



NOTE IN RELATION TO THE IMPLEMENTATION OF THE NEWCASTLE PORT CORPORATION VESSEL ARRIVAL SYSTEM TRIAL

Newcastle Port Corporation (NPC) will commence Stage 3 of its Vessel Arrival System Trial on 1 February 2010.

NPC wishes to provide a transitional period in which all parties can adjust their practices and processes to comply with the Vessel Arrival System Rules (Rules) which will form the basis of the Trial and which are attached to this Note.

The Trial will therefore be implemented as follows:

- **Phase 1:** From 1 February 2010 NPC will commence the compulsory tracking of all coal loading vessels (Vessels) attending the Port of Newcastle. From this date, Rule 3 of the Rules will apply to all Vessels and all Vessels must complete, sign and return to NPC the attached Berthing Notification Form. Vessels may voluntarily comply with the other parts of the Rules if they wish, however, they will not be required to do so. Until the commencement of Phase 2 discussed below, any acceptance of the Rules by a Vessel in the Berthing Notification Form will be interpreted by NPC as only applying to Rules 3 and 9. During this Phase NPC will calculate a 10 Day Notified Arrival Time for Vessels which will be used for internal purposes only.
- **Phase 2:** From 1 April 2010, NPC will commence allocating a 10 Day Notified Arrival Time to Vessels and this will be used to allocate Priority in the Queue to Vessels in accordance with Rules 4 and 5 of the Rules. Vessels can either slow steam or proceed to Newcastle in accordance with the current system. Until the commencement of Phase 3 discussed below, any acceptance of the Rules by a Vessel in the Berthing Notification Form will be interpreted by NPC as only applying to Rules 2, 3, 4, 5, 8 and 9.
- **Phase 3:** From 1 May 2010, Vessels will be required to comply with all aspects of the Rules, including the restrictions on anchoring in the Vicinity of the Port.

During the period from 1 February 2010 to 30 April 2010, NPC will not apply any restrictions to Vessels that do not comply with the Rules. However, NPC may inform Vessels that do not comply with any aspect of the Rules that are applicable at that time of their non-conformity. NPC will commence imposing restrictions on non-compliant Vessels from 1 May 2010.

Yours sincerely

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NECASTLE PORT CORPORATION VESSEL ARRIVAL SYSTEM

INTRODUCTION TO RULES

1 Introduction

- 1.1 Under New South Wales law Newcastle Port Corporation (**NPC**) exercises certain port safety functions for the Port 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 off the Port more than 48 hours prior to their estimated time of loading 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. For instance, if a vessel has anchored in the Fair Weather Anchorage in accordance with these Rules and its Loading Time is subsequently delayed, Rule 7.2 will not be applied to that vessel for remaining in the Fair Weather Anchorage to await its new Loading Time.
- 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 "10 Day Notified Arrival Time" as

per these Rules. This means that vessels may still issue their NOR at their 10 Day 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 NPC has initiated a working group that will meet and be fully informed on the way NPC will calculate and implement the 10 Day Notified Arrival Time. This group will first meet in January 2010 and will complete its task and therefore conclude by 31 March 2010.
- 1.8 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 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.
- 1.9 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.
- 1.10 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 their ETL at the Port, except if required to do so by an Emergency.
- 1.11 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.

RULES

The Vessel Arrival System Rules are as set out below.

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 Vessels must comply with Chapter IV, Regulation 10.1.1 of the International Convention for the Safety of Life at Sea, which requires that vessels be provided with an Inmarsat ship earth station.
- 3.2 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.

- 3.3 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 10 Day 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 10 Day 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 10 Day Notified Arrival Time. Only one Relevant Person is entitled to dispute a vessel's 10 Day 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 10 Day 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 10 Day 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 Rule 3, NPC fails to:
- (a) notify a vessel of its 10 Day 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 10 Day Notified Arrival Time. In these circumstances, the 10 Day Notified Arrival Time for the substitute vessel will be calculated in accordance with Rule 4.
- 5.2 Substitution of a vessel which has already been notified of its 10 Day Notified Arrival Time may occur in accordance with Terminal policies. Where substitution

occurs in these circumstances the 10 Day Notified Arrival Time of the substitute vessel will be calculated as follows:

- (a) if the estimated time of arrival of the substitute vessel is earlier than the estimated time of arrival of the substituted vessel, then the 10 Day Notified Arrival Time of the substituted vessel will be allocated to the substitute vessel; and
- (b) if the estimated time of arrival of the substitute vessel is later than the estimated time of arrival of the substituted vessel, then a new 10 Day Notified Arrival Time will be calculated and allocated to the substitute vessel in accordance with Rule 4.

6 Arriving at the Port

- 6.1 Except where Rule 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 these Rules 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 10 Day 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 10 Day 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 and their Introduction 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;

10 Day 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 after the said time of notification by NPC to the vessel. Such 10 Day Notified Arrival Time shall include month/date/hours;

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 Inmarsat global tracking and communications system which must be installed under Chapter IV, Regulation 10.1.1 of the International Convention for the Safety of Life at Sea;

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;

Vicinity of the Port means the area near, surrounding or proximate to the Port; and

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

9.2 In these Rules and their Introduction 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).



Newcastle Port Corporation - Berthing Notification Form

This form **must** be completed by all coal loading vessels visiting the Port of Newcastle (Port) as part of Newcastle Port Corporation's (NPC) Vessel Arrival System Trial. Under the Vessel Arrival System Rules (Rules) a coal loading vessel that does not complete and provide this form to the email address or facsimile number specified below at least 14 days prior to the vessel arriving off the Port **may not be permitted to enter the Port**.

All coal loading vessels visiting the Port must comply with the Vessel Arrival System Rules, which are attached to this form or which can be found on NPC's website at www.newportcorp.com.au.

NPC will use the information provided in this Form to track the transit of vessels to the Port, provide a vessel with its 10 Day Notified Arrival Time as contemplated by the Rules and to assess a vessel's compliance with the Rules.

Name of Vessel		
IMO Number		
Vessel Length Over All - LOA		
International Ship Security Certificate	Number	Expiry Date
Vessel e-mail address		
Agent		
Vessel Arrival System Tracking :		
Inmarsat C Unit Make / Model No.		
Inmarsat Mobile Number	4 _ _ _ _ _	

I, the authorised representative of the vessel listed above confirm as follows:

- (a) I am authorised to sign this form on behalf of the vessel;
- (b) the information provided above is correct;
- (c) I authorise NPC to use the information in this form for the purposes outlined above;
- (d) I have received a copy of the Vessel Arrival System Rules for the Port of Newcastle; and
- (e) the vessel accepts and will comply with the Vessel Arrival System Rules for the Port of Newcastle.

Signature of Authorised Representative

Print name of Authorised Representative

Date

*This information is to be submitted by the vessel to VTIC by e-mail vtic@newportcorp.com or facsimile (02) 49250611 **at least 14 days prior to the vessel arriving off the Port.***