



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 3131  
Canberra ACT 2601

23 Marcus Clarke Street  
Canberra ACT 2601

tel: (02) 6243 1111  
fax: (02) 6243 1199

[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: A91338  
Contact Officer: Jaime Martin  
Contact Phone: (03) 9290 1477

26 October 2012

***Sent via email***

Dear Sir / Madam

**Surat Basin and Bowen Basin coal producers' application for authorisation A91338  
– interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) has received an application for authorisation from six coal producers located in the Surat and Bowen Basins, Queensland.

The ACCC invites you to comment on the application. For further information about the authorisation process, including how to make a submission to the ACCC, please refer to the attached summary.

The coal producers are: Cockatoo Coal Limited; Cuesta Coal Limited; MetroCoal Limited; Peabody Energy Australia PCI Pty Ltd; QC Resource Investments; and Whitehaven Coal (hereafter referred to as 'the Applicants').

The Applicants are seeking authorisation to:

- collectively discuss and negotiate terms and conditions of water supply and the development of the proposed Nathan Dam Project with SunWater
- discuss among themselves matters relating to those discussions and negotiations and
- enter into and give effect to contracts, arrangements or understandings with SunWater.

Please find a copy of the application for authorisation attached to this letter. It is also available on the ACCC's website [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

**Interim authorisation**

The Applicants have requested interim authorisation in order to commence meaningful collective negotiations as soon as possible.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefits and detriments likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors, including harm to the applicant and other parties if interim is or is not granted, possible benefit and detriment to the public, the urgency of the matter and whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

In this instance, the Applicants submit that SunWater has advised that it will not commence construction of the Nathan Dam Project until sufficient demand has been secured. Therefore, the Applicants consider interim authorisation is required to ensure that the Nathan Dam Project proceeds in a timely manner. Please refer to Section 3.4 of the supporting submission to the application for further information about the Applicants' request for interim authorisation.

### **Request for submissions**

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed collective bargaining arrangements. Please refer to Sections 6 and 7 of the supporting submission to the application for further information about the Applicants' public benefit and public detriment claims.

The ACCC notes that its assessment of the application is limited to the likely public benefits and detriments resulting from the coal producers' collectively negotiating terms and conditions of water supply from the Nathan Dam Project with SunWater.

If you intend to provide a submission in relation to the substantive application for authorisation, please do so by **Monday, 19 November 2012**.

Submissions in relation to interim authorisation should be provided by **Friday, 2 November 2012**.

Alternatively, if you would like to provide comments orally, please contact Ms Jaime Martin on (03) 9290 1477 (or at [jaime.martin@acc.gov.au](mailto:jaime.martin@acc.gov.au)) to organise a suitable time.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

## Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information.

<b>18 October 2012</b>	Lodgement of application and supporting submission, including request for interim authorisation.
<b>26 October 2012</b>	Public consultation process begins.
<b>2 November 2012</b>	Closing date for submissions on interim authorisation.
<b>7 November 2012</b>	Applicants respond to issues raised by interested parties in relation to interim authorisation request.
<b>November 2012</b>	ACCC decision regarding interim authorisation.
<b>19 November 2012</b>	Closing date for submissions from interested parties on the substantive application for authorisation.
<b>December 2012</b>	Applicant responds to issues raised in the public consultation process.
<b>December 2012</b>	Draft determination.
<b>January/February 2013</b>	Public consultation on draft determination including any conference if called.
<b>February/March 2013*</b>	Final determination.

\* This timeframe may be longer if a conference is requested in response to the ACCC's draft determination.

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages. If you can, please also provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the application.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Ms Jaime Martin on (03) 9290 1477 (or at [jaime.martin@acc.gov.au](mailto:jaime.martin@acc.gov.au)) or myself on (02) 6243 1266 (or at [david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)).

Yours sincerely



David Hatfield  
Director  
Adjudication Branch

## **Application for authorisation A91338 lodged by Cockatoo Coal and Ors**

### **List of interested parties – initial consultation**

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1. Yancoal Limited
2. Coll Randall & Associates (representing Allegance Coal)
3. Blackwood Corporation
4. Stanmore Coal
5. Xstrata Coal
6. BHP Billiton Mitsubishi Alliance
7. Rio Tinto Coal Australia Pty Ltd
8. Anglo Coal Australia Pty Ltd
9. Wesfarmers Curragh Pty Ltd
10. Foxleigh Mining Pty Ltd
11. Macarthur Coal
12. Qld Department of State Development, Infrastructure and Planning
13. The Coordinator General, Queensland Government
14. Qld Department of Natural Resources and Mines
15. Qld Treasury Office (Economic and Structural Policy)
16. Qld Department of Energy and Water Supply
17. Qld Department of Agriculture, Fisheries and Forestry
18. Department of Resources, Energy and Tourism
19. Department of Infrastructure
20. Queensland Competition Authority
21. SunWater
22. Minerals Council of Australia
23. Queensland Resources Council
24. Ports Corporation of Queensland
25. Wiggins Island Coal Export Terminal Pty Ltd
26. Gladstone Port Corporation
27. Gladstone Industry Leadership Group
28. Queensland Famers Federation
29. Gladstone Area Water Board