



VESSEL ARRIVAL SYSTEM TRIAL- STAGE 3 CONSULTATION ON PORT RULES

Purpose of this consultation

Newcastle Port Corporation ('NPC') is in the process of trialling its Vessel Arrival System ('VAS').

The purpose of this consultation is to give coal and shipping industry participants the opportunity to provide comments, suggestions and feedback on the draft Port Rules for the VAS, which NPC will consider in finalising these Rules.

The draft VAS Port Rules ('Draft Rules') are attached to this paper.

Should you have any:

- questions or need further information about the Draft Rules or the VAS; or
- comments on the Draft Rules that NPC should take account of in finalising the Draft Rules and implementing Stage 3 of the VAS trial,

please contact:

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Please provide any comments you might have by no later than 31 December 2009. It will not be possible for NPC to take account of any comments submitted after this closing date in finalising the Draft Rules.

Background to the VAS Trial

In January 2009 NPC commenced Stage 1 of the VAS Trial, which involved vessel tracking. NPC issued a report at the conclusion of Stage 1, which ran to the end of March 2009. Stage 1 of the Trial demonstrated that the system has the capacity to perform the functions required to accurately track vessels.

Stage 2 of the VAS Trial, involving the voluntary slowing of vessel transit, is currently in operation.

Stage 3 of the VAS Trial will apply to vessels entering the Port of Newcastle to load coal and participation is compulsory for these vessels.

In this Stage the priority of vessels to enter the Port of Newcastle to receive coal will be determined in accordance with the VAS Port Rules. The Draft Rules are the subject of this consultation.

Stage 3 of the VAS Trial will commence on **1st February 2010**. Further information on NPC's timing for implementing the Stage 3 Trial is provided below.



The draft Vessel Arrival System Port Rules

A copy of the Draft Rules is attached. In summary, the Draft Rules:

- set out the information that vessels must supply to NPC. This information will allow NPC to track vessels on their transit to the Port, to determine the priority of vessels entering the Port and to decide whether they have complied with the VAS Rules;
- provide that, at 10 days out from the Port, NPC will notify a vessel of its position in the queue to enter the Port based on NPC's estimate of the vessel's time of arrival at 10 nautical miles from the Port (the Notified Arrival Time);
- allow NPC to take various actions, such as demote vessels in the queue, if vessels anchor in the vicinity of the Port (unless they anchor due to an emergency or anchor in the Fair Weather Anchorage 48 hours or less before their Estimated Time of Loading) or if they otherwise fail to comply with the Rules or NPC's lawful directions; and
- provide a mechanism for resolving disputes about the Notified Arrival Time.

Implementation plan for the VAS Trial Stage 3

Initially the Vessel Arrival System will operate as a compulsory trial (Trial Stage 3) while NPC assesses its operational effectiveness and issues that may need to be addressed for a permanent operation.

The VAS Trial Stage 3 will include a transitional period of three months from the Stage 3 Trial commencement date of 1st February 2010. This will allow stakeholders to adjust their contractual and operational arrangements (if required) and otherwise become familiar with the system's operation before NPC begins enforcing the rules.

After the transitional period NPC will require vessels to comply with the VAS, but coal and shipping industry participants may still make submissions to NPC on any issues of concern.

NPC will review whether any aspect of the VAS requires change six months after the VAS Trial Stage 3 commences and may bring this review date forward if it appears that changes to the VAS should be made before the 6- month review is due.

While the VAS Stage 3 Trial will commence on 1st February 2010, it will affect only those coal ships that are at least 14 days from the Port. The 'Effective Date' for the commencement of the VAS therefore is 15 February 2010, when the first of these ships would be expected to arrive off the Port of Newcastle.

Vessels that are already in the queue or are in transit and are less than 14 days from the Port as at 1st February 2010 will not be subject to the VAS Rules until next voyage.



The VAS Trial Stage 3 timetable

Four- week consultation period on the draft VAS Port Rules commences	4 December 2009
Consultation period closes	31 December 2009
NPC releases final VAS Port Rules to industry	18 January 2010
VAS Trial Stage 3 commences	1 st February 2010
Effective Date for commencement of VAS Trial Stage 3	15 February 2010
Three- month transition period for VAS implementation, after which NPC will commence enforcement of the VAS Port Rules.	1 February 2010 to 31st May 2010
Six- month review of the VAS Trial Stage 3	July 2010

Note: This review date may be brought forward if it appears changes to the VAS are required prior to this date.

The closing date for comments on the Draft Rules is 31st December 2009

Please note that it will not be possible for NPC to take account of any comments submitted after this date in finalising the VAS Port Rules



Draft VAS 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 These Rules and their enforcement are based on NPC's statutory powers to control and determine the manner and order in which vessels may enter and leave the Port. These Rules do not seek to direct masters how to conduct the navigation of their vessel which remains their responsibility. NPC's enforcement of these Rules will be subject to the right of innocent passage through the territorial sea of Australia as provided for by the United Nations Convention on the Law of the Sea and the requirements for safe navigation of vessels at sea which will remain the responsibility of each vessel's master.
- 1.3 In certain weather conditions and other circumstances an increased number of vessels at anchor off the Port increases risks to Port safety. NPC intends to use these Rules to assist in the discharge of its port safety functions and achieve the safer operation of the Port and enhance the safety of vessels using the Port.
- 1.4 The turn of arrival rules as stipulated by Terminals will continue to be managed by NPC according to these Rules which are intended to limit the number of vessels anchoring in the vicinity of the Port more than 48 hours prior to their estimated time of loading (**ETL**) at the Port. This 48 hour period should be understood as a "maximum period" (and not a minimum period) during which a vessel may anchor in the Fair Weather Anchorage prior to its ETL without jeopardising its Priority in the Queue. Vessels anchoring in the vicinity of the Port other than in accordance with these Rules may lose their priority and be demoted in the Queue.
- 1.5 Vessels will be given an ETL once and will subsequently be notified of their Loading Time. Due to factors affecting the transport and assembly of Cargos, Loading Times may change, however these Rules are intended to not disadvantage vessels whose Loading Times change.
- 1.6 Vessels should also note that a Notice of Readiness (**NOR**) may continue to be required as per usual commercial arrangements between coal and shipping industry participants. NPC does not wish to involve itself in these commercial arrangements, however NPC has been asked by some of those participants to indicate when an NOR should be issued under the Vessel Arrival System. In NPC's view, the NOR should be issued at the "Notified Arrival Time" as per these Rules. This means that vessels may still issue their NOR at their Notified Arrival Time even though at that time they may not yet have arrived at the Port. Therefore vessels transiting at slower speeds to the Port will not be disadvantaged.
- 1.7 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 its receipt and acceptance of these Rules. Vessels failing to observe these Rules may lose their Priority or be demoted in the Queue or may suffer a suspension, **not as a**



penalty but in order to effectively and fairly observe the Priority of other vessels in the Queue which are complying with the Vessel Arrival System and thereby contributing to the safer operation of the Port.

- 1.8 Masters will assist with the implementation of this Vessel Arrival System if, where possible, they notify the VTIC daily of their vessel's estimated time of arrival at the Port together with their current latitude and longitude.
- 1.9 During their transit to the Port, Vessels should use all reasonable endeavours not to anchor elsewhere in the territorial sea of Australia for the purpose of awaiting its ETL at the Port, except if required to do so by an Emergency.
- 1.10 The Fair Weather Anchorage is fully exposed to the weather with onshore winds regularly creating a dangerous lee shore. Sea-room in the Fair Weather Anchorage is also limited, so in adverse weather vessels have no shelter and may have limited room to manoeuvre. It is therefore a fair weather anchorage and masters of vessels anchoring there should closely monitor the weather conditions as rapid changes do occur which may see wind and swells rapidly increasing. This reduces the time available to masters in which to take appropriate action.

2 The Stem

- 2.1 Prior to being given any Priority, vessels will be nominated to the Stem in accordance with Terminal rules 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 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 and promptly comply with:
 - (a) NPC's requests for any other information which NPC may reasonably require in order to track the vessel's transit to the Port; and
 - (b) NPC's directions which do not interfere with the vessel's safe navigation.

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 Notified Arrival Time. Also at or about that time NPC will notify the vessel of its ETL on the understanding that the relevant Terminal may vary the vessel's Loading Time depending on factors affecting the transport and assembly of the Cargo to be loaded by the vessel.
- 4.2 To dispute a vessel's Notified Arrival Time a Relevant Person must notify NPC of the dispute in writing. NPC will then check, verify and alter or confirm that vessel's Notified Arrival Time. Only one Relevant Person is entitled to dispute a



vessel's Notified Arrival Time on a particular voyage. If more than one Relevant Person lodges such a dispute, NPC will review the first dispute lodged by a Relevant Person in order of time. If a Relevant Person's dispute is not settled then NPC and that Relevant Person 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 have its Priority established in the Queue on the date of its Notified Arrival Time as notified by NPC.
- 4.4 A vessel will not be given or accorded any Priority unless and until the vessel is notified of its Notified Arrival Time by 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 arrive at 10 nm off the Port for the purpose of being allocated an arrival time and position in the Queue.
- 4.6 If in relation to a vessel that has complied with Rules 3.1 and 3.2, NPC fails to:
 - (a) notify a vessel of its Notified Arrival Time and its ETL in accordance with Rule 4.1; or
 - (b) establish a vessel's Priority in the Queue in accordance with Rule 4.3 (unless one of the Rules in Part 7 applies);

then the affected vessel may arrive at 10 nm off the Port and notify NPC of its arrival as soon as possible. Having so notified NPC of its arrival such a vessel will be allotted a position in the Queue based on the actual time of its arrival at 10nm off the Port and Rule 7 will not be applied to that vessel for arriving at this point.

5 Vessel Substitution

- 5.1 Substitution of a vessel in the Stem may occur at any time prior to the substituted vessel being notified of its Notified Arrival Time.
- 5.2 Substitution of a vessel which has already been notified of its Notified Arrival Time may only occur with the prior approval of NPC and the relevant Terminal.

6 Arriving at the Port

- 6.1 Except where clause 4.5 applies, Vessels must use all reasonable endeavours to arrive in the vicinity of the Port not more than 48 hours prior to their ETL as notified to the vessel by NPC pursuant to Rule 4.1.
- 6.2 A vessel notified by NPC that its Loading Time is to occur prior to its ETL as previously advised pursuant to Rule 4.1, must use all reasonable endeavours to arrive at the Port prior to its new Loading Time provided that Rule 7.1 may be applied to that vessel by NPC if that vessel anchors in the vicinity of the Port more than 48 hours prior to its new Loading Time.
- 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.



- 6.4 A vessel which due to an alleged or claimed Emergency:
- (a) anchors in the vicinity of the Port;
 - (b) anchors or remains anchored in the Fair Weather Anchorage more than 48 hours prior to its ETL as notified to it pursuant to Rule 4.1; or
 - (c) otherwise fails to comply with these Rules,
- must promptly provide NPC with notice and reasonable details of the relevant claimed Emergency.

7 Demotion in the Queue and Suspension

- 7.1 It will be a contravention of these Rules if a vessel anchors in the vicinity of the Port, except in the following circumstances:
- (a) due to and during a bona fide Emergency; or
 - (b) if a vessel anchors in the Fair Weather Anchorage 48 hours or less prior to its ETL as notified to the vessel by NPC pursuant to Rule 4.1.
- 7.2 Except in the circumstances referred to in Rule 7.1(a) or Rule 7.1(b), if a vessel anchors in the vicinity of the Port, that vessel may as determined at the discretion of NPC:
- (a) be issued with warnings by NPC; or
 - (b) be demoted in the Queue by NPC causing the vessel to lose its Priority; or
 - (c) be suspended from entering or be refused entry to the Port by NPC on its current voyage or on subsequent voyages.
- 7.3 A vessel may also at NPC's discretion, be demoted in the Queue or refused entry to the Port by NPC for as long as that vessel without reasonable justification (which justification would include as a result of a bona fide Emergency) fails or refuses to comply with these Rules or NPC's proper directions given in accordance with New South Wales marine legislation.
- 7.4 A vessel that without justification (which would include as a result of a bona fide Emergency), repeatedly or persistently fails or refuses to comply with the Vessel Arrival System may be suspended from entering the Port or be permanently refused entry to the Port by NPC on its current voyage or on subsequent voyages.
- 7.5 Vessels failing or refusing to follow NPC's lawful directions given pursuant to New South Wales marine legislation may face prosecution as provided for by that legislation.

8 Dispute Resolution

- 8.1 If a Relevant Person wishes to dispute a vessel's Notified Arrival Time:
- (a) the Relevant Person must notify their dispute to the VTIC together with reasons in writing and NPC will after consulting with the Relevant Person, then check, verify and alter or confirm that vessel's Notified Arrival Time; and



- (b) if the Relevant Person does not accept NPC's decision under Rule 8.1(a) NPC will refer the dispute to the Harbour Master for final determination and the Harbour Master will promptly determine the dispute and will provide the Relevant Person and NPC with reasons for his or her determination.

8.2 Provided the Harbour Master complies with Rule 8.1(b), their determination of the dispute 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:

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;

Emergency means an event or circumstance reasonably determined by a vessel's master as:

- (a) giving rise to a real and present threat to the safety of that vessel or the wellbeing of its crew including due to accident, illness, adverse weather conditions, mechanical failure or breakdown or other similar emergency situation;
- (b) an event of force majeure; or
- (c) an event of distress making it necessary for a vessel to stop or anchor, but only for the purpose of rendering assistance to persons, other ships or aircraft in danger or distress;

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;

Fair Weather Anchorage means the area off the Port which is south of latitude 32 ° 58 ' S and at a distance greater than three nautical miles from the shoreline;

Harbour Master means the Harbour Master for the Port;

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;

Notified Arrival Time means for the purpose of a vessel being placed in the Queue, that vessel's time of arrival at 10 nautical miles from the Port as established via satellite tracking technology and notified in advance by NPC to that vessel and being 10 days (or such other number of days as NPC may from time to time determine) after the said time of notification by NPC to the vessel;

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;

Relevant Person means a vessel's master or other authorised representative of the vessel's owner, operator, charterer or agents as may be applicable;



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 Notified Arrival Time from NPC;

Terminal means a coal loading terminal at the Port; and

VTIC means NPC's Vessel Traffic Information Centre at the Port telephone +61-2 - 4985 8292.

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 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 these Rules nor any part of them are to be construed against a person on the basis that the person 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 these Rules or an agreement between the parties means a written notice, request, consent, approval or agreement and can include notice by facsimile or email. The requirement for written notice does not apply to the notification of Emergencies.

(communications) written notices should be sent to the VTIC via fax (+61-2 – 4925 0611) or email (vtic@newportcorp.com.au). Verbal communications should be directed to the VTIC by telephone (+61-2 - 4985 8292).