



## EOI PROCESS

### FOR IDENTIFYING USERS FOR THE UPGRADE OF THE PORT KEMBLA COAL TERMINAL

This document is available at <http://www.pkct.com.au/news.htm>

Dated: 7 November 2011

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## INTRODUCTION

This document sets out the process for identifying Port Kembla Coal Exporters who would enter into Capacity Commitment Deeds and subsequently SoP Agreements with PKCT for Capacity at the Terminal if the Board of PKCT elects to proceed with the Upgrade. This document is an update of the EOI Process published by PKCT on 20 May 2011.

### Terminology

In this document, certain terminology is used to refer to persons who participate in the EOI Process:

- A reference to an **Interested Person** is a reference to a Port Kembla Coal Exporter who responds to the call by PKCT for expressions of interest in paragraph 1(a).
- A reference to a **Respondent** is a reference to an Interested Person who lodges an EOI Application in accordance with paragraph 2(b).
- A reference to a **User** is to a Respondent who enters into a Capacity Commitment Deed and subsequently a SoP Agreement with PKCT for Capacity at the Terminal.

Defined terms have the meaning given to them in Schedule 1.

### Important Notice

At the date of publication of this document, PKCT is still finalising with PKPC and other stakeholders (including the ACCC) the terms upon which PKCT proposes to undertake the Upgrade.

The final determination of Users of the Terminal and allocation of Capacity to them will not be made by PKCT until:

- PKCT has completed consultations with the State, PKPC and other interested stakeholders with respect to the final terms on which PKCT will develop the Terminal and allocate the Capacity; and
- PKCT has received an ACCC authorisation and any other necessary regulatory approvals.

PKCT may at any time amend the EOI Process by giving written notice to Interested Persons (prior to the time nominated by PKCT for receipt of an EOI) or Respondents (after the time nominated by PKCT for receipt of an EOI).

## SUMMARY

This section summarises the EOI process. The process will be conducted in three phases:

### PHASE 1 – EXPRESSIONS OF INTEREST

In phase 1, PKCT will:

- call for non-binding expressions of interest in using the Terminal from Port Kembla Coal Exporters;
- ask Interested Persons to contribute to the costs of the EOI process by paying the EOI Cost Prepayment to PKCT;
- distribute an EOI information package to each Interested Person. This package will provide financial, commercial and contractual details for the Upgrade and will contain an EOI Application. Interested Persons will be asked to complete the EOI Application. It contains information that is relevant to PKCT's assessment of whether an Interested Person will meet the EOI Criteria;
- ask Respondents to provide a Bid Bond of \$1 million as security for their participation in the EOI Process;
- following the assessment of EOI Applications received from Respondents, provide Respondents with:
  - an update of the size of the Upgrade and, where relevant, the impacts of other project development factors;
  - an updated scope for the Upgrade and associated estimates of General Loading Charge; and
  - any changes to the financial, commercial and contractual details for the Upgrade.

### PHASE 2 – BINDING NOMINATIONS

In phase 2:

- PKCT will provide confirmation of whether or not Respondents meet the EOI Criteria for selection; and
- In order to progress to the Definition Study for the Upgrade, Respondents will be required to nominate a binding Capped Annual Tonnage (taking into consideration the Upgrade ramp up).

### PHASE 3 – ALLOCATION AND CONFIRMATION OF CAPACITY

In phase 3, at a point during the Definition Study for the Upgrade:

- PKCT will provide a definitive scope of works and the General Loading Charge to Respondents for the Upgrade;
- PKCT will advise Respondents of the available capacity and demand for capacity from Respondents;

- If PKCT has received in aggregate commitments to ship from Respondents which can be satisfied in full from the Capacity then PKCT will allocate to Respondents their Capped Annual Tonnage that they have committed to ship in their Capacity Commitment Deed.
- If PKCT has received, in aggregate, commitments to ship from Respondents which can not be satisfied in full from Capacity then PKCT will allocate the Base Tonnage or Reduced Base Tonnage to Respondents who are Existing Exporters and Additional Capacity to successful Respondents in accordance with Schedule 5.

If the Board of PKCT elects to proceed with the Upgrade of the Terminal, PKCT will finalise key commercial documentation including construction arrangements, the arrangements for the Contribution and SoP Agreements with the Users.

The Indicative Timetable for the process is set out in Schedule 4.

## PHASE 1 – EXPRESSIONS OF INTEREST

### 1. Call for Expressions of Interest

- (a) PKCT will notify Port Kembla Coal Exporters that it is requesting non-binding expressions of interest (**EOI**) from Port Kembla Coal Exporters who are confident of satisfying the EOI Criteria and who wish to take up Capacity in the Terminal and ask them to advise PKCT if they wish to receive an EOI Package. PKCT will do this by:
- (i) placing a notification on its website [www.pkct.com.au](http://www.pkct.com.au);
  - (ii) writing to each Port Kembla Coal Exporter who, within the past 24 months, has expressed to PKCT an interest in using the Terminal;
  - (iii) placing an advertisement in the Australian Financial Review and The Australian; and
  - (iv) if it so decides, taking such other steps as it thinks necessary or advisable for the purpose of such notification.

A Port Kembla Coal Exporter's EOI must be submitted in the form and by the time nominated by PKCT.

The EOI Package will be prepared by PKCT and its consultants and will assume that the Upgrade occurs in two stages.

However, PKCT may, in consultation with Respondents, revise the date for submission of the EOI and other key assumptions when it has a better understanding of the total capacity demand of Respondents and other project development factors.

### 2. Distribution of EOI Package and Communications with Respondents after initial EOI received

- (a) Subject to:
- (i) an Interested Person satisfying an initial assessment by PKCT of the ability of that Interested Person to satisfy the EOI Criteria; and
  - (ii) execution by that Interested Person of a confidentiality deed in the form approved by PKCT,

PKCT will make the EOI Package available to that Interested Person. PKCT may make the EOI Package available in one or more volumes. This is to enable the distribution to Interested Persons of the relevant documentation as it is developed.

- (b) An Interested Person who wishes to provide an EOI must lodge an EOI Application with PKCT marked to the attention of Peter Green, General Manager, PKCT by the closing date for lodgement of EOIs declared by PKCT in the EOI Package.

Each Respondent must provide its EOI Cost Prepayment in support of its EOI at the same time as submitting its EOI Application. This is intended to cover each Respondent's share of the EOI Out of Pocket Expenses. Any part of the EOI Cost Prepayment not expended by PKCT following the allocation of capacity in accordance with paragraph 7 will be refunded to the Respondents. In all other circumstances the EOI Cost Prepayment will not be refunded to the Respondent. If it transpires that the Respondent's share of the EOI Out of Pocket Expenses is

likely to exceed its EOI Cost Prepayment, PKCT will notify the Respondent, as soon as practicable after PKCT becomes aware, of any additional EOI Cost Prepayment required by it and the timing for payment of such amount. Respondents may withdraw from this process if they do not wish to pay such additional amounts.

- (c) PKCT will also request that Respondents provide a Bid Bond in the amount of \$1,000,000 as security for the EOI Process and the performance of the Respondent's obligations under the Capacity Commitment Deed. A Respondent's Bid Bond may be called by, and the proceeds retained by, PKCT if the Respondent is allocated Capacity in accordance with paragraph 7 but does not sign a Capacity Commitment Deed within the timeframe stipulated in paragraph 6 or deliver a letter of confirmation of satisfaction of the relevant Capacity Commitment Deed Condition within the timeframe stipulated in paragraph 8. A Respondent's Bid Bond will be returned to the Respondent if:
- (i) it is unsuccessful in obtaining Capacity (including because the Capacity Commitment Deed Conditions are not satisfied);
  - (ii) if, at any time, it is permitted to withdraw from the EOI Process; or
  - (iii) it successfully completes the EOI Process and executes a SoP Agreement in accordance with its Capacity Commitment Deed.

If a Respondent is lodging an EOI Application for and on behalf of two or more Port Kembla Coal Exporters then that Respondent is only required to provide one Bid Bond as security for the EOI Process and the performance of the Respondent's obligations under the Capacity Commitment Deed.

- (d) PKCT may decide to hold briefings for Respondents to discuss this process, the content of the EOI Package and the manner in which Respondents will be required to provide their EOI but is under no obligation to do so. Respondents may place written questions in respect of the EOI Package and PKCT will provide written responses to those questions to each relevant Respondent within 7 days.
- (e) PKCT may extend any part of the timetable for the EOI Process and update information contained in the EOI Package from time to time and will notify Respondents if it does so.
- (f) PKCT may in its discretion consider an EOI lodged by a Port Kembla Coal Exporter after the lodgement date referred to in paragraph (b) (above) but prior to the date referred to in Phase 2 below that PKCT notifies the Respondents it has finalised its due diligence enquiries.

### **3. Selection Criteria**

Each Respondent must satisfy all of the EOI Criteria in order for it to be considered as a User of the Terminal.

### **4. Preliminary Due Diligence**

PKCT (and consultants appointed by it who are independent of it and its Shareholders) will initially conduct a preliminary due diligence on each Respondent's EOI Application in order to form a preliminary view as to whether the Respondent is likely to satisfy the EOI Criteria.

PKCT and/or its consultants may then contact Respondents to clarify particulars of their EOI (including their ability to satisfy the EOI Criteria) or request further information in

connection with their EOI Application during the preliminary due diligence process. In addition, PKCT's consultants may interview Respondents in respect of their EOI Application.

## **5. Evaluation of EOI and completion of Due Diligence**

After completion of preliminary due diligence, PKCT and its consultants will assess each EOI Application against:

- (a) the EOI Criteria and other information included in the EOI Application; and
- (b) the results of PKCT's preliminary due diligence enquiries,

to determine what (if any) further due diligence needs to be conducted by PKCT and its consultants and to identify in respect of each Respondent any area that PKCT will require further clarification from the Respondent in order to determine if the Respondent satisfies the EOI Criteria.

PKCT (and its consultants) will conduct the assessment in an objective and consistent manner and apply the EOI Criteria consistently to each Respondent.

PKCT will inform each Respondent of the outcome of its preliminary assessment (identifying progress made by the Respondent in satisfying the EOI Criteria) and will ask each Respondent if the Respondent wants PKCT to proceed to complete its due diligence in relation to its EOI or if it wants to withdraw its EOI.

If the Respondent advises PKCT that it wants PKCT to complete its due diligence enquiries in relation to its EOI and the Respondent's share of the EOI Out of Pocket Expenses is likely to exceed its EOI Cost Prepayment, the Respondent must, if PKCT so requests, provide an additional EOI Cost Prepayment to PKCT by the date specified by PKCT. PKCT may also request further information from the Respondent in connection with its EOI.

As the relevant information is finalised, PKCT will provide Respondents with:

- (a) details regarding the Additional Capacity to be made available through the Upgrade and an update, where relevant, of the impacts of other project development factors;
- (b) estimate of the General Loading Charge; and
- (c) any changes to the financial, commercial and contractual details for the Upgrade.

PKCT and its consultants will then proceed to complete its due diligence enquiries in relation to each Respondent which advises PKCT to complete due diligence. Respondents will acknowledge that PKCT may subsequently be required to conduct further due diligence as a result of a change or delay in the EOI Process.

## PHASE 2 – BINDING NOMINATIONS

### 6. Execution of Capacity Commitment Deeds

PKCT will notify the Respondents when it has finalised all of its due diligence enquiries.

In order to progress to the Definition Study for the Upgrade, PKCT will determine which Respondents have, on the basis of PKCT's due diligence enquiries, satisfied the EOI Criteria.

PKCT will provide to each such successful Respondent an execution form of the Capacity Commitment Deed and request that the Respondent deliver to PKCT, by no later than the date specified by PKCT, an executed Capacity Commitment Deed.

If a Respondent:

- (a) has lodged an EOI Application for and on behalf of two or more entities who are Existing Exporters, and the Base Tonnage of those Existing Exporters has been calculated under paragraph (c) of the definition of Base Tonnage, those Existing Exporters jointly (or a related entity on their behalf) must enter into a single Capacity Commitment Deed (and a single subsequent SoP Agreement); or
- (b) is an Existing Exporter which comprises two or more entities jointly, and the Base Tonnage of those Existing Exporters has been calculated under paragraph (b) of the definition of Base Tonnage, each of those Existing Exporters must enter into separate Capacity Commitment Deeds (and separate subsequent SoP Agreements).

Respondents should be aware that there will be a ramp up in the Terminal's throughput capacity following Mechanical Completion during which PKCT may only be able to ship a proportion of any successful Respondent's Capped Annual Tonnage. PKCT does not guarantee that, following completion of the works for the Upgrade, the Terminal will have sufficient throughput capacity to satisfy the aggregate of all successful Respondents Capped Annual Tonnage requirements in full even though the Terminal is built to the necessary specifications to meet that aggregate amount.

## PHASE 3 – ALLOCATION AND CONFIRMATION OF CAPACITY

### 7. Allocation of Capacity

PKCT will undertake the Definition Study for the Upgrade (including Upgrade Capacity), having regard for the coal supply chain capacity with the objective of meeting the aggregate Capped Annual Tonnages of Respondents.

When the Definition Study has been completed, PKCT will advise Respondents of the planned Capacity, the forecast General Loading Charge and any other relevant information (as determined by PKCT).

PKCT will allocate Capacity to successful Respondents in accordance with the PKCT Allocation Principles. These are set out in Schedule 5.

A Respondent that disagrees with the allocation of Capacity made to it by PKCT may notify PKCT of a dispute in respect of that allocation to be resolved in accordance with the dispute resolution process set out in Schedule 7.

**8. Confirmation of Capacity Commitment Deed Conditions**

If the Board of PKCT elects to proceed with the Upgrade, each Respondent will be notified and requested to provide a letter confirming that the Capacity Commitment Deed Condition specifying that PKCT has allocated to that Respondent not less than 75% of the Capped Annual Tonnage nominated by that Respondent has been satisfied or waived by that Respondent. If such condition is satisfied, each Respondent must provide this letter of confirmation within 5 Business Days after receipt of that notice.

PKCT will then seek to finalise key commercial documentation as quickly as reasonably possible including construction arrangements and any changes to the existing documentation (including the form of SoP Agreements annexed to the Capacity Commitment Deeds) with the Users and other stakeholders.

PKCT will then seek financial close (including the execution of all SoP Agreements) and the commencement of the construction of the Upgrade at the earliest reasonable time. Financial close is the time when any conditions to the provision of the Contribution have been satisfied and the Contribution can be applied to fund the Upgrade.

## Schedule 1

### Definitions

**ACCC** means the Australian Competition and Consumer Commission.

**Additional Capacity** has the meaning given in Schedule 5.

**Aggregate Base Tonnage** means the aggregate of the Base Tonnages of all Existing Exporters.

**Authorisation** means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Base Tonnage** means:

- (a) for an Existing Exporter, that Existing Exporter's highest actual usage of capacity at the Terminal expressed in tonnes loaded onto vessels for any of the seven completed Financial Years which have occurred prior to the execution of Capacity Commitment Deeds under paragraph 6 as determined by PKCT;
- (b) for an Existing Exporter which comprises two or more entities jointly, the aggregate of each such entity's highest actual usage of capacity at the Terminal expressed in tonnes loaded on to vessels for any of the seven completed Financial Years which have occurred prior to the execution of Capacity Commitment Deeds under paragraph 6 as determined by PKCT; and
- (c) for a Respondent who lodges an EOI Application for and on behalf of two or more entities who are Existing Exporters, the highest actual usage of capacity at the Terminal of the Existing Exporters on whose behalf the Respondent has lodged an EOI Application expressed in tonnes loaded on to vessels for any of the seven completed Financial Years which have occurred prior to the execution of the Capacity Commitment Deeds under paragraph 6 as determined by PKCT where the highest actual usage in a Financial Year will be the aggregate of those tonnes of each of the Existing Exporters for the same Financial Year as determined by PKCT.

**Bid Bond** means an irrevocable undertaking in the form set out in Schedule 6.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

**Capacity** means the annual planned throughput capacity of the Terminal (including, for the avoidance of doubt, the Upgrade Capacity).

**Capacity Commitment Deed** means a deed under which a Respondent:

- (a) subject to the Capacity Commitment Deed Conditions set out in the Capacity Commitment Deed, undertakes to enter into a SoP Agreement with PKCT for the Capped Annual Tonnage allocated to it under the PKCT Allocation Principles;

- (b) agrees to participate in good faith in discussions and negotiations relating to the transaction documentation to which the Respondent will be a party;
- (c) affirms that the Bid Bond provided by it under paragraph 2(c) stands as security for its obligations under the Capacity Commitment Deed; and
- (d) provides customary representations and warranties as to its status and its power and authority to enter into and be bound by the Capacity Commitment Deed.

The form of SoP Agreement for a User will be annexed to the Capacity Commitment Deed for that User.

**Capacity Commitment Deed Conditions** means in respect of a Respondent's Capacity Commitment Deed:

- (a) receipt by PKCT of an ACCC Authorisation (as defined in the Capacity Commitment Deed);
- (b) PKCT has undertaken the allocation of Capacity in accordance with the PKCT Allocation Principles;
- (c) unless waived by the Respondent, PKCT has allocated to the Respondent not less than 75% of the Capped Annual Tonnage nominated by the Respondent;
- (d) the forecast General Loading Charge as determined by PKCT and its consultants following completion of the Definition Study is within the range set out in the EOI Package;
- (e) the Board of PKCT has elected to proceed with the Upgrade;
- (f) the transaction documentation (including any funding documentation then required for the Upgrade, the new Shareholders Agreement and the PKPC leases) has been agreed by all relevant stakeholders; and
- (g) financial close as contemplated by paragraph 8 of the EOI Process has occurred or will occur contemporaneously with the delivery of the Respondent's executed SoP Agreement (in accordance with the terms of the Capacity Commitment Deed).

**Capped Annual Tonnage** means the maximum tonnage of coal which a User would be entitled under its SoP Agreement to ship through the Terminal in a Financial Year.

**Conditions of Use** means the conditions applicable to handling of coal at the Terminal issued to Users by PKCT and updated from time to time.

**Contribution** has the meaning given in paragraph (e) of Schedule 2.

**Definition Study** means the definition study for the Terminal to be prepared by PKCT and its consultants. It will be a comprehensive study of the technical, economic and financial feasibility of an Upgrade which shall:

- (a) involve the completion of each of the activities determined by PKCT;
- (b) be undertaken using reputable advisers as are appropriate for each component of the study;
- (c) incorporate appropriate and adequate supporting plans, reports and data; and

- (d) be in such form as is acceptable, in the reasonable opinion of PKCT, to enable PKCT and the Shareholders to determine whether or not to proceed with or arrange finance for the Upgrade.

**EOI** has the meaning given in paragraph 1(a).

**EOI Application** means the form of EOI to be provided by a Respondent as set out in schedule 3.

**EOI Cost Prepayment** means the amount that each Respondent must pay to PKCT to cover the EOI Out of Pocket Expenses. The initial EOI Cost Prepayment will be included in the EOI Package and any additional EOI Cost Prepayment will be notified by PKCT to Respondents.

**EOI Criteria** means the criteria set out in schedule 2.

**EOI Out of Pocket Expenses** means PKCT's costs of due diligence and its other out of pocket expenses (including the costs and expenses of its consultants) in conducting the EOI Process (including the costs of any variations to the Definition Study and associated project cost estimates).

**EOI Package** means the following information in relation to the Upgrade:

- (a) a general overview of the Upgrade;
- (b) an indicative timetable setting out:
  - (i) timetable for the EOI process;
  - (ii) when binding nominations under the EOI process will be required; and
  - (iii) when Capacity will be allocated under the EOI process;
- (c) a draft Capacity Commitment Deed and summaries of the draft proposed key legal documents including the new Shareholders Agreement, the SoP Agreement, the Conditions of Use and the Operation Guidelines;
- (d) summary financial information about the General Loading Charge Calculation Methodology and the assumptions underlying the estimated General Loading Charge;
- (e) summary information about the Selection Phase Study Report, the Definition Study and current capital cost estimate;
- (f) a description of the key features of the proposed PKCT Allocation Principles;
- (g) the Process Letter;
- (h) the EOI Application for completion by the relevant Respondent;
- (i) "Request for Information" process document outlining protocols for communications and providing information to Respondents;
- (j) form of Bid Bond; and
- (k) a range for the amount of the Contribution.

**EOI Process** means the process contemplated in this document (including in respect of EOIs, EOI Applications and the allocation of capacity).

**Existing Exporters** means:

- (a) Illawarra Services Pty Ltd;
- (b) Oakbridge Pty Ltd;
- (c) Centennial Coal Company Limited;
- (d) Tahmoor Coal Pty Limited;
- (e) Metropolitan Collieries Pty Ltd/ Peabody Coaltrade Asia Private Ltd, jointly; and
- (f) Gujarat NRE Coking Coal Limited.

**Financial Year** means a period of 12 months commencing on 1 July of a calendar year and ending on 30 June of the following calendar year.

**General Loading Charge** means the General Loading Charge charged by PKCT in respect of all work and activities undertaken in respect of the unloading, storage and loading of coal.

**General Loading Charge Calculation Methodology** means the calculation methodology used to determine the General Loading Charge. The General Loading Charge will be determined on a cost recovery basis. The key commercial principle in determining the General Loading Charge will be that PKCT's expected revenue to be sufficient to meet the expected costs of PKCT.

**Interested Person** means a Port Kembla Coal Exporter who responds to the call for expressions of interest in paragraph 1(a). It is acknowledged that an Interested Person may respond to the call for expressions of interest for and on behalf of two or more Port Kembla Coal Exporters.

**JORC Code** means the Code for Reporting of Mineral Resources and Ore Reserves developed by the Australasian Joint Ore Reserves Committee (**JORC**) as published on <http://www.jorc.org>.

**MCR** means Marketable Coal Reserves defined in accordance with the Coal Guidelines attached to the JORC Code.

**MCR Life Cover Ratio** has the meaning given to it in the SoP Agreement.

**Mechanical Completion** means, in relation to Upgrade Stage One or Upgrade Stage Two, the date following practical completion of the Upgrade such that coal is able to be unloaded, stockpiled and loaded onto ships utilising the infrastructure developed by that Upgrade as more precisely defined in the new Shareholders Agreement or such earlier time as Capacity in respect of the Upgrade which is materially incremental (being an increase of not less than 2Mtpa) to the capacity existing prior to the Upgrade becomes available (as determined by the Board of PKCT).

**Operation Guidelines** means the Operation Guidelines issued to Users by PKCT and updated from time to time.

**PKCT** means Port Kembla Coal Terminal Limited ABN 72 003 942 774.

**PKCT Allocation Principles** means the principles for allocation of Capacity at the Terminal to Respondents as set out in Schedule 5.

**PKPC** means the Port Kembla Port Corporation.

**Port Kembla Coal Exporter** means:

- (a) a person which holds an exploration permit, mineral development licence, a mining lease or other Prescribed Mining Tenure for coal for one or more areas that currently has or will have legally binding and enforceable arrangements for transport of coal to the Terminal; or
- (b) a related body corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) or nominee of, or manager for, the person described in paragraph (a) who by virtue of its ownership, management rights or some other means:
  - (i) exercises effective operational control over; or
  - (ii) has, in relation to its dealings with PKCT authority to represent the interests of, one or more mines (including planned mines) producing (or expected to produce) coal for export through the Terminal; or
- (c) a related body corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) of the person described in paragraph (a) who purchases or otherwise acquires coal from one or more mines for the purpose of export through the Terminal.

**Prescribed Mining Tenure** means any mining tenure applicable to coal mining activities which is approved from time to time by the Board of PKCT for the purposes of the definition of Port Kembla Coal Exporter.

**Process Letter** means the PKCT letter prescribing various procedures which will apply to the process set out in this document including the conduct of due diligence, the procedure for clarification questions from Respondents in connection with the call for EOIs and the amount of, and timing for payment of, the initial EOI Cost Prepayment.

**Reduced Base Tonnage** has the meaning given in Schedule 5.

**Respondent** means each Interested Person who lodges an EOI Application in accordance with paragraph 2(b). It is acknowledged that a Respondent may lodge an application for and on behalf of two or more Port Kembla Coal Exporters.

**Selection Phase Study Report** means the Selection Phase Study Report to be prepared by PKCT and its consultants in respect of the Upgrade.

**Shareholder** means the Port Kembla Coal Exporters who are shareholders of PKCT.

**SoP Agreement** means the form of ship or pay agreement to be entered into between each User and PKCT.

**Source Mine** means a coal mine or a potential coal mine situated at a location that currently or potentially has transport connections to the Terminal.

**State** means any relevant New South Wales Government agency.

**Statement of Marketable Coal Reserves** means a report prepared by a Competent Person (as that term is used in the JORC Code) in accordance with the guidelines set out in the Coal Guidelines and the JORC Code which provides an estimate of the MCR as at the date the Statement is prepared.

**Terminal** means the coal terminal operated by PKCT at Port Kembla.

**Upgrade** means the staged upgrading of the infrastructure of the Terminal by way of Upgrade Stage One and Upgrade Stage Two over a number of years, including capital works to optimise and to upgrade the existing capacity.

**Upgrade Capacity** means the planned increase in Capacity of the Terminal for the Upgrade as determined by PKCT having regard to the level of interest in capacity received through the EOI Process. PKCT will also consider constraints in the capacity of the inbound rail and road infrastructure and the outbound port facilities such that the Capacity of the Terminal after the Upgrade is in reasonable balance with the remainder of the coal chain. The current maximum projected Capacity of the Terminal after the Upgrade is estimated at approximately 26.5Mtpa.

**Upgrade Stage One** means the Upgrade of the Capacity of the Terminal achieved through process improvements and investments utilising the existing equipment or replacing or refurbishing the existing equipment.

**Upgrade Stage Two** means, subject to sufficient demand for Upgrade Capacity determined by PKCT having regard to the level of interest in capacity received through the EOI Process and the development of the Definition Study, the Upgrade of the Capacity of the Terminal and the construction of a new berth, ship loader and associated equipment.

**Users** has the meaning given to that term in the Introduction.

## Schedule 2

### EOI Selection Criteria

**(a) Source Mine(s) and Marketable Coal Reserves**

The Respondent must:

- (i) identify the Source Mine or Source Mines from which the Respondent or its guarantor will source coal under its SoP Agreement<sup>1</sup>;
- (ii) provide evidence that it either holds a mining lease or a sublease of a mining lease (or an interest therein) or it (or a nominee or manager on its behalf) has applied for and is diligently pursuing the grant of a mining lease or a sublease of a mining lease in relation to the Source Mine(s) or if at the time of its EOI it (or a nominee or manager on its behalf) only holds an exploration permit or a mineral development licence in respect of a Source Mine, provide evidence to PKCT's satisfaction that it is probable that it (or a nominee or manager on its behalf) will have obtained a mining lease or a sublease of a mining lease (or an interest therein) by the estimated commencement of the term of its SoP Agreement at Mechanical Completion of Upgrade Stage One;
- (iii) nominate in Mtpa the maximum annual tonnage of coal it proposes to deliver to the Terminal;
- (iv) provide either a Statement of Marketable Coal Reserves in support of the tonnage to be allocated by it for shipment through the Terminal under, and for the 10 year evergreen term of, the SoP Agreement calculated in accordance with the Coal Guidelines attached to the JORC Code (a copy of which can be found at <http://www.jorc.org>) or evidence to PKCT's satisfaction that it will be able to provide such statement to PKCT by no later than the execution of its SoP Agreement (which is expected to be Week 16 after Receipt of ACCC Authorisation) and an overall "Reserves and Resources Statement" that complies with the JORC Code;
- (v) provide evidence that the MCR Life Cover Ratio of its or its guarantor's Source Mine or Source Mines will exceed 1.1:1 times at execution of the SoP Agreement (which is expected to be Week 16 after Receipt of ACCC Authorisation);
- (vi) provide evidence that the Recipient or its guarantor holds all Authorisations required under applicable law (including any necessary approval under the *Environmental Planning and Assessment Act 1979 (NSW)*) as are necessary for the production and delivery of coal from its Source Mine or Source Mines to the Terminal or evidence to PKCT's satisfaction that it will be able to secure such Authorisations to PKCT by no later than the execution of its SoP Agreement (which is expected to be Week 16 after Receipt of ACCC Authorisation);
- (vii) demonstrate that it will be able to comply with:
  - (A) the Conditions of Use;
  - (B) the Operation Guidelines;

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<sup>1</sup> It is acknowledged that the SoP Agreement will permit shipping from mines other than the Source Mine. The SOP Agreement will include a substitute shipper mechanism whereby a substitute shipper will be permitted to utilise tonnes available to a shipper under its SoP Agreement provided that shipper remains fully responsible for tonnes required to be shipped under the SoP Agreement.

- (C) the Respondent's coal specifications as set out in the response to paragraph 20 of its EOI Application being acceptable to PKCT.

**(b) Other Infrastructure**

The Respondent agrees that it will provide evidence that rail and/or road and other connecting or supporting infrastructure (including rail and road haulage contracts) necessary for the production and delivery of coal from its Source Mine or Source Mines will be in place as required to meet its obligations under its SoP Agreement for the Upgrade. Respondents must note that the existing rail and other connecting infrastructure may be constrained and those constraints will impact on the overall Upgrade Capacity unless the Respondent can provide evidence to PKCT's satisfaction that any infrastructure improvements required for the shipment of the Respondent's coal will be available by no later than Mechanical Completion of Upgrade Stage One.

**(c) Acceptable Security**

The Respondent must undertake to provide to PKCT's satisfaction a bank guarantee or letter of credit from a bank or other reputable financial institution that is acceptable to PKCT in respect of its obligations to PKCT under the SoP Agreement. The bank or other financial institution will be required to have a credit rating of at least A (Standard & Poor's corporation long term debt rating) or A2 (Moody's Investor Service, Inc long term debt rating). This security is in addition to the Bid Bond to be provided under paragraph 2(b) of the EOI Process and will be required to be provided on execution of the Respondent's SoP Agreement. It is anticipated that the bank guarantee or letter of credit will have a term of not less than 12 months and will be required to be replaced every 12 months pursuant to the SoP Agreement.

**(d) Affiliated Guarantor**

If the Respondent does not itself hold an exploration permit, mineral development licence, a mining lease or other Prescribed Mining Tenure, it must provide evidence to PKCT's satisfaction:

- (i) that the entity which holds the exploration permit, mineral development licence, mining lease or other Prescribed Mining Tenure (or an interest therein) or who itself or through a nominee or manager on its behalf has applied for and is diligently pursuing the grant of the exploration permit, mineral development licence, mining lease or other Prescribed Mining Tenure will guarantee all of the obligations of the Respondent under its Capacity Commitment Deed and SoP Agreement; or
- (ii) that a holding company (as that term is defined in the *Corporations Act 2001* (Cth)) of the person described in paragraph (i) will guarantee all of the obligations of the Respondent under its Capacity Commitment Deed and SoP Agreement; or
- (iii) that a nominee or related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of, or manager for, the person described in paragraph (i) who by virtue of its ownership, management rights or some other means:
  - (A) exercises effective operational control over; or
  - (B) has, in relation to its dealings with PKCT, authority to represent the interests of,

one or more Prescribed Mining Tenures producing (or expected to produce) coal for export through the Terminal will guarantee all of the obligations of the Respondent under its Capacity Commitment Deed and SoP Agreement.

**(e) Funding**

Respondents to the EOI Process will be required to fund by equity or in some other manner (**Contribution**) the development of the Upgrade of the Terminal. The Upgrade of the Terminal will not be funded by raising financial indebtedness from the debt or capital markets. PKCT is developing a framework for, and the terms and conditions of, the Contribution. Respondents should note that an LC / Bank Guarantee may be required to be provided to PKCT in support of the Contribution.

PKCT will publish that framework and those terms and conditions prior to completion of due diligence on Respondents. Each Respondent will need to demonstrate to PKCT's satisfaction that it will be able to comply with the terms and conditions of the Contribution.

**(f) Compliance with SOP Agreement and Conditions of Use**

PKCT must be satisfied (acting reasonably) that:

- the Respondent has in place, or will have, all Authorisations necessary to enable it to enter into and comply with its obligations under its SoP Agreement; and
- the Respondent will be in a position to deliver to the Terminal and ship its tonnage allocation through the Terminal by the scheduled date for Mechanical Completion of the relevant stage of the Upgrade and be capable of complying with the proposed SoP Agreement, Operation Guidelines and Conditions of Use (in the forms described in the EOI Package).

### Schedule 3

#### Form of EOI Application

**Port Kembla Coal Terminal Limited (PKCT)**  
**Attention: Peter Green**

The Company identified below submits this EOI for capacity in the Port Kembla Coal Terminal (**Terminal**).

|   |   |   |
|---|---|---|
| 1 | Company (including ABN)                         | Please note full details of Joint Venture (including participants) if Company is nominee of Joint Venture |
| 2 | Company address                                 |   |
| 3 | Guarantor (including ABN) (if applicable)       |   |
| 4 | Guarantor address (if applicable)               |   |
| 5 | Contact name                                    |   |
| 6 | Contact Details                                 | Phone:<br>Mobile:<br>Email:   |
| 7 | Name of Due Diligence Liaison Officer           |   |
| 8 | Due Diligence Liaison Officer's Contact Details | Phone:<br>Mobile:<br>Email:   |
| 9 | Project Team Member(s)                          | Name:<br>Phone:<br>Mobile:<br>Email:<br><br>Name:<br>Phone:<br>Mobile:<br>Email:                          |

|    |   |   |             |          |
|----|---|---|-------------|----------|
|    |   | Name:<br>Phone:<br>Mobile:<br>Email:  |             |          |
| 10 | External Advisors<br>(Legal/Other)  | Name:<br>Phone:<br>Mobile:<br>Email:<br><br>Name:<br>Phone:<br>Mobile:<br>Email:<br><br>Name:<br>Phone:<br>Mobile:<br>Email:  |             |          |
| 11 | Source Mine(s)  | Name (s):<br><br>Location:<br><br>Mining Lease held by Company or Guarantor: Yes/No<br><br>If yes, please attach a copy.<br><br>If no, please provide evidence of likelihood that a mining lease will be in place by the time of commencement of SoP Agreement (including copies of any application for lease and/or other evidence of diligent pursuit of the grant of lease.) |             |          |
| 12 | Best estimate of maximum tonnage of coal (in Mtpa rounded to the nearest 10,000 tpa)(being the Capped Annual Tonnage) which the Respondent would ship through the Terminal under its SoP Agreement in Financial Years one through 10. | Financial Year  | Source Mine | Mtpa     |
|    |   | 1(ending 30/6/13)   | [insert]    | [insert] |
|    |   | 2   | [insert]    | [insert] |
|    |   | 3   | [insert]    | [insert] |
|    |   | 4   | [insert]    | [insert] |
|    |   | 5   | [insert]    | [insert] |
|    |   | 6   | [insert]    | [insert] |
|    |   | 7   | [insert]    | [insert] |
|    |   | 8   | [insert]    | [insert] |
|    |   | 9   | [insert]    | [insert] |

|    |                |  |          |          |
|----|----------------|--|----------|----------|
|    |                | 10   | [insert] | [insert] |
|    |                | <b>[If Respondent has more than one Source Mine, please set out above details for each such Source Mine]</b>   |          |          |
| 13 | Rail logistics | <p>Rail logistics in place at date of this application: Yes/No</p> <p>If logistics not in place, Year Proposed: [mm.yyyy]</p> <p>Please attach to this form all material information relevant to the arrangements in place or proposed to be put in place for rail and other infrastructure necessary to transport nominated tonnage from nominated Source Mine to the Terminal by rail and to the matters referred to in paragraph (b) of schedule 2 of the document titled "EOI Process for Identifying Users for the Upgrade" dated [ ] October 2011 issued by PKCT.</p> <p>External / DECCW Approvals<br/><b>[describe]</b></p> <p>Haulage contracts<br/><b>[describe]</b></p>   |          |          |
| 14 | Road Haulage   | <p><b>[Describe arrangements for road haulage]</b></p> <p>Please attach to this form all material information relevant to the arrangements in place or proposed to be put in place for road and other infrastructure necessary to transport nominated tonnage from nominated Source Mine to the Terminal by road and to the matters referred to in paragraph (b) of schedule 2 of the document titled "EOI Process for Identifying Users for the Upgrade" dated [ ] October 2011 issued by PKCT.</p> <p>Confirmation of compliance with the drivers code of conduct set out in the Conditions of Use<br/><b>[confirm with evidence]</b></p> <p>External / DECCW Approvals<br/><b>[describe]</b></p> <p>Haulage contracts<br/><b>[describe]</b></p> |          |          |
| 15 | Coal Reserves  | <p>Please attach Statement of Marketable Coal Reserves in support of tonnage proposed to be allocated by it for shipment through the Terminal calculated in accordance with the Coal Guidelines attached to the JORC Code. If not available, please indicate when a Statement of Marketable Coal Reserves will be available. Please also attach an overall "Reserves and Resources Statement" that complies with the JORC Code.</p>  |          |          |

|     |  |   |
|-----|--|---|
| 16  | MCR Life Cover Ratio                               | <p>Please attach calculations showing that MCR Life Cover Ratio of nominated Source Mine(s) will exceed 1.1:1 with reference to the expected date of execution of SoP Agreement.</p> <p>If not possible at present to test ratio or there are insufficient Marketable Coal Reserves, please indicate when you expect to be in a position to calculate the ratio indicating compliance with the ratio.</p>   |
| 17  | Authorisations                                     | <p>Provide evidence that the Respondent has, or will have, in place all Authorisations necessary to enable it to enter into and comply with its obligations under its SoP Agreement.</p>  |
| 18  | Bid Bond   | Attached  |
| 19  | Financial Data                                     | <p>Attach last three years of audited financial statements for the Company and Guarantor (if applicable).</p>   |
| 20. | Specifications in respect of the Respondent's Coal | <p>Specifications for the product to be shipped:</p> <ul style="list-style-type: none"> <li>• Is the coal washed or unwashed?</li> <li>• What is the size distribution for the coal (ISO1953-1994, AS2418-1995)?</li> <li>• What is the nominal top size for the coal (ISO1953-1994, AS2418-1995)?</li> <li>• What is the total moisture of the coal (AS1038.1-2001)?</li> <li>• What is the bulk density of the coal (AS3899-2002)?</li> <li>• What is the dust extinction moisture of the coal (AS 4156.6-2000)?</li> <li>• What is the abrasiveness of the coal (AS 1038.19-2000)?</li> <li>• What is the angle of repose of the coal (AS2418)?</li> <li>• Evidence as to the conformance of the coal to the above specifications: <ul style="list-style-type: none"> <li>• Data to demonstrate the total moisture content and variation of such for the coal for a period of two years if available.</li> </ul> </li> </ul> |

|  |  |   |
|--|--|---|
|  |  | <ul style="list-style-type: none"> <li>• Data to demonstrate the size distribution and nominal top-size for the coal for a period of two years if available.</li> </ul> |
|--|--|---|

The Company and the Guarantor (if applicable) acknowledge that PKCT will conduct due diligence on each Respondent's EOI to determine whether it satisfies the EOI Criteria.

The Company confirms that it has authorised the Due Diligence Liaison Officer set out above to disclose information to PKCT and its consultants to enable PKCT and its consultants to expedite PKCT's due diligence enquiries, provided that confidential materials of the Company will not be made available to other Port Kembla Coal Exporters. Notwithstanding this, the Company acknowledges that PKCT will be permitted to publish or present aggregate information for all Respondents or all Port Kembla Coal Producers utilising confidential information provided by the Company.

In addition, the Company may be requested to consent to PKCT providing information relevant to its EOI to relevant industry stakeholders (for example relevant rail, road and other infrastructure providers and PKPC) to the extent necessary to evaluate its EOI and for use in the due diligence process provided that PKCT obtains agreement in the form of a confidentiality deed from each such person that the information will be kept confidential.

The Company acknowledges that rail infrastructure providers and road haulage providers may also use such information disclosed to them by PKCT for their own planning purposes. The Company also acknowledges that if it is not able to provide certain information to PKCT or consent to PKCT providing that information to relevant industry stakeholders, that failure may preclude PKCT from completing its due diligence enquiries in respect of the Company and consequently result in PKCT being unable to establish that the Company will meet the EOI Criteria.

The Company acknowledges that:

- (a) the EOI Package has been prepared to give all Respondents to the EOI Process background information on the Terminal;
- (b) neither PKCT, any Shareholder, any related body corporate of PKCT nor any of their officers, employees, consultants or advisors gives any warranty, nor makes any representations (express or implied) as to the completeness, adequacy, suitability or accuracy of the information contained in the EOI Package or any information which may be provided in connection with it; and
- (c) the information contained in the EOI Package or any information provided in connection with it has not necessarily been independently verified.

The Company has transferred its EOI Cost Prepayment in support of this EOI to the PKCT bank account specified for that purpose in the Process Letter.

The Company agrees to be bound by the dispute resolution process set out in Schedule 7 to the EOI Process.

Further, the Company acknowledges that for it to participate as a User:

- (a) it will need to be in a position to enter into a Capacity Commitment Deed in accordance with the indicative timetable set out in the EOI Package and a SoP Agreement by no later than Week 16 after Receipt of ACCC Authorisation;
- (b) it must commit to ship or pay as if it has shipped under its SoP Agreement its Capped Annual Tonnage as nominated by it in this EOI (or a proportion of that tonnage during PKCT's ramp up) as from Mechanical Completion for Upgrade Stage One; and
- (c) it must provide its Contribution in accordance with the terms and conditions of the Contribution.

Notwithstanding anything stated in this EOI, the expression of interest constituted by this EOI and the information provided by the Company in this EOI shall not bind the Company in any way. The Company is not liable to PKCT in respect of this EOI except in relation to the Company's agreement to transfer its EOI Cost Prepayment to PKCT's nominated bank account and consents to PKCT applying those funds to pay costs incurred by PKCT in connection with its due diligence enquiries.

Date 2011

|   |  |
|---|--|
| <p>Signed for and on behalf of<br/> <b>[insert name of Company]</b><br/>                 by its <b>[Chief Executive Officer or equivalent officer of the Company]</b></p> | <p>Name: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>By signing this document, the signatory confirms that he or she is authorised to execute this EOI on behalf of the Company and that all necessary internal approvals, including Board approvals where appropriate, have been obtained in order to provide this EOI to PKCT</p> |
|---|--|

## Schedule 4

### INDICATIVE TIMETABLE – SUBJECT TO CHANGE

|   |   |
|---|---|
| 20 May 2011<br><br>Week 3   | Place advertisement and send letters to Interested Persons.<br><br>Responses to advertisement and letters. PKCT to provide form of Confidentiality Deed. Interested Persons to provide executed Confidentiality Deed (so due diligence process can commence).   |
| 7 November 2011   | Updated EOI Process approved by PKCT Board. PKCT advises Interested Persons.  |
| One week after Updated EOI Process approved by PKCT Board                                       | PKCT to provide the EOI Package to Interested Persons.  |
| Four weeks after receipt of the EOI Package   | Receipt of nominations from Respondents. Respondents provide EOI Cost Prepayment and Bid Bond. PKCT commences initial due diligence enquires.   |
| Six weeks after receipt of the EOI Package  | PKCT will seek any necessary clarification from Respondents in order to determine if the Respondent satisfies the EOI Criteria other than in respect of the Contribution. Relevant Respondents to advise if they wish to continue due diligence past initial due diligence and provide supplement to EOI Cost Prepayment. |
| Twelve weeks after receipt of the EOI Package   | PKCT to provide terms and conditions of Contribution to Respondents and draft of the new Shareholders Agreement, SoP Agreement, Conditions of Use and Operations Guidelines.  |
| Two weeks after receipt of the term and conditions of the Contribution and draft documentation  | PKCT will seek any necessary clarification from Respondents in order to determine if the Respondent satisfies the EOI Criteria in respect of the Contribution.  |
| Four weeks after receipt of the term and conditions of the Contribution and draft documentation | All due diligence enquiries to be completed. PKCT forwards final execution version of Capacity Commitment Deed to each Respondent who it and its consultants determine have satisfied the EOI Criteria. Respondent executes and delivers Capacity Commitment Deed to PKCT within 10 Business Days.                        |

|   |  |
|---|--|
| Two weeks after receipt of ACCC Authorisation     | <p>PKCT and its consultants undertake capacity allocation in accordance with the PKCT Allocation Principles.</p> <p>Notification to successful Respondents and request for them to confirm their commitment to ship.</p> <p>Notification to unsuccessful Respondents.</p> <p>PKCT refunds to the unsuccessful Respondents any part of the EOI Cost Prepayment not expended by PKCT and returns Bid Bond to unsuccessful Respondents.</p> |
| Three weeks after receipt of ACCC Authorisation   | Expiry of period for Disputes lodged in accordance with the procedures set out in Schedule 7.  |
| Sixteen weeks after receipt of ACCC Authorisation | <p>The transaction documentation (including the new Shareholders Agreement, the SoP Agreement, Conditions of Use, Operation Guidelines, Contribution documentation and the PKPC leases) has been agreed by all relevant stakeholders.</p> <p>Delivery of Capacity Commitment Deed Condition confirmation letter by Respondents.</p>  |
| Twenty weeks after receipt of ACCC Authorisation  | Financial Close (Stage One).   |

## Schedule 5

### PKCT Allocation Principles

#### 1. Base Tonnage Offer

- (a) If an Existing Exporter or a Respondent for and on behalf of two or more Existing Exporters provides confirmation of a commitment to ship an amount equal to or greater than the applicable Base Tonnage then PKCT will allocate that Base Tonnage to that Existing Exporter or that Respondent.
- (b) If an Existing Exporter or a Respondent for and on behalf of two or more Existing Exporters provides confirmation of a commitment to ship an amount less than the applicable Base Tonnage (**Reduced Base Tonnage**) then PKCT will allocate the Reduced Base Tonnage to that Existing Exporter or that Respondent and the difference between the Base Tonnage and the Reduced Base Tonnage will be allocated in accordance with paragraph 2.

#### 2. Capacity

- (a) This paragraph 2 deals with Capacity not allocated under paragraph 1 (**Additional Capacity**) (including any Capacity which is the subject of a withdrawal notice under paragraph 7 of the EOI process).
- (b) If PKCT has received, in aggregate, commitments to ship from successful Respondents (including an Existing Exporter or a Respondent for and on behalf of two or more Existing Exporters) which can be satisfied in full from Additional Capacity then PKCT will allocate to successful Respondents the tonnes which they have committed to ship.
- (c) If PKCT has received, in aggregate, commitments to ship from successful Respondents which can not be satisfied in full from Additional Capacity then PKCT will allocate to successful Respondents the Additional Capacity pro-rata in the same proportion that its commitment to ship Additional Capacity bears to the total commitments to ship Additional Capacity of all such successful Respondents.

If a Respondent who has executed a Capacity Commitment Deed does not proceed to execute a SoP Agreement then the Capacity allocated to that Respondent will be re-allocated in a manner consistent with paragraphs 1 and 2.



## Schedule 7

### 1. Dispute

- (a) The procedures set out in this Schedule 7 will apply to any dispute or disagreement between PKCT and any Respondent in respect of or relating to the EOI Process set out in this document (including any claim in tort, in equity or pursuant to any statute in relation to the EOI Process) (**Dispute**).
- (b) A person must not commence any arbitration or court proceedings relating to a Dispute unless it has complied with the provisions of this Schedule 7, except where:
  - (i) a party seeks urgent injunctive relief; or
  - (ii) the Dispute relates to compliance with the procedures set out in this Schedule 7.
- (c) A person claiming that a Dispute has arisen must give written notice (a **Dispute Notice**) to the other person setting out the nature of the Dispute within 10 Business Days after the circumstances giving rise to the Dispute arises.

### 2. Negotiation

- (a) Within 5 Business Days of receipt of a Dispute Notice, the parties must each nominate a representative who has express authority to resolve the Dispute or to initiate proceedings for resolving the Dispute, and give written notice to each other party of the identity of that representative.
- (b) Within 10 Business Days after receipt of a Dispute Notice, the representatives nominated under paragraph (a) must meet at the offices of PKCT (or the offices of its nominated advisors) to seek to resolve the Dispute by negotiation. All aspects of the meeting, except the fact of its occurrence, must be kept confidential and all communications between representatives at the meeting are made on a without prejudice basis.
- (c) If the parties are unable to resolve the Dispute within 20 Business Days of the meeting referred to in paragraph (b), then they may have recourse to arbitration by a suitably qualified independent expert, litigation or other dispute resolution processes.

Each Applicant will agree to be bound to the dispute resolution process in its EOI Application.