasant Project. To quote directly from that release, '*Coal & Allied has held a development consent for the Mount Pleasant Project since 1999...Uncertainty surrounding ports infrastructure had delayed the application for a mining lease until now. This year Coal & Allied announced it will pursue all remaining approvals and consents needed following the breakthrough long term framework agreement reached for the Port of Newcastle*'.

C&A attaches copies of the relevant media announcements as Appendix A to this submission.

The port nominations submitted by C&A under the Capacity Framework Arrangements are reflective of its expansion plans.

On the basis of firm, long-term contracts from C&A and the other Hunter Valley producers, both PWCS and NCIG have committed to significant terminal expansions, as outlined elsewhere. C&A submits that this is direct, tangible evidence that the intent of the Capacity Framework Arrangements, and the benefits (as outlined in Paragraph 5.166 of the ACCC's Determination) are being delivered as intended.

Whether there has been or is likely to be any undue delay in the delivery of further capacity at the Port of Newcastle

C&A does not consider that there has been any undue delay in the delivery of further capacity at the Port of Newcastle under the Capacity Framework Arrangements to date, and is not aware of any factors which point to the likelihood of undue delay in the future. In this regard, C&A agrees with the submissions made by the Applicants on this point, and, specifically, notes the comments made by PWCS in relation to the development of T4 in accordance with the requirements of the Capacity Framework Arrangements.

Whether there is any evidence of capacity hoarding

Aston submits in its 15 December 2010 submission that the terms of take or pay agreements should ensure that incumbent producers are required to transfer unused capacity. C&A would like to reinforce PWCS' submission that the existing PWCS Long Term Ship or Pay Agreement already includes a positive obligation to seek to transfer any unused capacity. This clause appears as confidential Appendix B to this letter, on the basis that terms of the Long Term Ship or Pay Agreement are subject to confidentiality restrictions.

If, at the time of its submission to the ACCC, Aston had not yet executed a Long Term Ship or Pay Agreement with PWCS in relation to the capacity allocations made to it under the 2010 nominations process, Aston may not have been aware of this contractual obligation at that time. However, Aston should now be aware of this obligation.

In recognition of both the obligation to seek to transfer capacity, and the commercial advantages of doing so, the Hunter Valley coal producers have, through the Hunter Valley Coal Chain Coordinator (*HVCCC*), developed a computerized Capacity Trading System. This system facilitates the identification and execution of opportunities to transfer capacity (whether due to short-term variability or extended delays) to minimize lost coal chain capacity. This system is now operating well and facilitating a significant volume of capacity transfers.

Further, Aston has submitted that, to avoid 'hoarding', producers should be required to report to the coal chain at large on throughput and proposed and actual 'resumptions' (by which C&A assumes Aston is referring to the potential compression of capacity allocations provided for by the Capacity Framework Arrangements). C&A believes that such a proposal may lead to the inappropriate exchange of commercially sensitive information between competitors and would risk putting producers in contravention of the CCA. We also note that information in relation to allocations and throughput across the industry is collected by the HVCCC under appropriate confidentiality arrangements, and is utilised by HVCCC in carrying out its industry-mandated capacity planning and coordination functions.

Conclusion

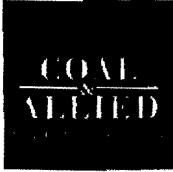
In summary, C&A does not believe there are any grounds for the ACCC to review the Authorisation. In fact, C&A considers that the Capacity Framework Arrangements are operating as intended and have facilitated significant growth across the Hunter Valley Coal Chain.

Please do not hesitate to contact me should you require any further information.

Yours sincerely



Timothy Renwick
General Manager – Infrastructure
Rio Tinto Coal Australia



Appendix A

Home Media Media releases Coal & Allied seeks to enlarge existing Mt Thorley mine pit to access extra 5Mt

27 January 2010

Coal & Allied seeks to enlarge existing Mt Thorley mine pit to access extra 5Mt

Coal & Allied is applying to the new South Wales Government to extend an existing approved mine pit to extract coal from company-owned land - most of which has been previously mined.

Coal & Allied has submitted a Statement of Environmental Effects to the Department of Planning for a modification to its Mt Thorley consent, to extract approximately five million tonnes of additional run of mine coal from the existing mine pit, which is largely within previously mined areas.

General Manager Operations, Cam Halfpenny, said the three coal seams that the pit accesses are already approved for extraction.

"Our submission for this modification is being advertised and placed on exhibition notice," Mr Halfpenny said.

"This is one of a number of applications that we are currently considering to access more coal from our existing leases, avoiding the need to acquire new land or enlarge our footprint in the community.

"As a result, members of the community may see additional drilling rigs on our property which is part of our ongoing exploration work, or newspaper advertisements to access further areas within our existing leases."

Mr Halfpenny said the proposed modification to the Mt Thorley pit would require the realignment of the existing coal haul road on Coal & Allied's land to take coal from the extended pit to the existing Mount Thorley coal preparation plant.

Minor items of infrastructure within the coal haul road realignment area would also need to be relocated to adjacent locations within the confines of the approved mine site:

ENDS

Media Enquiries:
Alison Smith 07 3361 4223 / 0 438 787 038

[Media Release - Coal & Allied seeks to enlarge existing Mt Thorley mine pit to access extra 5Mt \[PDF: 25 KB\]](#)

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[Home](#) [Media](#) [Media releases](#) [Approval of Bengalla expansion](#)

30 November 2010

Approval of Bengalla expansion

Coal & Allied and its joint venture partners Wesfarmers (40%), Mitsui (10%) and Taipower (10%) have reached agreement on a \$141 million expansion (100% basis) of the Bengalla mine site.

The expansion will increase Bengalla's capacity from the current run of mine (ROM) production rate of 7.8 million tonnes per year to 9.3 million tonnes per year.

The agreement follows completion of a feasibility study into an expansion of the existing open cut thermal coal mine at Muswellbrook, and with increasing capacity in the Hunter Valley Coal Chain after this year's introduction of a long term port access framework.

The expansion will include an upgrade to the site's coal handling and preparation plant to allow for two-stage washing, together with the upgrading of infrastructure and the purchase of additional mining equipment.

Coal & Allied Managing Director, Bill Champion, said: "This investment is an important component of Coal & Allied's plans to expand production at all of its operations in the Hunter Valley. We have secured additional port and rail capacity for this expansion, which is scheduled for completion in the first quarter of 2012."

A feasibility study for a second stage expansion to increase production to the currently consented rate of 10.7 million ROM tonnes per year is underway.

Coal & Allied manages the mine on behalf of the joint venture participants.

Media Enquiries: Alison Smith 07 3361 4223 / 0438 787 038

[Media_release - Approval of Bengalla expansion \[PDF; 19 KB\]](#)

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[Home](#) [Media](#) [Media releases](#) Coal & Allied welcomes Mount Pleasant Project mining lease

21 December 2010

Coal & Allied welcomes Mount Pleasant Project mining lease

Coal & Allied today welcomed the decision by the New South Wales Government to grant a mining lease for the Mount Pleasant Project.

General Manager Studies Antony Bijok said the mining lease is another step towards a decision to build the Mount Pleasant Project, a greenfield open cut coal mine which would provide significant ongoing investment in the Upper Hunter Valley.

"The Mount Pleasant Project will create around 700 jobs during construction and 300 jobs during operation, and we will target local people for these roles wherever possible," said Mr Bijok.

"We're actively working with Muswellbrook Council to ensure the Mount Pleasant Project delivers clear benefits for the local community through community infrastructure contributions and voluntary planning agreements, in addition to Coal & Allied's ongoing investment through its community development funds."

Coal & Allied has held a development consent for the Mount Pleasant Project since 1999 following an assessment by a Commission of Inquiry.

Uncertainty surrounding ports infrastructure had delayed the application for a mining lease until now.

This year Coal & Allied announced it will pursue all remaining approvals and consents needed following the breakthrough long term framework agreement reached for the Port of Newcastle.

"First production is planned in 2014, gradually ramping up to our consented Run of Mine production rate of 10.5 million tonnes of thermal coal per year for international markets," said Mr Bijok.

"We have lodged an application to modify our existing development consent to provide flexibility for detailed assessment of options that would reduce capital costs while reducing the footprint of disturbance and decrease vegetation clearing.

"We are also currently working through any requirements that might apply to the project under the Commonwealth Environment Protection and Biodiversity Conservation Act, as this Act commenced after the existing state development consent was granted.

"Coal & Allied is committed to working with the Hunter Valley community on concerns about cumulative impacts from mining, and the Mount Pleasant Project will meet internationally recognised environmental standards and current regulatory requirements."

Media enquiries: Matthew Klar 07 3029 1168 / 0457 525 578

[Media release - Coal & Allied welcomes Mount Pleasant Project mining lease \[PDF: 26 KB\]](#)

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Appendix B