

# **Hunter Valley Coal Chain Coordinator Limited**

**Application for authorisation under the *Competition and Consumer Act 2010 (Cth)***

**Hunter Valley export coal industry – coal chain coordination**

**Dated: 19 December 2023**

**PUBLIC VERSION**

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# HVCCC - ACCC Authorisation Application

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## 1 Executive Summary

### 1.1 Application for ACCC authorisation

Hunter Valley Coal Chain Coordinator Limited (**HVCCC**) is seeking authorisation under section 88(1) of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) to engage in the Proposed Conduct specified in Attachment 1.

This will enable HVCCC to continue the activities that it currently undertakes to support the efficient operation of the Hunter Valley export coal chain following the expiration of Authorisation Nos A91147-A91149 and A91168-A91169 (**Current Authorisation**) on 31 December 2024.

This application does not reflect any changes to HVCCC's existing activities. In addition, it does not reflect any substantive changes to HVCCC's conduct as already authorised under the Current Authorisation. The only changes are to:

- (a) set out more clearly the conduct for which HVCCC is seeking authorisation – this further clarity reflects HVCCC's experience in undertaking its coordination role since the Current Authorisation came into force in 2009, and is intended to provide greater clarity for the ACCC and other coal chain participants rather than reflect any substantive changes; and
- (b) enable HVCCC to continue to undertake these activities and engage in the Proposed Conduct until 31 December 2034 (i.e., for a further 10-year period after the expiration of the Current Authorisation).

The Hunter Valley export coal chain involves the shared use of above and below rail, port and port terminal infrastructure – each of which is owned and operated by different parties – by multiple coal Producers and other Service Providers. Its safe and efficient operation therefore inherently requires coordination between coal chain participants, particularly in relation to planning for the use of, and interfaces between, shared and connected infrastructure.

This application and the Proposed Conduct relate to the role that HVCCC will continue to undertake in planning and coordinating the cooperative operation and alignment of the Hunter Valley export coal chain. This application does not apply to, or otherwise seek to cover, the separate arrangements entered into between other Service Providers in the Hunter Valley and their respective customers (e.g., between below rail, above rail, port and/or port terminal operators and their respective customers).

HVCCC considers that HVCCC's conduct as authorised under the Current Authorisation has demonstrably delivered significant public benefits with very few, if any, public detriments. Given that the Proposed Conduct under this application is in all material respects the same for HVCCC as under the Current Authorisation, HVCCC considers that public benefits will continue to outweigh any detriments.

Attachment 2 sets out a glossary of terms used in this application.

### 1.2 The Proposed Conduct

Details of the Proposed Conduct are set out in Attachment 1.

HVCCC has implemented strong information sharing protocols to ensure that any competitively sensitive information it receives from Producers, above and below rail operators or port terminal operators is not disclosed to any competing Producer, rail operator or port terminal operator (see Attachment 3). Those protocols also ensure HVCCC does not become

a channel or means by which competitively sensitive information can be shared among competing Producers, rail operators and port terminal operators.

In addition, HVCCC does not have any ability to make decisions or issue directions that are binding on other coal chain participants. HVCCC's role is limited to making recommendations. Producers and Service Providers will continue to make independent decisions about their respective operations.

However, given HVCCC's ownership structure (see section 2 below), HVCCC is seeking authorisation to provide certainty to HVCCC, its Members and directors, that the sharing of information needed to enable the HVCCC to undertake its role effectively does not contravene the CCA.

As set out above, HVCCC is seeking authorisation in relation to the Proposed Conduct until 31 December 2034. The Current Authorisation will continue to apply in accordance with its terms until 31 December 2024.

As the Current Authorisation (which covers both HVCCC's current and proposed conduct) does not expire until 31 December 2024, HVCCC is not seeking interim authorisation in respect of the Proposed Conduct.

### **1.3 The Proposed Conduct will result in significant public benefits**

The conduct enabled by the Current Authorisation has demonstrably resulted in significant public benefits.

As the Proposed Conduct is the same in substance, HVCCC considers that the coordination activities specified as part of the Proposed Conduct will continue to deliver the same public benefits, including:

- (a) Maximising efficient coal chain capacity and throughput, including through:
  - (i) the coordination of agreed "System Assumptions" which underpin coal chain capacity scenarios;
  - (ii) coordination to synchronise and smooth flows across the connecting components of the coal chain, rather than separate components making decisions in isolation and without visibility of potential implications across the whole coal chain;
  - (iii) central planning and coordination to minimise interface losses, efficiently resolve bottlenecks and system constraint points, and therefore reducing the need to invest in additional or buffer capacity in different parts of the coal chain; and
  - (iv) continued measurement of performance against System Assumptions and agreed processes and key performance indicators to facilitate improved planning and scheduling across the coal chain.
- (b) Promoting greater accuracy and transparency of whole of coal chain capacity, which will continue to facilitate:
  - (i) increased alignment between coal chain capacity and Service Providers' contractual commitments with their respective customers;
  - (ii) greater predictability and visibility of planning outcomes; and
  - (iii) increased certainty about production and investment decisions for Producers and Service Providers.

- (c) A greater ability to manage and respond to disruptive events, including:
  - (i) alignment of scheduled maintenance times across different parts of the coal chain to maximise throughput and minimise disruption; and
  - (ii) supporting optimal recovery of the coal chain from unplanned events and other major disruptions or constraints that occur within the coal chain.
- (d) Greater certainty in supply chain planning which will continue to facilitate optimisation of vessel queues and the efficient docking and dispatch of vessels. Efficient and clear planning will further continue to facilitate lower demurrage costs and support the international competitiveness of the Hunter Valley coal export industry.

These public benefits will, collectively, assist in:

- (e) maintaining high levels of export revenue for Australia and royalties for New South Wales; and
  - (f) maintaining employment levels in the Hunter Valley and surrounding areas,
- each of which also involves significant public benefits.

#### **1.4 The Proposed Conduct will not give rise to any discernible public detriments**

The conduct enabled by the Current Authorisation has not resulted in any discernible public detriments. As the Proposed Conduct is the same in substance, HVCCC considers that this will continue to be the case. In particular:

- (a) The Proposed Conduct will not reduce the availability of capacity for coal exports. To the contrary, it will facilitate increased utilisation of capacity and increased throughput.
- (b) The Proposed Conduct will not have any impact on the level of competition between:
  - (i) Producers (who will continue to make independent decisions about the production and marketing of coal, and continue to compete to supply coal to Australian and overseas customers);
  - (ii) above rail haulage providers (who will continue to compete to win coal haulage contracts); and
  - (iii) port terminal operators (who will continue to compete to load coal for export).

HVCCC making recommendations to facilitate smooth flows across the connecting components of the coal chain will not have any impact on the way that Producers or Service Providers market and compete to supply products and services to their respective customers.

- (c) HVCCC has implemented strong information sharing protocols to ensure that any competitively sensitive information it receives from Producers, above rail operators or port terminal operators is not disclosed to competing Producers, rail operators or port terminal operators (see Attachment 3).

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## **2 HVCCC and its activities**

### **2.1 Background to the formation of HVCCC**

HVCCC was incorporated on 27 August 2009 and replaced the Hunter Valley Coal Chain Logistics Team (**HVCCLT**) which previously undertook a coal chain coordination role in the Hunter Valley. The HVCCLT, which comprised representatives seconded from Service

Providers, was itself a successor of the Hunter Valley Coal Chain Planning Group (**HVCCPG**), a less structured cooperative organisation responsible for planning coal exports from the Hunter Valley.

At the time it was incorporated as a company limited by guarantee, HVCCC also:

- (a) included coal Producers as Members – Producers were not previously Members of the HVCCLT or HVCCPG; and
- (b) specified governance arrangements in the Constitution and Members Agreement, including:
  - (i) a clear statement of the Objects of HVCCC (see section 2.3 below). These Objects set out HVCCC's core functions and role, namely:

*“to plan and co-ordinate the co-operative operation and alignment of the Coal Chain in order to maximise the volume of coal transported through the Coal Chain, at minimum total logistics cost in accordance with the agreed collective needs and contractual obligations of Producers and Service Providers”;*
  - (ii) clear information sharing protocols to ensure compliance with all legal and contractual obligations, including obligations under the CCA (see Attachment 3); and
  - (iii) eligibility for membership and directorship, and processes for ensuring effective operations and decision-making to achieve HVCCC's Objects.

## 2.2 Current HVCCC Members

The current Members of HVCCC are listed in Attachment 4. They include:

- (a) **Producers** – a range of Producers that export coal through the Port of Newcastle;
- (b) **Below rail track provider** – Australian Rail Track Corporation Limited;
- (c) **Above rail haulage providers** – Pacific National Pty Ltd, Aurizon Operations Limited, One Rail Australia (FLACH) Pty Ltd and Southern Shorthaul Railroad Pty Ltd;
- (d) **Port terminals** – Port Waratah and NCIG; and
- (e) **Newcastle Port** – Port Authority of New South Wales and Port of Newcastle Operations Pty Ltd as trustee for the Port of Newcastle Unit Trust, the operator of the Port of Newcastle.

In accordance with its Constitution and the Members Agreement, individual Members of HVCCC can nominate Member representatives and directors.

Members, the board of directors, board committees and working groups meet regularly to monitor and manage HVCCC's operations.

## 2.3 Objects and functions of HVCCC

HVCCC's Objects are set out in Schedule 1 of its Constitution. The Objects establish the principles under which HVCCC must operate and its role in the coordination of the Hunter Valley coal chain. A summary of the Hunter Valley coal chain is set out in Attachment 5.

The Objects set out HVCCC's:

- (a) "exclusive Objects" in the preamble. These exclusive Objects inform all of HVCCC's operations;
- (b) "Coordinating Functions" (clause 1.1), which require the engagement of other coal chain participants to achieve HVCCC's objectives; and
- (c) "Other Functions" (clause 1.2), which for the most part do not require any (or only require limited) coordination with Members.

### **The exclusive Objects**

HVCCC's exclusive Objects are as follows:

- (a) to plan and coordinate the cooperative operation and alignment of the coal chain
- (b) in order to maximise the volume of coal transported through the coal chain
- (c) at minimum total logistics cost
- (d) in accordance with the agreed collective needs and contractual obligations of Producers and Service Providers,

by engaging in the following "Coordinating Functions" and "Other Functions."

### **Coordinating Functions**

HVCCC's key Coordinating Functions include:

- (a) providing a daily centralised and coordinated forward delivery plan and daily schedule for the movement of coal through the coal chain with the cooperation of Producers and Service Providers;
- (b) providing advice and coordination for the recovery of the daily schedule for the movement of coal in response to unplanned events;
- (c) developing, implementing and reviewing business rules for the coordination of the coal chain (which may include performance standards for each element of the coal chain and any recommendations for incentives or a penalty regime);
- (d) providing a co-ordinated annual coal chain capacity plan with declared daily, weekly, quarterly and annual targets based on a published set of System Assumptions; and
- (e) coordinating input from Service Providers and advising on coal chain alignment.

### **Other Functions**

HVCCC also undertakes a range of "Other Functions", primarily in relation to monitoring and reporting. The key Other Functions include:

- (a) monitoring and reporting to stakeholders in the coal chain, including Producers and Service Providers on:
  - (i) daily, weekly, monthly and year-to-date planned and actual coal chain performance;
  - (ii) utilisation of coal chain capacity, including the impact of variations in demand, asset availability and transfers of capacity between load points;
  - (iii) updated Coal Chain demand forecasts; and



- (iv) variations to upcoming planned coal chain capacity due to, for example, changes in Service Providers' planned maintenance and or asset availability.
- (b) identifying and advising on capacity constraints (whether physical, operational or commercial) affecting the efficient operation of the coal chain and assisting the evaluation of proposals to overcome these constraints;
- (c) developing, publishing and annually updating a Hunter Valley Capacity Master Plan for the coal chain; and
- (d) evaluating and advising on access impact, capacity assessment and system considerations including port, track and rail.

## 2.4 HVCCC's activities

Consistent with the exclusive Objects, Coordinating Functions and Other Functions set out above, HVCCC develops and applies objective planning processes and actions which encompass longer-range planning through to actual day of operations planning.

Following development and implementation of these actions, HVCCC coordinates with, and makes recommendations to, Service Providers to assist in responding promptly to unforeseen events and to coordinate "recovery of the daily plan" in a manner that accords with the plan's objectives.

This section sets out further details in relation to HVCCC's activities.

### Strategic capacity planning

HVCCC prepares a rolling annual 10-year Hunter Valley Capacity Master Plan with a focus on the market outlook, forecast volume scenarios, capacity constraints and whole of coal chain considerations including port, track and rail.

The Master Plan provides balanced guidance on the long-term outlook for the Hunter Valley coal chain to help HVCCC and Members refine and execute their respective strategic planning. It provides Members with pathways to meet forecasted whole of coal chain demand scenarios. In assembling the Master Plan, HVCCC coordinates separately with each Producer for forecast volumes and with each Service Provider for planned maintenance, asset availability and operating assumptions.

Using a purpose-built model that simulates the physical operations of the Hunter Valley coal chain, HVCCC models scenarios against the end-to-end, system-wide capacity of the coal chain's below rail, above rail, terminal, port and load point information and interfaces.

HVCCC's strategic capacity planning is also used to evaluate and advise relevant Members on whole of coal chain implications of new access requests and changes to existing contracted capacity.

The guiding principles of HVCCC's strategic capacity planning are to replicate core operating modes (i.e., by recognising that each Service Provider operates differently), and to maximise the flow and synchronisation of the coal chain's interdependent assets.

Strategic capacity planning is conducted for the benefit of the coal chain as a whole and not for the benefit of individual Producers, Service Providers or any other individual interests.

### Annual Declaration and System Assumptions

HVCCC prepares and publishes a coordinated annual coal chain capacity plan ('Annual Declaration and System Assumptions') which includes sculpted monthly capacity plans and associated System Assumption performance targets.

HVCCC compares the System Assumptions (including forecasted parameters for capacity in future years) with actual or expected assumptions for the year ahead (demand, maintenance and asset performance).

In particular, the Annual Declaration states the expected coal chain capacity based on the whole of coal chain interdependencies of shared infrastructure, differing Service Provider operating modes and contractual obligations, maintenance windows, and key performance levels. If the Annual Declaration determines that there is risk that coal chain capacity cannot be achieved due to whole of coal chain interdependencies, HVCCC coordinates the potential intervention pathways to deliver that capacity.

The System Assumptions are documented to provide HVCCC and Members with a reference point for the infrastructure requirements, modes of operation, maintenance windows, loss rates and key performance levels or targets. Even when the Annual Declaration does not determine there is risk to capacity being achieved, the System Assumptions outline performance obligations and also highlight potential risks.

### **Operational planning**

HVCCC coordinates rolling weekly planning meetings integrating Producer demand and forecasts out to 12 weeks, matching Service Provider assets to demand and contractual obligations, aligning maintenance and identifying risks and opportunities.

Weekly planning meetings involve participation by representatives of all Producer and Service Provider Members, individually with HVCCC and collaboratively in forums facilitated by HVCCC.

HVCCC also publishes daily rolling Cargo Assembly Plans to align Service Provider capacity and asset availability to meet Producer demand and contractual obligations, all in accordance with Member-agreed objective planning processes.

HVCCC continually updates the Cargo Assembly Plan to adapt to changing inputs from Producers (demand and supply variation) and Service Providers (asset availability). The Cargo Assembly Plan is enabled by HVCCC publishing daily (24-hour) plans and schedules for use as requested by Service Providers for rail, coal delivery, stockpile planning and vessel loading.

### **Live run (day of operations)**

HVCCC facilitates the Live Run Integration Team, which comprises representatives from terminal, track and rail haulage provider Member organisations, and collectively oversees the execution of daily plans to minimise potential throughput losses from system interfaces and disruptions (**Live Run**). Just as HVCCC builds the plans and schedules according to objective planning processes, Live Run monitors delivery against the objective plan.

Using its independent and holistic view of the coal chain, HVCCC's role in Live Run is to facilitate communications among Service Providers, assist objective decision-making and ensure the latest information is input into subsequent planning cycles. HVCCC makes recommendations on priorities, maximising the movement of coal through disrupted or constrained areas of the coal chain to minimise congestion.

When Live Run disruptions cannot be fully mitigated, HVCCC facilitates the cancellation process to assist the members of Live Run to attribute accountability for train cancellations.

HVCCC has no authority to compel Producers or Service Providers to act on its recommendations, and ultimately individual Producers and Service Providers determine what action they wish to take.

The Live Run Integration Team has access to real-time, up-to-date operational information regarding the plan, coal chain status and disruptions. However, Live Run Member

participants do not have access to commercially sensitive information of other operators and Member representatives are not involved in the forward planning functions and schedule development.

### **Monitoring, analysing and reporting**

HVCCC monitors and analyses actual performance of the coal chain against the System Assumptions. Most reporting contains aggregated industry information which aims to provide HVCCC and Members with insights into opportunities for further system optimisation, and to improve the accuracy of modelling.

## **2.5 HVCCC information sharing protocols**

To maintain a holistic view of the whole coal chain and deliver its plans, schedules, reports and other services to Members, HVCCC obtains information from its Members. This includes confidential information, such as individual Producer forecasts, Producer-nominated orders/vessels, asset capability statements, contractual obligations between Producers and Service Providers, and maintenance plans. HVCCC does not obtain or consider commercial information such as pricing or costs of its Members.

To ensure that confidential and competitively sensitive information is not provided to any competitor of the party that provided the information (e.g., Producers, rail haulage providers or port terminal operators), HVCCC has implemented information sharing protocols that are set out in the Members Agreement and included in Attachment 3.

These protocols provide that HVCCC:

- (a) will not disclose confidential information shared by a Producer Member to any other Producer Member without the disclosing Producer Member's prior written consent;
- (b) will not disclose a Producer Member's confidential information to any third-party or to a Service Provider unless the Chief Executive Officer and Chair of HVCCC are satisfied that the disclosure is to a Service Provider Member who will use the confidential information for the purpose of assisting HVCCC to achieve its Objects and that the Service Provider Member will keep the information confidential; and
- (c) will ensure that its management information and data, including Board papers and other documents supplied to Directors (except the Chair) will not include a Member's confidential information, except to the extent that the Directors need that information for a matter being considered by the Board (in which case the Directors will ensure such information remains confidential and that they will not pass that information back to their nominating Member).

HVCCC requires that all Members and directors comply with these Information Sharing Protocols.

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## **3 The Applicant and counterparties**

### **3.1 Parties seeking authorisation**

HVCCC is seeking authorisation of the Proposed Conduct for itself and on behalf of its current Members.

Pursuant to section 88(2) of the CCA, it also seeks authorisation on behalf of any other Hunter Valley coal chain participant who in the future is eligible and becomes a Member of HVCCC.

In addition, HVCCC requests that any authorisation granted by the ACCC is expressed to apply to the Related Entities and to the directors and officers of HVCCC and its Related Entities.

This will ensure that the authorisation provides statutory immunity for all relevant parties.

### **3.2 Provisions of the CCA for which HVCCC is seeking authorisation**

HVCCC is seeking authorisation for the Proposed Conduct to the extent that it might otherwise contravene the prohibitions in the CCA against:

- (a) making a contract or arrangement, or arriving at an understanding, that contains a cartel provision (ss45AF and 45AJ);
- (b) giving effect to a contract, arrangement or understanding that contains a cartel provision (ss45AG and 45AK);
- (c) making a contract or arrangement, or arriving at an understanding, a provision of which has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any market (s45(1)(a));
- (d) giving effect to a contract, arrangement or understanding, a provision of which has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any relevant market (s45(1)(b)); or
- (e) engaging with one or more persons in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market (s45(1)(c)).

### **3.3 Address for service**

The address in Australia for service of documents on the Applicant is:

Patrick Cooper AM CSC  
Chief Executive Officer  
Hunter Valley Coal Chain Coordinator Limited  
45 Lambton Road  
Broadmeadow NSW 2292  
Pat.Cooper@hvccc.com.au

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## **4 The Proposed Conduct will result in significant public benefits**

### **4.1 Overview of the public benefits**

HVCCC considers that the Proposed Conduct has delivered and will continue to deliver significant public benefits, many of which are recognised in the ACCC's decision to grant the Current Authorisation.<sup>1</sup> Examples of improvements achieved under the Current Authorisation are outlined in Attachment 5.

### **4.2 The Proposed Conduct will assist in maximising efficient coal chain capacity and throughput**

In particular, the Proposed Conduct involves:

- (a) the development of agreed System Assumptions which enable efficient and aligned planning and scheduling within the coal chain (compared to a situation where

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<sup>1</sup>See ACCC Final Determination dated 9 December 2009 here: <https://www.accc.gov.au/system/files/public-registers/documents/D09%2B193856.pdf> (pgs 44 to 63).

separate coal chain participants make decisions about interconnected infrastructure in isolation, and removed from consideration of wider coal chain impacts);

- (b) coordination for the purpose of synchronising or “smoothing” total flow across the separate components of the coal chain. This both reduces interface losses and ensures that separate parts of the coal chain do not make decisions in isolation, without visibility of potential implications across the whole coal chain;
- (c) central planning and coordination, which enables the efficient resolution of bottlenecks and system constraint points and which reduces the potential for inefficient investment in unnecessary additional or buffer capacity in different parts of the coal chain;
- (d) alignment of maintenance windows across the coal chain, as well as coordination, to enable recovery from unplanned events and disruptions in order to minimise coal chain impacts and potential delays to vessel loading; and
- (e) the continued measurement of actual performance of the coal chain against System Assumptions, to facilitate improved planning and scheduling across the coal chain.

#### **4.3 The Proposed Conduct will promote greater accuracy and transparency of whole of coal chain capacity**

Greater accuracy and transparency of whole of coal chain capacity facilitates:

- (a) increased alignment between coal chain capacity and Service Providers’ contractual commitments with their respective customers;
- (b) greater predictability and visibility of planning outcomes; and
- (c) increased certainty about production and investment decisions for Producers and Service Providers. As previously recognised by the ACCC,<sup>2</sup> increased certainty in relation to export volumes enables Producers to forecast production levels more accurately and to maintain optimal stockpiling.

#### **4.4 The Proposed Conduct will facilitate a greater ability to manage and respond to disruptive events**

Coordinated planning and live monitoring of day of operations variation and events will continue to:

- (a) reduce the impacts of scheduled maintenance time on coal chain throughput (compared to a situation where maintenance across different parts of the coal chain are undertaken in an uncoordinated manner and without regard to impacts on other parts of the coal chain); and
- (b) support the optimal recovery of the coal chain from unplanned events and other major disruptions or constraints that occur within the coal chain (e.g., equipment breakdowns or weather impacts).

This level of operational coordination is particularly important given that the coal chain involves the shared use of above and below rail, port and port terminal infrastructure – each of which is owned and operated by different parties – by multiple coal Producers and other Service Providers.

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<sup>2</sup> Ibid., pg 48.

#### **4.5 The Proposed Conduct will provide greater certainty in supply chain planning**

Greater certainty in supply chain planning will continue to enable Producers and port terminal operators to optimise vessel queues and the efficient docking and dispatch of vessels. As recognised by the ACCC in granting the Current Authorisation, efficient and clear planning reduces the likelihood of excessive vessel queues forming off the Port of Newcastle, and therefore the deadweight of demurrage costs incurred by Producers.<sup>3</sup> This, in turn, promotes the international competitiveness of the Hunter Valley coal industry as a reliable, efficient and competitive supplier of export coal (relative to a situation where there are significant vessel delays and demurrage costs).

#### **4.6 Each of these public benefits is likely to result in further and wider benefits to the public**

Increases in the efficiency of the Hunter Valley coal chain are also likely to result in a number of other public benefits, including:

- (a) maintaining high levels of export revenue for Australia and royalties for New South Wales (compared to a situation where there are unnecessary supply chain constraints affecting the export of coal from the Port of Newcastle); and
- (b) maintaining employment levels in the Hunter Valley and surrounding areas (compared to a situation where there are constraints on coal chain throughput and higher costs for Producers and Service Providers).

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### **5 The Proposed Conduct will not result in any discernible public detriments**

The Proposed Conduct will not give rise to any discernible public detriments for the reasons set out below.

#### **5.1 The Proposed Conduct will not reduce the availability of capacity for coal exports**

To the contrary, one of the key purposes of the Proposed Conduct is to enable more efficient utilisation of the coal chain as a whole, and therefore maximise throughput and exports.

HVCCC considers that the Proposed Conduct will result in a higher level of system capacity than would be the case if planning for the individual components of the coal chain were conducted separately and without reference to wider system impacts.

#### **5.2 The Proposed Conduct will not reduce competition between Producers or any Service Providers**

Given the nature of the public benefits set out in section 4 above, the Proposed Conduct will not, and cannot, have the effect of substantially lessening competition in any market for the supply of thermal or coking coal, the supply of coal haulage services, or the supply of port handling services. In particular, the Proposed Conduct will not have any adverse impact on competition between:

- (a) **Producers**, who will continue to make independent decisions about the production and marketing of coal and continue to compete to supply coal to Australian and overseas customers. The Proposed Conduct will facilitate the efficient operation of the coal chain and, therefore, promote competition by Producers on price, quality, timeliness of supply and other parameters in respect of which they compete with each other.

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<sup>3</sup> Ibid., pg 61

- (b) **Above rail haulage providers**, who will continue to make independent decisions about their respective service offerings and the terms on which they deal with Producers and other customers. Any tender processes to win rail contracts and incremental volumes take place well before any annual or day of operations planning undertaken by HVCCC.
- (c) **Port terminal operators**, who will continue to make independent decisions about available capacity, allocations, load scheduling, operational issues and dealings with customers, and compete for incremental tonnes.

HVCCC does not have any role in relation to the prices, volumes or other terms on which Producers or Service Providers engage with their respective customers.

### **5.3 Members and coal chain participants are not bound by HVCCC recommendations**

HVCCC does not have any ability to make decisions or issue directions that are binding on other coal chain participants. HVCCC's role is limited to making recommendations. Producers and Service Providers will continue to make independent decisions about their respective operations.

In addition, the Proposed Conduct does not involve any participant engaging in collective boycott activity.

### **5.4 There are strong protections in place to ensure that competitively sensitive information is not shared between competitors**

Information sharing among HVCCC Members is limited to what is required for the purposes of the Proposed Conduct.

HVCCC has implemented robust information sharing measures set out in Schedule 2 of its Members Agreement (see Attachment 3).

These protocols ensure that competing Producers, rail operators and port terminal operators do not obtain access to confidential or competitively sensitive information of other participants except in specific, limited circumstances, for a specific purpose and only with prior notice.

The protocols further reduce any risks to competition by ensuring that each party takes all reasonable precautions to protect and maintain the confidentiality of confidential information.

# Attachment 1 - Proposed Conduct

The Applicant seeks authorisation for itself, its Members and directors to engage in the following conduct, including engaging in any concerted practice, and to make any contract or arrangement or arrive at any understanding, and to give effect to any contract, arrangement or understanding, which contains a provision in relation to the following conduct:

(1) Sharing information and/or coordination between HVCCC, Members, and Related Entities for the purpose of:

(a) **Capacity planning.** This includes undertaking work to facilitate efficient and aligned system capacity planning across the coal chain, including:

- (i) preparation and communication of Master Plans and Annual Coal Chain capacity plans (Annual Declaration and System Assumptions); and
- (ii) assisting coal chain participants to understand potential impacts of changes to, or transfers of, contracted capacity and changes to planning assumptions.

(b) **Operational planning.** Coordinating with Members and Related Entities to:

- (i) identify risks to, and opportunities for, efficient operations; and
- (ii) prepare rolling plans to enable efficient and aligned operations,

across the coal chain.

This includes obtaining information from, and coordinating with, Members and Related Entities, to prepare and share short to medium-term plans (including maintenance windows, forward weekly plans, cargo assembly plans, coal delivery schedules, rail plans and stockpile and vessel plans).

(c) **Facilitating the Live Run function.** This includes monitoring the execution of daily plans and making recommendations to:

- (i) minimise losses from delays and disruptions; and
- (ii) ensure that impacts from events in Live Run are appropriately addressed and managed in future plans.

(d) **Recommending improvements in delivery of HVCCC Objects.** This includes:

- (i) recommending, measuring and reviewing coal chain performance standards, such as load point standards, train standards (sizes and cycle times), unloading standards, cargo assembly standards (e.g. build times, parcels per vessel, parcel size), and vessel standards;
- (ii) creating and sharing performance reports, including analysis and insights for causes and potential improvements; and
- (iii) recommending improvements to processes for planning and coordinating the cooperative alignment of the coal chain.



- (2) Any concerted practice or any contract, arrangement or understanding between Members or Related Entities that they will act in a particular way on the basis of a recommendation by, or advice from, HVCCC, or any conduct which involves a Member or a Related Entity making an independent decision based on, or giving effect to, a recommendation by, or advice from, HVCCC in delivery of HVCCC Objects.

## Attachment 2 - Glossary

**Current Authorisation** means ACCC Authorisation Nos A91147-A91149 and A91168-A91169 in respect of the Capacity Framework Arrangements.

**Member** means a current member of HVCCC as set out in Attachment 4 or a future member of HVCCC.

**NCIG** means Newcastle Coal Infrastructure Group Pty Limited.

**Port Waratah** means Port Waratah Coal Services Limited.

**Producer** means a coal producer, including joint venturers, that export coal from the Hunter Valley.

**Proposed Conduct** has the meaning given in Attachment 1.

**Related Entities** means the successors, assigns, related bodies corporate, associated entities, agents, joint venture partners and equity partners of each Member (current or future).

**Service Provider** means Australian Rail Track Corporation Limited, each above rail operator that provides haulage services in respect of coal exported from the Port of Newcastle, Port Waratah, NCIG, Port Authority of New South Wales and Port of Newcastle Operations Pty Limited as trustee for the Port of Newcastle Unit Trust.

## Attachment 3 - Information sharing protocols

Any information sharing by HVCCC is subject to the following principles:

- (1) HVCCC will not supply to any Producer members any confidential information disclosed by, or in respect of, another Producer member in accordance with the Constitution and Members Agreement, without the relevant disclosing Producer member's prior written consent.
- (2) Subject to (1) above, HVCCC will not supply any confidential information disclosed by a Producer member to any third party or to a Service Provider:
  - (a) unless the CEO and Chair, acting reasonably and in good faith, agree in writing that they are satisfied the supply is to a Service Provider member which:
    - (i) will use that confidential information only in accordance with the provisions of the Constitution and Members Agreement for the purpose of assisting HVCCC to achieve its Objects as set out in the Constitution; and
    - (ii) will keep that confidential information confidential in accordance with the terms of the Members Agreement;
  - (b) unless that confidential information is to be used by the solicitor, auditor, accountant or other professional advisor of the HVCCC or a Service Provider member entitled to receive the information in accordance with (2)(a) above, and then only if the said solicitor, auditor, accountant or other professional advisor has first acknowledged that such information is to remain confidential; or
  - (c) unless that supply is required by law or a competent authority and then only strictly in accordance with the valid and enforceable requirements of such law or authority and after having advised the relevant Producer member who has disclosed that confidential information of HVCCC's proposed supply.
- (3) HVCCC will not supply a Service Provider member's confidential information to any third party or to another Service Provider otherwise than in accordance with sub-paragraphs (2)(a) to (c) above.
- (4) Where the relevant confidential information, to be supplied by HVCCC in accordance with these principles, is likely to be commercially sensitive then HVCCC will, prior to such supply, first use its reasonable endeavours to give the affected member reasonable prior notice of HVCCC's intended supply.
- (5) Notwithstanding any other provision of the Constitution and Members Agreement, HVCCC will ensure that:
  - (a) HVCCC's management information and data including Board papers and other documents supplied to Directors (except the Chair) does not include a member's confidential information which has been disclosed to the HVCCC for the purpose or purposes for which Members provide or share such confidential information to or with HVCCC as required by the Members Agreement, except to the extent that the Directors need that information for a matter being considered by the Board; and
  - (b) in the ordinary course, Directors will be given such information on their undertaking that it is to remain confidential, and that the Director will not pass that information back to his or her nominating member. A nominating member is a member who

represents a Producer or group of Producers, the Newcastle Port Corporation or another Service Provider handling more than 1 million tonnes per annum on the coal chain or who is party to a binding contract or contracts to handle a total of more than 1 million tonnes of coal per annum on the coal chain over a consecutive 3-year period.

## Attachment 4 - List of HVCCC Members

<b>Coal producers</b>
<b>Bengalla Coal Sales Company Pty Limited</b> <b>ACN 058 360 982</b> c/ - New Hope Group Level 16 175 Eagle Street Brisbane Qld 4000
<b>Bloomfield Collieries Pty Ltd</b> <b>ACN 000 106 972</b> Four Mile Creek Road Ashtonfield NSW 2323
<b>Centennial Coal Sales and Marketing Pty Limited</b> <b>ACN 123 052 540</b> Level 18, BT Tower, 1 Market Street Sydney NSW 2000
<b>Glencore Coal (NSW) Pty Limited</b> <b>ACN 097 523 058</b> Level 44, Gateway 1 Macquarie Place Sydney NSW 2000
<b>Hunter Valley Energy Coal Pty Ltd</b> <b>ACN 062 894 464</b> Level 27 180 Lonsdale Street Melbourne Vic 3000
<b>Idemitsu Australia Pty Ltd</b> <b>ACN 010 236 272</b> Level 9175 Eagle St Brisbane Qld 4000

**MACH Energy Australia Pty Ltd**

**ACN 608 495 441**

Suite 1, Level 3

426 King Street

Newcastle West NSW 2302

**Maxwell Coal (Sales) Pty Ltd**

**ACN 054 328 862**

Level 26

259 George Street

Sydney NSW 2000

**Peabody Australia Mining Pty Ltd**

**ACN 002 818 699**

Peabody Building

100 Melbourne Street

South Brisbane Qld 4101

**Whitehaven Coal Limited**

**ACN 124 425 396**

Level 28, 259 George Street

Sydney NSW 2000

**Yancoal Australia Limited**

**ACN 111 859 119**

Tower 2, Level 18, 201 Sussex Street

Sydney NSW 2000

**Below rail**

**Australian Rail Track Corporation Limited**

**ACN 081 455 754**

PO Box 10343 Gouger Street

Adelaide SA 5000

**Above rail**

**Aurizon Operations Limited**

**ACN 124 649 967**

900 Ann Street

Fortitude Valley Qld 4006

**One Rail Australia (FLACH) Pty Ltd**

**ACN 137 483 713**

Suite 6.02

Level 6, 1 Pacific Highway

North Sydney NSW 2000

**Pacific National Pty Ltd**

**ACN 098 060 550**

Level 16, 15 Blue Street

North Sydney NSW 2060

**Southern Shorthaul Railroad Pty Ltd**

**ACN 146 566 430**

175 Murphy Street

East Bendigo Vic 3550

**Port terminal operators**

**Port Waratah Coal Services Limited**

**ACN 001 363 828**

PO Box 57

Carrington NSW 2294

**Newcastle Coal Infrastructure Group Pty Ltd**

**ACN 111 228 221**

30 Raven St

Kooragang NSW 2304

**Port of Newcastle Members**

**Port Authority of New South Wales**

Level 4, 20 Windmill Street

Walsh Bay NSW 2000

**Port of Newcastle Operations Pty Limited**

**ACN 165 332 990**

Level 4, 251 Wharf Road

Newcastle NSW 2300

## Attachment 5 - The Hunter Valley coal chain

The Hunter Valley coal chain is the largest seaborne coal export operation in the world and is a highly complex supply chain.

Since 2009, the Hunter Valley coal chain has experienced changes to its organisations, infrastructure and performance, with export capacity increasing from 95 million tonnes to over 200 million tonnes per annum. While some consolidation has occurred, demand for Hunter Valley coal has seen five additional coal producers join HVCCC since 2009 and a range of new mines, mine expansions and lease extensions. Rail haulage providers increased from one to four, operating 58 trains (up from 28), and terminal operators expanded from five berths and five ship loaders to nine and seven respectively. In addition, supply chain losses reduced from 10.1 to 6.7 percent and average vessel turnaround times reduced from twelve days to four.

At the time of this submission, the Hunter Valley coal chain involves:

- (a) 29 coal mines owned by 14 coal producers (either alone or in joint ventures with other participants);
- (b) a rail network with multiple branch lines and coal haulage distances of up to 406 kilometres;
- (c) more than 24 points for loading coal onto trains;
- (d) four rail haulage providers delivering coal to the Port of Newcastle, as well as to domestic customers;
- (e) three unload points for domestic customers;
- (f) two export coal terminal providers (operating three terminals), with different operational processes and nomination, allocation and contracting arrangements with customers; and
- (g) the movement and loading of more than 1,600 coal vessels annually.

The Hunter Valley coal chain therefore involves the shared use of above and below rail, port and port terminal infrastructure – each of which is owned and operated by different parties – by multiple coal producers and other service providers. Its safe and efficient operation inherently requires coordination between coal chain participants, particularly in relation to the use of, and interfaces between, shared and connected infrastructure.

In 2022 approximately 200Mt of coal chain contracted capacity was available for export from Hunter Valley coal mines. Both thermal (or steaming) coal and coking (or metallurgical) coal are exported from the Hunter Valley, with the majority of exported coal being thermal coal. The majority of Hunter Valley coal is exported to: Japan (approximately 55%); Taiwan (approximately 16%); and South Korea (approximately 10%).



## Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

CEO

Office held

PATRICK JOSEPH COOPER

(Print) Name of authorised person

NINETEENTH DECEMBER 2023

This [insert day] day of [insert month] [insert year]

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*



## HVCCC MEMBER CONTACT DETAILS

Member Organisation	Name	HVCCC Role	Member Organisation Title	Email
Aurizon Operations Limited	Daniel Kadziela	Director	GM Operations NSW & SEQ	[REDACTED]
Australian Rail Track Corporation Ltd	Wayne Johnson	Director	Group Executive Hunter Valley Network	[REDACTED]
Bengalla Coal Sales Company Pty Ltd	Alistair Baben Der Erde	Director	Infrastructure Manager	[REDACTED]
Bloomfield Collieries Pty Limited	Brett Lewis	Director	Managing Director/CEO	[REDACTED]
Centennial Coal Sales and Marketing Pty Limited	Anthony Raines	Director	Marketing Contracts Manager	[REDACTED]
One Rail Australia	John McArthur	Director	Chief Commercial Officer - GWA	[REDACTED]
Glencore Coal NSW Pty Limited	Ben Farrar	Director	Commercial Manager - Logistics	[REDACTED]
Hunter Valley Energy Coal Pty Ltd	Tim Edwards	Director	Logistics Superintendent	[REDACTED]
Idemitsu Australia Pty Ltd	Craig Forster	Director	Senior Manager Infrastructure	[REDACTED]
MACH Energy Australia Pty Ltd	Chris Thoroughgood	Director	General Manager Marketing and Logistics	[REDACTED]
Malabar Resources	Robert Hayes	Director	Infrastructure Manager	[REDACTED]
Newcastle Coal Infrastructure Group Pty Ltd	Aaron Johansen	Director	CEO	[REDACTED]
Pacific National Pty Ltd	Brendan Sellens	Director	Head of Operations NSW Coal	[REDACTED]
Peabody Australia Mining Pty Ltd	Christine Evans	Director	Director, Logistics	[REDACTED]
Port Authority of New South Wales	John Finch	Director	Chief Operating Officer	[REDACTED]
Port Waratah Coal Services Limited	Hennie du Plooy	Director	CEO	[REDACTED]
Southern Shorthaul Railroad	Milton Bromwich	Director	Director	[REDACTED]
Whitehaven Coal Limited	Keiron Rochester	Director	General Manager - Infrastructure	[REDACTED]
Yancoal Australia Ltd	Mike Dodd	Director	General Manager Infrastructure	[REDACTED]
Port of Newcastle	Glen Hayward	N/A	Executive Manager Marine and Operations	[REDACTED]