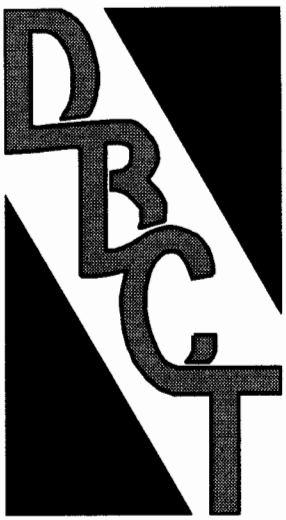

# Dalrymple Bay Coal Terminal Pty Ltd

## Update and further submission in support of authorisation for proposed queue management system at Dalrymple Bay Coal Terminal

2 August 2005

# Dalrymple Bay Coal Terminal Pty Ltd

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## 1 Introduction and executive summary

### 1.1 Introduction

This update and further submission is made by Dalrymple Bay Coal Terminal Pty Ltd ("**DBCTPL**") in its capacity as operator of the Dalrymple Bay Coal Terminal ("**Terminal**").

This further submission supports DBCTPL's applications on 5 April 2005 for authorisation of the proposed solution to prevent extensive vessel queues at the Terminal, under sections 88(1) and 88(7) of the *Trade Practices Act 1974 (Cth)* ("**TPA**").

The particular conduct to be authorised is the operation of the queue management system ("**QMS**") to address the imbalance between the demand for coal loading services at the Terminal and the capacity of the Goonyella coal supply chain, including the Terminal (together "**System Capacity**"), to meet this demand.

The QMS in the form of the *Dalrymple Bay Coal Terminal, Queue Management System Amendment to Terminal Regulations*, was granted interim authorisation by the Australian Competition and Consumer Commission ("**Commission**") on 29 April 2005 and a variation was granted on 25 May 2005 ("**Interim Authorisation**").

### 1.2 Purpose of submission

This further submission provides:

- an update on the successful operation of the QMS since the Interim Authorisation was granted by the Commission and commenced operation after approval by the Babcock & Brown company BBI (DBCT) Management Pty Ltd (formerly called Prime Infrastructure Management (DBCT) Pty Limited) ("**BBI**"); and
- addresses the further general information sought by the Commission in relation to the operation and impact of the QMS,

in order to assist the Commission's assessment of DBCTPL's authorisation application.

DBCTPL notes that all existing users of the Terminal ("**Users**") supported the introduction of the QMS and continue to support the QMS. The issues that DBCTPL is currently reviewing with Users (in consultation with customers of Users), are operational refinements as well as improvements to the QMS.

## 1.3 Operation of the QMS

The QMS initially commenced operating in queue reduction mode and the initial objective of reducing the queue has been achieved. Since 1 July 2005, the QMS has been operating in queue management mode. Queue management mode is focussed toward ensuring maximum operational efficiency of the Terminal while also ensuring the vessel queue is maintained at a working queue level. The QMS will continue to operate in queue management mode while there is insufficient System Capacity to meet the demand for Terminal services. It is anticipated that an imbalance between demand and supply will remain until the end of 2008.

DBCTPL is continuing to consult widely to ensure the efficient operation of the QMS while in queue management mode. As the Commission may be aware, there appears to be consensus among Users that the QMS continues to be required and that there are only certain issues of practical and operational detail that need to be refined. DBCTPL has put into place processes for immediate refinement and has also put into place a more detailed review process (principally with Users) to review certain specific practical issues where further data is required on which to make commercial decisions on the most efficient approach.

DBCTPL notes that there will continue to be opportunities for improvements in the coal chain. DBCTPL with its shareholders, Users and coal chain stakeholders has sought through logistics committees to facilitate those improvements. The process that DBCTPL has put into place with other stakeholders in relation to the coal chain should provide continued operational flexibility to seek efficiency improvements. This is considered further in this submission.

Dealing with the questions raised by the Commission on the operation of the QMS:

- **Period of operation:** it is envisaged that between now and the end of 2008 it is unlikely that System Capacity will exceed demand. In these circumstances, it is submitted that the operation of the QMS should not be dependent on strict definitions regarding the "volume" over which demand must exceed System Capacity for a defined "sustained period" as experience has shown that there are a variety of complex reasons for System Capacity misalignment at any given time. While DBCTPL (and its shareholders) do not wish to see the QMS operate when it is not needed, there is a danger that selecting an arbitrary figure would not allow DBCTPL the necessary flexibility to ensure the QMS process operates to ensure maximum Terminal efficiency and throughput while also minimising demurrage. The reasons why DBCTPL believes flexibility is needed are explained later in this submission. Given the structure of the ownership and management at the Terminal, and the widely known capacity issues at hand, DBCTPL does not believe an issue has been raised as to the length of the authorisation sought by DBCTPL.

- **Declaration of System Capacity:** the Independent Expert's process of forecasting System Capacity requires an analysis of a number of factors including the relevant forecast period, the throughput rate for each element of the coal supply chain, the historical success rate in achieving allocated throughput and predicted outages. This is explained later in this submission.

- **Queue Reduction System Capacity:** the appropriate timing of a Queue Reduction System Capacity request is a complex matter which requires flexible rules for application and is not well suited to a definitive figure on vessel queue numbers or time periods. Using an arbitrary number may see the QMS not being sufficiently flexible to deal with day to day operational issues. This is discussed later in this submission.

- **Physical Compensation:** the position in the QMS Terminal Regulations is based on a consideration of Users' concerns that physical compensation for non use of loading entitlement would operate unfairly between Users. Having regard to the existing take or pay regime that is in operation, the majority of the Users and therefore DBCTPL, decided not to pursue additional physical compensation arrangements. As set out later in this submission, this position is subject to the current review process being undertaken by DBCTPL.

- **Dispute resolution:** the QMS amendments to the Terminal Regulations, as provided to the Commission, set out the basic framework for a dispute resolution process for Users who are not satisfied with the operation of the QMS. The process has already been used and appears to be acceptable.

- **New user entitlement:** DBCTPL confirms that the process for new user entitlements was changed in the amended Terminal Regulations provided to the Commission subsequent to DBCTPL's initial submission. DBCTPL believes that the QMS continues to facilitate fair access to the Terminal for new users and no issues have been raised with DBCTPL in relation to new users since the change was made.

- **Request for reports:** DBCTPL is happy to provide the daily QMS report (currently provided to Users) to the Commission so that the Commission is informed as to progress under the QMS. The report contains some confidential information of Users and is therefore not provided for the public register. For the purposes of transparency, and to ensure there is clear understanding of the status of the QMS, DBCTPL is comfortable for this submission to be included on the public register.

## 1.4 The reduction of the vessel queue at the Terminal

DBCTPL believes that the primary reason for the reduction in the vessel queue prior to the introduction of the QMS was the prospect itself of the introduction of the QMS and the "working queue" targeted for July 2005. Users were made aware of the system entitlements and the proposed introduction of the QMS as early as March. Sufficient information was available as early as March to estimate an overall percentage reduction against contract and estimates of individual company positions were discussed among Users in April. By early May, all Users had received informal notification of the likely allocation for the April to June quarter. In late May the allocations were confirmed.

It is a logical commercial response by a coal shipper to respond to this information and incorporate it in vessel acceptance plans before the QMS was formally introduced.

As set out in some of the public submissions to the Commission, steps were taken prior to the commencement of the QMS by individual Users seeking to prepare their own positions. These steps resulted in the vessel queue decreasing before the formal introduction date (which was later than expected due to issues not related to regulatory approval).

In order to ensure all views are put forward, we note for completeness that some coal companies may believe there are other or additional reasons for the queue reduction and in fact that the queue reduction was caused by a combination of factors. However, DBCTPL has its own view on the reasons as set out above, which is a view that is shared by its shareholders who constitute the majority of Users.

## 1.5 Assessment of public benefit and detriment

The current version of the Terminal Regulations was prepared based on extensive consultation with Users. In order to ensure the continued efficient operation of the Terminal, DBCTPL management, in conjunction with the Users, is conducting a review while under queue management mode of the operation of the QMS under the Interim Authorisation. This review process involves data collection over at least a six week period (data collected from earlier periods may also be added to discern emerging trends) and then an assessment to determine if further changes are warranted. This review will then be discussed with Users to assess the operational merits of any changes and then further consultation with the Commission will occur.

The review process has merit and DBCTPL believes that this is a sensible and practical approach to making such important assessments. If the Commission has any concerns with this approach, please let us know.

DBCTPL also acknowledges that the ability to adopt this practical and commercial approach has been assisted by the Commission's facilitative approach in devoting resources to review this matter and making a timely assessment of the Interim Authorisation application.

In terms of the overall public benefits and detriments, DBCTPL believes that substantial public benefits have flowed, and will continue to flow from the vessel queue reduction and management, and that the primary focus is now on refinements to the QMS. DBCTPL believes there is general consensus on this view.

Subject to the findings of the review process on certain refinements which is still to occur, DBCTPL's position on the issues mentioned by the Commission is as follows:

- **Monthly allocations:** DBCTPL believes that monthly, rather than quarterly, user entitlement allocation allows greater scope for "active management" of the working vessel queue. It is very important that DBCTPL maintains such flexibility if the public benefits arising as a result of the QMS are to be maximised. However, in order to ensure that the practical operation of the QMS is consistent with this approach, DBCTPL in conjunction with the Users, has agreed to a review process in order to obtain more factual data to confirm the respective merits and detriments of monthly and quarterly allocations. It is noted that logistical issues associated with monthly allocations have been raised by some customers of Users. It is understood that other customers have expressed support for the QMS in its current form. The precise reason for their concerns differ, as does their view on the appropriate timeframe for allocations. DBCTPL and Users are working with customers to explain the QMS to address these concerns and it is hoped to resolve all concerns at an operational logistics level.

- **Smaller vessels:** the question as to whether a monthly allocation system will lead to smaller vessels being scheduled is a matter of speculation, the answer can only be reliably shown through further experience of the QMS. This issue is also being assessed as part of the review.[1]

- **Incentives to swap unused allocation:** the introduction of further "incentives" which, in practice, means additional penalties on Users for failing to swap unused allocation, was considered by DBCTPL and the Users and was not acceptable to all Users. Nonetheless, this issue is being reviewed in the light of the experience of the operation of the QMS.[2]

- **Impact on exports:** DBCTPL believes that the QMS should have (and has had) no impact on the aggregate amount of exports through the Terminal as throughput through the Terminal is not reduced by the QMS. What is reduced is the "deadweight loss" to Australia through wasted demurrage costs. There are also varying issues unassociated with the QMS which have an effect on coal production that have arisen in recent months. These include production problems

[1] DBCTPL notes, however, that external market forces also have a practical impact on this particular issue. For example, a change in iron ore exports from Australia means that there may be different numbers of vessels of the larger sizes available for coal exports. The influence of this factor on vessel size is difficult to assess.

[2] It is also important to note that "swaps" already occur

at some mines, de-railments and individual decisions as to stockpiling, type of production and the export terminal chosen to be used by coal miners. Throughout this period, there had been a working queue and the QMS has delivered the same level of exports as would have occurred, but has been successful in achieving a planned queue reduction precisely as expected.

- **Demurrage projections:** DBCTPL believes that its projections for demurrage cost savings in its original submission remain reasonable.

## 1.6 Goonyella coal supply chain co-ordination

A coal chain logistics co-ordination team - the Goonyella Coal Chain Improvement Program ("**GCCIP**") (which involves QR National, QR NA, the owner of the adjacent Hay Point terminal and various stakeholders in the coal industry), had already been put in place by the coal chain stakeholders well before the May 2005 Exports and Infrastructure Taskforce Report recommending such teams. GCCIP is well resourced and represents a substantial investment by all parties concerned in the initiative.

DBCTPL believes that the co-ordinational transparency arising from the involvement of coal chain stakeholders in GCCIP, means that GCCIP is the best placed entity to assist in the Goonyella coal supply chain co-ordination.

Although planned expansion at the Terminal and the co-ordination efforts in the Goonyella coal supply chain will remove the need for the QMS in the long term, these activities are not sufficient to address excessive demurrage costs in the short to medium term. DBCTPL's application in respect of the QMS relates to resolving the issue of excessive demurrage costs to Users of the Terminal in the short to medium term potentially until the end of 2008.

## 1.7 Conclusion and next steps

DBCTPL continues to consult extensively to refine the QMS. This work, at a "micro" level, is being conducted in parallel with the broader GCCIP project which is endeavouring to identify broader system opportunities to expand System Capacity. This consultation is seen as an ongoing process through the period of operation of the QMS.

DBCTPL reiterates its view that the QMS will generate substantial public benefits, especially by significantly reducing deadweight demurrage charges, and that the QMS will have no detriment to the public.

The current position is that there is unanimous support for a QMS by all Users. There are currently operational refinements being made by DBCTPL to the QMS and those refinements may be submitted to the Commission in the next few weeks in the form of Revised Terminal Regulations. DBCTPL and the Users do not believe that these changes will have any negative impact. Following the six week review period further changes to the QMS and therefore the Terminal Regulations may be needed for operational and efficiency improvements.

Having regard to these prospective changes to the QMS, DBCTPL wishes to formally request the Commission to allow additional time to assess the QMS and to consider deferring issuing any draft or final determination until these issues can be worked through by DBCTPL with all Users. It is not anticipated that DBCTPL would require any significant period of time for this process as any final version of QMS Terminal Regulations for the purposes of this authorisation application would still be anticipated to be submitted by the end of September. It is noted that all Users are agreeable to this general timeframe as it allows data to be collected and assessed with Users, and consultation to occur with Users (and their customers), which is a process which is both consultative in scope and definitive in timeframe.

DBCTPL believes this approach is consistent with the principles espoused in the recent Exports and Infrastructure Taskforce Report, which recommended industry participants being encouraged to reach commercial agreement in the first instance. In this context, adequate time is required for industry participants to finalise the operational refinements to the QMS Terminal Regulations currently being discussed and reviewed.

It is hoped that for such a significant and complex matter, the Commission will be agreeable to this approach, recognising it is something acceptable to the industry both for the commercial certainty and for the considered decision making process which it allows.

# 2 Current review process for operational refinements to the QMS

The QMS amendments to the Terminal Regulations were prepared based on consultation with Users both by DBCTPL and BBI. DBCTPL management is committed to ensuring optimal efficiency of operations at the Terminal and is therefore, in conjunction with the Users, still reviewing the operation of the QMS in queue management mode under the Interim Authorisation.

This review process involves data collection over a six week period (which may involve comparison with data collected from earlier periods to discern emerging trends) and then an assessment to determine if further changes are warranted in the context of the QMS' current "queue management mode". This review will then be held with Users to assess the operational merits of any changes and then further consultation with the Commission will occur. DBCTPL and all Users believe that this is the sensible and practical approach to making such important assessments.

DBCTPL would also like to acknowledge that this commercial approach has been assisted by the Commission's facilitative approach in devoting resources and making a timely assessment of the Interim Authorisation application.

DBCTPL believes that substantial public benefits have and will continue to flow from the vessel queue reduction and that the assessment is now essentially that of operational refinements to the QMS. DBCTPL believes there is consensus on this view.

Although the refinement process is still occurring, DBCTPL's believes that it remains clear that the public benefits arising from the QMS are significant and there are no public detriments.

# 3 Response to Commission questions

## 3.1 Operation of the QMS

***Question 1:*** *Page 5 of the supporting submission to the application states that 'the QMS will not operate at any time that demand does not exceed System Capacity for a sustained period.'*

*Please explain:*

*(a) whether demand is required to exceed system capacity by a certain volume;*

*(b) the definition of 'sustained period'; and*

*(c) when and how often System Capacity will be reviewed to determine whether the QMS should operate.*

It is envisaged that during the QMS' period of operation between now and the end of 2008 it is unlikely that System Capacity will exceed demand for the services provided by the Terminal. In these circumstances, it is submitted that the operation of the QMS should not be dependent on strict definitions regarding the "volume" over which demand must exceed System Capacity for a defined "sustained period" as experience has shown there are a variety of complex reasons for System Capacity misalignment at any given time.

In response to sub-questions (a), (b) and (c), underpinning the QMS is a rolling five quarter System Capacity forecast process which takes into account the "brownfields" expansion of Terminal, rail and power infrastructure expected to occur during the period the QMS operates. A rolling five quarter System Capacity forecast period provides **transparency**, and provided that sufficiently accurate data is received from regulated service providers, the forecast period also provides Users with **certainty** about forecast System Capacity. The forecast process requires System Capacity to be reviewed monthly.

DBCTPL does not believe it is appropriate to base a trigger on a specific vessel queue or figure as there could be a variety of complex factors leading to those numbers. If, as part of the forecast process, the QMS identifies a sufficiently negative imbalance between demand and System Capacity (which would lead to a build up of vessels in the queue) the QMS demand allocation processes will apply. It is important that this forecast process is flexible and able to take into consideration the numerous and varied factors associated with analysing demand and its relationship to System Capacity. DBCTPL does not consider it appropriate to establish strict definitions regarding the "volume" over which demand must exceed System Capacity or a strict period which would constitute a "sustained period". Such strict definitions would be by their nature artificial and arbitrary, and would not allow DBCTPL the necessary flexibility to ensure the QMS demand allocation process operates to ensure maximum Terminal efficiency and throughput while also minimising demurrage.

DBCTPL appreciates that the Commission may wish to have an objectively verifiable figure to assess, but DBCTPL notes that this process in the QMS has been constructed with the participation and consultation of all Users. In addition, Terminal expansion is within the control of BBI and the capacity and demand imbalance on any forecast is not anticipated to be resolved until at least the end of 2008.

***Question 2:*** *Please provide a more detailed explanation of the Independent Expert's process for declaring System Capacity, including the level of industry consultation. In addition, please confirm the current declared system capacity.*

The current declared System Capacity for the month of July is 52.86 Mtpa.

The Independent Expert's process of forecasting System Capacity requires an analysis of a number of factors.

Firstly, the relevant forecast period must be established. At the calculation level, the relevant forecast period is one day. However the System Capacity reporting period is one month as stipulated in the Terminal Regulations as amended to incorporate the QMS.

Secondly, the appropriate throughput rate for the element of the system under consideration must be established. The elements of the Goonyella coal chain that will be assessed are as follows:

(a) the below rail infrastructure (provided by QR Rail Access);

(b) the above rail infrastructure (provided by QR National);

(c) Terminal in-loading facilities;

(d) Terminal stockyard facilities;

(e) Terminal out-loading facilities; and

(f) the vessel stream.

Thirdly, having assessed these elements, consideration is given to the system's previous success rate in achieving the existing throughput levels. Historical data is used as a starting point in forecasting system throughput.

Fourthly, planned and predicted outages (such as weather, expansion works and maintenance) will be taken into consideration.

The Independent Expert consults extensively with:

- Queensland Rail (Network Access) (the rail access provider);
- Queensland Rail (National) (the rail haulage provider);
- DBCTPL; and

- the Stakeholder Operations Monthly Meeting (comprising representatives of all current DBCT Users, Queensland Rail (Network Access), Queensland Rail (National), Hay Point Services and BBI.

The overriding objective of the System Capacity forecasting process is to provide a practicable throughput assessment that enables the vessel queue to be managed to achieve maximum utilisation of System Capacity while also minimising demurrage charges.

***Question 3:*** *Clause 4.2 of the current Terminal Regulations provides that where the queue is significantly larger than a working queue, and it is not likely to be reduced, DBCTPL will request the Independent Expert to determine a Queue Reduction System Capacity.*

*Please provide further detail in relation to the operation of this clause, particularly whether the queue has to exceed the working queue by a specific quantity for a specified time.*

The appropriate timing of a Queue Reduction System Capacity request is a complex matter requiring analysis of a number of factors. As an adaptive supply network,[3] flexibility is required, as opposed to linear or mechanistic rules.

The complexity is demonstrated by an analysis of the characteristics and operational realities of the vessel queue itself. The vessel queue at the port of Hay Point consists of vessels designated for either the Hay Point Services terminal or the Terminal. Within the vessel queue designated for the Terminal there are vessels with varying levels of status. Each vessel must pass through each status before berthing and loading can occur, although not necessarily in any particular sequence. As a simple example, before berthing and loading of a vessel can occur, each vessel must have:

(a) an entitlement to load coal at the Terminal;

(b) coal at the Terminal designated for loading onto the vessel; and

(c) completed the preloading process.

Therefore, it is overly simplified to consider only "**the** vessel queue" in the context of a Queue Reduction System Capacity. While there are two broad types of queue created by the QMS, the working queue (ie the queue of vessels that have completed the requirements above) and the dead queue (ie the queue of vessels that have not completed the requirements above), there are in fact a number of different vessel queues for vessels at various status levels. Thorough consideration is required of not only the number of vessels in the queue awaiting loading of coal at the Terminal, but also the status of vessels in the queue.

The logistical complexity involved in the coal loading process at the Terminal is increased further by the fact that, in many instances, the loading process also requires the blending of various coal types. Blending of coal types occurs in order to produce the specific compositions requested by customers.

[3] See www.cmis.csiro.au/asn/asn-introduction.htm

As the types of coal required for each blend may arrive at the Terminal at different times and in different sequences, sophisticated and flexible co-ordination procedures are required to match the coal types arriving at the Terminal with the blend loading requirements of the vessels arriving at the Terminal.

There are also other complicating factors which make set criteria in relation to a Queue Reduction System Capacity unworkable. As an example, a queue may build triggering set criteria if a rail system suddenly shut down for a period. However, it might be expected to quickly abate if major maintenance could be re-scheduled to coincide with the downtime.

This process of analysing the appropriate time to request a Queue Reduction System Capacity, and the development of the Queue Reduction System Capacity itself, is more suited to the flexibility of the ongoing assessment of the Independent Expert rather than to arbitrarily set criteria.

***Question 4:*** *Page 4 of the supporting submission to the application provides that 'producers who under-use allocation may be subject to physical compensation and take or pay obligations under User Agreements.'*

*Please clarify the operation of the physical and financial compensation mechanisms under the Terminal Regulations, including when they would be applied.*

The existing User Agreements that regulate the provision of services to Users of the Terminal include "take or pay" arrangements if a User's shipments in a given period are less than their agreed Annual Contract Tonnage. These arrangements provide an incentive for Users to ship coal consistent with their Annual Contract Tonnage.

As indicated in DBCTPL's initial submission to the Commission, during the initial planning phase of the QMS it was contemplated that it may be appropriate to introduce additional "penalties" (in the form of physical or financial compensation) for failing to swap unused entitlement under the Terminal Regulations. In the interests of quickly establishing a set of terminal regulations to manage down the then critical queue of approximately 50 vessels, DBCTPL sought to reach a compromise outcome on a number of matters, with application of penalties being one issue. A number of Users argued that such arrangements for physical and financial compensation would operate unfairly given the existing take or pay arrangements and the existing capacity constraints.

In response to User representations and a judgement that incentives in the QMS are adequate to encourage use or transfer of allocation, DBCTPL decided not to pursue such arrangements.

This issue is still being considered by DBCTPL in relation to the QMS and it will be revisited after the review process is completed.

***Question 5:*** *Page 27 of the supporting submission to the application states that a dispute resolution process is proposed to be created for persons dissatisfied with decisions of DBCTPL in respect of the QMS.*

*Please explain:*

*(a) whether a dispute resolution process has been developed; and*

*(b) the procedures involved, including the type of decisions that may be reviewed by an independent administrator.*

The QMS amendments to the Terminal Regulations, as provided to the Commission, set out the basic framework for a dispute resolution process for Users who are unsatisfied with the operation of the QMS.

Under clause 7(a)(i) of the Terminal Regulation amendments, the Independent Expert (currently Ernst & Young) may determine any appeal by a User in relation to the exercise of a discretion by DBCTPL under the QMS which materially impacts on that User. This right of appeal only applies to the extent that an appeal can be conducted before the DBCTPL's exercise of discretion is implemented.

The dispute resolution process as provided for in the Terminal Regulations has already been utilised by Users, and it appears the process is considered acceptable.

***Question 6:*** *Pages 26 and 27 of the supporting submission to the application outline how DBCTPL will manage coal loading allocations to enable new producers to ship coal through the terminal.*

*Are these sections of the supporting submission consistent with the recent amendment to the Terminal Regulations, which deleted the sentence concerning the definition of Monthly Contract Tonnage for new entrants?*

It was DBCT's original intention that new Users who had entered into a User Agreement with BBI, but who had not yet delivered coal to the Terminal would **not** receive an entitlement allocation under the QMS. However, such a User could still assign (at an agreed rate) the Annual Contract Tonnage under their User Agreement to Users who were currently delivering coal to the Terminal. The Users who were to be assigned such additional Annual Contract Tonnage where then to be allowed corresponding entitlement allocation.

As the Commission is aware, after consultation with existing and new Users, DBCT agreed to amend the definition of "Monthly Contract Tonnage" in the QMS amendments to the Terminal Regulations as follows:

> ***Monthly Contract Tonnage*** *in respect of a User for a relevant Month, the Annual Contract Tonnage of that User at that time pursuant to its User Agreement divided by the number of days in the relevant Financial Year, multiplied by the number of days in the relevant Month.* ~~*However, if a User has not yet delivered Coal to the Terminal pursuant to a relevant User Agreement, its Monthly Contract Tonnage in respect of that User Agreement will be deemed to be nil until the month in which it first delivers Coal to the Terminal.*~~ *(For clarification, the Annual*

*Contract Tonnage under a User Agreement in a relevant Month will be taken to be an annualised amount at that time, even if it is not expressed as such in a User Agreement. For example, if a User Agreement entitles a User to Ship 3 million tonnes of Coal in the period January to June in a Financial Year, the Annual Contract Tonnage during that period will be taken to be expressed as (approximately) 6 million tonnes per annum for the purposes of this definition.)*

The effect of this amendment is that new Users who have entered into a User Agreement with BBI automatically receive an entitlement allocation under the QMS. DBCT believes that the effect of this change is not significant as new Users who are not in a position to use their entitlement would trade their entitlement in any case (rather than assign their Annual Contract Tonnage as previously contemplated).

DBCTPL confirms, therefore, its initial view that although the process in the Terminal Regulations has been altered from that contemplated in DBCTPL's initial submission, there are still no barriers to entry or expansion at the Terminal as a result of the QMS. The QMS continues to facilitate new Users' fair access to the Terminal and no further issues have been raised with DBCTPL regarding this issue since the change was made.

***Question 7:*** *Clause 8 of the Terminal Regulations provides that DBCTPL is required to send BBI and coal producers a weekly System Management Report.*

*If possible, we would also appreciate receiving this weekly report.*

DBCTPL is happy to provide the weekly QMS report to the Commission. DBCTPL notes that the weekly QMS report contains some commercially confidential information of Users and DBCTPL requests that these reports not be included on the register.

## 3.2 The queue

***Question 8:*** *We understand that the level of the queue at Dalrymple Bay Coal Terminal fell substantially prior to the formal introduction of the QMS.*

*Please provide:*

*(a) confirmation of the number of vessels in the queue when the QMS was introduced;*

*(b) your views on what caused the reduction in the queue to that point; and*

*(c) the changes in the level of the queue since the QMS has been introduced.*

When DBCTPL lodged its application on 5 April 2005 with the Commission the vessel queue was over 50 vessels. On 27 May 2005 when the QMS amendments to the Terminal Regulations were approved by Prime (as BBI was then) the vessel queue was 27 vessels. At the time the QMS was put into effect on 3 June 2005 the number of vessels in the queue was 24 vessels. The vessel queue has now reduced to a working queue of 10-15 vessels.

During the period from the lodgment of DBCTPL's application for authorisation of the QMS until the date on which the QMS was introduced under the Interim Authorisation, the Terminal's vessel queue reduced significantly. DBCTPL believes that the primary reason for the reduction in the vessel queue during this period was the prospect itself of the introduction of the QMS and the specifically identified "working queue" targeted for July 2005.

As explained on page 33 of DBCTPL's original submission to the Commission, the "tragedy of the commons" plays a significant role in determining the size of the vessel queue at the Terminal. The tragedy of the commons occurs where, when confronted with "oversold" System Capacity, all producers add more and more vessels to the queue in response to its perception that its competitors will be doing the same. Therefore "oversold" capacity becomes self-fulfilling. DBCTPL believes that the impending introduction of the QMS was an active factor in softening the impact of the tragedy of the commons.

Further, a peripheral factor may have been User uncertainty as to the effectiveness of the queue reduction of the QMS which could have affected User decision making in respect of the scheduling of vessels.

To provide all views, DBCTPL notes that some coal companies may believe that there are a broader range of reasons for the reduction of the vessel queue and therefore no definitive view should be put forward as it is speculation. However, DBCTPL has a firm view on the reasons as set out above, a view that is shared by its shareholders and certainly the majority of Users.

## 3.3 Assessment of public benefit and detriment

***Question 9(a):*** *To assist the ACCC's evaluation of the QMS, please provide additional information on the following public detriment and benefit issues:*

*DBCTPL submits (on page 32 of its supporting submission) that the QMS is designed to ensure that the terminal operates at full system capacity, which will mean that there should not be any overall reduction in exports as a result of the QMS.*

*Please respond to concerns raised that system capacity will not be maximised under the QMS, including claims that:*

- *monthly allocations (as opposed to quarterly allocations) limit the flexibility for producers to schedule vessels in time to utilise any spare capacity; and*
- ...

As discussed earlier, the QMS incorporates a transparent rolling five quarter forecast system which permits Users to anticipate variability in System Capacity and User entitlement. If this transparent system was accompanied by quarterly rather than monthly allocation DBCTPL believes it is likely, based on its own experience of capacity issues prior to the introduction of the QMS, that "front end loading" of the "quarter allocation" would occur.

DBCTPL's experience is that where Users anticipate a scarcity of capacity compared with entitlement, they have sought to 'front end load' the queue (essentially increasing individual User shipments compared to the average). Front. Front end loading could be exacerbated in a quarterly allocation period. The attached graph and historical data is consistent with this belief.

The likely impact of front end loading within a quarter would be to increase the size of the vessel queue thereby reducing the realisation of the public benefit arising as a result of the QMS. Any unnecessary increase in the size of the vessel queue would result in increased demurrage costs being paid by Users and would detract from Australia's reputation as a reliable and cost efficient supplier of metallurgical and steaming coal.

Given the anticipated "brownfields" expansion activity at the Terminal, DBCT believes that monthly, rather than quarterly, confirmation of System Capacity and user allocation allows greater scope for "active management" of the working vessel queue. As discussed above, determining System Capacity and managing the working vessel queue involves the weighing of a number of complex factors. Adaptive supply networks,[4] like the Terminal's operations, require flexibility, not linear or mechanistic rules. It is crucial that DBCTPL maintains flexibility in management if the public benefits arising as a result of the QMS (primarily in the form of reduced deadweight demurrage and the enhanced reputation of the Terminal) are to be maximised. Further, it is DBCTPL's belief that a monthly allocation system ensures that DBCTPL is best placed to 'actively manage' the QMS so as to minimise risk of a reduction of exports through the Terminal.

However, DBCTPL recognises that the monthly versus quarterly allocation of entitlement issue is of concern to some Users. In order to ensure that the practical operation of the QMS is consistent with the consensus goal of achieving maximum and equitable throughput at the Terminal, DBCTPL, in conjunction with the Users, has agreed to a review process in order to obtain more factual data to confirm the respective merits and detriments of monthly and quarterly allocations.

DBCTPL also acknowledges that some third party customers of coal producers who use the Terminal have made submissions to the Commission suggesting that the monthly entitlement allocation system used as part of the QMS is causing disruptions to shipping schedules. DBCTPL is aware of other third party customers who have taken the contrary view and prefer the monthly allocation system. The precise reason for the concerns of third party customers differs as does their view on the appropriate timeframe. DBCTPL and the individual coal companies are having discussions with relevant customers to provide greater explanation of the operation of the QMS in order to address the initial issues that have arisen with logistics. It is hoped that these discussions will resolve any concerns.

[4] See www.cmis.csiro.au/asn/asn-introduction.htm

***Question 9(a) continued:*** *Please respond to concerns raised that system capacity will not be maximised under the QMS, including claims that:*

...

- *this lack of flexibility may lead to smaller vessels being scheduled and increase the need for multi-parcelling at the terminal; and*

...

The issues of smaller vessels being scheduled is one of the issues being monitored as part of the current review process so that any undesirable trends can be detected and reduced. The review process will take into account market factors that might also account for vessel size: due to international market factors, vessel size may vary irrespective of the QMS.

At this early stage, DBCTPL believes that whether a monthly allocation system will lead to smaller vessels being scheduled is matter of speculation, the answer can only be reliably shown through further experience of the QMS.

***Question 9(a) continued:*** *Please respond to concerns raised that system capacity will not be maximised under the QMS, including claims that:*

...

- *there are insufficient incentives under the QMS to encourage producers to swap their un-used allocation in a timely manner; and*

...

The existing User Agreements contain "take or pay" obligations which provide an incentive for Users to swap their unused allocation. Accordingly, Users who do not act to swap unused allocation must pay for any unused Annual Contract Tonnage under their User Agreement. The introduction of further "incentives" in practice means additional penalties on Users for failing to swap unused allocation. As discussed above, the introduction of further penalties was strongly resisted by a number of Users who considered that such further penalties would operate unfairly between Users and that there are already adequate incentives to swap.

The unintended consequence of any capacity allocation system is that if a User experiences production problems between acceptance of a stem and the time when coal must be made available for loading the vessel, the commercial reality is that the User may choose not to swap allocation if, in doing so, the accepted vessel does not retain its "spot in the queue" for that month together with the obligation to load that vessel "in order of arrival" in any subsequent period.

This issue is being considered as part of DBCTPL's review process.

***Question 9(a) continued:*** *Please respond to concerns raised that system capacity will not be maximised under the QMS, including claims that:*

...

- *the pro-rating of contracted capacity will mean mines reduce their production schedules accordingly and will then be unable to rapidly increase production in the event that another mine experiences production difficulties. This would lead initially to a reduction in the queue and potentially to forgone exports. The experience at Port Waratah in May and early June of this year is cited as an example of this risk.*

DBCTPL submits that the proposition that mines will reduce their production schedules as a result of the allocation of System Capacity is incorrect and an over simplification of the mining process. At an overall level, DBCTPL reiterates its view that the QMS has no impact on the aggregate quantity of exports through the Terminal as throughput through the Terminal is not reduced.[5]

In terms of actual impact on individual production, it is not possible to make generalisations, DBCTPL submits that it is unlikely that a long term coal mining operation will be scaled back in response to System Capacity allocation given the close relationship between the rate of underground face advance and ground conditions. Equally, in a strip mine, the ability of the mine to hold "in-pit" inventory may be beneficial rather than seek to accelerate overburden removal, which, with depth of overburden and seam thickness, is likely to be a factor limiting run-of mine ("**RoM**") production.

In those mines operating in more complex geological conditions which limit "in-pit" inventory, the RoM stockpile can represent a strategic buffer between mine production and saleable product.

A number of mines have more than one product, which in turn may be subject to a market price differential. Under these circumstances it is likely that preference will be given to production of the higher value product, with swing capacity being utilised on a "opportunity basis". Based on User submissions, notice required for acceptance of stems provides adequate opportunity to prepare product for multi parcel vessels, during normal operating mode for mines shipping predominantly in single cargos, would require product stockpile assembly space well in excess of average shipment size.

Production difficulties caused by a combination of factors including geology and weather, inherent in both underground and open cut coal production, have been documented by BBI as a major contributor to the variability in demand for Terminal services.

DBCTPL reiterates its view that there would need to be significant and sustained unused allocation before the Goonyella coal supply chain stopped operating at full capacity. Such a level of unused allocation, even in the event of the reduction of a coal producer's productive capacity, is unlikely because of the contemplated flexibility mechanisms built into the QMS. The flexibility amounts and available allocation are deliberately biased towards higher usage rates. When considering this issue it is important to remember that there are varying issues which impact upon production. Recently, production problems at some mines, de-railments, decisions as to stockpiling, type of production and export terminal have all impacted on production levels.

Even if the coal producer putting forward this theory that capacity distribution systems reduce indivdual mine production was correct (which is not accepted), it is only a theoretical possibility at the Terminal because of the amount of coal being produced and the lack of capacity.

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[5] DBCTPL does not wish to comment on the position at Port Waratah, a separate port with different operating circumstances. The issues apparently raised by one producer to the Commission in relation to Port Waratah are vehemently rejected by other producers. DBCTPL prefers to comment on its own factual position where it can be categorical - there is no impact on aggregate exports, just a reduction in aggregate demurrage.

A decrease in throughput to below capacity at the Terminal could only arise in situations of multiple mines ceasing production for operational reasons with no stockpiles being available. Given the amount of coal in the Goonyella basin this is not a realistic probability.

There is room for increased transparency on mine production so that when one mine has a planned production outage, there is an ability for other mines to take up that System Capacity. This is an area of transparency that DBCTPL would welcome.

***Question 9(b):*** *To assist the ACCC's evaluation of the QMS, please provide additional information on the following public detriment and benefit issues:*

*At the time of lodgement, DBCTPL submitted that the vessel queue had been steadily trending up in the last 5 months. It claimed that if that trend continued, demurrage costs could be as high as A$550 million for 2005. Please comment on the likelihood of that trend continuing in 2005 absent the QMS and the resultant demurrage costs.*

As indicated above, in recent weeks the number of vessels in the Terminal's vessel queue has increased. Further, on the basis of credible economic forecasts, it appears that there will be no lessening in demand for coking coal exported from Australia in the medium term and therefore no reduction in demand for the coal loading services provided by the Terminal.

Accordingly, DBCTPL believes that its projections for demurrage in its original submission remain reasonable.[6]

***Question 9(c):*** *To assist the ACCC's evaluation of the QMS, please provide additional information on the following public detriment and benefit issues:*

*The ACCC understands that it is relatively common for producers to cap daily demurrage costs under sales contracts with overseas buyers. As such, overseas buyers would share the risk of demurrage. Please provide your view on the extent of such caps and the impact they have on the level of demurrage savings resulting from the QMS.*

DBCTPL is aware that opportunities exist for Users to specify daily demurrage costs in many coal contracts rather than using actual chartered rates, which has the effect of exposing the coal buyer to any difference between contract rates and the chartered rate (which may in turn be very different to publicly available spot vessel rates).

However, since DBCTPL does not sell coal and is not privy to the details of such arrangements, DBCTPL is not able to express a view as to the precise extent of such arrangements in the industry.

[6] At the time of the September review a further assessment will be made of vessel demurrage and detention costs having regard to changes in vessel demand and supply.

## 3.4 Other

***Question 10:*** *Following the recent Infrastructure Taskforce report, we understand there have been proposals put to the coal industry and government concerning the potential establishment of a centralised coal chain logistics planning organisation in Queensland. We would be interested in your comments on these proposals and any potential impacts on the current application for authorisation.*

The Commission is aware that the Goonyella Coal Chain Improvement Programme ("**GCCIP**") was initiated by Users in July 2004 as a means of engaging coal chain stakeholders in a transparent manner. GCCIP is well resourced and represents a substantial investment by all parties concerned in the initiative. Although the GCCIP had been put in place well before the recent Exports and Infrastructure Taskforce Report was produced recommending such teams, the GCCIP is consistent with the principles discussed in that report. DBCTPL believes that the crucial advantage of the GCCIP is the progression toward the provision of co-ordinated and transparent information flows between elements of the Goonyella coal supply chain for the individual elements to make use of in their planning processes.

A example of the benefits derived from the GCCIP arose after the recent train derailment at Coppabella that resulted in a kilometre of track being damaged and 10 mines experiencing delays along the coal supply chain. Improved communication between the coal chain stakeholders and Queensland Rail allowed priority coal loads to reach the Terminal and the impact on Terminal operations to be reduced.

Under the "Quick Wins" phase of the GCCIP, the GCCIP partners (DBCTPL, QR Rail Access and QR National; with the cooperation of BMA – Hay Point Services) have focussed on improving both the currency of information and the timely availability of information to minimise variability in supply chain operations. The scope of GCCIP's ongoing work includes coal supply chain integration planning commencing with the development of a "vision and principles".

DBCTPL reiterates its view that the alignment of stakeholder interests is critical to the success of the Goonyella coal supply chain in the medium to long term. The Terminal is only one element in the wider coal supply chain. Although each element in the wider coal chain requires work to overcome its own particular issues, the wider coal supply chain also requires effort toward the improvement of better co-ordination between the various elements. The GCCIP is focussed toward this task of better co-ordination.

DBCTPL's application in respect of the QMS relates to resolving the issue of excessive demurrage costs to Users in the short to medium term. Although planned expansion at the Terminal and the co-ordination efforts in the Goonyella coal supply chain will remove the need for the QMS in the long term, these activities are not sufficient to address excessive demurrage costs in the short term to medium term.

DBCTPL and the Users have a unanimous position that they are more than satisfied with GCCIP and do not see any new proposals for coal chain logistics teams being able to provide service levels and improvements above that which could be delivered by GCCIP.

# 4 Next steps

As discussed earlier in this submission, DBCTPL will be submitting to the Commission various minor operational amendments to the QMS that have been arising since its initial implementation. Given the urgency and complexity involved, these minor changes are to be anticipated.

DBCTPL will be conducting a review of certain specific issues that warrant further consideration based on data compilation. It is anticipated that the data compilation and assessment will be completed in early September with any final changes to the QMS under the authorisation application being submitted before the end of September.

DBCTPL believes this approach is consistent with the principles espoused in the recent Exports and Infrastructure Taskforce Report which recommended industry participants being encouraged to reach commercial agreement in the first instance. In this context, adequate time is required for industry participants to finalise the operational refinements of the QMS Terminal Regulations current being discussed and reviewed.

As this approach allows a considered approach to complex factual issues and having regard to the extensive consultation being undertaken and unanimous support of Users for this approach, it is hoped that the Commission will be comfortable with this timing in its assessment of the authorisation application.

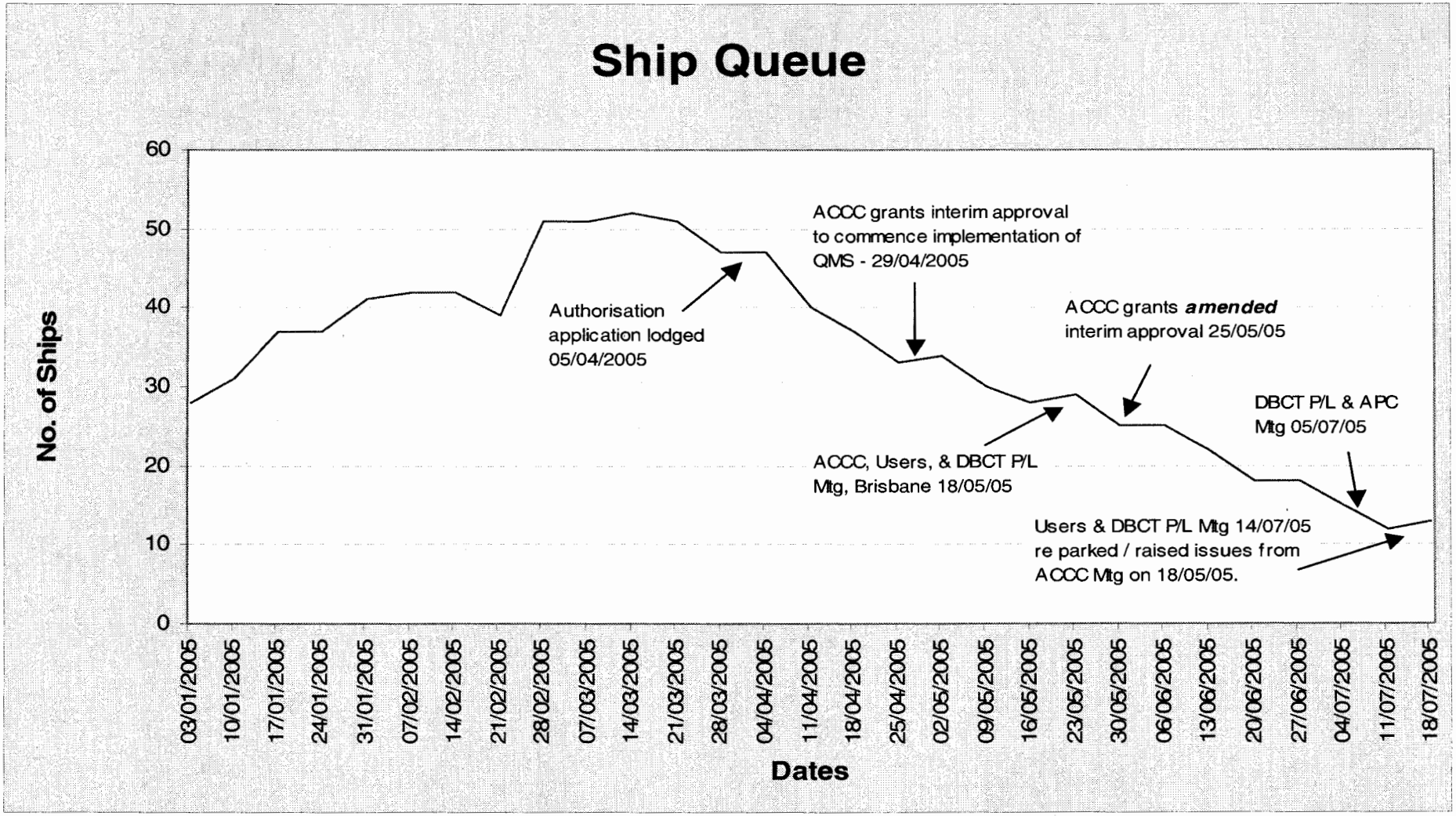
# 5 Conclusion

This further submission in respect of DBCTPL's application for authorisation of the QMS has provided an update on the QMS and a response to the various questions raised by the Commission.

DBCTPL reiterates its view that the QMS will generate substantial public benefits, especially by significantly reducing deadweight demurrage charges, and that the QMS will have no, or negligible, detriment to the public.

If you have any questions, or would like any further information, DBCTPL would be pleased to assist.

**Dalrymple Bay Coal Terminal Pty Ltd**
2 August 2005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Authorisation application lodged 05/04/2005
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ACCC grants amended interim approval 25/05/05
DBCT P/L & APC Mtg 05/07/05
ACCC, Users, & DBCT P/L Mtg, Brisbane 18/05/05
Users & DBCT P/L Mtg 14/07/05 re parked / raised issues from ACCC Mtg on 18/05/05.
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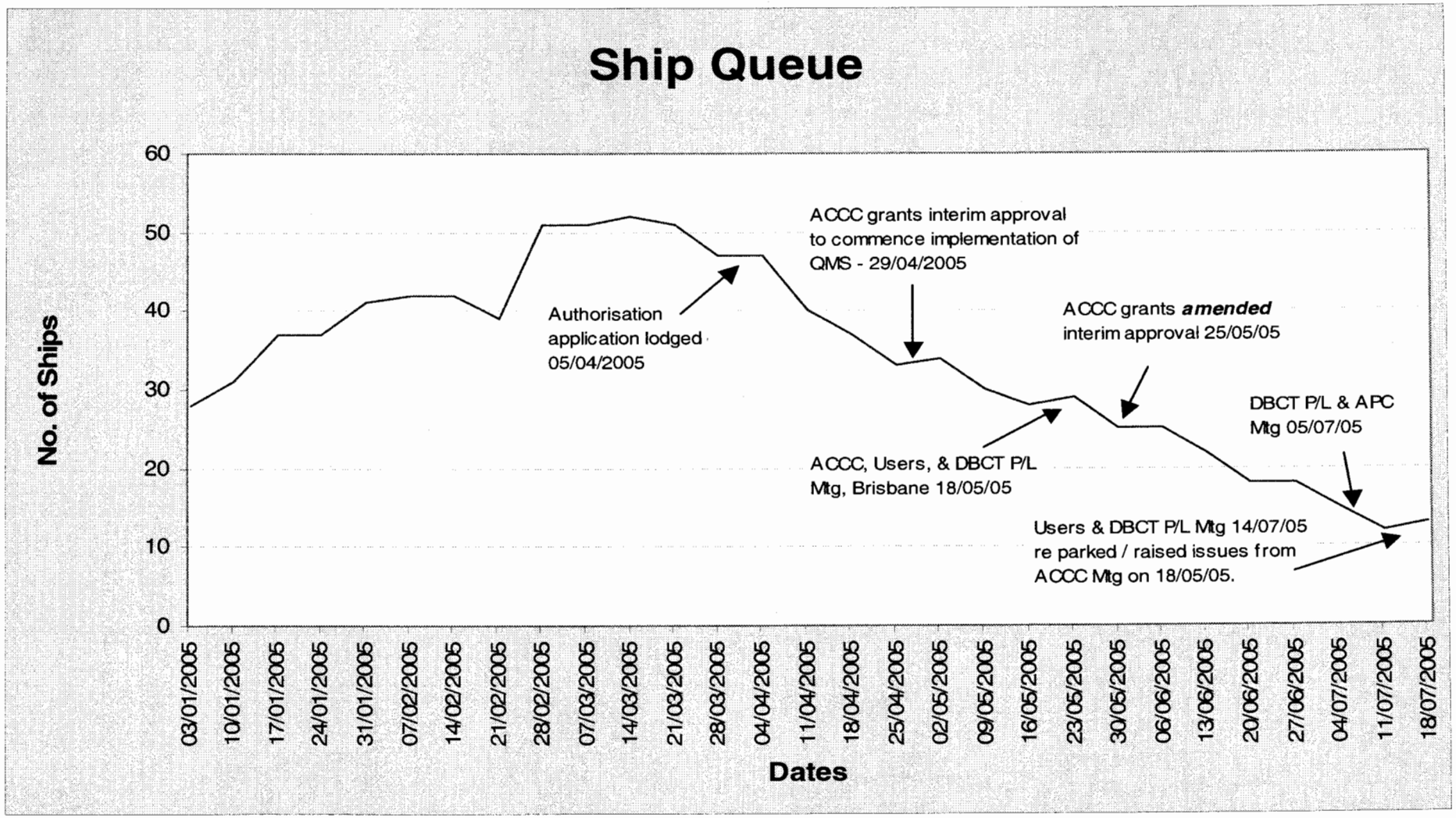
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Dates

# Queue Management System (QMS) - Key Dates

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| 5/04/2005 | Application lodged to ACCC by Mallesons on behalf of DBCT P/L and parties advised |
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| 19/05/2005 | ACCC visits DBCT site |
| 25/05/2005 | ACCC grants ***amended*** interim approval |
| 01-03/06/2005 | Process Mapping - Audit of QMS |
| 15/06/2005 | Briefing ot Users by DBCT P/L re QMS Process/Role of External Indept. Experts |
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