



7 March 2011

For public register

Mr David Hatfield
A/g General Manager
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA. ACT 2601

Attention: Mr Luke Griffin

Dear Mr Hatfield

**Port Waratah Coal Services Limited (PWCS), Newcastle Coal Infrastructure Group (NCIG) and Newcastle Port Corporation (NPC) Authorisation
A91147-A91149 & A91168 & A91169 - Request for review by Aston Resources**

We refer to your letter dated 10 February 2011 and to the submissions made in response to your letter which are public on the ACCC website. Port Waratah Coal Services Limited ("**PWCS**") has previously made a submission in relation to the issues raised by Aston Resources on 23 December 2010. Having regard to the further submissions and the specific questions in your recent letter, PWCS provides additional comments as follows.

1. Whether the Capacity Framework Arrangements are operating as intended

As set out in PWCS' previous submission, PWCS is of the view that the Capacity Framework Arrangements ("**CFA**") are operating as intended with substantial public benefits being achieved. The submissions from supporting Producers and the Applicants with actual investment as a result of the CFA and the certainty it provides speak for themselves. The CFA has facilitated growth and new entry and as a consequence of the nominations from coal Producers PWCS is obligated to undertake significant expansion to meet the aggregate contracted allocations. This includes the triggering of Terminal 4 (T4) that itself is unlikely to have been triggered so early without the nomination and allocation process in the CFA.

It is worthwhile noting that the nomination and allocation process for capacity applies equally to existing and new Producers, with any Producer required to:

- Demonstrate that it has sufficient marketable coal reserves in accordance with the JORC Code;

- Provide information relating to the development status of the source mine, including development consent and other approvals to operate;
- Provide a timeline for first coal production, where the nomination relates to a new or expansion project;
- Obtain the approval of Newcastle Port Corporation ("**NPC**") if the nominated commencement year is the 5th year after the nomination is submitted. In this regard, NPC must be satisfied that the nomination is for a planned mine with infrastructure that has extended lead times for delivery and that the nomination will not have any adverse effect on nominations from other Producers for allocations which may commence earlier;
- Commit to ship or pay obligations under the Long Term Ship or Pay (LTSOP) Agreement; and
- Provide the required security.

The New South Wales coal industry considered these criteria to be reasonable to commercially underpin capacity expansion at the terminals. Some of the parties that have raised concerns in relation to the CFA and criticised PWCS in the media have not even nominated for capacity at PWCS. PWCS notes that its expansion obligations are not triggered until Producers actually nominate for capacity allocations under ten year LTSOP Agreements. Expansion decisions cannot be made based on anticipated demand and expected timing of commencement from Producers that are yet to commit to the terminal and nominate.

The CFA clearly provides that new entrants are catered for by the expansion provisions, with new and expanding Producers waiting for the new capacity to be built. The industry position to provide certainty for producers, employers and customers was that existing Producers would not be diluted. To provide new entrants with access to existing capacity that is already fully contracted is effectively a return to the previous common user access arrangements that caused uncertainty, saw coal companies being forced to make redundant existing contractors and employees and hampered investment in the coal industry.

PWCS considers that the CFA has resulted in unique access arrangements to support the development of new coal mines:

- PWCS is obligated to expand to meet contracted demand;
- No up front funding contributions are required from new or expanding producers;
- A common pricing model applies; and
- There is a well established capacity transfer system in place, with Producers entitled to transfer allocations.

PWCS is not aware of any other coal terminal that has comparable access arrangements.

In relation to the suggestion of alternative compression in the case of under utilisation, it is not clear to PWCS as to how potential under utilisation at some unknown point in the future could provide a certain basis for new entrants to make final investment decisions.

In summary, PWCS believes that the CFA is operating as intended and that it brings substantial benefits and that the position of new entrants and their development is actually more than adequately dealt with under the CFA if they choose to use them.

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

PWCS submits that there has been no undue delay in the delivery of further capacity at PWCS.

PWCS is currently undertaking expansion works at the existing Kooragang Terminal which will increase PWCS' nameplate capacity to 133 Mtpa by the end of 2011. PWCS also has expansion plans that will lift capacity to its operating consent limit of 145 Mtpa by the end of 2012.

As set out in PWCS' previous submission, PWCS has undertaken a considerable volume of work in relation to T4 since it signed the Agreement for Lease with NPC on 31 August 2009.

The T4 project is a major 'greenfield' project that will require a number of complex approvals relating to planning and environmental matters having regard to the nature of the T4 land. Within 18 months of the Agreement for Lease, PWCS has been granted Major Project Facilitation status by the Commonwealth Government and has also recently been declared as a Major Project by the NSW Planning Minister which will assist in streamlining the approvals process. PWCS submitted its Preliminary Environmental Assessment to the NSW Department of Planning in November 2010. A planning focus meeting was held on 9 December 2010. Significant work is continuing to manage the approvals process.

An industry update on the status of the T4 project was held on 22 February 2011. Attached at Appendix 1 is a copy of an industry communication which provides an overview of the progress of the project.

PWCS will continue to keep the industry informed of progress on T4 so that the industry can make plans for their projects under practical timeframes. PWCS has sought to be upfront with the industry that the environmental and planning approval process for T4 creates a risk of the project not meeting the four year timeframe for completion but PWCS is doing all it can to achieve on time completion. Review provisions were specifically included in the CFA to allow for the nature and complexities of the project and the status of project planning at the time of triggering T4.

3. Whether there is any evidence of capacity hoarding

PWCS is not aware of any evidence of capacity hoarding. The CFA provides for various provisions in relation to the hoarding of capacity. The LTSOP Agreement includes a positive obligation for Producers to seek to transfer any unused allocation and for anti-hoarding compression in the event of an expansion delay or shortfall. There is a capacity transfer system in place which has been effective in facilitating transfers of allocation between producers as noted in other submissions.

Under utilisation of terminal capacity may exist from time to time due to a number of factors relating to mine production, weather, economic conditions and ability to deliver coal to the terminals, however this is not evidence of hoarding. To require compression without a clear reason for non usage of capacity would create uncertainty.

No evidence of capacity hoarding has been presented in other submissions.

4. Conclusion

PWCS believes that the requisite factors for the ACCC to review the authorisation have not been met. There is no evidence to suggest a material change in circumstances or that the authorisation was based on false or misleading material. The authorisation was not granted subject to conditions.

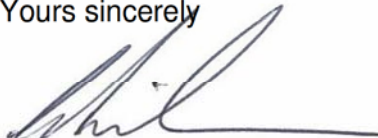
PWCS has complied with its obligations under the framework and is meeting all project milestones in the T4 Agreement for Lease.

PWCS submits that there would be significant commercial uncertainty created by a review of the authorisation by the ACCC. This would detrimentally impact the significant investment that is taking place all along the Hunter Valley Coal Chain from mine to port, including T4. This investment is a result of the certainty provided by the CFA. The reputation of the Hunter Valley Coal Chain is also being impacted with the media reporting growing concern from coal buyers. In this sense a review is likely to do more harm to the industry as a whole, rather than improving the current position.

PWCS notes the negotiations as to the CFA were extensive between the NSW Government and coal industry and PWCS doubts that it would be possible to reach another industry consensus as to amendments to the CFA.

If the ACCC has any questions or requires further assistance, PWCS would be pleased to assist.

Yours sincerely



**GRAHAM DAVIDSON
GENERAL MANAGER**



Terminal 4 Industry Communication Quarter 1, 2011

INTRODUCTION

In September 2009, the Hunter Valley Coal Industry and the NSW Government entered into a historic Long Term Commercial Framework (LTCF) for access to and expansion of coal terminal capacity in the Port of Newcastle. Under the LTCF, PWCS has a legal requirement to ensure sufficient terminal capacity to meet the long term contracts of coal producers.

The LTCF was overseen by the NSW Government and authorised by the Australian Competition and Consumer Commission. Its primary function is to address capacity bottlenecks that have hindered the Hunter Valley coal chain over recent years and enable timely infrastructure investment decisions to be made, underpinned by ten year ship-or-pay contracts.

The LTCF has resulted in unique access arrangements at PWCS to support the development of new coal mines which means that:

- PWCS is obligated to expand to meet contracted demand
- No upfront funding contributions are required from new or expanding producers
- A common pricing model applies

- There is a well established capacity transfer system in place, with producers entitled to transfer allocations.

The plan came into effect in January 2010.

PWCS' current expansion plans will lift capacity to its operating consent limit of 145 Mtpa by the end of 2012. Contracted allocations with producers total 147.6 Mt in 2015 and there are also a number of parties with projects at various stages of development that have indicated a need for future terminal access.

It is expected that the aggregate contracted allocations will increase as PWCS conducts the annual demand assessment process each year. The Terminal 4 (T4) project aims to meet this long term contracted demand for terminal capacity.

In summary the T4 project will involve:

- the development of approximately 200ha of industrial zoned land, located west of the existing PWCS facilities
- the construction and operation of coal stockyards, rail facilities, marine side infrastructure (e.g. wharves) and ship loading facilities



T4 PROJECT UPDATE

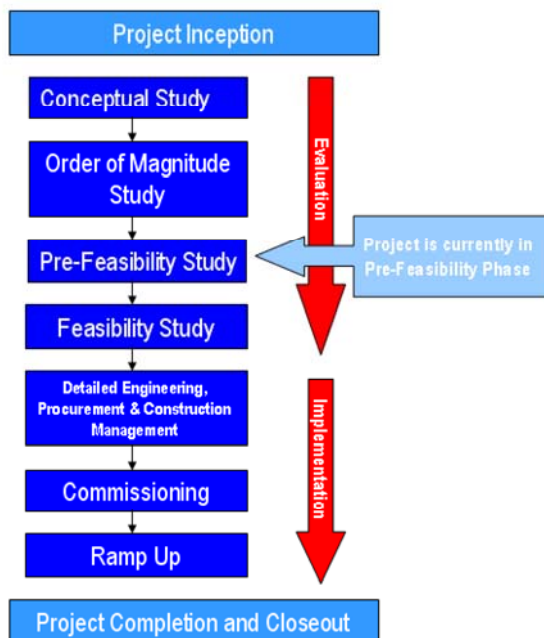
T4 Board Sub Committee

In late 2009, PWCS established a PWCS Board Sub Committee as required under the LTCF. The purpose of the Sub Committee is to consult with producers about the design, construction and mode of operation of T4. The Sub Committee comprises an independent Chairperson, five producer members and three PWCS members. The producer members represent a cross section of producer sizes and regions and are tasked with representing the best interests of all producers. Meetings of the Sub Committee are held on a regular basis.

The Sub Committee has developed four key objectives for T4:

- Certainty of throughput
- Optimum capacity increase
- Minimum cost to producers (direct and opportunity costs)
- Strategic fit with the Hunter Valley Coal Chain

Project Progress



The T4 Agreement for Lease (AFL) was signed on 31 August 2009. Since this time PWCS has:

- Established a team to work on the T4 project, which is supported by a number of consulting engineers and specialists
- Purchased a key parcel of land that will form part of the T4 footprint
- Progressed through the Concept and Order of Magnitude phases of project evaluation

PWCS is currently in the Pre-Feasibility phase of the project lifecycle and is undertaking extensive pre-feasibility assessments and investigations in a range of specialised areas, including environment, community, geotechnical, civil design, engineering and modelling.

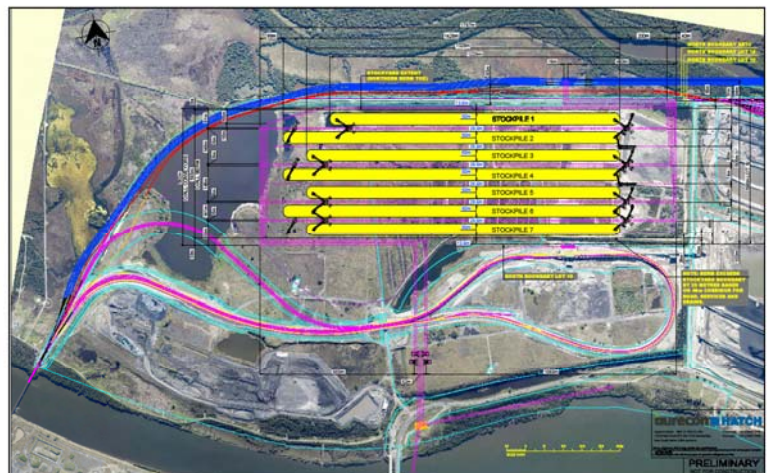
An industry update on the status of the T4 project was held on 22 February 2011.

Layout

A range of rail options and stockyard configurations have been considered.

The preferred rail option is for the rail line and dump stations to be located along the northern boundary of the site.

The preferred stockyard option allows for up to 7 stockpiles utilising a combination of stacker/reclaimers and stackers to maximise flexibility. This will cater for either dedicated stockpiles or cargo assembly operations.



It is anticipated that the capacity of T4 could be in excess of 100 Mtpa, depending on planning approvals. The AFL currently includes space for two berths near Tourle Street. Other locations in the Hunter River are being considered to provide additional berth capacity to support T4.

PWCS is also developing optimal staging for T4 which will create a master plan for growth in terminal capacity for the next 20 years.

Environment

Due to the previous land use and current state of the site, PWCS' early investigations indicate some environmental issues that will require consideration as the project progresses. These include:

- the presence of industrial residues
- the presence of green and golden bell frogs
- the presence of migratory and other birds which have been recorded on water bodies or adjacent to the site
- the presence of salt marsh and fresh water wetlands



Community

PWCS has developed a comprehensive T4 community engagement strategy for the study phases through to the development approval stage.

Extensive consultation with the community and a range of NSW and Commonwealth agencies has been undertaken to date and will be accelerated in the near future.



Approvals

The NSW and Commonwealth planning processes are critical for the timely progress and delivery of T4. As is the case with any development of this magnitude, PWCS is obligated to work within existing planning frameworks.

The T4 project has been granted Major Project Facilitation status by the Commonwealth Government and has also recently been declared as a Major Project by the NSW Planning Minister. PWCS submitted its first major planning documentation - the Preliminary Environmental Assessment - to the NSW Department of Planning in November 2010. A planning focus meeting was held on 9 December 2010.

The development of T4 will require dredging. There are existing consents for dredging in the South Arm of the Hunter River held by NSW Maritime. Consistent with previous projects, PWCS will seek to operate under the existing NSW Maritime consents for T4 dredging. Sea dumping permits will also be required from the Commonwealth. A sampling and analysis plan is being prepared.

In parallel with the pre-feasibility work, PWCS is preparing a Development Application to submit to Newcastle Port Corporation (NPC) for review by 30 November 2011 in accordance with the project milestone in the T4 AFL.

PWCS continues to engage with all levels of Government to ensure that there is an understanding of the importance of this significant infrastructure project.

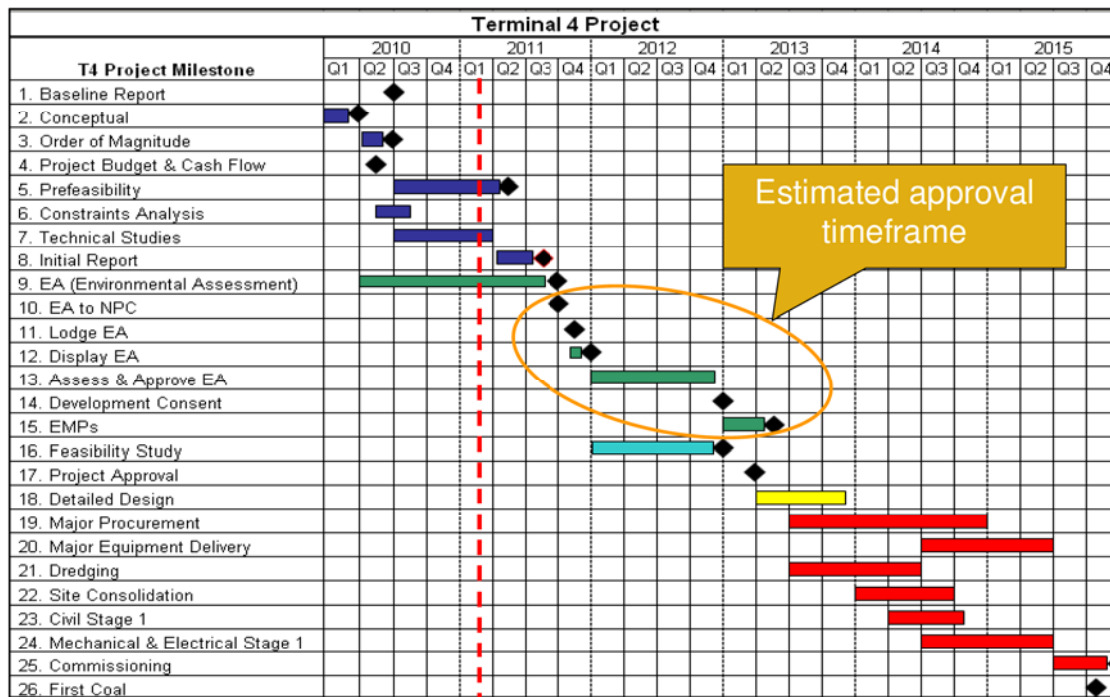
Modelling and Coal Chain

Stand-alone capacity modelling for T4 and a multi-terminal PWCS has been conducted. The Hunter Valley Coal Chain Coordinator is now incorporating T4 into the simulation model for the entire Coal Chain. PWCS continues to work closely with ARTC and NPC to ensure track and port capacity supports the potential stockyard capacity for T4.

Schedule

The following is the forecast timeline for the development of T4.

The schedule will continue to be refined as PWCS progresses further through the pre-feasibility and feasibility phases of the project. Delivering T4 in the quickest timeframe is PWCS' number one priority and PWCS will continue its endeavours to fast track the schedule.



Next Steps

PWCS is currently awaiting advice from the NSW Department of Planning, in the form of the Director General's Requirements which will shape and inform further planning and environmental considerations and the community consultation program.

Ecological fieldwork is continuing along with progress on a compensatory habitat/offset program. Further evaluation of geotechnical and site consolidation requirements is being undertaken.

A status meeting will be held with NPC in March 2011. PWCS is on track to submit its initial report to NPC by 31 August 2011 in accordance with the T4 AFL.

Contacts

PWCS appreciates the Hunter Valley Coal Industry's support for the development of T4.

If you require any further information in relation to T4 please contact Mr Lindsay Crutch, PWCS' General Manager Development, on (02) 4907 2000.