

Dalrymple Bay Coal Terminal Pty Ltd

Authorisation application for
the Queue Management System
at Dalrymple Bay Coal
Terminal

Submission to the Australian
Competition & Consumer
Commission after the
September 2005 Review

4 October 2005

Dalrymple Bay Coal Terminal Pty Ltd

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1 Introduction and purpose of submission and summary

1.1 Introduction and purpose of submission

This submission by Dalrymple Bay Coal Terminal Pty Limited (“**DBCTPL**”) to the Australian Competition & Consumer Commission (“**Commission**”) is intended to provide:

- the Commission with information relating to the September review (“**September Review**”) of the Queue Management System (“**QMS**”) at the Dalrymple Bay Coal Terminal (“**Terminal**”); and
- a request for a further variation of the Interim Authorisation of the QMS to deal with operational recommendations arising from the September Review.

1.2 Executive summary

DBCTPL acknowledges the Commission’s prompt review of this authorisation application in order to deal with the extensive vessel queues at the Terminal. DBCTPL estimates that from the commencement of the Interim Authorisation granted by the Commission until the end of August 2005, approximately A\$150 million in deadweight demurrage costs have been saved, with no decrease in exports from the Terminal. In fact, August 2005 was a record month for exports from the Terminal. On the basis of a reduction in the vessel queue from over 50 vessels, it is anticipated that the savings of deadweight demurrage costs for calendar year 2005 will be A\$550 million (as originally estimated in DBCTPL’s submission of 5 April 2005), with no loss of exports.¹

In order to facilitate the Commission’s further consideration of this matter, extensive data and material have been provided in this submission. Consistent with the Federal Government’s Exports and Infrastructure Taskforce which considered infrastructure export bottlenecks, DBCTPL and its shareholders, together with other users of the Terminal, have sought to put forward industry solutions until such time as the capacity expansion at the Terminal occurs.

¹ Extrapolated to the end of the requested authorised period, in the event that a queue of 50 ships were to maintain throughout that period without the QMS, the savings would approach \$2.15 billion. However, it is not possible to accurately predict whether a queue of 50 ships over that period is likely without the QMS. It is still anticipated that substantial demurrage savings will continue under the QMS.

The extensive consultation carried out by DBCTPL and assistance by coal industry representatives has led to certain proposed changes to the QMS and possible further changes by industry consensus. It is hoped that these changes and further monitoring by DBCTPL will ensure that the QMS continues to operate successfully over a longer period and there is no decrease in throughput as a result of the QMS.

2 Summary of September Review results

2.1 Introduction

DBCTPL's shareholders² constitute approximately 88.3% of the coal exports through the Terminal.³ DBCTPL believes that the QMS has operated extremely well since its commencement. DBCTPL estimates that in calendar year 2005, the QMS will save deadweight demurrage costs and lead to public benefits of approximately A\$550 million, with no reduction in exports.

At the request of coal companies exporting through the Terminal ("Users") in the month of September, a review was undertaken by DBCTPL of the performance of the QMS in the months of June, July and August. The results of the September Review were provided to Users on 20 September 2005.

The September Review has shown the following:

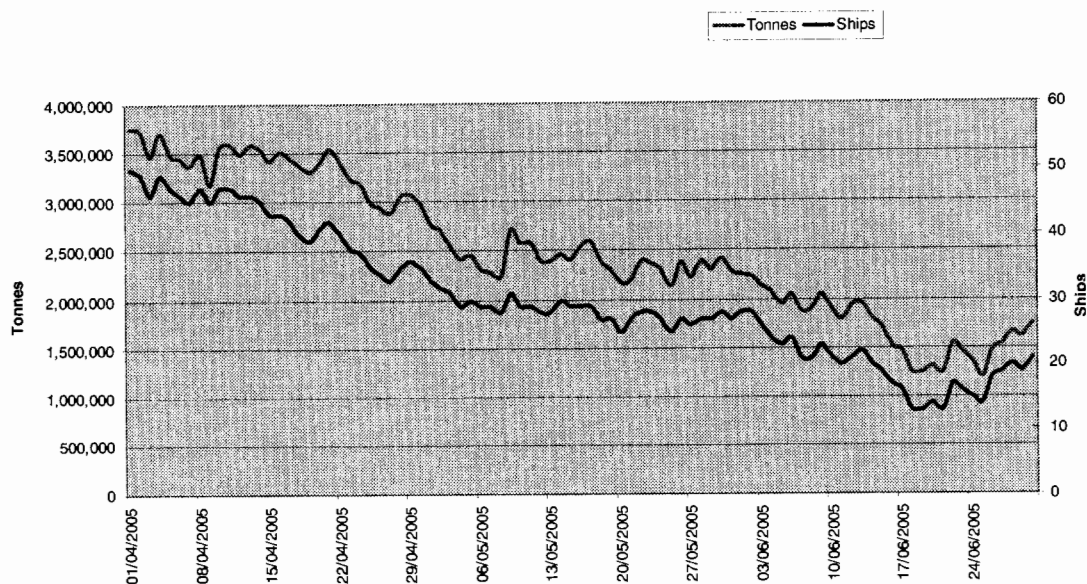
- ***The queue has been reduced from over 50 vessels as at 30 March 2005 to a working queue of approximately 15 vessels.*** This is consistent with DBCTPL's intention in establishing the QMS. However, further work is needed, as discussed later in this submission, to balance "dead" and "live" vessels in the queue. Nonetheless, as shown by third party data, the QMS has contributed to a freeing up of vessels for the global seaborne freight market. This has been accompanied by reduced vessel hiring rates.

Diagram One demonstrates the reduction in the vessel queue as a result of the QMS while it has been in "queue reduction mode" to a working queue of approximately 15 vessels.

² See page 17 of submission dated 5 April 2005 for a list of DBCTPL shareholders.

³ See confidential Attachment E to the submission dated 5 April 2005 for the financial year ended 2004 / 2005.

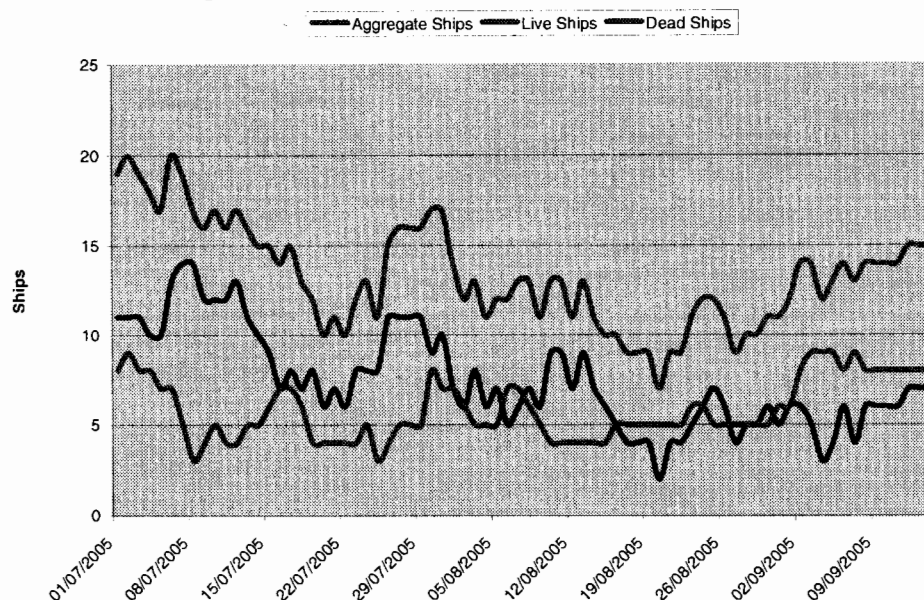
Diagram One - QMS - Queue Reduction Mode



Source: DBCTPL

Diagram Two demonstrates the management of the working vessel queue between 1 July 2005 to 9 September 2005 during which time the QMS has operated in "queue management" mode. The balance between "live" and "dead" vessels is discussed later in this submission.

Diagram Two - QMS - Queue Management Mode



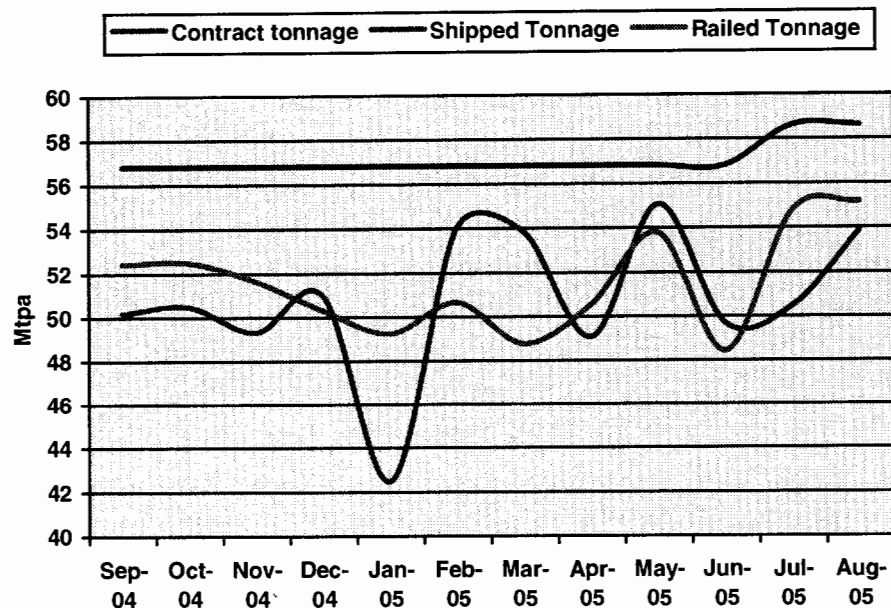
Source: DBCTPL

- **Very good results for throughput through the Terminal in July and August.** August was in fact a record month for exports at the Terminal (it is noted there are a variety of reasons for the record and it is not claimed it was only because of the QMS).⁴

⁴ Throughput at the Terminal can be affected by inloading issues such as rail derailments and outloading issues such as maintenance or the use of stockpile areas for expansion projects at the Terminal. September 2005 is likely to be affected by these factors.

Diagram Three demonstrates the surge in exports through the Terminal during July and then particularly in August. Certainly, there is no evidence of any throughput decreases as a result of the QMS.

Diagram Three - QMS - Tonnages (Annualised)



Source: DBCTPL

It is noted that July and August are only a short period of operation of the QMS, so it is difficult to draw long-term conclusions. During this time rail contracts “coordinated” by DBCTPL increased to 58.62 Mt under the QMS (vs. 52.15 Mt + 4.12 Mt), QR National increased train payload and a 48-hour schedule (a Goonyella Coal Chain Improvement Program (“GCCIP”)⁵ initiative) was instituted.

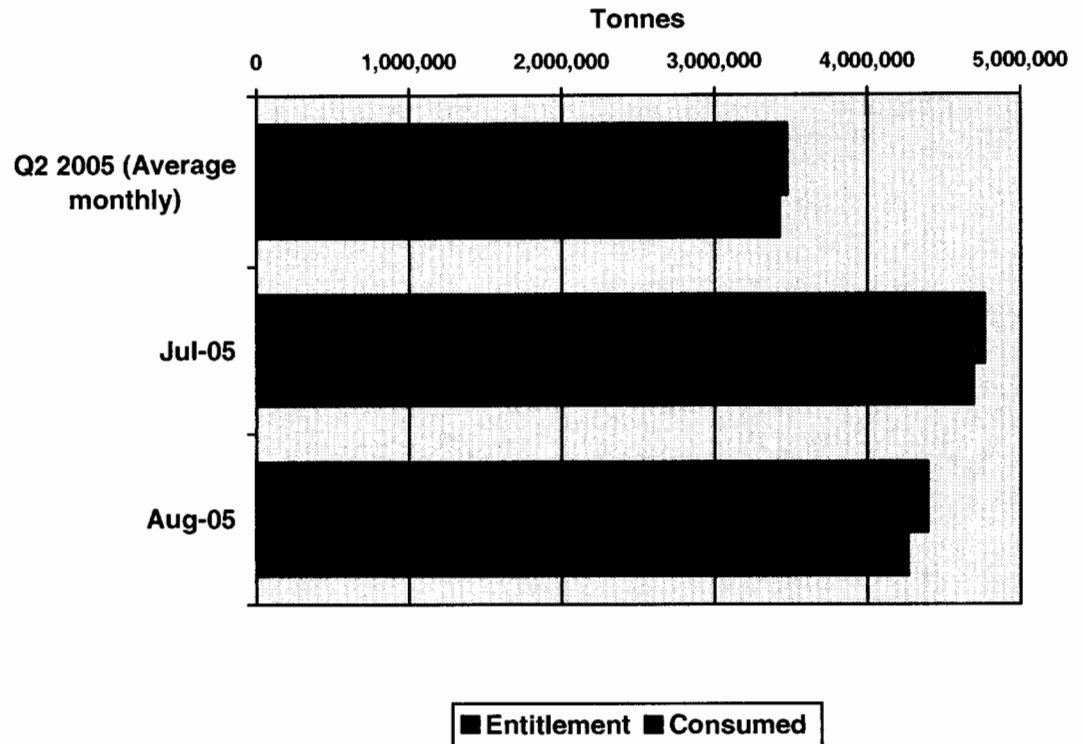
- ***There has been almost complete use of loading Entitlement under the QMS.*** “Entitlement” distributed under the QMS, is the estimate of the Terminal’s maximum capacity over relevant periods of time (currently monthly periods). DBCTPL and its shareholders do not believe that there has, to date, been any decrease in tonnages which could have been exported, as a result of the under-use of Entitlement (having regard to production issues at various mines and actual swaps of Entitlement and the fact that the QMS was designed to include sufficient flexibility and buffers to ensure the Terminal would operate at maximum capacity). Nevertheless, there is still some under-use of Entitlement, which DBCTPL is seeking to address through providing for an increase in the size of the working queue (when the Independent Expert believes it is needed) and further facilitation of swapping of Entitlement.⁶

⁵ GCCIP is a User initiated project that is governed by a steering group made up of representatives from each of the asset owners (QR Network Access, QR National, BMA, DBCTPL and BBI) as well as User representatives from Rio Tinto, Anglo and Xstrata.

⁶ Under-use of Entitlement was 70,000 tonnes in July 2005 and 130,000 tonnes in August 2005. It is noted that non-use of Entitlement does not translate to decreases in exports as the working

Diagram Four demonstrates that Entitlement has been almost completely used during July and August 2005.

Diagram Four - Entitlement Consumed (All Users)



Source: DBCTPL

Notes:

- A User's Entitlement includes any Swaps/Transfers/Buffer that have been employed for that period.
- ***The extent and depth of swapping has improved greatly with substantial volumes and 6 week timeframes now provided to maximise sufficient time for vessel scheduling.*** This is shown in the confidential attachment to this submission (it is confidential as it demonstrates swaps by individual Users). DBCTPL is pleased with the improvement in swapping as Users have become more familiar with the QMS, but is undertaking even more measures to further facilitate early swaps of Entitlement.

2.2 Refinements to the QMS based on the September Review

DBCTPL believes that the three month review period of the September Review (noting that in April/May the QMS was in queue reduction mode), has not been sufficient to allow any definitive interpretation of the data as to the operation of the QMS. However, the September Review has led DBCTPL and the Users to agree to institute three further refinements to the

queue, among other factors, provides a buffer to ensure full use of coal chain capacity and swaps were sought for that entitlement not able to be used in July and August.

QMS to further increase the incentives to increase Terminal throughput and to increase the early swapping of Entitlement if a producer is not able to use that Entitlement. For the Commission's ease of reference, the Queue Management System Amendments to the Terminal Regulations ("**Terminal Regulations**") incorporating the proposed refinements in revision mode are attached as Annexure One to this submission. The proposals in general terms are as follows (words have the same definitions as used in the Terminal Regulations):

- **Refinement of language for Queue Adjustments:**

Entitlement is distributed proportionately to Users each month, based on the Independent Expert's prediction of System Capacity for that month. Clause 4.2 allows the Independent Expert to transparently apportion Entitlement based on a tonnage less than the actual predicted System Capacity, in order to reduce an excessive queue of vessels (which excessive vessel queues lead to deadweight demurrage costs as those vessels remain idle waiting for loading berths). It is now thought that it is desirable to give the Independent Expert a reciprocal power to distribute Entitlement based on a tonnage higher than actual System Capacity, in order to increase the queue, if it is predicted that the queue would otherwise fall below an optimum Working Queue and that by increasing the Working Queue all available Entitlement will be consumed. Clause 4.2 of the Terminal Regulations has been amended, with consequential changes throughout the Terminal Regulations. This is intended to deal with the "dead" and "live" vessel issue and to ensure no under-use of Entitlement by effectively increasing the buffer.

- **14 Day Swap to increase flexibility**

Clause 5.4 of the Terminal Regulations currently requires at least 14 days' notice of a Swap. To increase flexibility, the clause is proposed to be amended so that less than 14 days' notice can be given. The date for loading may be re-scheduled if the Swap adversely affects other Users (but not to a date later than 14 days from the notice of a Swap).

- **Establishment of a Forum to facilitate early swapping**

Clause 5.4(c) has been included to provide for a forum (for example, a meeting in person or by telephone, or an internet portal) to facilitate an exchange of information, to encourage Users to Swap Entitlement as early as practicable.

These proposed changes are reflected in the Draft Terminal Regulations attached to this submission to form the basis of a variation to the current Interim Authorisation. As with previous requests for variation to the Terminal Regulations, the proposed changes are "draft" as they will need to be "approved" by BBI (DBCT) Management Pty Ltd ("**BBI**"), as owner (lessee) of the Terminal, if the Commission grants an interim authorisation to those changes.

DBCTPL believes that these further refinements to the Terminal Regulations will be actively supported by all Users (it has not been informed of any objections) as they seek to further increase the bias to ensuring maximum throughput through the Terminal. DBCTPL believes it is difficult to see any compelling objection to these amendments as the amendments facilitate Swaps and only potentially marginally increase demurrage costs to ensure maximum use of all Entitlement. If they slightly decrease the public benefit because they potentially slightly increase demurrage, they also decrease any public detriment as they are aimed at ensuring full use of all Entitlement and hence maximising throughput.

2.3 Possible further changes to the QMS

DBCTPL notes that the Stakeholder Operational Monthly Meeting⁷ (“SOMM”) Group has made recommendations to the DBCT User Group to review two further issues. The issues are only for consideration at this stage. There is no consensus as to the issues and whether they will ultimately be put forward. These issues are only being raised in this submission so that the Commission is aware of the possibility of these changes.

First issue being further considered

- **Loss of Entitlement due to delayed loading**

It is considered that a further inducement may be required for Users to actively trade Entitlement in advance where a vessel will be delayed due to non-availability of coal. This is because each User has unique grades of coal, and production problems can mean that the coal necessary to load a particular cargo is dependent on production being restored. Two options are being considered:

- Option One - any Entitlement relating to a vessel which is unable to load 14 days from the first available berth (based on turn of arrival) due to the unavailability of product will be lost in a subsequent month; and
- Option Two - any Entitlement relating to a vessel which is unable to load 14 days from the first available berth (based on turn of arrival) due to the unavailability of product, and results in the vessel loading in a month subsequent to the month of Entitlement consumption, will be lost in a subsequent month.

Option One is applicable to a monthly or rolling allocation system and Option Two may encourage front end loading within a month. These options are complex and need to be considered on their merits. They require careful consideration of the consequences of forfeiture of Entitlement having regard to the practicality of doing so under the contractual terms of the User Agreements, as well as how to deal appropriately and fairly with what are often force majeure events (eg production failures at a mine).

⁷ The SOMM is a BBI User Agreement obligation

Second issue being further considered

- **A second proposal to amend the monthly Entitlement to a rolling entitlement period has been put forward for discussion.**

The issue is that a monthly period facilitates shippers to use Entitlement / capacity evenly, but some have alleged this has flexibility inhibitions. A longer three month “rolling” period allows greater flexibility but can lead to uneven use of Entitlement and front end loading (which appears to be the current PWCS experience). This too is a complex issue that has not been worked through at this time by the SOMM Group, let alone a recommendation made to the DBCT User Group for consideration by the DBCTPL board.

These two issues being considered are complex and have the capacity to change incentives and the operation of the QMS quite significantly. There is therefore a practical concern not to rush in to change the QMS where it is considered to be working well. These possible changes may have a positive or adverse impact on the QMS and individual producers and therefore they need careful consideration by industry participants and logistics professionals. It is further emphasised that these proposals are subject to consideration on their merits and DBCTPL is mindful of ensuring that there is no prejudging of the outcomes. It is noted that there are some Users who are very much against these proposals and that there is currently no consensus. If consensus is obtained to amend the QMS to incorporate these proposals and DBCTPL puts them forward to the Commission, it is hoped to do so before the end of November 2005.

2.4 Assessment of public benefits and detriments post September Review

The QMS is strongly supported by the industry

DBCTPL believes that all stakeholders are of the view that a QMS is needed and that the public benefits greatly outweigh any detriments. DBCTPL understands that Rio Tinto, Anglo Coal, BHP Mitsui Coal, Xstrata and Peabody believe that if the QMS were terminated, an extensive vessel queue would reform. Although the view of industry participants is that the QMS is needed, one industry participant has issues and states that the form of the QMS needs refining. The refinements to date and those proposed above, go a significant way towards addressing that industry participant’s issues.

The Japanese steel mills, some of which earlier in the year publicly expressed some concerns with the one month Entitlement period under the QMS, have been the subject of extensive consultation by individual Users to explain the logistics processes involved in the QMS. It is understood from DBCTPL shareholders (who have the supplier-customer relationship with the Japanese steel mills) that the concerns initially expressed by the Japanese steel mills have now largely dissipated.

The “issues” with the QMS raised by the one producer are being considered by the industry

The one User that continues to express concerns with the QMS, does accept that a form of QMS is needed, but has concerns with some of the provisions of the current form of the QMS. In response to that concern, DBCTPL notes that extensive work and consultation is occurring on the two additional issues identified from an operational perspective. However, if they are adopted, those changes will be adopted because they are operationally efficient for all Users of the Terminal. If they are not, it will be because of operational issues which suggest they may have a negative impact on the QMS and efficient Terminal operation. Either way, while acknowledging the Commission’s role in the authorisation process, it is submitted that on such complex operational issues, great weight should be placed on whether the overall industry is best placed to gauge the overall impact on exports compared to demurrage costs.

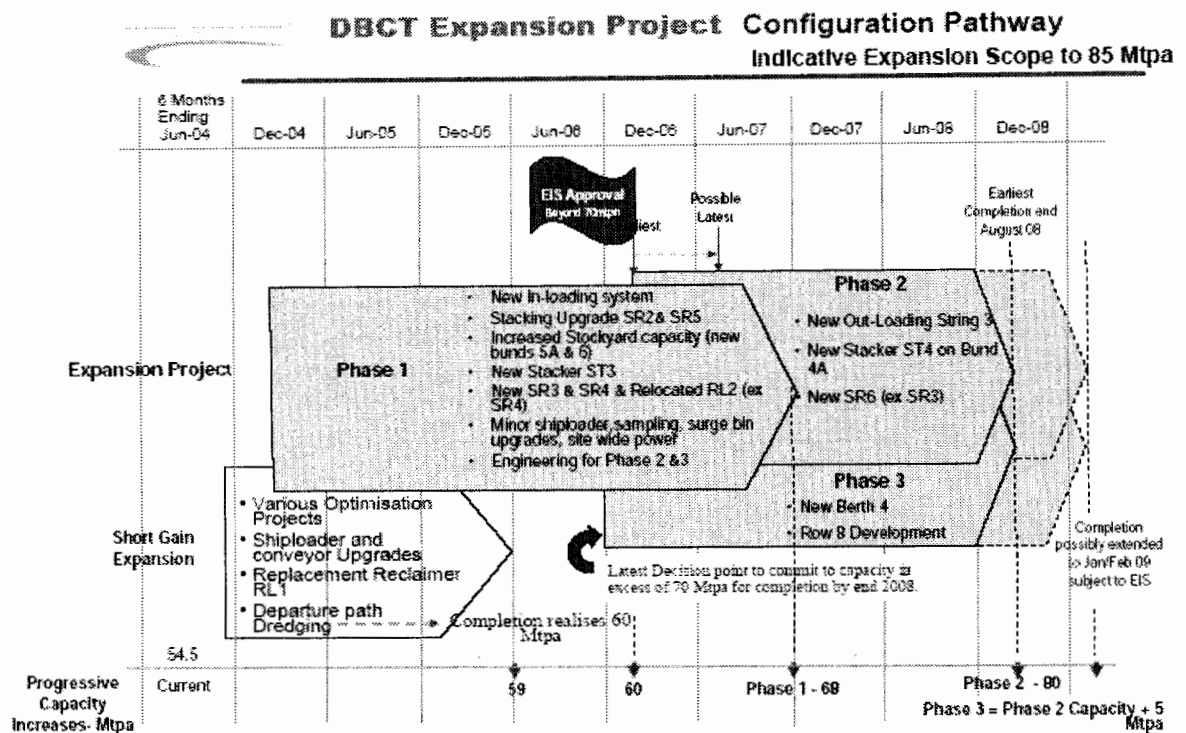
Alignment of interests and reasons why DBCTPL put forward the QMS for authorisation

DBCTPL as Operator of the Terminal under the Operating and Maintenance Contract (“**O&M Contract**”) with BBI, the owner (lessee) of the Terminal, is also best placed to put forward the authorisation application as it relates to Terminal Regulations which it is charged with administering. DBCTPL under the O&M Contract is also responsible for putting forward Terminal regulations under the O&M Contract for BBI approval. BBI understands and accepts that contractual framework and has also expressly authorised DBCTPL to confirm to the Commission that BBI “cannot see how the QMS would have any impact on BBI’s expansion of DBCT”.

Terminal expansion issues are additional reasons to support the QMS

In this regard, the various aspects of the expansion works at the Terminal to be carried out by BBI necessitate the continued operation of the QMS at least until the earlier of completion of the expansion and end of 2008. BBI’s expansion plans are reflected in the following Diagram Five.

Diagram Five - DBCT Expansion Project



Source: BBI

This expansion work planned by BBI means that irrespective of the level of demand for coal through the Terminal over the next few years, expansion work will affect the throughput capacity at the Terminal, necessitating the QMS to deal with a fair and equitable allocation of contracted capacity as the ability to load coal will significantly fluctuate. This fluctuation in System Capacity is demonstrated in Diagram Six, which is the most recent advice received by DBCTPL from the Independent Expert as to System Capacity in the QMS. As noted later in this submission, the expansion project is the subject of delays and this will further impact this advice from the Independent Expert, which will now need additional revision.

**Diagram Six - Independent Expert Forecasts for
System Capacity (until end 2007)**

Quarter	Quarterly Practicable Capacity (tonnes)	Month	Days	Monthly Practical Capacity (Annualised - Mtpa)	Monthly Practical Capacity (Tonnes)
Q4 - 2005	13,807,638	Oct-05	31	55.713	4,731,831
		Nov-05	30	55.683	4,576,689
		Dec-05	31	52.973	4,499,118
Q1 - 2006	12,708,716	Jan-06	31	44.753	3,800,979
		Feb-06	28	55.616	4,266,405
		Mar-06	31	54.648	4,641,332
Q2 - 2006	13,148,285	Apr-06	30	55.211	4,537,904
		May-06	31	55.713	4,731,831
		Jun-06	30	47.189	3,878,550
Q3 - 2006	13,807,638	Jul-06	31	52.973	4,499,118
		Aug-06	31	55.713	4,731,831
		Sep-06	30	55.683	4,576,689
Q4 - 2006	13,755,924	Oct-06	31	55.713	4,731,831
		Nov-06	30	55.683	4,576,689
		Dec-06	31	52.365	4,447,404
Q1 - 2007	14,213,475	Jan-07	31	51.756	4,395,690
		Feb-07	28	54.942	4,214,691
		Mar-07	31	65.972	5,603,094
Q2 - 2007	13,622,364	Apr-07	30	45.867	3,769,920
		May-07	31	61.105	5,189,760
		Jun-07	30	56.729	4,662,684
Q3 - 2007	17,462,400	Jul-07	31	67.254	5,712,000
		Aug-07	31	70.329	5,973,120
		Sep-07	30	70.290	5,777,280
Q4 - 2007	17,429,760	Oct-07	31	70.329	5,973,120
		Nov-07	30	70.290	5,777,280
		Dec-07	31	66.870	5,679,360

Source: QMS - Independent Expert

Accordingly, even if one were to accept the issues raised by the one producer which continues to express concerns with the current form of the QMS, then this is addressed by the following:

- the current proposed (and possible future) changes to the QMS which DBCTPL believes largely address the operational issues raised by that producer; and
- the practical reality that the expansion works at the Terminal to be carried out by BBI will constrain the outloading capacity to a significant degree such that there is likely to be a substantial volume of available coal production that will more than outweigh any production issues at some mines at any particular time. In other words, contracted throughput will substantially exceed System Capacity during the time of the authorisation application.

2.5 Conclusion on Public Benefits and Detriments

Estimated public benefits

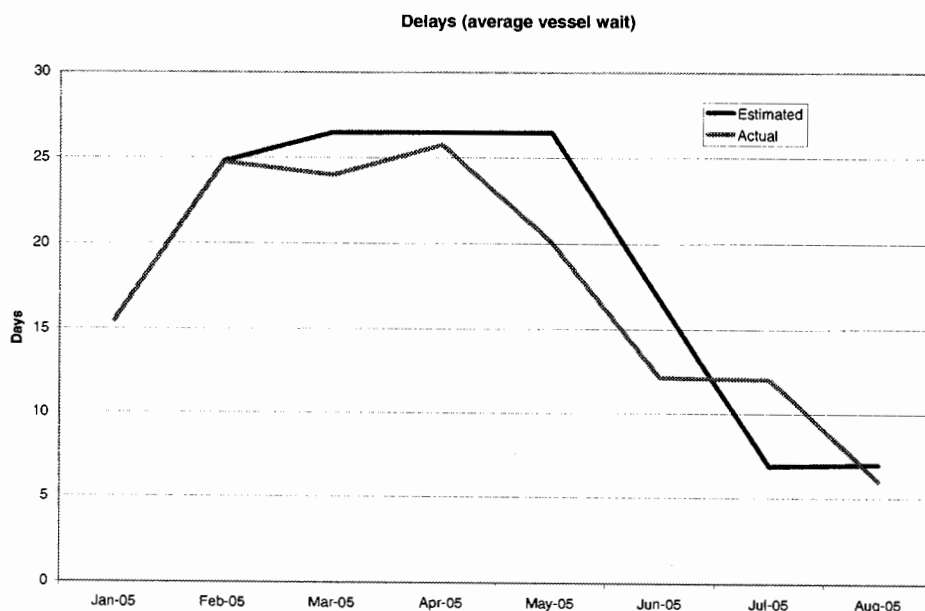
In the DBCTPL submission of 5 April 2005, it was estimated that the demurrage charges for coal Users at the Terminal in 2005 would involve payments of A\$550 million in demurrage charges in the balance of 2005, which estimates were based on:

- The queue continuing to rise by 4 vessels a month from April in the case where no action was taken; and
- The queue falling to 12-15 vessels if the Terminal Regulations were introduced from approximately 50 vessels as at March 2005.

The cost estimate was based on taking the delays resulting from the above estimate and applying a demurrage rate based on US\$0.27 per deadweight tonne per day, which was the estimated long term rate for the mix of vessels calling at the Terminal. The estimate did not take into account the recent spike in freight rates in 2004 or the flow-on effect of reduced queuing on overall freight rates by releasing vessels.

The actual queuing delays at the Terminal have developed largely as anticipated (see Diagram Seven below). In fact, delays have been slightly improved on the original estimates in part as a result of increased Terminal throughput clearing the queue more quickly (as the improvement efforts throughout the Goonyella system have started to improve efficiencies) and in part due to some anticipation of the queue reduction by some shippers.

Diagram Seven - Delays (Average Vessel Wait)



Source: DBCTPL

Inquiries by the DBCTPL to date indicate demurrage costs as a result of congestion have fallen from a peak of about US\$10/t in April to less than US\$1/t. While these inquiries are not complete, these figures would suggest a saving of A\$50 million per month, consistent with previous estimates.

DBCTPL is in the process of collecting additional information on actual demurrage costs to refine estimates of public benefit.

Ocean freight rates have also moderated substantially since the QMS was put in place. Average Capesize charter rates for 2004 were some US\$69,000 per day, substantially higher than the rates of about US\$25,000 per day in the freight market in 2000-2002. Rates peaked in mid April and by June had collapsed to levels not seen for some time. While the international dry bulk market is complex and causation is difficult to prove, some observers have linked the recent lower rates to a reduction in port congestion. Lower freight rates provide a significant boost to the competitiveness of Australian coal and are hence a significant benefit to Australian coal producers.

It is very difficult to forecast estimates of demurrage savings for the duration of the QMS as there is no way to accurately predict the level of the queue going forward if the QMS were not in place. However, the demurrage estimates to date have proved reasonably accurate and DBCTPL shareholders believe a queue would reform if the QMS were removed. Accordingly, it is believed that substantial public benefits in terms of reduced deadweight demurrage costs would continue if the QMS is retained.

The Commission has previously found that there are public benefits in the substantial savings of deadweight demurrage. This issue is therefore not canvassed further in this submission apart from also noting the public benefits associated with the improved reputation of the Terminal and Australia's coal exports arising from the QMS.

Assessment of any public detriments

Any public detriments associated with the QMS would appear to be primarily the impact of any lost exports. As explained later in this submission, the raw statistic of "vacant berth time" is not a reliable measure of lost opportunity to export as it could arise for a number of reasons such as maintenance (leaving aside the fact there are only two outloading strings available in any event and three berths) and adverse weather conditions. The better determinant of detriment is likely to be unused System Capacity and therefore potentially lost exports. Again, it is only "potential" as this depends on the nature of underlying contracts. In order to deal with this potential unused System Capacity (which DBCTPL and its shareholders believe really only arises from operational breakdowns in the coal chain and mine production issues), DBCTPL has taken the following initiatives in the QMS:

- Users have always been able to put vessels in the queue, if they have no Entitlement at the time;
- a working queue of vessels will be maintained (to act as a buffer, with the intention that there will always be vessels ready to start loading);
- swaps and transfers are allowed (DBCTPL is facilitating this even further through the proposed forums);

- there are flexibility provisions and a 90,000 tonne buffer, to ensure that monthly allocations of Entitlement do not result in Entitlement being wasted because they do not align with a whole number of cargo sizes; and
- the latest initiative to allow the Independent Expert to allocate additional entitlement above estimated System Capacity to further increase the working vessel queue.

Entitlement (ie the Terminal's full capacity) is likely to be virtually all consumed whenever demand outstrips capacity. BBI estimates of demand for terminal services (underpinning Stage 7X Expansion) and ABARE forecast growth in coal exports indicates an imbalance between Goonyella coal supply chain system capacity, supply and demand during the Terminal expansion until end 2008. Naturally, DBCTPL cannot predict whether there may be in the future market forces which see decreases in the use of the Terminal and non-use of Entitlement, but that would not be as a result of the QMS on any "with or without" assessment basis. The QMS would come to an end in any event - see the definition of "Term" in the Terminal Regulations.

In addition, DBCTPL believes that great caution needs to be taken in accepting views on scalebacks of production and inability to swap as demonstrating that non-use of Entitlement under the QMS has led to decreased exports. The attached Confidential Annexure on Swaps includes data which highlights the availability of swaps, the fact that having Entitlement does not mean a producer has a buyer (and therefore there is no lost exports) and that it is possible for producers to produce significant tonnages above Entitlement by taking advantage of Entitlement offered to swap or sell. In other words, the timeframes for swaps are such that mine production can be increased to take advantage of opportunities.

The QMS is intended to allocate available loading capacity in an equitable manner having regard to the underlying contracted throughput under the User Agreements between individual Users and BBI. An individual User has previously been, and continues to be, able to respond to market forces by declining to supply coal at what it considers uncommercial prices or seeking to absolutely maximise sales at times of high prices for coal. Given the various types of coal exported by the various producers through the Terminal, these external market forces will have a differing impact on different producers at different times. At this time, producers are seeking to maximise throughput and DBCTPL is seeking to do whatever it can to assist in efficient Terminal operation to facilitate that throughput. Moreover, as DBCTPL is not the owner of the Terminal or the counterparty to User Agreements, it cannot be alleged to have any other incentive.

Under the QMS, the producers have the ability to continue to engage in opportunistic behaviour, but that behaviour is now likely to have less of an adverse impact on others. In the past, sending vessels to join the queue with limited loading capacity led to the extensive vessel queue. Individual producers still have an ability to send vessels to join the queue in excess of Entitlement, where they will bear the demurrage costs. However, they do not cause on-queuing problems for others if they do not have Entitlement. That opportunistic vessel will have to wait until all other vessels with Entitlement are loaded. Alternatively they can, and are more likely to, seek to acquire

additional loading Entitlement and therefore certainty of loading. Again this will depend on the individual producer whether the type of coal available and the prices obtained outweigh the demurrage or the cost of the swap. However, this is a far better economic decision and overall result as there is a far closer correlation of costs and benefits to individual producers and the use of scarce resources. This objective is being further facilitated by the establishment of the new forum by DBCTPL to facilitate swaps.

Conclusion

In conclusion, the incentives under the QMS for DBCTPL are to decrease deadweight demurrage costs and maximise throughput by operating a working queue at all times where there is an imbalance between demand for coal loading services at the Terminal and System Capacity (capacity of the Goonyella coal chain, including the Terminal).

DBCTPL therefore seeks to ensure that there is no decrease in throughput (as this affects its shareholders as well as all Users) while minimising demurrage costs. If DBCTPL is able to continue to operate the QMS under the authorisation, this is anticipated to result in savings in calendar year 2005 of deadweight demurrage costs of A\$550 million and no decrease in exports.

3 The existing operation of the QMS and the September Review

3.1 Introduction

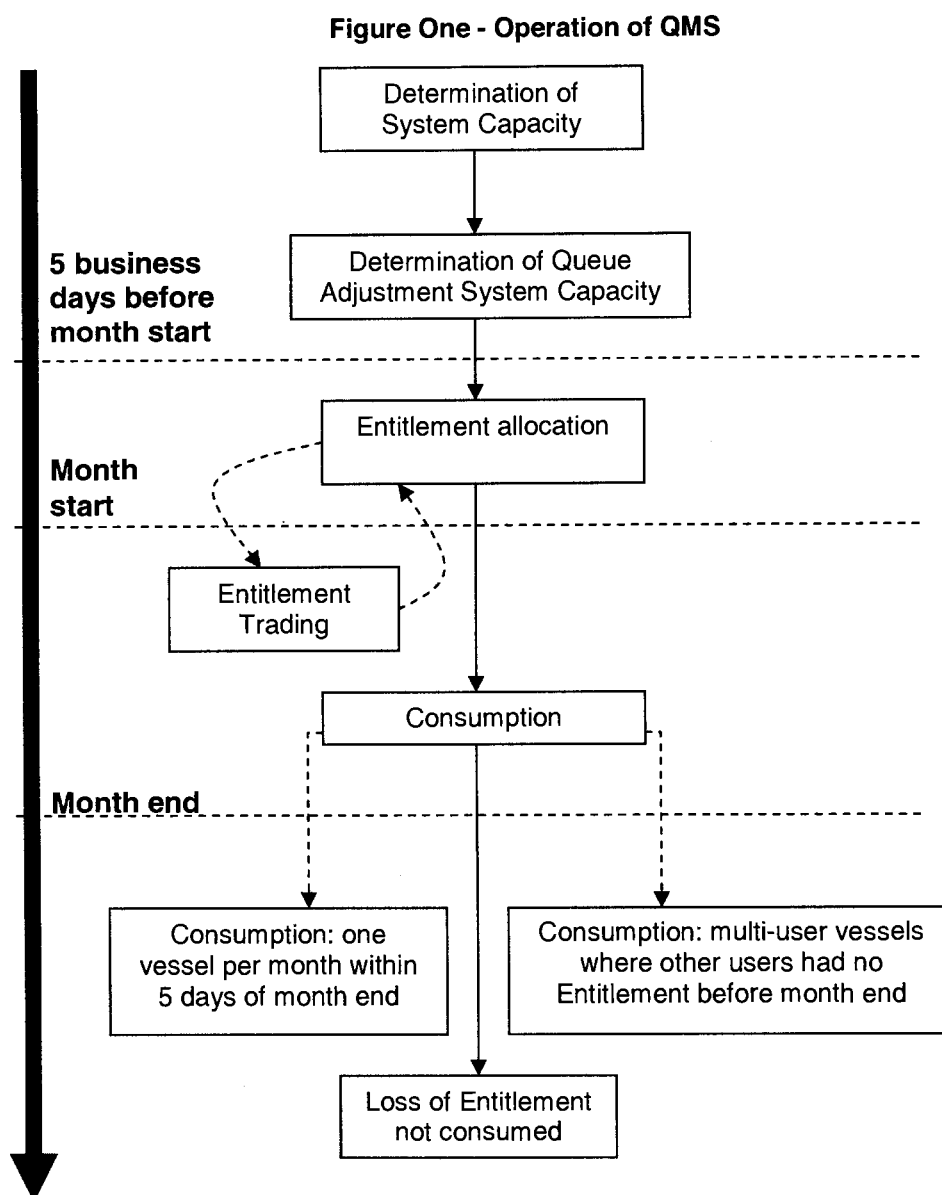
An analysis of the intentions behind the QMS and the refinements proposed from the September Review should be undertaken against the background of the key objectives of the QMS. The key objectives of the QMS are to:

- (a) ensure a fair, equitable and transparent allocation of System Capacity (and where applicable Queue Adjustment System Capacity) from time to time between Users;
- (b) achieve and maintain a Working Queue, so as to minimise deadweight demurrage costs to all Users;
- (c) maximise utilisation of System Capacity; hence maximising Coal exports from the Terminal; and
- (d) restore and maintain the reputation of the Terminal as a reliable and low demurrage facility.

As DBCTPL is the Operator of the Terminal and not the owner, it can only seek to ensure a fair and equitable allocation of available loading capacity consistent with the underlying contracts between BBI and the individual User. DBCTPL cannot determine what is the available capacity; that is a function of the overall coal chain worked out by the Independent Expert in consultation with BBI and other members of the coal chain such as QR National and QR Network Access. Neither DBCTPL nor its shareholders have an incentive to make this capacity determination larger or smaller, as whatever figure is determined is then apportioned pursuant to the underlying contracts in a transparent, fair and equitable way.

The initial operation of the QMS was in “Queue Reduction Mode” to decrease the working queue to a manageable level to approximately 15 vessels. This occurred in May/June and the QMS is now operating in “Queue Management” mode to minimise deadweight demurrage costs while at the same time seeking to maximise utilisation and throughput at the Terminal.

The operation of the QMS can be demonstrated in the following Figure One.



It is hoped that it is no longer questioned that excessive vessel queues damage the commercial reputation of a port given the adverse national and international publicity that the vessel queue received and the actual movement of coal buyers to other non-demurrage affected coal export terminals in Australia and overseas. DBCTPL and its shareholders believe that the excessive vessel queue of 50 vessels in March did have a significant effect on the Terminal’s and Australia’s coal exporting reputation, with repeated adverse press, the involvement of the Treasurer and Prime Minister and parliamentary committees, and comments on the detrimental impact on the Australian economy by the Reserve Bank Governor.

3.2 The September Review

The September Review was designed to assess the QMS based on actual data and not conjecture. The process and work to prepare the QMS took many months and considerable management time. The blending and loading of coal through the Terminal with limitations on the stockpile area is a complex task. It is not a task where DBCTPL management or its shareholders are prepared to undertake any major changes to the QMS without sufficient evidence to support such changes given those changes may lead to further issues being created.

The September Review (and the Interim Authorisations granted by the Commission) has provided an opportunity to assess the operation of the QMS. As set out in the data presented earlier in this submission, the headline results are that the Terminal has operated at very high levels in July and then a record throughput in August, despite significant adverse factors such as weather, derailment and maintenance issues. The forthcoming result for the month of September is likely to be adversely affected by weather, the expansion works and external market forces. There can be no certainties as to what will happen to demand. However contracted throughput at the Terminal is well above actual loading capacity and that capacity will be further significantly affected by the expansion work. In these circumstances, particularly given the high prices for coking coal, DBCTPL shareholders are confident that in the absence of the QMS, a vessel queue would reform.

An issue that DBCTPL has recognised in the September Review of the QMS is that there is some Entitlement which is not being used. While this does not mean that there has been any decrease in exports (as there has always been a working queue of vessels), DBCTPL has decided to facilitate (where appropriate) an increase in the size of the vessel queue by transparently overstating System Capacity, to seek to ensure maximum usage of Entitlement. This ability to overstate System Capacity is aimed at addressing any imbalance between consumption of Entitlement and consumption of System Capacity, ie ATA v transfer of coal at the Terminal. DBCTPL is also conscious of the need to continue to operate the Terminal as a low demurrage port, but the QMS is biased towards maximising throughput and exports. This does not mean that there may not be some Entitlement which is still not used, as some Users may not be able to find customers for specific coal that has been produced or market forces may mean that demand decreases at particular times. If that occurs the ability to swap, and the proposed new forum to facilitate swapping, will nevertheless encourage the use of as much Entitlement as is needed to meet demand.

In addition, as noted earlier, the two additional issues as to incentives to swap early and rolling periods of Entitlement are the subject of further consideration by the DBCT User Group. As with the current proposed further refinements to the Terminal Regulations, such changes if they are approved by consensus as being fair and equitable and operationally / logistically workable, would be anticipated to increase the public benefits, not lessen them. If they are taken forward it would be hoped that they would be able to be presented to the Commission before the end of November 2005. Otherwise DBCTPL is conscious that it may be necessary to seek a revocation and substitution of a fresh authorisation in 2006 unless the

Commission can see an opportunity to allow flexibility without the need for the cost, delay and time involved in a new authorisation application.

3.3 Comments on specific issues raised in relation to the QMS

Several issues have been raised with DBCTPL as to the operation of the QMS based on DBCTPL's submissions, third party submissions and media reports.

Issue 1: What is the difference between "dead" and "live" vessels and the ability of those vessels to become "live"?

The Terminal Regulations do not formally distinguish between "dead" and "live" vessels and these terms are not defined or used in the Terminal Regulations. It is a concept of practical use to DBCTPL in assessing the readiness of ships in the queue to load. Generally, a vessel is "live" if there is coal available at the relevant mine(s) ready for transport to the Terminal for loading onto the vessel. A vessel is "dead" if one or more mines loading onto that vessel is not in a position to supply the necessary coal. Under operational rules worked out by the SOMM and the DBCT User Group, consistent with appropriate economic incentives, the demurrage cost becomes the issue of the last delayed mine in multi-parcel vessels.

Generally a vessel is live if it has Entitlement and there is coal available at the relevant mine. Accordingly, vessels in the queue can become "live" at varying times by notice to the Terminal and therefore the overall vessel number is still relevant.

In any event, the new proposal by DBCTPL to allow the Independent Expert to transparently increase the vessel queue (if thought necessary) should address this issue by ensuring more "live" vessels are in the queue.

Issue 2: Whether the decrease in the queue (and decline in vessel hiring rates) has led to decreased projections for the demurrage/public benefits estimations?

The issue has been raised as to whether the combination of the reduced queue and press reports about decreases in vessel hiring rates have led to a decreased estimation of saved demurrage costs and therefore public benefits arising as a result of the QMS.

The original April 2005 DBCTPL submission noted that the QMS would assist in reducing hiring rates as it would "free" vessels from the queue. DBCTPL believes that the QMS has been one factor in freeing up of vessels which together with the availability of new vessels has contributed to a decrease in freight rates (as independently corroborated by Rio Tinto).

To the extent that the additional vessels become free and result in decreased hiring rates charged to Australian companies, that is a public benefit. The quantum of that benefit is difficult to determine. Nonetheless, the demurrage estimates are not affected as they were based on lower long run rates and the current rates have still not returned to those levels. In addition, had the queue remained, there would have remained a constrained supply of vessels, resulting in higher than normal freight rates, with a resulting double negative impact of longer queues and higher rates.

Issue 3: Whether the under use of Entitlement or any production issues at coal mines is a result of the QMS?

DBCTPL acknowledges that it is possible for some mines to slow production if they do not have Entitlement, or if they are loading jointly with another producer that has had production difficulties. Even then, some coal companies are (or have been) producing above Entitlement to be able to opportunistically take advantage of non-use through swaps. Even more recently DBCTPL has allowed vessels to partly load so that they do not need to wait for other producers. However, the existence of the QMS itself is not a reason for a User to “under-use” their allocated Entitlement. It is in all Users’ best interests to ship as much coal as they are able and these production issues which have affected the coal chain could have arisen irrespective of the QMS.

It is of course an important element that the QMS is sufficiently flexible to ensure that the allocated Entitlement of Users who face production difficulties is able to be utilised by other Users. DBCTPL has reviewed the operation of the existing flexibility mechanisms as part of the September Review of the operation of the QMS. To deal with these issues, the QMS includes the following provisions:

- mines are able to put vessels in the queue even if they have no allocation;
- there is a working vessel queue;
- swaps and transfers are allowed;
- there are flexibility provisions and a 90,000 tonne buffer; and
- the latest initiative to allow the Independent Expert to transparently allocate additional Entitlement above estimated System Capacity.

It does need to be recognised that there can be a multitude of reasons for non-use of Entitlement. There have been examples where Entitlement has been offered for Swap but the offer has not been taken up.

Issue 4: What is the impact of the recent reported contracts between Queensland Rail and BMA on Terminal expansion plans?

The issue has been raised as to the impact of the newspaper reports that BMA has contracted all excess QR rail capacity such that it is not possible for BBI to proceed with the expansion of the Terminal.

The recently reported contract between BMA and QR is a factor that will affect the future expansion of the Terminal. However, it is not a factor that affects the operation of the QMS.

As reported recently, BBI is understood to be concerned that the BMA/QR rail contracts may put in doubt the *third* expansion phase (Stage 7X, Phase 3) at the Terminal.⁸ It has also been reported that BBI is considering the possibility of rail track investment.⁹ However, BBI has indicated that the *first* expansion phase (Stage 7X, Phase 1) and it is understood the *second* expansion phase (Stage 7X, Phase 2) will still proceed although BBI is still assessing issues.¹⁰ As requested in DBCTPL's initial submission, DBCTPL would like the authorisation to extend through to the earlier of 2008 or the scheduled completion of expansion Stage 7X when capacity is anticipated to exceed demand. Although Stage 7X, Phase 1 was expected to be completed later in 2007, BBI has recently indicated that the delivery date for Stage 7X, Phase 1 has been extended by 2-3 months. This fact highlights the need for the authorisation to extend post the scheduled completion of Expansion Stage 7X, so as to allow for unforeseen delays. Therefore, the requested timeframe of the end of 2008 is still appropriate.

BBI has indicated that the viability of the expansion Stage 7X, Phase 3 depends upon a range of factors including demand and regulatory certainty. BBI is also working with QR to identify alternative strategies to boost the capacity of the rail network; possibilities include reorganising QR's practices or direct investment in the rail network by BBI. Recent indications suggest that QR has found additional rail capacity to cover some or all of the second expansion phase.¹¹

Issue 5: Whether the operation of the QMS has led to decreased exports?

Media reports,¹² as well as internal QMS reports, have indicated the possibility of vacant vessel berths and the question has been raised whether vacant vessel berths may lead to decreased exports.

DBCTPL reiterates its view that the QMS has no impact on the aggregate quantity of exports through the Terminal, evidenced by the fact that throughput through the Terminal has not reduced and there has always been a working queue.

DBCTPL acknowledges that there have recently been berth vacancies at the Terminal. However, vacant berths do not necessarily mean a reduction in overall exports. It is important for the Commission to note that the Terminal experienced "vacant berths" before the QMS was introduced including during periods in which there was a large vessel queue at the Terminal. The current Terminal is a configuration of three berths and two outloading systems reflecting the Harbour Master's rules that vessels being loaded at the Terminal must maintain their propeller underwater at all times. This rule means that the Terminal loading rate is ultimately constrained by the vessel deballasting rate. The extra berth permits an outloading system, previously committed to a vessel experiencing a deballast delay, to be assigned to a

⁸ *B&B eyes Queensland rail potential*, The Age, 4 August 2005; *Rail giant finds extra coal capacity*, The Australian Financial Review, 15 September 2005.

⁹ *B&B eyes Queensland rail potential*, The Age, 4 August 2005

¹⁰ *Babcock confident about Dalrymple rail capacity*, The Australian Financial Review, 29 September 2005.

¹¹ *Rail giant finds extra coal capacity*, The Australian Financial Review, 15 September 2005.

¹² *Slashed vessel queue leaves vacant berth time at Dalrymple Bay*, Lloyd's List Daily Commercial News, 26 July 2005

vessel capable of receiving coal – hence maximising both outloading system utilisation and Terminal throughput. In addition, rail receipt and cargo assembly continues even when there are vacant berths. When the Terminal is constrained by rail and inloading capabilities a vacant berth is a reasonably common event as the Terminal dispatches coal as soon as it is delivered and then may have to wait until the next shipment is fully assembled. During the period from about July 2004 to when the QMS was introduced, this was considered as the 'normal' operating condition for the coal chain. Managing and maximising throughput takes into account the rail receipt, cargo preparation and vessel loading inter-dynamics which are an integral element of the Terminal's operation.

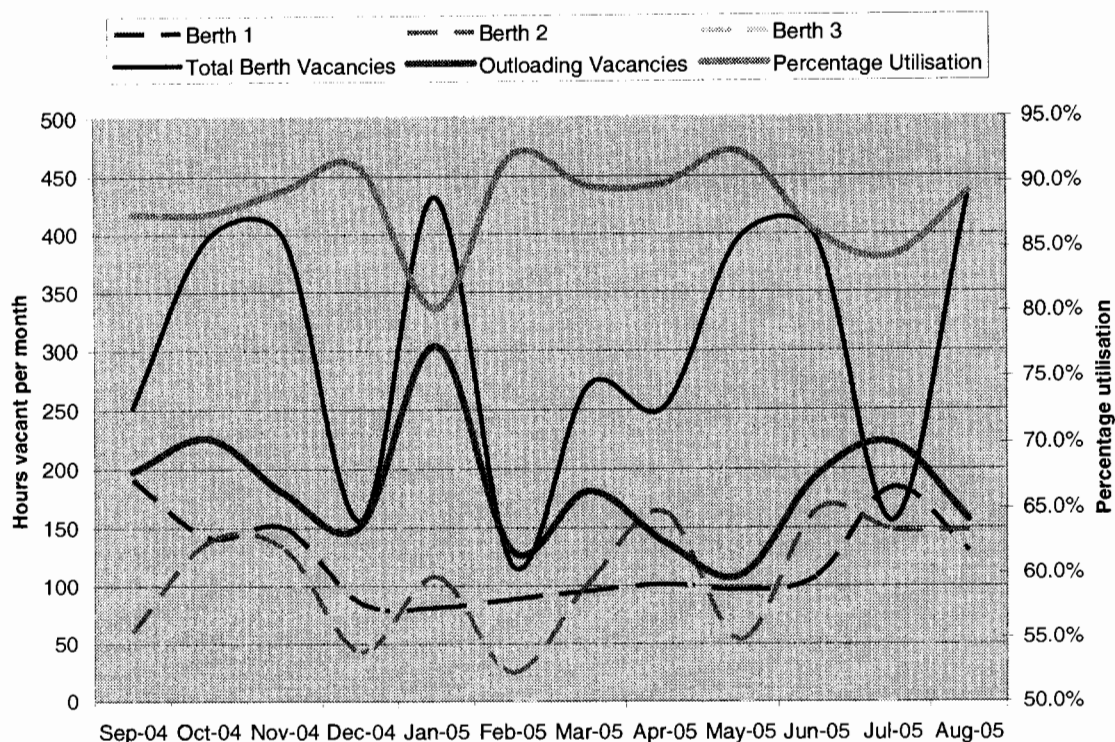
In addition, if sea swells increase, it may be unsafe to have a small (Handy / Handymax) vessel alongside a berth due to damage either to the vessel or the wharf fenders. Under these circumstances, a large (Cape) vessel, exhibiting greater stability, may be loaded if such a vessel is in the queue and ready to load.

Before the QMS was introduced there were also other constraints that occurred for short periods that impacted on coal chain throughput and resulted in vacant berths. This included occasions when the system was constrained by:

- the mines' ability to supply coal for transport (similar to the current environment with the QMS);
- equipment reliability issues at the Terminal; and
- adverse weather that prevented the berthing of ships.

Diagram Eight below illustrates over a 12 month period the fluctuation in vessel berth vacancies and illustrates that the key issue is in fact percentage utilisation, which has been approaching 90% in the relevant months of the QMS.

Diagram Eight - Vacant berth time and outloading vacancies



Source: DBCTPL

Notes:

- Outloading vacancies do not include Scheduled Maintenance.
- Percentage availability based on 24/7 usage of 2 outloading strings.
- January had 6.4 days of outloading lost because of two separate weather events.
- June/July had significant weather-related vacancies with high winds/seas requiring berths to be vacated, plus Coppabella derailment.

In short, "vacant berth" time has always occurred and will continue to occur, with or without a QMS. In isolation it has little relevance to overall Terminal efficiency – what is relevant is the number of export tonnes loaded, which has not reduced since the introduction of the QMS.

Issue 6: Elements of discretion in the QMS

The element of discretion retained in the QMS has also been raised. It is important to ensure that there is some flexibility in the operation of the QMS as otherwise it cannot operate effectively as it is not possible to deal with every eventuality in a set of terminal regulations. The coal chain and the operation of the Terminal is far too complex to not allow such flexibility. For example, one producer was the beneficiary of such flexibility when DBCTPL sought to ensure that that producer's coal parcel could be partly loaded onto vessels without waiting for coal from other producers which had been delayed which were supposed to have been loaded at the same time.

The discretion within the QMS is necessary to allow flexibility. That discretion has checks and balances through the Independent Administrator (who can intervene instantly if an exercise of discretion is questioned) and importantly through the extensive data disclosures provided to all Users on a daily and weekly basis. DBCTPL believes that such transparency should give comfort as to the use of discretion.

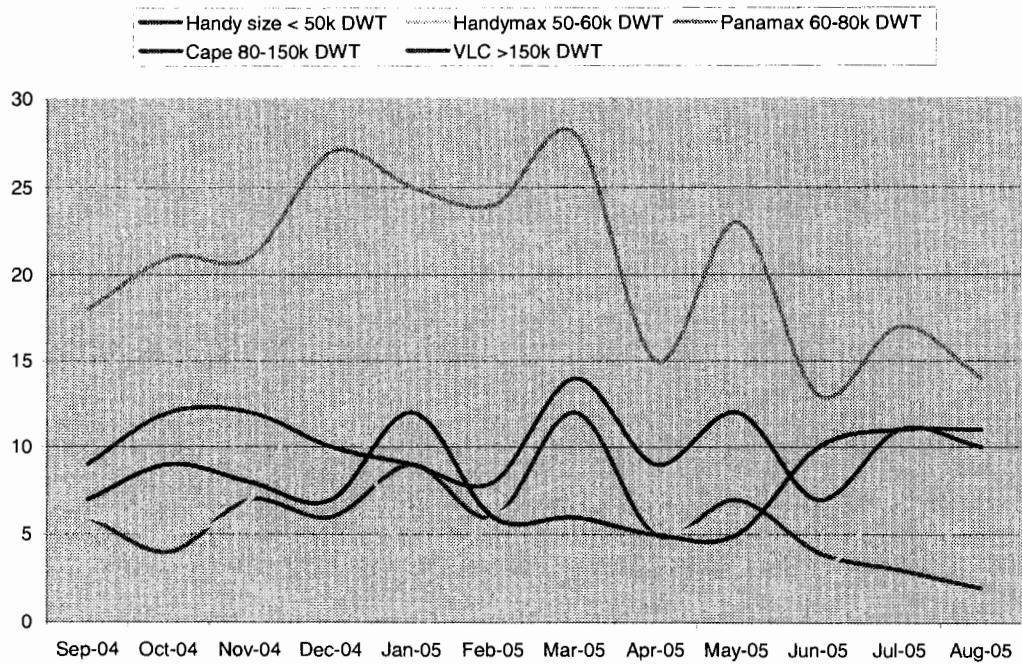
Issue 7: Reasons for the reduction in the vessel queue

DBCTPL acknowledges as it did in the previous submission, that the reduction of the vessel queue could have been influenced by a variety of factors. However, DBCTPL shareholders are of the view that in the absence of the QMS, the queue would reform. As to the suggestion that the reduction in the queue was largely contributed to by GCCIP, DBCTPL has earlier stated that GCCIP has contributed to the efficient use of the Terminal and the improved System Capacity. However, the QMS offers an holistic supply chain approach to the provision of User certainty, complementing the GCCIP focus on supply chain performance. That is, the QMS distributes what System Capacity there actually is, managing the vessel queue in a fair and equitable way: GCCIP deals with improving system performance so that there is more to distribute. Both have their own role.

Issue 8: Vessel sizes and parcel sizes

The data provided in the September Review is considered to be over far too short a period to be definitive on vessel sizes as a result of the QMS. However, the initial data suggests a trend towards the larger vessels. In relation to multi-parcelling, it appears as if this is increasing. (This is set out in Diagrams Nine and Ten below.) However, DBCTPL's understanding from the coal producers is that this is a customer driven issue that DBCTPL is unlikely to be able to change. Given that the majority of sales are made on a basis where customers are responsible for chartering the vessel, it is difficult for Users or DBCTPL to alter the vessel mix. Provided the vessel dimensions comply with the port requirements the vessel nominated by the buyer can be accepted.

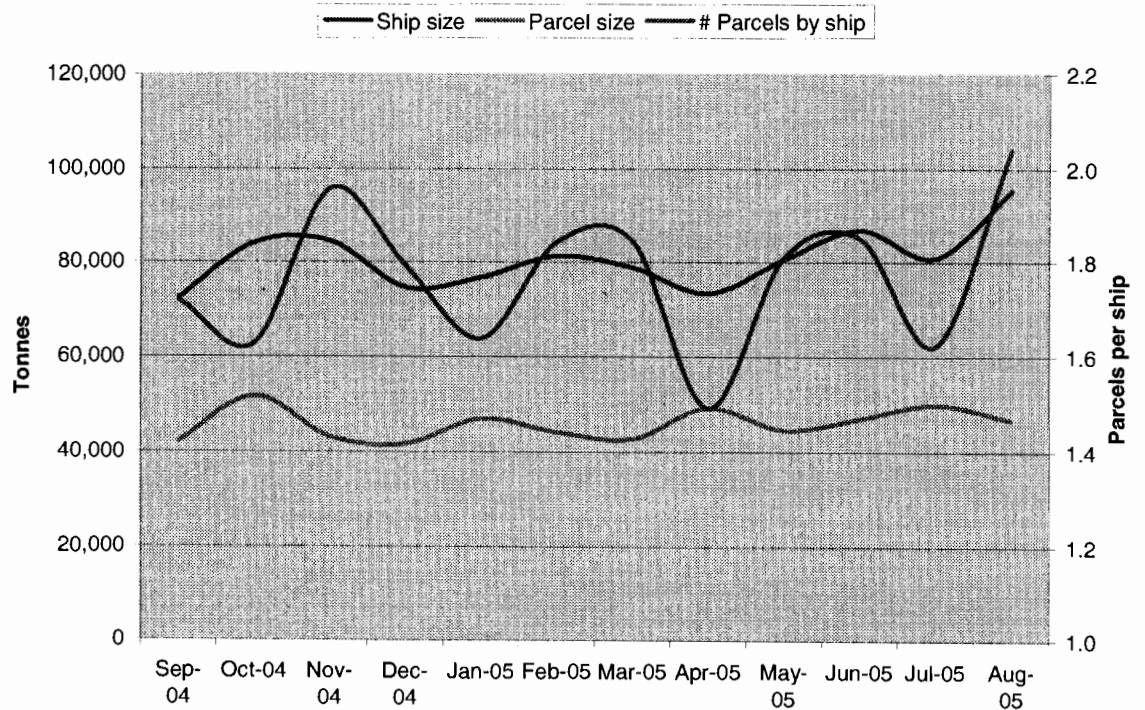
Diagram Nine
Number of Vessels by Size



Source: DBCTPL

Diagram Ten

Ship Size / Parcel Size / # Parcels



Source: DBCTPL

4 Issues raised by Macarthur Coal

4.1 Introduction

Macarthur Coal (C&M Management) Pty Ltd (“**MCCM**”), formerly known as Australian Premium Coal Pty Ltd has raised certain issues in its submission dated 7 September 2005 as to:

- (a) the appropriateness of DBCTPL being the administrator of the QMS;
- (b) the reasons for the reduction of the vessel queue; and
- (c) DBCTPL’s position on the issues raised in the ACCC’s letter to DBCTPL’s lawyers of 24 June 2005.

DBCTPL would prefer not to respond to issues raised by any particular producer in an adverse way as they are entitled to their own views and indeed MCCM has operational executives who have contributed to the QMS and have provided helpful guidance on some of the additional issues currently being considered by the DBCT User Group. DBCTPL also acknowledges that each User is entitled to consider each issue from their own financial and commercial position and that each User may have its own views on how the QMS can be most efficiently implemented. DBCTPL prefers the approach of seeking to deal with issues raised by all Users as it is difficult to address each issue to the satisfaction of all parties. The preferable course (and the outcome for which DBCTPL strives) is to have the QMS being fair and equitable for all. Accordingly, DBCTPL only responds to the MCCM issues as a result of a direct request to do so and only in so far as they were put by MCCM in relation to DBCTPL. It is also noted that most of MCCM’s issues as to the QMS have been dealt with earlier in this submission.

4.2 DBCTPL as administrator of the QMS

DBCTPL is the operator of the Terminal under the O&M Contract with BBI. As the Operator of the Terminal, and because it is responsible for putting forward the Terminal Regulations to operate the Terminal, DBCTPL believes it is the appropriate party to put forward the QMS as applicant for the authorisation to the Commission. Moreover, there is a mechanism for Users of the Terminal to become shareholders in DBCTPL should they so choose at a capital cost which is not prohibitive and which cost is independently determined each year, based on the value of DBCTPL’s share capital at the time. Accordingly, DBCTPL represents the majority of Users at the Terminal who also represent approximately 88.3% of the throughput at the Terminal. In addition, DBCTPL as Operator of the Terminal puts forward the Terminal Regulations to BBI to engage in further consultation as to any changes to the Terminal Regulations.

As to MCCM’s view of corporate governance, it is noted that:

- in the O&M Contract there is an express obligation on DBCTPL to operate the Terminal “in the case of competing interests of Users ... (taking account of) ... fairness and the efficiency and economy of the Coal Transport Chain as a whole”. DBCTPL has an overriding contractual obligation to act fairly amongst all Users; and

- the QMS itself specifically requires in clause 15(b) that DBCTPL administer the Terminal Regulations "equitably and in good faith, with a view to achieving the key objectives", one of which is to "ensure a fair, equitable and transparent allocation of System Capacity ... between Users".

The actual issue that MCCM highlights is the purpose of the QMS, in operating the Terminal efficiently and in so doing treating all Users equitably. In many respects, there is a higher burden on DBCTPL shareholders to act fairly than on non-shareholders. It would also seem difficult to object to this shareholding structure if MCCM is annually invited to become a shareholder. What DBCTPL has sought to do, in conjunction with GCCIP, is to take a leadership position in operating the Terminal efficiently and in conjunction with BBI. If each individual producer takes an individual approach, then it will lead to the "tragedy of the commons" of an overall increase in demurrage costs, with no overall increase (and possibly a decrease as a result of congestion) in throughput.

Accordingly, under the QMS, it is acknowledged that individual Users may see their own individual throughput decreased, but that throughput was previously at the expense of others. What the QMS seeks to do is ensure that there is no aggregate decrease in throughput. Evidence to date suggests that GCCIP in conjunction with the QMS has resulted in increased throughput.

Finally, as to the statements that DBCTPL should be seeking to put forward only operating parameters of the QMS to the Commission, that misunderstands the authorisation process. As to the assertion of the QMS being used to favour Users that are shareholders or who have representatives on the board, there is an underlying assumption that the interests of MCCM for some reason are different from those of other Users who hold shares in DBCTPL, and that those Users have caused DBCTPL to draft the QMS in a way which prejudices only MCCM. To the extent that the QMS deters one User from simply sending ships in an effort to achieve a disproportionate share of vessel loading, it does so to all Users.

Each year DBCTPL offers all Users the opportunity to become shareholders. If MCCM had a concern that DBCTPL discriminated against non-shareholders (something which DBCTPL believes not to be the case, as well as being virtually impossible to achieve even if it were desired), it has a ready solution - it can become a shareholder. DBCTPL is not aware of any legal obligations to favour shareholders or those with board representation over other Users not so represented, in the operation of the QMS or otherwise. Indeed, it has express contractual obligations not to do so.

The fact is that the application of the QMS is on a pro-rata basis, and that it is difficult to see how any User can say it has been discriminated against.

5 Conclusion

DBCTPL believes that the QMS has led and will continue to lead to substantial public benefits, through the reduction in excessive vessel queues and associated deadweight demurrage costs. In addition, the structure of DBCTPL and the QMS and the incentives of Users is such as to ensure pressure for maximum throughput and exports under the QMS. The QMS is biased towards exports and every effort is being made to ensure that there is no loss of the utilisation of System Capacity, and therefore exports, as a result of the QMS.

The operation of the QMS is transparent to Users which means that it is difficult to see how any inequality or unfairness to any User would not be readily identified. The inherent nature of the QMS to operate on a pro-rata basis also makes it difficult to see how the issues raised by one producer as to unfairness could be sustained.

DBCTPL believes that the positive results of the September Review and the work and continuing initiatives undertaken by DBCTPL and the DBCT User Group to address any non use of Entitlement, should give the Commission comfort that the authorisation application for the QMS has been well worked through as best the industry can achieve, to ensure that public benefits substantially outweigh any detriments.

DBCTPL appreciates the Commission considering this submission and the request for a further variation of the Interim Authorisation.

Dalrymple Bay Coal Terminal Pty Ltd
4 October 2005

Annexure One - Queue Management System
Amendments to Terminal Regulations - Mark up
of proposed further refinements

Confidential Annexure Two to Submission to the Australian Competition & Consumer Commission - Swaps

Table One - Swaps of Entitlement agreed under the QMS

[Confidential]

**Table Two - Offers to Swap Entitlement lodged with DBCTPL
for September / October**

[Confidential]