

30th September 2009

Mr. Ron Sorensen
General Manager, Operations
Newcastle Port Corporation
PO Box 663
NEWCASTLE NSW 2300
AUSTRALIA

Dear Mr. Sorensen,

Subject : Comments about Stage 3 of the Vessel Arrival System (VAS) Trial

We would like to express our opinions about Stage 3 of the VAS trial as follows.

First of all, unless coal shippers and Japanese coal receivers allow us to participate in Stage 3 of the VAS, we are not able to participate in the system.

Also, we have following concerns and requirements, which should be clarified and met by your good self before we go along with your plan.

In particular, it is essential to verify the accuracy of 10 day Notified Arrival Time calculated by NPC. Therefore we would suggest that NPC takes some more months in order for us to compare vessels' actual arrival time with your 10 day Notified Arrival Time and that NPC does not start stage 3 until the completion of the verification.

In addition, referring to article 1.2 & 6.1 of your proposed new port rules for Newcastle harbour, it might be construed as vessel could not stay safely at Newcastle anchorage over 48 hours. We are afraid that Newcastle harbour might be regarded as "unsafe port" by concerned parties of international maritime transportation due to your proposed new port rules.

- 1) NPC are requested to announce calculation methods of 10 day Notified Arrival Time and how to place vessel's berthing priority officially to all concerned parties, such as shippers, vessel operators, consignees and cargo receivers, so that adequacy of 10 day Notified Arrival Time and fairness & transparency of berthing priority would be confirmed among the parties concerned.
- 2) Treatment for vessels which would miss the revised ETL/Loading Time or stay at Anchorage more than 48 hours due to fluctuating ETL /Loading Time should be clearly stated.
- 3) It is stated that "A vessel may be demoted in the Queue for anchoring in the territorial sea of Australia during its transit to or waiting to enter the Anchorage or Port and for using or remaining in the Anchorage more than 48 hours prior to its Loading Time." and "Vessel failing or refusing to follow NPC's lawful directions in relation to

anchoring or not anchoring in the Port or entering or not entering the Port may face prosecution by NPC.” We have to say that NPC’s action forces vessels to reduce speed or to drift somewhere out of Australia. We are worried about safe operation of vessels as a large number of vessels waiting for ETL are forced to concentrate in specific area which is regarded as safe for drifting.

- 4) Disclosure of Vessel Line Up for nominated vessels
- 5) We would require NPC to review and revise VAS providing opportunities for us to express our opinion within a certain period of time.
- 6) For fundamental solution of the port congestion, your continuous efforts such as expansion of capability of coal terminal and allocation of exporting quantity etc.

Your well understanding on our opinions and your practical and swift reply would be highly appreciated.

Sincerely yours,

Asahi Shipping Co., Ltd.

Signed

Takashi. Kato,
Group Leader, Business Group

Daiichi Chuo Kisen Kaisha, Ltd

Signed

Tetsuya Mera
General Manager, Cape and Tanker Group

Iino Kaiun Kaisha, Ltd.

Signed

Hiroshi Furusawa, General Manager
Marine Transport Business Group-IV(Dry Cargo)

Kawasaki Kisen Kaisha, Ltd.

Signed

Michitomo Iwashita, Manager
Coal & Iron Ore Carrier Group

Mitsui O.S.K. Lines, Ltd.

Signed

Masahiko Shoda, General Manager,
Dedicated Bulk Carrier Division

Nippon Yusen Kaisha

Signed

Yoshihide Kotani, General Manager,
Dry Bulk Marine Quality Control Group

Nippon Steel Shipping Co., Ltd.

Signed

Tai Sugawara,
Director, Business Dept.

Shinwa Kaiun Kaisha, Ltd.

Signed

Kiyoshi Kanemitsu
General Manager, Coal/Bulk Carrier Group

The Sanko Steamship Co., Ltd.

Signed

Noriyuki Hanabuchi, Manager
Cape & Panamax Operation Section
Bulk Carriers Operation Dept.



VESSEL ARRIVAL SYSTEM TRIAL STAGE 3

Background

In December 2008 Newcastle Port Corporation (NPC) issued the Vessel Arrival System Trial Policy Paper, which is available on NPC's website. The Paper described two stages of the trial:

- Stage 1- vessel tracking
- Stage 2- voluntary slowing of vessel transit.

At the conclusion of Stage 1, which ran from January to the end of March 2009, NPC issued a report on Stage 1 of the Vessel Arrival System (VAS) trial. Stage 1 of the VAS trial demonstrated that the system has the capacity to perform the functions required to accurately track vessels. Stage 2 of the trial is currently in operation.

In Stage 3 of the VAS trial, the priority of vessels to enter the Port of Newcastle to receive coal will be determined in accordance with Port access rules established by NPC.

When will Stage 3 occur?

It is anticipated that Stage 3 of the VAS trial will commence before the end of 2009.

Prior to the commencement of Stage 3, NPC will undertake further consultations with industry regarding its implementation.

How will Stage 3 be implemented?

NPC will establish port access rules that will set out a procedure for determining the priority in which vessels may enter the Port of Newcastle.

The rules will set out:

- the information that must be provided by vessels to NPC;
- the process for establishing the priority of vessels to enter the Port of Newcastle;
- the circumstances in which vessels may lose their priority to enter the Port of Newcastle;
- the sanctions for non-compliance with the rules; and
- a dispute resolution process.

NPC will consult with industry on the proposed port rules.

How will it work?

NPC will obtain from the Hunter Valley Coal Chain Logistics Team (HVCCLT) and Port Waratah Coal Services (PWCS) an Estimated Time of Loading (ETL) for the vessel.

At ten days from the Port, NPC will inform the vessel of its arrival time at the Port of Newcastle for the purpose of placing the vessel in a position in the queue and will also inform the vessel of its ETL. Placement in the queue will establish that vessel's turn of arrival at the Port. (The turn of arrival system is a terminal rule implemented by NPC.) A vessel's place in the queue will be determined based on NPC's estimate of that vessel's estimated time of arrival at 10 nautical miles from the Port.

NPC will track the vessel on its transit to the Port of Newcastle.



If during this period HVCCLT and the terminal operator advise NPC that the vessel's ETL has changed, NPC will communicate this change to the vessel.

A key element of the Vessel Arrival System is to enhance maritime safety through reducing the number of vessels anchoring off the Port. In Stage 3 this will occur by allowing NPC to defer the priority of vessels that do not comply with the Rules, that anchor in the territorial sea of Australia whilst transiting or waiting to enter the Port or that anchor in the vicinity of the Port more than 48 hours prior to their loading time. Other sanctions for vessels that do not comply may include future restrictions on calling at the Port of Newcastle and/or prosecution by NPC.



VESSEL ARRIVAL SYSTEM

DRAFT RULES

The implementation of Stage 3 of the Vessel Arrival System (VAS) trial will require a change to the Port Rules for Newcastle Harbour. The proposed Port Rules for the VAS are detailed below.

If you have any comment on the proposed Port Rules, please provide them by no later than Wednesday 23 September 2009 to:

Mr Ron Sorensen
General Manager Operations
Newcastle Port Corporation
PO Box 663
NEWCASTLE NSW 2300
AUSTRALIA

or

Email: ron.sorensen@newportcorp.com.au
cc: kerrie.f@newportcorp.com.au



VAS - Draft Rules

1 Introduction

- 1.1 Under New South Wales law Newcastle Port Corporation (**NPC**) exercises certain port safety functions for the Port of Newcastle which include these Rules as a Vessel Arrival System for the Port.
- 1.2 In certain weather conditions and other circumstances the number of vessels in the Queue at or off the Port may pose a risk to Port safety. NPC uses these Rules to assist in the discharge of its port safety functions and to maintain the safe operation of the Port and the Queue.
- 1.3 The turn of arrival rules as stipulated by the Terminals are managed by NPC according to these Rules to ensure safety of the Port and vessels using the Port.
- 1.4 Vessels may establish and maintain their Priority only in accordance with these Rules and NPC may not accord Priority to a vessel nor permit a vessel to enter the Port until that vessel's owner or charterer has acknowledged in writing its acceptance of and agreement to abide by these Rules and the relevant directions of NPC as referred to herein.

2 The Stem

- 2.1 Prior to being given any Priority, vessels will be nominated to the Stem and matched with their Cargo.
- 2.2 A place in the Stem gives no Priority to a vessel.

3 Required Information

- 3.1 NPC may not give a vessel Priority nor permit a vessel to enter the Queue or the Port until that vessel has first supplied to NPC by fax or by email at least 14 days prior to a vessel's arrival at the Port:
 - (a) a properly completed and signed Berthing Notification Form; and
 - (b) the Required Information and necessary consents enabling NPC to poll and track the vessel's transit to the Port.
- 3.2 To establish and maintain its Priority a vessel must cooperate with and promptly comply with NPC's directions and requests for any other information NPC may reasonably require to track the vessel's transit to the Port.

4 Establishing Priority

- 4.1 Subject to these Rules a vessel will establish and be accorded its Priority in the same order in which NPC notifies the vessel of its 10 Day Notified Arrival Time. Also at or about that time NPC will notify the vessel of its ETL on the basis that the relevant Terminal may vary the vessel's ETL depending on factors affecting the assembly of the Cargo to be loaded by the vessel.



- 4.2 If a vessel's master disputes its 10 Day Notified Arrival Time the master may notify NPC of the dispute which NPC will then check, verify and alter or confirm that vessel's 10 Day Notified Arrival Time. If the master's dispute is not settled then the parties will engage in the dispute resolution process referred to in Rule 8.
- 4.3 Subject to its compliance with these Rules and the directions given to it by NPC, each vessel will enter and establish its Priority in the Queue on the date of 10 Day Notified Arrival Time.
- 4.4 A vessel will not be given or accorded any Priority unless and until the vessel receives its 10 Day Notified Arrival Time from NPC.
- 4.5 Vessels transiting to the Port directly from another port located within 10 days voyage of the Port will be expected to notify NPC at their earliest opportunity and will be required to present at 10 nm off the Port for the purpose of being allocated an AM or PM arrival time position in the Queue.
- 4.6 If two or more vessels in transit to the Port are simultaneously at locations all reckoned to be 10 days from the Port then NPC will in its discretion notify those vessels of their respective 10 Day Notified Arrival Times in the order and Priority as decided by NPC having regard to various matters including the known characteristics, capacities, normal speeds and previous compliance with these Rules of those vessels.
- 4.7 Following their entry into the Queue, NPC will notify vessels of their Loading Time and any changes to their Loading Time.

5 Vessel Substitution

- 5.1 Substitution of a vessel may occur at any time prior to the substituted vessel receiving notification of its 10 Day Notified Arrival Time.
- 5.2 Substitution of a vessel which has already received notification of its 10 Notified Arrival Time may only occur if the new substitute vessel is notified of and observes a new 10 Day Notified Arrival Time.

6 Arriving at the Anchorage

- 6.1 Vessels must use all reasonable endeavours to present at the Anchorage not more than 48 hours prior to their Loading Time as determined by the relevant Terminal and notified to the vessel by NPC.
- 6.2 Vessels entering or using the Anchorage more than 48 hours prior to their Loading Time may be demoted in the Queue or may lose their Priority or face prosecution as determined by NPC provided that NPC may allow vessels to remain in the Anchorage for an extended period if in its discretion NPC is satisfied there are bona fide safety or other proper reasons justifying such actions.



- 6.3 Vessels must use all reasonable endeavours to enter the Port and access their allotted loading berth at the relevant Terminal in accordance with their Loading Time.

7 Demotion in the Queue

- 7.1 A vessel may lose or have its Priority deferred by NPC or be demoted in the Queue by NPC in accordance with these Rules.
- 7.2 A vessel may at NPC's discretion, be demoted in the Queue for as long as that vessel is without reasonable justification:
- (a) anchored in the territorial sea of Australia during its transit to or waiting to enter the Anchorage or Port;
 - (b) using or remaining in the Anchorage more than 48 hours (or such other longer period as may be approved by NPC) prior to its Loading Time as is notified to it by NPC; or
 - (c) fails or refuses to comply with these Rules or NPC's directions as to a vessel's compliance with these Rules or New South Wales marine legislation.
- 7.3 Vessels failing or refusing to follow NPC's lawful directions in relation to anchoring or not anchoring in the Port or entering or not entering the Port may face prosecution by NPC.
- 7.4 Vessels which repeatedly fail or refuse to follow NPC's lawful directions as referred to in Rule 7.3 may be permanently refused entry to the Port [or be suspended from entering the Port].

8 Dispute Resolution

- 8.1 Disputes as calculation and determinations involved in NPC issuing a notification of a 10 Day Notified Arrival Time –

If a vessel has been allocated its 10 Day arrival time for the purpose of a position in the queue and the Master disputes this given time.

- a) He will notify his dispute with Newcastle Port Corporation Vessel Traffic Information Centre (VTIC) and VTIC will recheck and try and work with the Master to reach a decision.
- b) If the Master is still not in agreement it will be referred to the Harbour Master for a determination.

The determination of the Harbour Master will be final and no further negotiations will be entered into.



9 Definition and Interpretation

9.1 In these Rules the following definitions shall apply:

10 Day Notified Arrival Time means for the purpose of being placed in the Queue, a vessel's time of arrival at 10 nautical miles from the Port as established and notified in advance by NPC to that vessel and being 10 days AM or PM after the said time of notification by NPC;

Anchorage means [that area in the territorial sea of Australia where vessels may anchor between Newcastle and south to Palm Beach];

Berthing Notification Form means a vessel's notification to NPC (in such form as NPC may from time to time determine) that the vessel requires a berth at a Terminal;

Cargo means a cargo of coal to be loaded onto a vessel at a Terminal;

ETL means a vessel's initial estimated time of loading a Cargo as determined by the relevant Terminal and notified by NPC to the Vessel;

Loading Time means the date and time for actual loading of a vessel's Cargo as determined by the relevant Terminal at which the Cargo is to be loaded;

Port means the port of Newcastle, Australia;

Priority means a vessel's turn and place of priority in the Queue;

Queue means the queue of vessels either in transit or waiting at or off the Port for access to a Terminal to take on a Cargo;

Required Information means the information and consents required by NPC to be able to effectively poll and track a vessel's transit to the Port for the purpose of taking on a Cargo and includes details of the vessel's Satellite Tracking System and a properly completed and signed Berthing Notification Form;

Satellite Tracking System means a vessel's global tracking and communications system being the Inmarsat SAT C system which is used by NPC to effectively poll and track the vessel's transit to the Port;

Stem means the list of Cargos nominated to the Terminals by relevant Cargo producers and vessels nominated by customers of those Cargos before those vessels receive their 10 Day Notified Arrival Time from NPC;

Terminal means a coal loading terminal at the Port;

VTIC means NPC's Vessel Traffic Information Centre at the Port;

9.2 In these Rules unless the context indicates a contrary intention:

(**vessels**) these Rules only apply to vessels transiting to the Port for the purpose of taking on a Cargo at a Terminal.

(**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of the Rules.



(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, and any other organisation or legal entity and their personal representatives, substitutes (including persons taking by novation) and permitted assigns.

(requirements) a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done.

(including) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(gender) words importing one gender include all other genders.

(rules of construction) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(time and date) a reference to a time or date in connection with the performance of a requirement is a reference to the time and date at Newcastle, Australia, even if the requirement is to be performed elsewhere.

(writing) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.