

Mr Scott Gregson
General Manager, Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

26 September 2007

Attention: Mr David Hatfield

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

Dalrymple Bay Coal Terminal Pty Limited - Application for revocation and substitution of authorisations under section 91C

We act for Dalrymple Bay Coal Terminal Pty Limited (“DBCTPL”).

1 Application for revocation and substitution of authorisations

Pursuant to section 91C of the *Trade Practices Act 1974* (Cth) (“TPA”), DBCTPL applies for the revocation of authorisations numbered A30239, A30240 and A30241 (granted by the Commission on 15 December 2005), and substitution of new authorisations for any contract, arrangement or understanding involving DBCTPL and any producer of coal for export through the Dalrymple Bay Coal Terminal at the Port of Hay Point, or exporter or exporters of coal through the Dalrymple Bay Coal Terminal (whether they are shareholders in DBCTPL or not), which relates to or is in any way associated with the revised queue management system (“QMS”) that is described in the attached Submission and which may constitute:

- exclusionary provisions within the meaning of section 45 of the TPA;
- a provision having the effect of substantially lessening competition within the meaning of section 45 of the TPA; and
- a provision to which sections 45D, 45DA or 45DB of the TPA might apply.

The only revision to the QMS for which authorisation is currently being sought is to extend the term of the QMS until the later of:

- completion of Phase Two and Phase Three of the Terminal expansion; and
- the date when System Capacity reaches or exceeds on a sustained Monthly basis the aggregate of Monthly tonnages of Coal which Users wish to ship through the Terminal on a sustained basis (that determination of sustained System Capacity being made by the Independent Expert),

but in any event no later than 31 December 2010 when System Capacity expansion is expected to have occurred.

The existing QMS is expressed to terminate at the earliest of:

- the end of “Phase One Expansion”;
- 31 December 2008; and
- the date when System Capacity reaches or exceeds on a sustained Monthly basis the aggregate of Monthly tonnage of coal which Users wish to ship through the Terminal on a sustained basis (that determination of sustained system capacity being made by the Independent Expert).

As Phase One Expansion is expected to be completed towards the end of 2007 or early 2008, and system capacity will not reach the aggregate of Monthly tonnage before then, the Existing QMS will come to an end on completion of Phase One Expansion (early 2008). It is industry consensus that contrary to previous expectations, because of high demand and limitations in the Coal Chain, the vessel queue will continue at similar numbers throughout at least 2007, 2008 and 2009 and more likely into 2010 and certainly beyond the current authorisation which ends in 2008.

Further information is contained in the supporting submission.

2 Application for urgent interim authorisation

DBCTPL is also seeking urgent interim authorisation of the Amended QMS under section 91 of the TPA. DBCTPL together with the Queensland Coal Industry recognise that there is an urgent need to address the excessive and substantial vessel queues off the coast of Australia and to provide certainty as early as possible that the QMS will continue to operate beyond 2008.

The sooner the Amended QMS can be implemented, there will be certainty amongst coal producers that the QMS will continue to allow the vessel queue to be managed to a workable and efficient queue at the Terminal with resultant savings. In addition, the implementation of the QMS as soon as practicable should avoid a situation in which if it became apparent that the QMS would cease to operate, coal producers would be likely to send a large number of vessels in the last quarter of 2007, thereby increasing the queue significantly. This occurred with the Capacity Balancing System at the Port of Newcastle when that system was initially voted to finish at the end of 2006. Accordingly, the Commission is requested to consider this authorisation application as soon as possible.

3 Supporting materials

We enclose:

- (a) Form FC, the application form prescribed by regulation for revocation of a non-merger authorisation and substitution of a new authorisation;
- (b) a confidential supporting Submission, of which Confidential Attachment A contains commercially sensitive information, which DBCTPL requests be excluded from the public register;
- (c) a non-confidential version of the supporting Submission for the public register, from which Confidential Attachment A has been withheld; and
- (d) a cheque for \$2,500 for lodgement of the application.

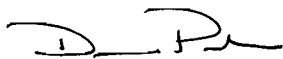
4 Confidentiality

As noted, Confidential Attachment A to DBCTPL's Submission contains commercially sensitive and confidential information. Pursuant to section 89(5) of the TPA, DBCTPL requests that the Commission exercises its power under section 89(5A) to exclude this information from the register kept by the Commission pursuant to section 89(3).

DBCTPL requests the Commission place only this letter, Form FC, and the non-confidential version of the Submission (with Confidential Attachment A removed) on the public register.

Should you have any questions relating to this application, please contact me, or Kate Newman on (02) 9296 2119.

Yours sincerely



Dave Poddar
Partner
Direct line +61 2 9296 2281
Direct fax +61 2 9296 3961
Email dave.poddar@malleasons.com

Encl

26 SEP 2007

Form FC

Commonwealth of Australia

Trade Practices Act 1974 - subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1 Applicant

- (a) Name of applicant
(Refer to direction 2)

Dalrymple Bay Coal Terminal Pty Limited ("DBCTPL")

A91060

- (b) Description of business carried on by applicant:
(Refer to direction 3)

A91061

A91062

DBCTPL operates the Dalrymple Bay Coal Terminal at the Port of Hay Point in Queensland. DBCTPL provides coal handling services to coal exporters who are part of the Goonyella coal chain, including receiving and unloading of coal, the storage of coal and loading of coal into vessels for export.

- (c) Address in Australia for service of documents on the applicant:

c/- Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

2 Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

A30239- Authorisation to:

- make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the TPA;

- give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the TPA.

A30240 - Authorisation to:

- make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the TPA;
- give effect to a provision of a contract, arrangement or understanding, a provision of which has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the TPA

A30241 - Authorisation to:

- engage, in concert with other persons, in conduct that may prevent or substantially hinder, a third person from supplying goods or services to, or acquiring goods or services from, a fourth person; and
- engage, in concert with other persons, in conduct that may prevent or substantially hinder, a third person from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

(b) Provide details of the basis upon which revocation is sought:

The service to which the Authorisations A30239, A30240 and A30241 relate is the queue management system (“QMS”), designed to address the imbalance between the demand for coal loading services at the Port of Hay Point and the capacity of the Goonyella coal chain. Now, however, a substantial deadweight vessel queue (of over 33 vessels) has re-formed off the coast of Australia, causing substantial demurrage costs to the industry. Additionally the current Authorisations expire on 31 December 2008. DBCTPL, in consultation with the Goonyella coal producers, considers that the QMS will be required beyond 2008.

Accordingly, revocation of Authorisations A30239, A30240 and A30241 is sought in order that they be substituted by authorisations that permits the QMS to be amended so as to extend the term of the QMS and to reduce the vessel queue.

3 Substitution of authorisation

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:
(Refer to direction 4)

A copy of the revisions to the QMS (forming part of the Terminal Regulations) for which authorisation is sought is attached to the supporting submission.

(b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

The service to which this application for revocation and substitution relates is the QMS designed to address the imbalance between demand for coal loading services at the Dalrymple Bay Coal Terminal and the capacity of the Goonyella coal chain.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

Authorisation is sought until 31 December 2010.

Please refer to the supporting submission which sets out the grounds supporting this period of authorisation.

4 Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

Any producer of coal for export through the Dalrymple Bay Coal Terminal or exporter of coal from the Dalrymple Bay Coal Terminal may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include the shareholders in DBCTPL listed in the supporting submission, as well as other coal companies in the Goonyella coal chain in Queensland producing coal for export.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

N/A

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

N/A

5 Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:

Please refer to the supporting Submission.

(See Direction 6 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the supporting Submission.

6 Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

- (a) A global market for coal (or at least the Asian coal market).
- (b) A market for the provision of coal loading services for bulk coal carrying ships in the Northern Bowen Basin

(See Direction 7 of this Form)

7 Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

Please refer to the supporting Submission.

(See Direction 8 of this Form)

- (b) Facts and evidence relevant to these detriments:

Please refer to the supporting Submission.

8 Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No

- (b) If so, the following information is to be furnished?

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/A

(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

N/A

(See Direction 5 of this Form)

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

N/A

9 Joint ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes. DBCTPL is an incorporated joint venture between the companies listed in the supporting Submission.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?

N/A

10 Further information

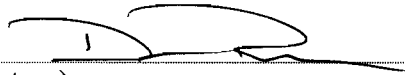
- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Mr Kim Gebers
Chief Executive & General Manager
Dalrymple Bay Coal Terminal Pty
Limited
Martin Armstrong Drive
Mackay Qld 4740
Tel: +61 7 4943 8444

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Email: Dave.Poddar@mallesons.com
Tel: +61 2 9296 2281

Dated 26 September 2007

Signed by/on behalf of the applicant



(Signature)

Dave Poddar

(Full Name)

Mallesons Stephen Jaques

(Organisation)

Partner

(Position in organisation)



DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) To the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing— provide a true copy of the writing; and
 - (b) To the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing— provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision— provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Dalrymple Bay Coal Terminal Pty Limited

2007 Amendment to extend the term of the Queue Management System to address the imbalance between the demand for coal loading services at the Dalrymple Bay Coal Terminal and the capacity of the Goonyella Coal Chain

Submission in support of the application for revocation and substitution under section 91C of the *Trade Practices Act 1974* (Cth) and application for an interim authorisation

Non-Confidential Version

Dated 26 September 2007

Dalrymple Bay Coal Terminal Pty Limited

2007 Amendment to extend the Term of the Queue Management System to address the imbalance between the demand for coal loading services at the Dalrymple Bay Coal Terminal and the capacity of the Goonyella Coal Chain

Submission in support of the application for revocation and substitution under section 91C of the *Trade Practices Act* 1974 (Cth) and application for an interim authorisation

1 Background and executive summary

1.1 The current authorisation

On 15 December 2005, the Australian Competition & Consumer Commission (“ACCC”) granted authorisation to applications (numbered A30239, A30240 and A30241) lodged by Dalrymple Bay Coal Terminal Pty Ltd (“DBCTPL”). The authorisations related to the Queue Management System (“Existing QMS”) in Attachment A to the ACCC’s authorisation determination. The authorisations came into force on 6 January 2006, subject to annual reporting requirements.

1.2 The Queue Management System (QMS)

DBCTPL operates the Terminal at the Port of Hay Point in Queensland. The Terminal is the largest export coal handling facility in Queensland.

The Existing QMS consists of Terminal Regulations which operate in conjunction with the existing take or pay contracts for coal loading (“User Agreements”) between coal companies (“Users”) and Babcock & Brown Infrastructure Limited (“BBI”).¹

The Existing QMS is expressed to terminate at the earliest of:

- the end of “Phase One Expansion”;
- 31 December 2008; and
- the date when System Capacity reaches or exceeds on a sustained Monthly basis the aggregate of Monthly tonnage of coal which Users wish to ship through the Terminal on a sustained basis (that determination of sustained system capacity being made by the Independent Expert).

¹ The User Agreements and the terminology associated with them are not dealt with in detail in this Submission as the Commission is familiar with these terms from the previous submissions in this matter. Terms and definitions not otherwise defined in this Submission have the same meanings as used in the Existing QMS as available on the Commission’s website.

As Phase One Expansion is expected to be completed towards the end of 2007 or early 2008, and system capacity will not reach the aggregate of Monthly tonnage before then, the Existing QMS will come to an end on completion of Phase One Expansion (early 2008).

The Existing QMS has been successful in reducing vessel queues and delivering public benefits. Prior to the implementation of the QMS the queue of vessels waiting to load off the East Coast of Australia was persistently numbering over 50 ships. The introduction of the QMS reduced the size of the vessel queue to approximately 15 ships in September 2005. However, there currently remains an ongoing imbalance between the demand for coal loading services at the Dalrymple Bay Coal Terminal (“**DBCT**”) and the capacity of the Goonyella coal chain, including the Terminal (together, “**System Capacity**”), to meet this demand.

The Existing QMS operates in general terms as follows:

- DBCTPL engages an independent expert to assess and determine overall coal chain System Capacity, and to the extent that coal producers’ combined annual contract tonnages under their User Agreements (“**Annual Contract Tonnages**”) exceed that declared System Capacity, producers will be given a pro rata reduction of their Annual Contract Tonnages for each month or other equivalent relevant period (“**Entitlement**”) so there is equity in the allocation of System Capacity;
- DBCTPL is not required to load a vessel that is nominated beyond the relevant coal producer’s coal loading entitlement based upon their Annual Contract Tonnage and loading allocation (“**Allocation**”) until entitlement is available or due to supply chain constraints, no other vessel is ready to load;
- producers can trade Allocation, either by private arrangements between themselves that is then communicated to DBCTPL or facilitated by DBCTPL in an open and transparent manner; and
- the QMS will not operate at any time that demand does not exceed System Capacity for a sustained period.

1.3 QMS Objectives

The key objectives of the QMS are to:

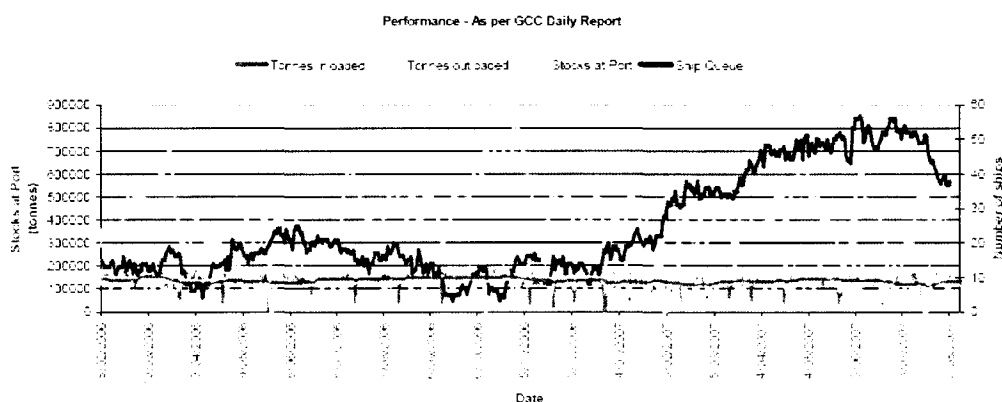
- (a) ensure a fair, equitable and transparent allocation of System Capacity (and where applicable Queue Adjustment System Capacity) from time to time between Users;
- (b) achieve and maintain a Working Queue, so as to minimise deadweight demurrage costs to all Users while maximising exports from the Terminal;
- (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.²

1.4 Current issues with the Goonyella Coal Chain affecting the QMS

The Existing QMS has been successful in managing the vessel queue. However, as demonstrated in Figure 1 below, over the first half of this year extraneous Coal Chain issues (including industrial action at Queensland Rail, cancellations of trains due to rolling stock and crewing issues), and extraneous weather issues (a cyclone) have led to a still significant queue of vessels (numbering 33 as at 23 August 2007) off the Terminal with resulting deadweight demurrage charges for Australian coal producers.

Figure 1 - Performance - As per GCC Daily Report



Source: "The Forecast System Capacity for the Goonyella Coal Chain - DBCT Component", Tuesday, 7 August 2007, Author: Independent Expert, Bruce Martin

As the size of the vessel queue has been affected by external factors, DBCT is also taking steps to seek to reduce the vessel queue. The operation of a Queue Adjustment, as provided for in the Existing QMS, is reducing the vessel queue and is expected to further reduce the vessel queue over the next few months. If further Queue Adjustment were to become necessary because of such extraneous factors, DBCTPL would inform the Commission at an appropriate time.

The re-appearance of the vessel queue in Queensland (and New South Wales) has led to complaints from international coal purchasers and Australia's trading partners as to delays and costs as well as continuing damage to Australia's and the Terminal's export reputation. For example, the issue was raised recently by a Japanese delegation of coal industry representatives who attended the Japanese Coal Infrastructure Conference in Sydney in July 2007. In the course of discussions with the Queensland Premier, Mr Peter Beattie and the New South Wales Minister for Transport, Mr Michael Costa, the delegations sought assurances that the infrastructure bottlenecks would not jeopardise exports.³ This background highlights the continuing need for a QMS.

² Clause 3, Terminal Regulations. p.p. 6-7.

³ <http://www.globalcoal.com/news/coalnews.cfm>

Apart from weather issues, the queue has reformed largely due to rail coal chain issues being much worse than expected and time being needed to address knock on effects in the coal chain. On 29 July 2007, the Queensland Government released the Review by Mr Stephen O'Donnell ("O'Donnell Review") into Goonyella Coal Supply Chain Capacity⁴. The O'Donnell Review was jointly commissioned by the Queensland Government and the Queensland Resources Council and identified that the current bottleneck is the lack of rail rolling stock capacity in the Goonyella Coal Chain. The O'Donnell Review also noted that for short periods of time the port may become the bottleneck later this year during the planned construction works to be carried out at the Terminal.

Irrespective of any temporary position, the recent release of the Forecast Capacity for the Goonyella Coal Chain in 2008 has noted that the System Capacity for the 2008 calendar year is 57.4Mt. Accordingly, it is now also clear to coal producers that System Capacity will be less than Terminal Capacity beyond the expiration of the current Authorisation.

Table 1 - The System Capacity Forecast

Quarter	Quarterly Practicable Capacity (tonnes)	Month	Days	Monthly Practical Capacity (Annualised - Mtpa)	Monthly Practical Capacity (Tonnes)
Qtr 4 - 2007	12,931,949	October	31	51.072	4,337,624
		November	30	51.425	4,226,717
		December	31	51.425	4,367,607
Qtr 1 - 2008	13,917,791	January	31	51.425	4,367,607
		February	29	58.097	4,615,922
		March	31	58.097	4,934,261
Qtr 2 - 2008	13,911,385	April	30	58.097	4,775,092
		May	31	52.778	4,482,535
		June	30	56.621	4,653,758
Qtr 3 - 2008	14,643,615	July	31	58.097	4,934,261
		August	31	58.097	4,934,261
		September	30	58.097	4,775,092
Qtr 4 - 2008	14,947,429	October	31	54.148	4,598,856
		November	30	61.178	5,028,348
		December	31	62.641	5,320,225

Source: "The Forecast System Capacity for the Goonyella Coal Chain - DBCT Component", Tuesday, 7 August 2007, Author: Independent Export Bruce Martin

The Existing QMS will terminate at the earliest of the completion of "Phase One Expansion", 31 December 2008 and the date on which system capacity will equal system demand. Practically, this means the Existing QMS will terminate on the completion of Phase One Expansion, which is estimated to be late 2007 or early 2008. At the time of preparation of the Existing QMS in 2005, it was not envisaged that rail and associated coal chain issues would remain post Phase One expansion to 68mtpa (which was estimated to be completed between

⁴ http://www.qrc.org.au/01_cms/details.asp?ID=1046

July 2007 to end 2007, but is now estimated to be completed between late 2007 to early 2008), let alone Phase Two and Phase Three expansions to an estimated 85mtpa by the end of 2009.

It is now evident that an overhaul of the whole Goonyella coal chain (and in particular rail capacity) is required to remedy the coal chain capacity constraints which exist and it is the view of industry that such expansion is unlikely to occur before the end of 2010. It is also evident that, in the interim, it is necessary that the QMS continues beyond the completion of Phase One expansion to operate until further expansion is completed and the imbalance between demand and coal chain capacity is remedied.

DBCTPL believes that, in the interim and absent the QMS, having regard to the imbalance between demand and Coal Chain capacity and in the absence of a mechanism for matching demand and Coal Chain capacity, the queue will persist and even grow throughout the remaining part of 2007 and then into 2008, 2009 and 2010. In these circumstances, unless the Existing QMS is extended, the queue is estimated by Producers to lead to substantial demurrage costs in the order of approximately A\$290 million in deadweight demurrage costs for 2008.

The estimated demurrage costs when the QMS is operating and the vessel queue consists of 15 vessels, compared to a queue of approximately 33 vessels with demurrage estimated at more than A\$17,000 per day, are approximately A\$16.8 million per annum, meaning that the QMS is estimated to result in a saving of approximately A\$273.2 million compared to a cost of A\$290 million without the QMS.

1.5 The proposed extension of the term of the QMS

Having regard to the Goonyella coal chain capacity issues, DBCTPL is initially proposing to amend the term of the Existing QMS only.

The Existing QMS terminates at the end of Phase One Expansion because the industry's view in 2005 was that such expansion was likely to have resolved the capacity imbalance. It was intended that the QMS was to be transitional until the imbalance was corrected by commercial forces. For the reasons noted earlier, it is now anticipated that the imbalance in coal chain capacity and in particular inability to obtain additional rail capacity, will extend until the end of 2010. For this reason, the revised end date of the QMS is to be formulated as follows.

“The QMS will terminate on the later of:

- (i) completion of Phase Two and Phase Three of the Terminal expansion; and*
- (ii) the date when System Capacity reaches or exceeds on a sustained Monthly basis the aggregate of Monthly tonnages of Coal which Users wish to ship through the Terminal on a sustained basis (that determination of*

sustained System Capacity being made by the Independent Expert),

but in any event no later than 31 December 2010 when System Capacity expansion is expected to have occurred."

It is estimated that, if the QMS is extended in 2008, the QMS will result in a reduction in demurrage costs of approximately A\$273.2 million. Adopting a similar basis if the QMS is extended into 2009 and 2010, it should reduce demurrage costs in an approximate total amount of A\$819 million. It is noted it is difficult to extrapolate such estimations in advance as a variety of factors could influence the size of the vessel queue. However, this estimate for 2008 is not dissimilar in an amount as that estimated for one similar priced in the O'Donnell Reports.

1.6 Request for revocation and substitution of authorisation

The operation of the Existing QMS as noted earlier ends on Phase One expansion later this year (or early next year) when actual completion occurs. On no conceivable basis will the coal chain issues be resolved by that time. For this reason, DBCTPL is requesting a revocation and substitution to allow amendment of the QMS beyond Phase One to the end of 2010 as it is important that there is no perceived likelihood of the QMS ending later this year or during 2008. If it appeared possible that it would end later this year, then as occurred with the Capacity Balancing System at the Port of Newcastle, which was initially voted to finish at the end of 2006, producers would be likely to send large numbers of vessels in the last quarter of 2007 which would result in an extremely large vessel queue. Accordingly, there is a degree of urgency that it be clear that the QMS as authorised will continue in 2008 (and through 2010).

We do not believe that this should create substantive concerns for the Commission as the existing authorisation allowed termination at the end of 2008 subject to Phase One expansion. In terms of the extension of the QMS to the end of 2010, there is now clear independent evidence of coal chain capacity imbalance problems likely to continue into 2010 from the O'Donnell Review. DBCTPL does not anticipate industry disagreement with this estimation.

1.7 Request for interim authorisation

The sooner the Amended QMS can be implemented, it will signal confirmation that the QMS will continue, thereby allowing the vessel queue to be managed towards a workable and efficient queue at the Terminal with resultant savings. It is important to provide the coal producers with certainty as soon as practicable that the QMS will not come to an end during 2008 while the imbalance between system capacity and demand for coal loading services at the Terminal continues, so that the coal producers can continue their operations without needing to make provisions for a possible scenario in which the QMS ceases to operate.

In addition, the implementation of the Amended QMS as soon as practicable is necessary to avoid a situation where coal producers would

be likely to send a large number of vessels to the Terminal in the last quarter of 2007, if it became apparent that the QMS would terminate in late 2007 or early 2008.

Accordingly, DBCTPL is also seeking an interim authorisation under section 91 of the TPA to provide continued certainty and the Commission is requested to consider this interim authorisation application as soon as practicable.

DBCTPL appreciates that this request is somewhat unusual, given that the existing authorisations are on foot until the end of 2008. However, given that the Existing QMS will self-terminate in late 2007 or early 2008 (based on a provision which, at the time, was regarded a sensible, commercial mechanism for limiting any impact of the QMS), DBCTPL submits that there is a need to seek interim authorisation of the Amended QMS.

It is noted that as far as DBCTPL is aware, there has been no suggestion by any coal industry participant that the QMS itself has curtailed the Terminal expansion, rail expansion, or is responsible for coal chain issues further up the Goonyella coal supply chain. It is noted that rail capacity expansion is lagging Terminal expansion. However, as there is only one above rail bulk freight provider in Queensland, in Queensland Rail National ("QRN"), DBCTPL understands this is more an issue within QRN, rather than as a result of the Existing QMS.

Finally, as the Amended QMS will continue to operate on a periodical basis, if the Commission were to ultimately decide not to provide a final authorisation, the QMS could be terminated on several months notice such that granting an interim authorisation will not have an irreversible effect.

1.8 Assessment of benefits vs detriments - No impact on competition in Australia and significant public benefits.

Although the vessel queue has continued despite the operation of the Existing QMS (largely due to extraneous coal chain and weather issues), the continuation of the QMS beyond the completion of Phase One expansion will continue to deliver significant public benefits as, in its absence, the vessel queue would be likely to grow even further beyond its current size.

Therefore, by continuing to manage the current vessel queue and seeking to ensure it continues at a workable length on a transitional basis, the Amended QMS will continue to result in a number of substantial public benefits including:

- saving A\$273.2 million in demurrage costs for 2008, which absent the Amended QMS, Australian-based coal producers would otherwise have to pay to foreign ship owners. Demurrage charges are a dead weight loss and economically inefficient. Coal producers are essentially paying empty vessels to sit unproductively for lengthy periods of time. Saving these costs is a substantial public benefit. By increasing economic

efficiency and reducing this impost to exports, the Amended QMS will benefit the Australian public;

- improved international reputation and international competitiveness of the Terminal and the Queensland Coal Industry;
- assists in the queue operating at a more efficient level and the consequent demurrage cost savings;
- reducing User stockpiling costs at the mine;
- providing increased certainty to Producers regarding the volume of coal they can ship, which will enable Producers to manage production more efficiently, thereby facilitating the most efficient operation of the Goonyella coal chain; and
- importantly allowing a transition to a long term solution for the Goonyella coal chain.

1.9 Further amendments to the QMS may be the subject of a later application for revocation and substitution

It is likely that further review of the operation of other parts of the Goonyella Coal Chain will ultimately be necessary, which may, in turn, necessitate further amendments to the Existing QMS. Following the release of the O'Donnell Review it has become apparent that the various stakeholders in the Goonyella coal chain will need to work together with the Queensland Government to implement the recommendations made in the O'Donnell Review. At this stage however, DBCTPL is merely seeking an amendment to the term of the QMS to enable the coal chain to operate as efficiently as possible while a longer term solution is developed and implemented.

DBCTPL will update the Commission as to any further amendments to the Amended QMS which are considered.

1.10 Structure of submission

This submission is divided into the following sections:

Section 2 - sets out further information on the Bowen Basin coal industry, the owner and operator of the Terminal and the operation of the Terminal;

Section 3 - sets out further information on the proposed amendments to the term of the QMS;

Section 4 - sets out further information on the request for revocation and substitution and for doing so on an urgent interim basis;

Section 5 - sets out further information on the rationale for the proposed amendments to the term of the QMS;

Section 6 - sets out further information on the public benefits which will arise from the amendments to the term of the QMS; and

Section 7 - sets out a brief conclusion.

We will now discuss these issues in more detail.

2 Background Information

2.1 Factual background

Detailed information in relation to the factual background of the QMS was provided to the ACCC in our application dated 5 April 2005. DBCTPL trusts that those earlier materials will assist the Commission in its consideration of this matter. However, in the interest of assisting the Commission by providing all relevant background information on the QMS in one document, set out below is an up-to-date overview of DBCTPL and the associated coal industry background.

2.2 The Queensland coal industry

Introduction

Queensland and New South Wales account for over 95% of Australia's black coal production. In particular, the Bowen Basin in Queensland and the Sydney Basin in New South Wales account for the vast majority of coal produced in Australia.⁵ As Figure 2 below illustrates, a vast amount of the substantial coal resources in Australia are contained in central and south-eastern Queensland.

Figure 2: Australian black coal resources



Black Coal Resources
■ Producing areas
■ Substantial economic resources
■ Known coal areas

Source: www.australiancoal.com.au

Queensland coal production and exports

During 2005-2006, Queensland produced a record 171.88 million tonnes (Mt) of saleable coal and of this, 142.89Mt was exported to 34 countries world-wide, valued at A\$17.88 billion. Of these exports,

⁵ <http://www.australiancoal.com.au/resources.html>

99.43Mt (58%) was coking coal and the remaining 72.45Mt (42%) was thermal coal.⁶

Japan has traditionally been Australia's major market for coking coal, and while remaining the main consumer of Australian export coking coal, this has decreased over recent years with the industrialisation of other Asian countries. Over 73% of Australia's export thermal coal is destined for Asia, with Japan, Korea and Taiwan as major buyers.⁷ The top ten purchasers of Queensland coal in 2005-2006 are set out in Table 2 below.

Table 2: Top 10 purchasers of Queensland coal in 2005-2006

Country	Quantity (million tonnes)
Japan	54.75
Korea	20.67
India	15.47
Taiwan	8.30
Brazil	5.37
France	4.89
Netherlands	4.84
UK	4.52
China	4.22
Spain	3.26

Source: www.nrw.qld.gov.au/mines/coal/pdf/table_3mp.pdf

Coal is traditionally sold to customers under long term contracts and the majority of coal from the Bowen Basin is shipped through the Terminal on Free on Board (FOB) terms. Under FOB terms, the buyer charts the vessel, however the producer is responsible for paying any demurrage charges incurred, based on the waiting time of the vessel, the contract loading rate and the demurrage rate specified for the vessel and/or provided for in the coal sales contract.

Most of the coal shipped from the Terminal is sold on a long term basis, although some coal is sold on the spot market.

2.3 The Bowen Basin

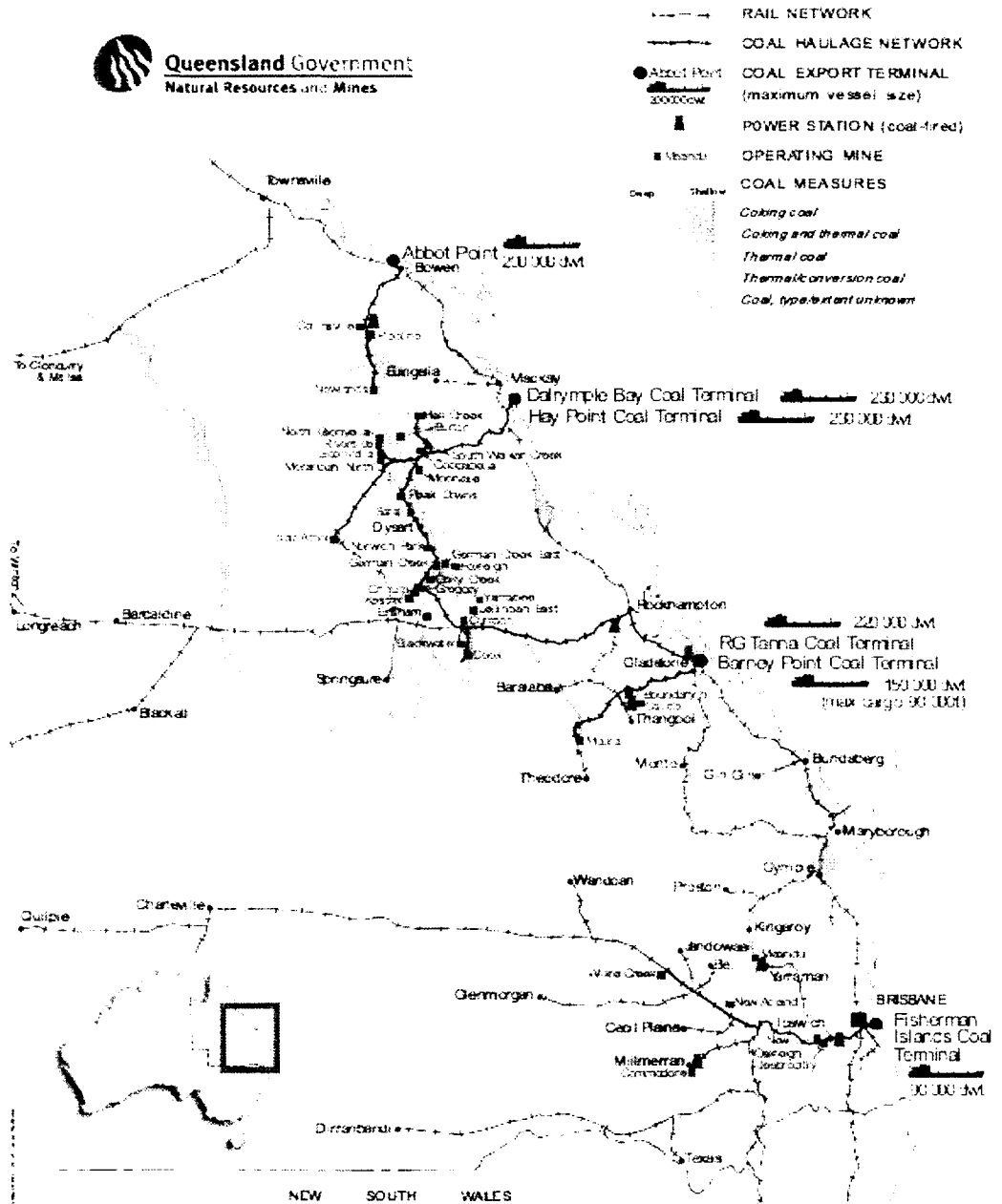
The Bowen Basin area extends over approximately 60,000 square kilometres of Central Queensland from the town of Collinsville in the north to Theodore in the south, as set out in the map in Figure 3 below.

⁶ Queensland Government: Department of Natural Resources and Mines, Queensland Coal Facts 2005-06 available at http://www.nrm.qld.gov.au/mines/statistics/coal_stats.html

⁷ Queensland Government: Department of Natural Resources and Mines, Queensland Coal Facts 2005-06

Figure 3: Queensland Coal Mines and Infrastructure

Queensland Coal Mines and Infrastructure



Source: <http://www.nrm.qld.gov.au/mines/coal/pdf/coalfacts.pdf>

The Bowen Basin coal reserve is the largest in Australia and the 34 operational coal mines in the area extract over 100 million tonnes annually, which represents approximately 83% of Queensland's coal production.⁸ The basin is the site of large, open cut mines and generates most of Queensland's black coal export earnings.

⁸ www.bowenbasin.cqu.edu.au

2.4 Queensland Port facilities

Queensland coal destined for export markets is handled through six coal terminals at four deepwater ports along the Queensland coast. From north to south these ports are:

- Port of Abbot Point, (Abbot Point Coal Terminal);
- Port of Hay Point (Hay Point Coal Terminal and Dalrymple Bay Coal Terminal);
- Port of Gladstone (RG Tanna Coal Terminal and Barney Point Coal Terminal); and
- Port of Brisbane (Fisherman Islands Coal Terminal).⁹

The Dalrymple Bay, Hay Point and RG Tanna coal terminals collectively handle approximately 85% of Queensland's coal exports.

2.5 Dalrymple Bay Coal Terminal

The Terminal is located at the Port of Hay Point and is leased from the Queensland State Government by BBI (the ownership and operation structure of the Terminal is discussed further below).

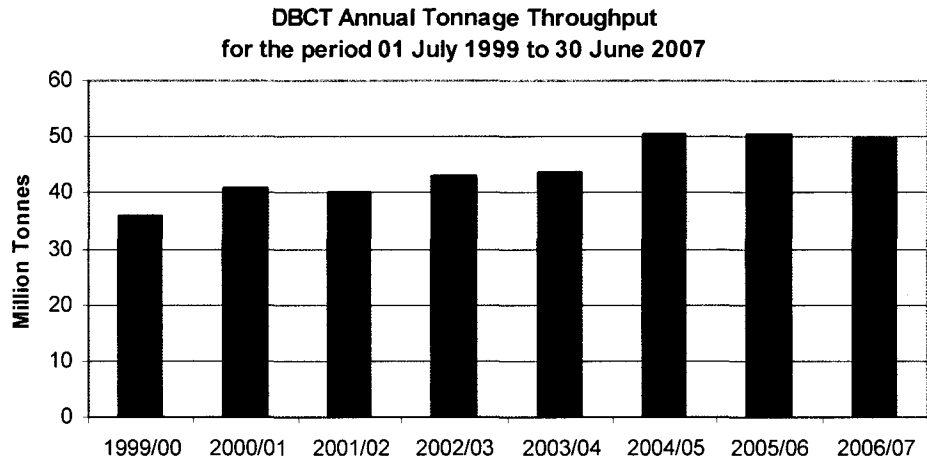
The Terminal is a common user coal export facility and the largest export coal terminal in Queensland, handling the products of northern Bowen Basin mines. The Terminal has three berths, three ship loaders (capacity 7,200 tonnes/hour) and encompasses purpose-built rail in-loading facilities and on-shore stockpile yards. The Terminal's wharf is 3.8 km offshore to permit ship loading in deep water.

The Terminal has a stated throughput capacity of approximately 55.53 million tonnes per annum (mtpa)¹⁰ and in 2006-2007, had total throughput of 49.97Mts. Figures 4 and 5 below illustrate recent tonnage shipped through the Terminal and the relationship between contracted tonnes and actual tonnes shipped through the Terminal.

⁹ www.nrm.qld.gov.au

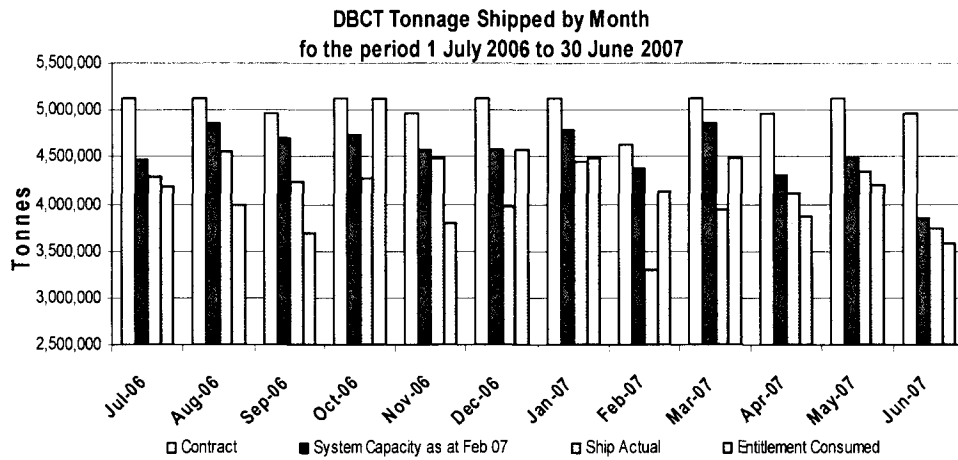
¹⁰ www.dbct.com.au

Figure 4: Annual Total Throughput at the Terminal between 1996 and 2006



Source: DBCTPL

Figure 5: Monthly tonnage shipped at Terminal YTD 06/07



Source: DBCTPL

Table 3 lists the mines supplying the Terminal.

Table 3: Mines that supply the Terminal

Mine	Owner	Operator
Blair Athol	Joint venture between Rio Tinto Coal Australia Pty Limited (57.2 %), Leichhardt Coal Pty Limited (31.4 %, which is owned by UniSuper, Rio Tinto Coal Australia and the Electric Power Development Co Ltd of Japan), and the Japanese power utilities EPDC (Australia) Pty Ltd (8 %) and JCD Australia Pty Ltd (3.4 %).	Rio Tinto Coal Australia Pty Ltd
Goonyella / Riverside	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited
Capcoal German Creek	Underground mine owned by Anglo Coal Australia Pty Ltd (70%) and Mitsui Pty Ltd (30%). Opencut mine owned by Anglo Coal Australia Pty Ltd (86%) and Marubeni Coal Pty Ltd (14%)	Anglo Coal (Capcoal Management) Pty Ltd
Oaky Creek	Xstrata plc	Xstrata Coal Queensland Pty Ltd
North Goonyella	Peabody Energy Australia Coal Pty Limited	North Goonyella Coal Mines Pty Ltd
Burton	Peabody Energy Australia Coal Pty Limited	Thiess Pty Ltd
Moranbah North	Anglo Coal Australia Pty Ltd (88%) and the remaining 12% owned by joint venture partners Nippon Steel, Mitsui Coal, Shinsho Australia, NS Resources and Kokan Kogyo	Anglo Coal Australia Pty Ltd
Hail Creek	Joint Venture - Rio Tinto Coal Australia (82%), Nippon Steel Australia 8%, Marubeni Coal (6.66%) and Sumisho Coal Development (3.34%).	Rio Tinto Coal Australia Pty Ltd
Foxleigh	CAML Resources Pty Limited (60%), Bowen Basin Investments Pty Ltd (16.4%), Itochu Coal Resources Australia Ltd (20.6%) and Lake Lindsay Investments Pty Ltd (3%).	Foxleigh Mining Pty Ltd
Coppabella	Coppabella and Moorvale joint venture: Macarthur Coal Limited (73.3%), CITIC (7%), Marubeni Corporation (7%), Sojitz Corporation (7%), JFE Shoji Trade Corporation (3.7%) and Nippon Steel Trading Co Ltd (2%).	Macarthur Coal (C&M Management) Pty Ltd

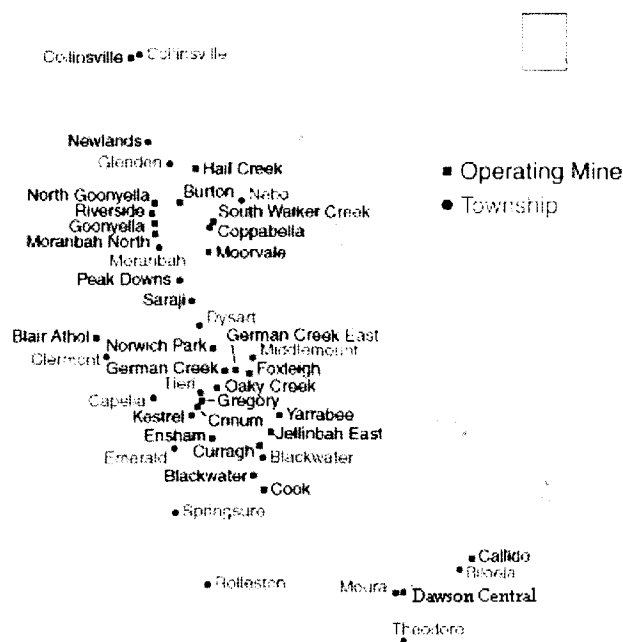
Mine	Owner	Operator
Moorvale	Coppabella and Moorvale joint venture: Macarthur Coal Limited (73.3%), CITIC (7%), Marubeni Corporation (7%), Sojitz Corporation (7%), JFE Shoji Trade Corporation (3.7%) and Nippon Steel Trading Co Ltd (2%).	Macarthur Coal (C&M Management) Pty Ltd
Peak Downs	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited
Millenium	Peabody Energy Corporation (84.6%)	Millenium Pty Limited
Norwich Park	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited
Isaac Plains	Bowen Central Coal Joint Venture, owned equally by Aquila Coal Pty Ltd and Companhia Vale do Rio Doce	CVRD Australia Holdings Pty Ltd (previously AMCI Holdings Australia Pty Ltd)
Carborough Downs	Companhia Vale do Rio Doce (80%) and joint venture partners Nippon Steel, JFE Group, POSCO and Tata Steel each with 5%	CVRD Australia Holdings Pty Ltd (previously AMCI Holdings Australia Pty Ltd)
South Walker Creek	BHP Billiton (80%) and Mitsui and Co (20%)	BHP Mitsui Coal Pty Ltd
Broadlea	Companhia Vale do Rio Doce	CVRD Australia Holdings Pty Ltd (previously AMCI Holdings Australia Pty Ltd)
Gregory / Crinum	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited
Blackwater	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited
Broadmeadows	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited
Saraji	BHP Billiton Mitsubishi Alliance, consisting of equal ownership between BHP Billiton and Mitsubishi Development Pty Ltd	B.M Alliance Coal Operations Pty Limited

Source: www.bowenbasin.cqu.edu.au and respective websites of mine operators

The main exporters through the Terminal in the financial year 2006/2007 are set out in the confidential Attachment A.

The location of these coal mines is set out in Figure 6 below.

Figure 6: Operating Coal Mines in the Bowen Basin



Source: www.bowenbasin.cqu.edu.au

DBCTPL is the operator of the Terminal. DBCTPL is responsible for the day-to-day operations and maintenance of the Terminal pursuant to a contract with BBI (DBCT) Management Pty Ltd (“BBI”). The operations and maintenance contract is currently effective until March 2009 with the capacity for a further extension until 2014. DBCTPL is able to request a further extension beyond 2014 although BBI is under no obligation to grant this extension.

DBCTPL is owned by the following shareholders

- **Blair Athol Coal Pty Ltd** (ACN 009 739 729)
- **Anglo Coal (Capcoal Management) Pty Limited** (ACN 010 037 564)
- **Anglo Coal (Moranbah North Management) Pty Limited** (ACN 069 603 587)
- **Xstrata Coal Queensland Pty Limited** (ACN 098 156 702)
- **BHP Mitsui Coal Pty Ltd** (ACN 009 713 875)
- **Burton Coal Pty Ltd** (ACN 064 159 977)
- **CAML Resources Pty Ltd** (ACN 080 649 029)

- **Bowen Basin Investments Pty Ltd** (ACN 083 431 761)
- **ICRA Foxleigh Pty Ltd** (ACN 089 980 138)
- **Lake Lindsay Investments Pty Ltd** (ACN 083 471 685)

The major functions performed by DBCTPL at the Terminal are:

- co-ordinating the raiing of coal from the mine sites to the Terminal (in conjunction with Queensland Rail);
- managing and operating train unloading, stockpiling and ship loading activities within the Terminal;
- preparing shipping documentation (bills of lading, manifests, statements of fact etc) on behalf of the mines shipping the coal; and
- *maintenance and minor engineering functions.*¹¹

The handling of coal at the Terminal by DBCTPL for producers is governed by Terminal Regulations. Each producer has a User Agreement with BBI giving them the right to have their coal shipped through the Terminal. Producers agree to abide by the Terminal Regulations as part of their User Agreement with BBI.

2.6 Proposed expansion

The terminal is currently being expanded from approximately 60 Mtpa initially to approximately 68 Mtpa and then to approximately 85 Mtpa. Modification, enhancements or new plant and equipment are proposed for all major areas of the terminal during the 3 phases of expansion of the Terminal.

Phase 1 expansion includes:

- third in-loading system including rail loop, and dump station;
- stockpile upgrades;
- two new stockpile bunds;
- relocation of SR4 as RL2 on Bund 6;
- three new yard machines; and
- minor outloading upgrades

¹¹ www.comlabs.com.au

2.7 Queensland Competition Authority

The Terminal is declared for third party access under the *Queensland Competition Authority Act 1997 (Qld)* (“QCA Act”). This declaration means that BBI must not hinder or prevent access to the Terminal and must negotiate in good faith with access seekers.

On 20 June 2003, BBI (then known as Prime Infrastructure (DBCT) Management) submitted a draft access undertaking for the coal handling services at DBCT to the Queensland Competition Authority (“QCA”) on behalf of DBCT Holdings.

On 20 April 2005 the QCA published its decision to refuse to approve the draft access undertaking. The decision set out the reasons for refusing to approve the draft access undertaking and outlined how it needed to be amended in order to be approved by the QCA.

DBCT Management and the DBCT User Group subsequently entered into discussions to resolve all outstanding matters in relation to the draft access undertaking. Because of concerns about the time being taken to finalise these discussions, on 21 October 2005 the Authority issued DBCT Management with an initial undertaking notice in accordance with s.133 of the *QCA Act*. This notice required DBCT Management to submit a revised draft access undertaking which was consistent with the Authority's decision by 19 January 2006.

On 4 January 2006, DBCT Management submitted a draft access undertaking in accordance with the initial undertaking notice, as well as an associated standard access agreement. On 15 June 2006 the Authority published its decision approving the draft access undertaking

Queensland Rail's below rail infrastructure is also regulated under the provisions of the QCA Act.

2.8 The process of delivering coal

The process for coal being loaded at the Terminal is as follows:

- Consistent with Terminal Regulations, DBCTPL “vets” vessel nominations, accepts vessel nominations, reviews “quality plans”, co-ordinates rail delivery of coal parcels to meet the nominated vessel quality and loading plans;
- Referring to the current loading plans and the future raiiling plan DBCTPL allocates stockpiles at the Terminal for a particular vessel. The Terminal was originally designed to operate in “dedicated stockpile” mode. However, consistent with User requests, cargo assembly areas have been progressively established to facilitate loading of multi-cargo vessels. Following the collapse of a coal reclaimer in 2004, Users have foregone their entitlement to dedicated stockpiles and the Terminal has been operating exclusively in cargo assembly mode;

- The mines load the coal for transport to the Terminal where it is placed on the appropriate stockpiles or through-loaded direct to the ship; and
- Upon completion of parcel assembly (or scheduled “on rail” delivery to the Terminal) the vessel is berthed and loading commenced.

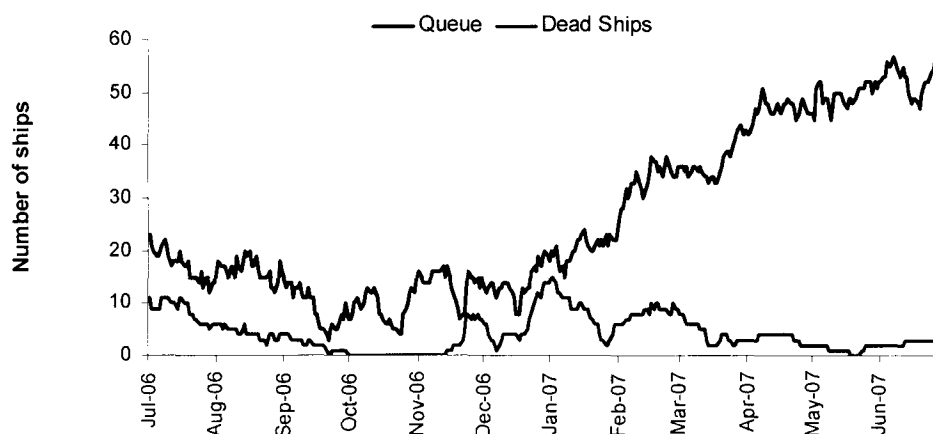
2.9 Problems of extensive vessel queues

There is strong world demand for coal. That demand is currently outstripping System Capacity to export coal. Producers of coal are facing a congested coal chain and ship loading facilities. This is causing substantial queues of vessels to form and the coal producers are incurring substantial levels of demurrage.

Demurrage costs

Shipping companies charge coal producers demurrage fees for the period of time in which ships must remain idle while waiting to collect coal from the port. This cost incurred by producers represents a considerable deadweight loss. Figure 8 shows the size of the vessel queue between July 2006 and June 2007.

Figure 8: Size of the Vessel Queue July 2006 to June 2007



Source: DBCTPL, 2007¹²

Increased costs of coal production and investment disincentive

The congestion and delays coal producers experience in their ability to access Terminal services raises coal producers’ costs of doing business.

Due to System Capacity congestion restricting the amount of coal producers may ship through the Terminal, some coal producers have opted to use alternative coal terminals such as the Abbot Point Coal Terminal, in order to export more of their production. The Abbot Point Coal Terminal is 200 kilometres further north from the Terminal and as such, producers incur higher transport costs, especially considering that

¹² “Dead ships” are vessels with no entitlement to load and waiting the opportunity to be granted entitlement. They have not been included in demurrage calculations.

trains on this rail line can only transport 3,000 tonnes in comparison to the 9,500 tonne capacity of a typical train to the Terminal. Although the current high coal prices have enabled such a strategy to be financially viable for producers, such strategies by producers reflects the production and cost inefficiencies generated by the congestion at the Terminal.¹³

System Capacity limitations may also produce a disincentive for producers to undertake further investment in mining in the Bowen Basin region. New mines in the Bowen Basin have been delayed as producers assess the viability of developing mine sites which depend upon access to the Terminal and thus would be subject to delays and a restricted ability to export all mine production.¹⁴

International Reputation

The vessel queue is also causing substantial damage to the international reputation of the Terminal, Bowen Basin coal exporters and the Australian coal industry in general.

Coal customers are already shifting purchases to other suppliers in Australia or overseas. Lost exports are an opportunity foregone for the Australian economy.

The proposed Amended QMS will substantially reduce economic inefficiency until expansion of System Capacity occurs, and it will continue to alleviate Bowen Basin coal exporters paying substantial demurrage charges as well as prevent further damage to international reputation and competitiveness.

2.10 Causes of the vessel queue

DBCTPL believes that current vessel queue issues are caused by a combination of:

- **System Capacity limitations** — embodied in the contractual misalignment between rail haulage and Terminal services, system capacity limitations had not previously been highlighted due to coal producer mine production shortfalls and some elasticity in demand / supply;
- **Increased demand and prices** — in particular the recent surge in steel demand, in turn related to economic growth by China and North Asia, has lead to increased global demand for coking coal. Thermal coal demand has also been high. The consequence has been higher coal prices.
- **High vessel arrival rates** — reflecting high overseas demand for coal produced at Bowen Basin coal mines.

¹³ "Macarthur skirts bottleneck", Australian Financial Review, 15 March 2005.

¹⁴ Macarthur Coal has reconsidered its investment plans in light of port congestion, see "Dalrymple Bay backlog continues", www.abc.net.au, 2 March 2005; "Port Delays hamper miners expansion", www.abc.net.au, 25 February 2005.

- **Rail issues** — the O'Donnell Review identified the lack of rail rolling stock capacity in the Goonyella Coal Chain as the current bottleneck.

More specifically, the following extraneous events have occurred during 2007 which have contributed to the vessel queue reforming despite the operation of the QMS.

- Rail provider – industrial action (February 2007);
- Above rail (locomotive) reliability (December, January, February, March, June);
- Rail crewing issues (December 2006 through March 2007);
- Short loaded trains, 250 – 300 tonnes per train under target (January – August);
- Unscheduled power outage (March);
- Weather – Excessive rain, block chutes and high wind events (January, February, June);
- Implementation of Coal Transport Plan 30, Peak 17 trains per day (CTP30) (February - August);
- Terminal expansion impact (July August);
- Fire on one of two Terminal inloading conveyors (June);
- Poor performing vessels – excessive deballast stops (June, July);
- Stockyard constraints due to high yard stock levels (August); and
- Slow unloading due to sticky coal (January through August).

The O'Donnell Review released on 30 July 2007 addresses in some detail the capacity constraints of the Goonyella coal chain. System Capacity has failed to increase in line with demand for export coal. Accordingly, an imbalance has emerged between System Capacity and demand at the Terminal, manifested at the Terminal by ships waiting to be loaded, causing an extensive vessel queue off the Terminal.

The purpose of extending the term of the QMS is to address the economic inefficiency arising from the current disconnects in the Goonyella coal chain until System Capacity can be expanded throughout the coal chain and is intended to be a workable solution on an interim basis to avoid the inefficient expenditure of hundreds of millions of dollars on demurrage.

2.11 Vessel queue likely to persist

DBCTPL has been advised by Users that the high demand for coal exported from the Bowen Basin will continue in the face of high global demand. This demand is likely to be driven largely by the economies of both China and also India, which are forecast to account for almost three quarters of the increase in coal demand in developing countries and two thirds of the increase in world coal demand.¹⁵

All Users have advised DBCTPL that they are in favour of an extension of the QMS beyond the completion of Phase One capacity on the basis that if the QMS were to terminate at that time, the vessel queue will increase in the absence of the QMS.

The next significant capacity expansion at the Terminal is the completion of the "Phase One" Expansion (including an additional coal in-loading station and coal stacker) which is currently scheduled for completion in late 2007 / early 2008. However it has become clear that the expansion of the Terminal will not cure the capacity constraints, which exist at other points along the coal chain. DBCTPL is therefore requesting the authorisation extend until the latest of completion of Phase Two and Phase Three (including a third outloading conveyor, an additional bund, an additional yard machine, a fourth berth and an additional partial stockpile row) of the Terminal expansion or the date System Capacity ceases to constrain monthly tonnage of coal being shipped through the Terminal, but no later than 31 December 2010, importantly recognising that the QMS will not operate if demand does not exceed System Capacity.

Furthermore, the proposed Amended QMS will continue to operate only where demand exceeds available capacity and will not operate where excess demand does not exist for use of coal loading capacity at the Terminal and in the coal chain. In that sense, the QMS is a self-regulating system. Therefore, it can be asserted with confidence that when the QMS operates, it will be because a substantial queue would otherwise form. So while the exact length of that queue, and therefore the exact demurrage savings, cannot be predicted with precision, the fact that there are savings as a result of the proposed QMS is clear.

¹⁵ Coal Industry Advisory Board Background Paper, November 2003, www.iea.org.

3 Extension of the term of the QMS

3.1 Overview of Amended QMS

DBCTPL requests that the final authorisation granted by the Commission in relation to the Amended QMS should continue until the later of:

- (i) completion of Phase Two and Phase Three of the Terminal expansion; and
- (ii) the date when System Capacity reaches or exceeds on a sustained Monthly basis the aggregate of Monthly tonnages of Coal which Users wish to ship through the Terminal on a sustained basis (that determination of sustained System Capacity being made by the Independent Expert),

but in any event no later than 31 December 2010 when System Capacity expansion is expected to have occurred.

DBCTPL does not believe that the Amended QMS will result in any decrease in coal exports at the DBCT particularly as the Coal Chain restrictions are not at the Terminal and the benefits in demurrage cost reduction will outweigh the detriments (if any). The QMS is also structured not to operate at any time that demand does not exceed System Capacity such that there is comfort that during this period there is a self regulating method to “turn off” the QMS if this occurs.

3.2 Duration of Existing QMS

The Existing QMS was put into place in early 2005 and came into final operation in January 2006 after operating on an interim basis. The Existing QMS authorisations are set to expire on 31 December 2008. However, the provisions of the Terminal Regulations, which set out the Existing QMS itself, are expressed to be for a term that ends “on the earliest of”:

- completion of Phase One (being the delivery of additional throughput capacity at the DBCT);
- 31 December 2008; or
- the date System Capacity ceases to constrain monthly tonnage of coal being shipped through the Terminal.

As completion of Phase One is expected to occur before 31 December 2008, it appears that this will be the trigger for the Existing QMS to terminate.

3.3 Duration of Amended QMS

However, for the reasons set out in this submission, DBCTPL believes that the duration of the QMS should be linked to the period of System Capacity expansion. The Amended QMS is a transitional measure to address the current and continued imbalance between demand for coal loading services and the capacity of the Goonyella coal chain, including at the Terminal. DBCTPL therefore seeks authorisation for the extension of the QMS until the completion of Phase Two and Phase Three of the Terminal but no later than 31 December 2010, which DBCTPL considers to be a reasonable period after the current estimate for increased System Capacity to be operational, allowing time for delays and the need to improve capacity in other parts of the coal chain, such as rail.

As has been noted elsewhere in this submission, in 2005 it was not anticipated that rail and associated coal chain issues (including vessel queue issues) would remain post Phase One expansion, or even possibly with the completion of Phase Two and Phase Three expansions in 2009. These constraints have been publicly outlined in the independent O'Donnell Review and DBCTPL believes that an Amended QMS is required to address demand and Coal Chain capacity to avoid having the vessel queue persist or grow throughout the period of expanding System Capacity.

3.4 Amendment of Terminal Regulations

The QMS forms part of the Terminal Regulations, the relevant parts of which are contained in Attachment A to the Commission's earlier determination dated 15 December 2005.

A copy of the amended clause 1.1 of *Queue Management Procedures, forming part of the Terminal Regulations* which give effect to an extension of the term of the QMS and for which DBCTPL is seeking authorisation is set out in Schedule 1 to this submission.

4 Request for revocation and substitution

4.1 Request for revocation

DBCTPL requests that the ACCC grant a revocation of its authorisations of 15 December 2005 ("**Existing Authorisation**") and the substitution of a new authorisation as in the Form FC lodged with this Submission.

4.2 Why revocation of previous authorisation and substitution

A revocation is requested as we understand that an amendment to the term of the QMS -- while not substantive -- is perhaps significant enough to warrant an application for a new authorisation under section 91C of the TPA. Therefore it is considered appropriate to revoke the Existing Authorisation and seek the substitution of a new authorisation of an Amended QMS.

Pending the ACCC's consideration of the request for revocation and substitution, DBCTPL requests that the ACCC grant an interim authorisation of the Amended QMS with the amendment in the form set out in Schedule 1 as soon as practicable so that the amendment to the term of the QMS can come into effect on 1 January 2008.

The proposed changes to the QMS to amend the term of the QMS to extend beyond the completion of Phase One expansion at DBCT and beyond 2008 are consistent with the reality of insufficient coal chain capacity as found by the independent O'Donnell Review.

Substantial demurrage costs are currently being incurred by the industry (estimated at more than A\$17,000 per vessel per day, so a vessel queue of approximately 33 vessels would give rise to approximately \$560,000 in demurrage costs, per day). It is imperative that it can be confirmed, as soon as possible, that the QMS will not terminate upon the completion of Phase One Expansion which is due late 2007 to early 2008. In turn, this would provide coal producers with certainty that the Amended QMS will continue to operate with a view to achieving a Working Queue. In these circumstances, DBCTPL submits that this is an urgent matter being of a kind with respect to which it is appropriate for the ACCC to grant interim authorisation, particularly where the factual basis and economic impact of the QMS is relatively well known to the ACCC.

In addition, there is no suggestion that the QMS has delayed expansion at DBCT so that it is difficult to see that the Amended QMS changes the balance of positive public benefits.

4.3 Request that authorisation extend beyond December 2008 until no later than 31 December 2010

DBCTPL together with the Goonyella Coal Industry recognises that there is an urgent need to address the excessive and substantial vessel queue off the coast of Australia that has arisen since June 2004. It is industry consensus that contrary to previous expectations, because of high demand and limitations in the Coal Chain, the vessel queue will continue at similar numbers throughout 2008 and into 2010 until the coal chain issues raised in the O'Donnell Review are resolved.

Goonyella Coal Producers together with DBCTPL have recognised that the QMS is required to continue to operate in order to address the excessive vessel queue while coal chain issues are resolved. This is likely to be at the end of 2010.

The Amended QMS has a similar benefit / detriment basis to that previously assessed by the Commission, if not additional benefits as it is evident that the vessel queue will continue to grow in its absence.

5 Rationale for amending the QMS and doing so pursuant to an interim authorisation

5.1 Submission in support of revocation and substitution

By granting the revocation of the Existing Authorisation and substituting a new authorisation as requested by DBCTPL, the Commission would only be authorising the extension of the term of the QMS.

In particular:

- there is a consensus that there will continue to be coal chain capacity issues beyond the initial Phase One expansion of DBCT such that the QMS should continue beyond its current term in the QMS document to at least the end of 2008 (the current authorised term);
- the industry continues to confront capacity constraints in respect of the Coal Chain as independently found by the O'Donnell Review and that will last until at least 2010;
- the consequence of these constraints is that absent the continuation of the QMS, a significant queue of vessels will arise, giving rise to demurrage costs in the region of A\$300 million per annum based on current levels; and
- DBCTPL anticipates that in the absence of the QMS the queue will persist while the coal chain issues continue.

For the reasons referred to below, DBCTPL submits that if the term of the QMS is extended beyond the end of 2008, the QMS, will continue to deliver significant public benefits that outweigh any public detriments. In particular, if the QMS terminates when Phase One expansion is completed, DBCTPL submits that the vessel queue will grow significantly, resulting in public detriments such as substantial dead-weight demurrage costs. It is noted that, as the Commission has had the benefit of previous submissions, this Submission does not go into extensive detail on many background issues associated with the coal industry.

5.2 Reasons for request for urgent interim authorisation

DBCTPL together with the Queensland Coal Industry recognise that there is an urgent need to provide certainty that the QMS will not come to an end during 2008 or at any time before the imbalance between system capacity and demand for coal services at the Terminal is remedied. If it was perceived by the coal producers that the QMS were to end during 2008 it is likely that, as occurred with the Capacity Balancing System at the Port of Newcastle ending at the end of 2006, producers would send large numbers of vessels to the terminal prior to the end of the term of the QMS, leading to the establishment of a new and large vessel queue. Accordingly, there is a degree of urgency that it

be clear as soon as practicable that the QMS as authorised will continue beyond 2008.

Queensland Coal Producers together with DBCTPL have recognised the need for a solution and will continue to work together to formulate a solution to address the continued and future vessel queue in the absence of the QMS.

It is submitted that an urgent interim authorisation should be granted for the following reasons:

- Need for certainty that the QMS will continue: It is important that there is no perceived likelihood of the QMS ending during 2008 and that the coal producers have certainty in this respect so that they may proceed on the basis that the QMS will continue. In particular, certainty that the QMS will continue should avoid a situation, which would otherwise be likely to occur if it became apparent that the QMS would terminate, whereby coal producers would send a large number of vessels to the Terminal in the last quarter of 2007, thereby increasing significantly the vessel queue.
- Need for urgent action: Producers are paying substantial deadweight demurrage charges at the moment and will continue to do so if the term of the QMS is not extended.
- The effect of an interim authorisation is not irreversible: Granting interim authorisation will not preclude the Commission from denying final authorisation should it have any concerns as to the balance between detriment and benefit once it has considered the application fully.
- Extending the term of the QMS will assist in ameliorating the public “hot house” environment of the vessel queue as soon as possible which would be likely to worsen should the QMS cease to operate and is consistent with the various Government reviews of infrastructure in Australia to allow a transition over the next few years to allow an increase in capacity along to Goonyella Coal Chain.

6 Significant public benefits resulting from the Amended QMS

Detailed arguments as to the public benefit which results from the QMS were provided to the Commission in the application for authorisation dated 5 April 2005. Although the arguments in support of the extension of the term of the QMS are essentially the same as the arguments in support of the implementation of the QMS initially, in order to assist the Commission by ensuring that all relevant information is easily accessible, we set out below an outline of the benefits which will be derived as a result of the term of the QMS being extended.

6.1 Benefit: reducing demurrage

Substantial dead-weight demurrage

As has been stated above, the Amended QMS is estimated to decrease demurrage costs by approximately A\$273.2 million annually. It is estimated that coal producers using the Terminal will pay A\$290 million in demurrage charges in 2008 for vessels queued at the Terminal awaiting ship loading. If the vessel queue is reduced to 15 vessels under the Amended QMS, demurrage costs are estimated to be approximately A\$16.8 million under the Amended QMS, resulting in a saving of approximately A\$273.2 million for 2008.

Even if the vessel queue were to increase while the QMS is in place due to the effect of extraneous factors such as capacity constraints in rail and adverse weather events, as it has done in the second half of 2007, the continuation of the QMS will still result in significant public benefits in comparison to the situation without a QMS, in which the vessel queue would be likely to increase significantly. Further, the QMS offers a mechanism to decrease the vessel queue through queue adjustments, should the queue begin to grow at any time.

Schedule 2 sets out the estimated demurrage costs that the Industry would face in the period until the end of 2008 if the Amended QMS did not operate (ie the counter factual).

These charges are economically inefficient dead-weight losses. Coal producers are paying substantial sums for empty ships to sit idle off the coast of Australia.

Demurrage costs of this magnitude will continue to be incurred by coal producers as long as System Capacity is less than demand. On-going "brown fields" expansion of Terminal capacity and the need for complementary expansion in other parts of the coal chain could see System Capacity constrained through to at least the end of 2009 and potentially 2010.

Substantial savings

It is estimated that extending the term of the QMS may be able to assist in limiting demurrage in 2008 to approximately A\$16.8 million. Therefore, based on an estimated A\$290 million payable in demurrage for 2008 on current trends - if the Amended QMS proceeds, savings of

approximately A\$273.2 million in demurrage costs per annum are achievable.¹⁶ Further, substantial savings are then likely in later years.

If the ACCC authorises the Amended QMS, the Amended QMS will continue to deliver a public benefit in terms of avoiding or at least substantially decreasing the deadweight demurrage costs estimated in Schedule 2 which would otherwise result from a significant increase to the current vessel queue.

Public benefit

The Commission can therefore be confident that the continuation of the QMS, as amended, will result in substantial savings of demurrage compared to the counter-factual of an increasing vessel queue if the QMS were to terminate. Even if, as is currently the case, the vessel queue increases during the operation of the QMS due to extraneous factors, the public benefit of reduced demurrage costs will continue as, in the absence of the QMS, the vessel queue would be even larger and there would be no mechanism in place to reduce the size of the queue.

The savings of demurrage costs will reduce the economic inefficiency inherent in demurrage charges. As the Commission has acknowledged in its authorisation of a capacity distribution system at the Port of Newcastle, this is a substantial benefit.¹⁷ It reduces the cost of exporting coal and the amount of time coal vessels sit unproductively in a queue.

This is a public benefit because, despite the immediate benefit being a cost saving to coal producers, this has a flow-on benefit for the broader Australian community, particularly in Mackay and Queensland. Each of the coal producers employs Australians, and requires service industries in the region that employ Australians.

Furthermore, the Commission has in the past indicated that an application for authorisation that relates solely to exports inherently involves benefits and detriments that are public in nature.¹⁸

6.2 Benefit: reducing stockpiling costs

Reducing the vessel queue (or at the very least preventing it from increasing which would occur absent the QMS) will give exporters and buyers of coal greater certainty as to when a particular shipment of coal will be loaded and how much coal they will be able to load in a month. Producers can then use this greater certainty to better manage their production and stockpiling of coal. This will allow them to reduce stockpiling costs below what would be the case with the uncertainty of the vessel queue.

¹⁶ DBCT

¹⁷ Commission Final Determination, Applications for Authorisation A90906, A90907, A90908 lodged by Port Waratah Coal Services Pty Ltd (9 July 2004), p.60

¹⁸ Commission Final Determination, Applications for Authorisation A90906, A90907, A90908 lodged by Port Waratah Coal Services Pty Ltd (9 July 2004), p.62

The public benefits from the reduction of economic inefficiency caused by stockpiling costs in the same way as it benefits from the reduction of inefficient demurrage charges.

6.3 Benefit: improving the Terminal's reputation

While the vessel queue is a result of strong continuing demand for Bowen Basin coal, the long vessel queue is nevertheless having a negative impact on the reputation nationally and internationally of the coal producers and the Goonyella coal chain, including the Terminal. There has been significant media scrutiny and commentary about the problems of vessel queues at the Terminal.

International coal buyers, faced with uncertainty about how long it will take for their coal to be loaded at the Terminal because of a long vessel queue, may lose confidence in the Terminal's coal producers and be more likely to consider alternative sources of supply, including from other countries. This would be aggravated without the extension of the term of the QMS, because the queue would persist and increase.

There are public benefits from the Goonyella coal chain (including the Terminal) and the Bowen Basin coal producers having a strong international reputation as efficient, timely and low-demurrage exporters.

6.4 Benefit: more efficient investment and re-investment

With a greater ability to predict annual costs and revenue, coal producers are better placed to make long-term plans and decisions, particularly with respect to production and investment. This in turn will allow the producers to operate more efficiently.

In particular, the amounts saved in demurrage and stockpiling charges are available to be re-invested in the Bowen Basin coal industry, and specifically funding System Capacity investment.

6.5 Benefit: maintaining the queue at an efficient level

The continued operation of the QMS will better allow DBCTPL to operate the Terminal with an efficient working vessel queue. This will underpin the efficiency of the Terminal by ensuring that there are enough vessels to cope with any under-utilisation of allocation by coal producers (so that there is never a circumstance where the Terminal should be idle), while avoiding there being too many vessels so that the vessels sit unproductively in a queue for longer than reasonably necessary.

6.6 Benefit: more efficient production

Compared with a situation where the QMS has ceased to operate, the extension of the QMS will provide coal producers greater certainty regarding the volume of coal they can expect to ship in upcoming months, and greater certainty as to the amount of time it will take from when they produce a tonne of coal to when it will be loaded on a ship. This added certainty will allow producers to manage their production better so that it matches the likely capacity of the coal chain to accept

their coal and, if they choose, to take advantage of any excess allocation that becomes available (eg, through trading or conditional allocation). In this way, the QMS will contribute to more efficient production and the more efficient operation of the supply chain.

6.7 Benefit: environment

The Terminal is situated adjacent to the Great Barrier Reef. The Great Barrier Reef clearly has enormous environmental importance to Australia and the world, and flow-on economic benefits for Queensland and Australia in tourism and other industries.

While the environmental risk associated with bulk cargo vessels can be managed, efficiently managing the vessel queue to reduce its length to a working queue of approximately 15 vessels is a positive benefit in protecting this unique environment.

6.8 Benefit: allowing a transition to a long-term solution

The Amended QMS will not solve the problem of demand outstripping the capacity of the coal chain. Coal producers can produce enough tonnes of coal to meet demand, and would benefit from being able to sell those tonnes at today's high coal prices. However, while they are constrained by System Capacity, they are incurring the cost of lost opportunity.

It is clearly in the interests of the export coal industry and in Australia's general economic interest, therefore, to expand capacity in the Goonyella coal chain and to allow throughput to meet demand.

The continuation of the QMS, by removing immediate concerns as to spiralling demurrage costs, will facilitate a significantly improved environment to consider long term investment decisions consistent with the recommendations in the O'Donnell Review.

6.9 Detriment: impact on competition

The Amended QMS only involves an extension of the term of the Existing QMS. Accordingly, we set out below the arguments in support of the view that an extension of the term of the QMS will not result in any public detriment.

Market definition

DBCTPL submits that there are potentially two markets of relevance: the market for coal handling and ship loading services in the northern Bowen Basin, and the market for coal.

The Terminal is not the only ship loading facility in the Bowen Basin. There is also the Hay Point Coal Terminal within approximately 500 metres of the Terminal, which is not a common user facility, as well as the Abbot Point Coal Terminal and the RG Tanna and Barry Point coal terminals operated by the Gladstone Port Authority which have coal ship loading capability.

The market for coal is likely to be either an Asian market or a global market.

DBCTPL submits that it is not necessary to determine with certainty the geographical extent of these markets, as the impact the Amended QMS has on competition is the same regardless of market definition.

Impact on competition

The Amended QMS does not impact on how the QMS currently allocates capacity to coal producers based on a pro-rata reduction of their Annual Contract Tonnage. It might be argued that the current system of allocation is less competitive than a market solution where the most efficient producers are able to ship more coal than the less efficient producers. DBCTPL submits that getting a coal producer's coal through the Goonyella coal chain currently has little to do with the producer's efficiency or competitiveness, and there is little evidence that any coal producer is better able than others to do so. Therefore, the QMS does not reward inefficiency or penalise efficiency to any discernible extent.

In addition, the ability to trade allocations and participate in an allocation auction allows coal producers to obtain more capacity according to market forces. This will allow for greater competition between producers than the current arrangements.

An extension of the term of the QMS will, nevertheless, create greater certainties which, in turn, will allow producers to increase the efficiency of their production.

Coal producers, while cooperating in the efficient development and operation of the Goonyella coal chain, will still compete for customers in the international coal market in the same way with or without the QMS, and, since the Terminal will still be operating at full capacity, the Terminal will be no more or less competitive with the alternative facilities in the region.

The existence of other competing terminals and the fact that the Terminal is at capacity means that other terminals are able to offer alternatives.

On that basis, DBCTPL submits that the QMS will have only a negligible negative effect, if any, on competition in relevant markets, and may in fact have a positive effect.

6.10 Detriment: impact on exports

The purpose of extending the term of the QMS is to ensure that the Terminal continues to operate at full System Capacity, while facilitating better management of the vessel queue. This will mean that there should not be any overall reduction in exports as a result of the QMS continuing until 2010.

It must first be realised that System Capacity, including Terminal capacity, is not measurable to an exact figure, it can only be estimated by making various assumptions. The System Capacity that will actually

be delivered during a certain period depends upon the nature of the demand pull, including vessel characteristics and arrival patterns, the influence of the cluster infrastructure and mine load point performance on the pattern of train arrivals, the nature, size and composition of consignments and stockpile management arrangements.¹⁹

In this respect, it is important to distinguish between allocation and capacity. Producers will receive allocations which, in aggregate (especially taking account of any flexibility provisions that may be available) exceed the actual capacity of the coal chain at a point in time. This is deliberate. The immediate impact of under-using capacity is a shortening of the queue. This is why DBCTPL proposes to maintain a working queue of approximately 15 vessels. This allows a buffer for under-use of allocation without the coal chain operating at less than maximum capacity.

Individual coal producers may argue that the QMS has the effect of reducing the amount of coal they would export without the QMS. It may be that some coal producers would be able to ship more coal than their pro-rata reduction without the QMS, and perhaps even their full Annual Contract Tonnage. However, this is not a factor of their competitiveness or efficiency, but simply their ability to push more of their tonnes through the congested Goonyella coal chain. For example, they may have been able to nominate more vessel arrivals sooner than others. However, because of the capacity constraints, that producer's ability to ship more tonnes will be at the expense of another producer who, despite the pro-rata reduction of their forecast demand, may find that the QMS allows them to ship more actual tonnes because of the more equitable and non-discriminatory distribution of capacity shortfalls.

Any reduction in exports for an individual coal producer will not be a public detriment where the overall level of exports remains the same, which is what the QMS is designed to achieve. To date, DBCTPL has not been provided with any evidence of the QMS reducing the overall level of exports.

This desire by coal producers to push as much of their production through the congested coal chain as possible leads to the "tragedy of the commons", where all producers are scheduling more and more vessels, beyond System Capacity. The natural response of a producer when confronted with contracted tonnage above system capacity is to add more vessels to the queue in response to its perception that its competitors will be doing the same.

DBCTPL therefore strongly submits that the extension of the term of the QMS is very unlikely to result in a net reduction in exports, and to the extent that it may result in individual producers having lower exports, this is not a public detriment as overall exports are maintained.

¹⁹ Synergies Economic Solutions, "Optimal incentive regulation for DBCT, A submission to the Queensland Competition Authority by the DBCT User Group", February 2005

6.11 Detriment: impact on long-term investment at DBCT

The long term solution to System Capacity is to expand capacity appropriately throughout the coal chain, including at the Terminal.

DBCTPL is the operator of the Terminal, not its owner (BBI is the long term lessee), and so has no control over decisions relating to investment and expansion of the Terminal. There would, however, need to be complementary expansion in the coal chain for any expansion of the Terminal.

Granting the authorisation is unlikely to have any impact on the incentive for continued expansion at the Terminal.

The O'Donnell Review discloses no issues with expansion at the Terminal as a result of the QMS and instead notes the issue facing coal producers that at the end of terminal expansion to 85 mtpa there is likely to be continued problem with coal chain capacity reaching that level.

6.12 Detriment: impact on rail capacity expansion

DBCT does not believe the Existing QMS has had any negative impact on rail capacity expansion. Rather, the lag in investment in additional rolling stock compared to investment in terminal expansion has arisen due to a disparity between tonnes contracted with the above rail operator QRN and tonnes contracted with BBI as the Terminal Lessee. QRN makes its investment decisions on the basis of contracted capacity through the QR network and maintains that the lag in rail capacity expansion has resulted from a mismatch between the recent port contracting framework and the rail contracting framework which has a historical base.

In future this will be addressed through re-alignment of contracts and assumptions between the ports and the rail. QRN has stated that it is committed to delivery of contractual throughputs for its customers, and as such is working as quickly as possible toward additional rolling stock, crews and infrastructure in order to meet these expectations.

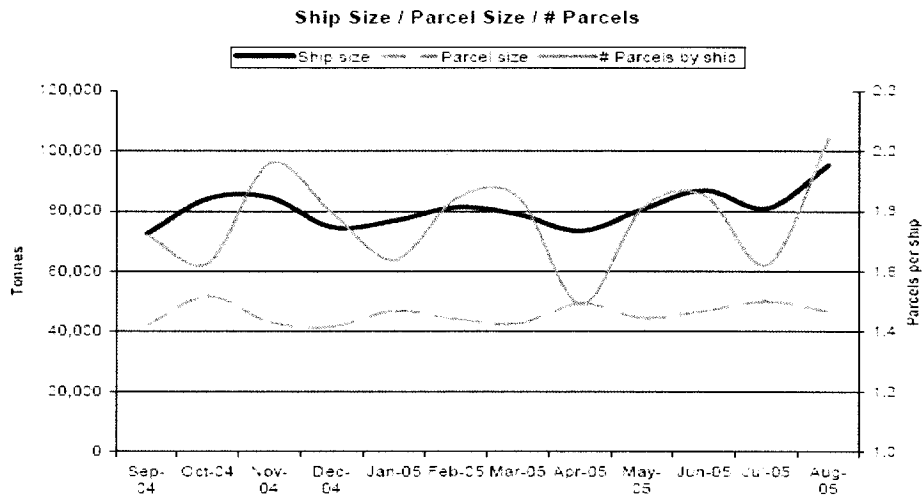
6.13 Detriment: impact on shipment size

Previously some concern was expressed by the coal producers that the Amended QMS would lead to smaller vessels being scheduled to load coal at DBCT. Figures 9, 10 and 11 show that the average shipment size for the period September 2004 to June 2007 has not decreased and overall has remained consistent over that three year period. This accords with the conclusion reached by the Commission in relation to shipment size in its final determination to grant authorisation of the Existing QMS on 15 December 2005.

DBCTPL believes that vessel size is an outcome of market forces and is not determined by the QMS. Since the inception of the Existing QMS there has been no significant trend towards larger or smaller vessels. A comparison between Figure 9, 10 and 11 demonstrates there have not been significant changes in vessel size, parcel size or the number of

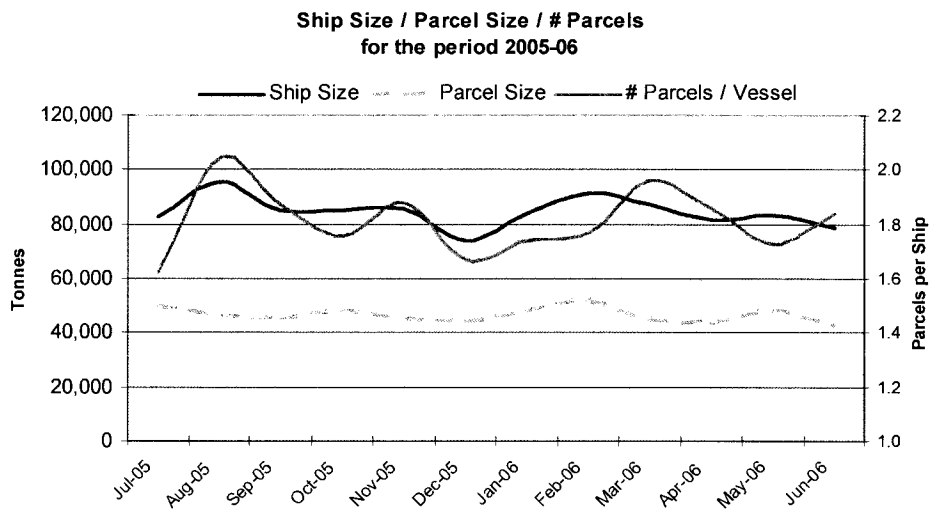
parcels per vessel since the inception of the Existing QMS. This may change due to a shift in the coal markets that are serviced by the terminal as reflected in Figure 12, due to the increase in the percentage of smaller vessels (Handys) resulting from destination port constraints.

Figure 9: Average Shipment Size 04/05



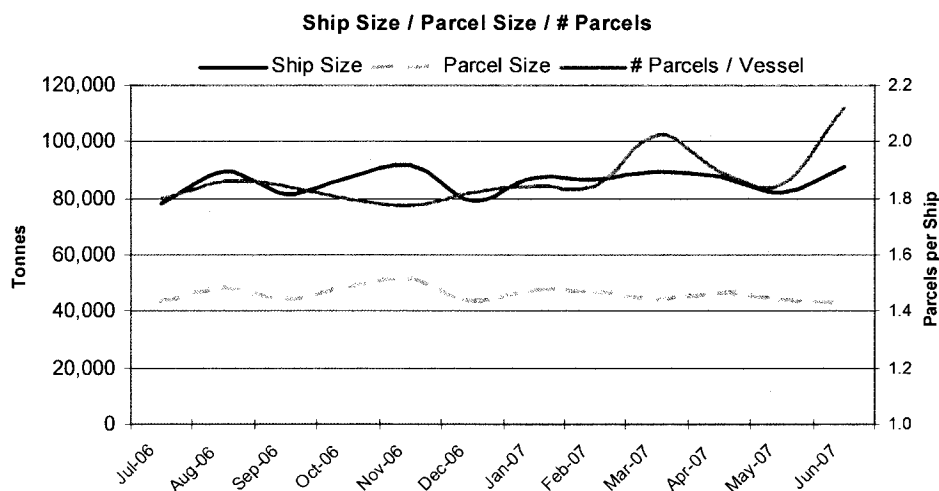
Source: ACCC Determination A30239 – A30241, 15 December 2005

Figure 10: Average Shipment Size 05/06



Source: DBCTPL

Figure 11: Average Shipment Sizes 06/07



Source: DBCTPL

Figure 12: Existing and Forecast Vessel Mix

	Handy	Panamax	Japmax	Cape
Vessel Mix for YEJ07	22%	35%	13%	30%
Forecast Vessel Mix @ 85 mtpa	30%	30%	11%	30%

Source: DBCTPL

6.14 Conclusion: substantial net public benefit

In summary, DBCTPL believes that the extension of the term of the QMS will:

- have the substantial public benefit of reducing dead-weight demurrage charges by approximately A\$273.2 million annualised and continue to have substantial savings each year that demand continues to outstrip System Capacity until the coal chain is expanded (not expected until end 2010);
- reduce the vessel queues at the Terminal or, at the very least prevent it from growing (which would be likely to be the case if the QMS were to terminate) and will allow DBCTPL to operate the Terminal at an efficient working queue of approximately 15 vessels;
- re-establish the historical vessel size mix, increasing Terminal capacity;
- reduce inefficient coal stockpiling and the associated costs;
- improve the international competitiveness and reputation of the Australian coal industry, and of the Goonyella coal chain, including the Terminal, and the Bowen Basin coal producers in particular;

- facilitate more efficient investment decisions, and potential re-investment, by participants in the Bowen Basin coal industry;
- provide certainty to producers regarding the volume of coal they can expect to export through the Terminal, as well as vessel loading times and schedules, which will allow producers to manage production more efficiently, thereby facilitating the more efficient operation of the Goonyella coal chain;
- reduce the risks which arise from substantial vessel queues adjacent to the Great Barrier Reef Marine Park; and
- assist in the transition to a long-term solution to the System Capacity constraints.

DBCTPL submits that any public detriment from the Amended QMS is likely to be low for the reasons identified in the ACCC's final determination to grant authorisation on 15 December 2005, and will be exceeded by the continued delivery of the significant public benefits.

DBCTPL also submits that the Amended QMS will not have the effect of delaying investment in capacity in the Goonyella Coal Chain. DBCT has previously reported to the ACCC on rail, port and other capacity expansion initiatives undertaken by participants in the Goonyella Coal Chain for 2005 and 2006. **Schedule 3** sets out infrastructure initiatives at the Terminal since 2000 to increase DBCT capacity and proposed increases over the next 3 years.

To the extent any individual coal producers suggest that the QMS may affect its individual export tonnages, this represents the "tragedy of the commons" as even if that were to be correct, the increase in exports by one producer will be at the cost of other producers such that overall, there will be no reduction in exports.

The substantial public benefits of the continued operation of the QMS therefore outweigh any public detriments.

DBCTPL therefore submits that the Amended QMS meets the statutory test for authorisation under the TPA and the Commission should grant the authorisation to allow the realisation of the significant public benefits anticipated.

7 Conclusion

DBCTPL together with the Queensland Coal Producers has proposed an Amended QMS which extends the Existing QMS that was previously authorised by the Commission to a date when the Terminal will have been fully expanded. This is likely to be toward the end 2009, but may well slip into mid 2010. However, the independent O'Donnell Review confirms that it is not the QMS which is responsible for capacity limitations but rather a host of issues along the coal chain and these issues will not be resolved until the end of 2010.

Therefore, it is hoped that the ACCC's assessment of benefits and detriments should be the same, in favour of granting authorisation over the extended period of the QMS.

In addition:

- There is a clearer evidence of continued Terminal expansion as Phase One nears completion and there has been no suggestion that the QMS has delayed that expansion; and
- The O'Donnell Review is independent and makes it clear that issues with imbalance in the Goonyella coal chain until 2010 will be rail capacity issues.

Dalrymple Bay Coal Terminal Pty Limited
26 September 2007

Schedule 1 - Amended clause 1.1 of the Queue Management Procedures, forming part of the Terminal Regulations

The definition of Term in clause 1.1 of the Terminal Regulations will be replaced with the following:

“Term: means the period commencing on 1 April 2005 and ending on the later of:

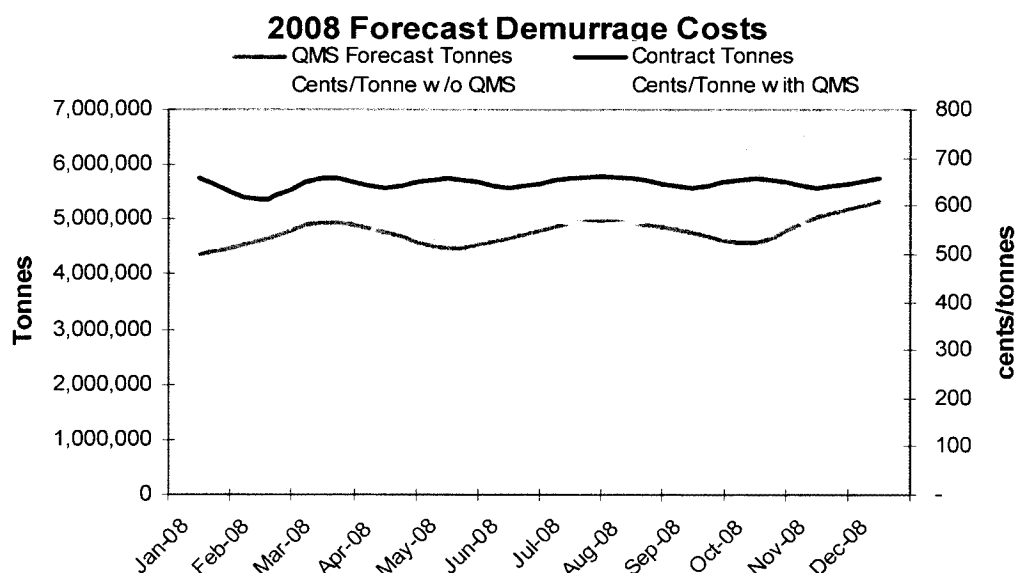
- (i) completion of Phase Two and Phase Three of the Terminal expansion; and*
- (ii) the date when System Capacity reaches or exceeds on a sustained Monthly basis the aggregate of Monthly tonnages of Coal which Users wish to ship through the Terminal on a sustained basis (that determination of sustained System Capacity being made by the Independent Expert),*

but in any event no later than 31 December 2010 when System Capacity expansion is expected to have occurred.”

Schedule 2 - Estimated demurrage costs if the Amended QMS is not implemented

The following chart illustrates DBCTPL's estimate of demurrage costs for 2008. These estimates have been calculated based upon a demurrage charge of \$17,000 per vessel per day and a nominal vessel size of 87,000 tonnes.

Figure 13: 2008 Forecast Demurrage Costs



In the absence of the Amended QMS, and assuming that a level of approximately 59 vessels will remain queued for the balance of 2008, demurrage costs are estimated to be:

Per Tonne:	509 cents/tonne
Daily:	\$793,177
Monthly:	\$24,191,894
Annual:	\$290,302,732

Conversely, if the Amended QMS operates and assuming that the number of vessels is stable at approximately 15 vessels, demurrage costs for 2008 are estimated to be A\$16.8 million, resulting in a saving of approximately A\$273.2 million.

The estimate of the size of the Vessel Queue without the Amended QMS in place is based on the difference between the Independent Expert's Forecast of System Capacity and the Coal Producers' Annual Contract Tonnage.

Note: the size of the vessel queue has been capped at 60 vessels as this is the nominal point where the impact of diminishing returns naturally manages the queue.

Figure 14: Calculation of Demurrage Costs 2007/2008

Month	Days	Monthly Practical Capacity (Annualised - Mtpa)	QMS Forecast Tonnes	Contract Tonnes	No of Vessels	Demurrage Time in days per Vessel	Demurrage / Vessel	Daily Demurrage	Monthly Demurrage	Cents / Tonne w/o QMS	Demurrage / Vessels with QMS	Vessel Queue 15	Cents / Tonne with QMS	Demurrage per Day for 15 ships
Oct-07	31	51.072	4,337,624	5,778,315	15	5.5	\$93,500	\$45,242	\$1,402,500	24	\$45,242	\$1,402,500	32	\$45,242
Nov-07	30	51.425	4,226,717	5,591,918	15	5.50	\$93,500	\$46,750	\$1,402,500	25	\$46,750	\$1,402,500	32	\$46,750
Dec-07	31	51.425	4,367,607	5,778,315	16	6.11	\$103,828	\$54,309	\$1,683,570	29	\$45,242	\$1,402,500	32	\$45,242
Jan-08	31	51.425	4,367,607	5,752,787	32	14.07	\$239,161	\$247,930	\$7,685,842	176	\$45,242	\$1,402,500	32	\$45,242
Feb-08	29	58.097	4,615,922	5,381,639	41	18.47	\$313,973	\$443,221	\$12,853,416	278	\$48,362	\$1,402,500	32	\$48,362
Mar-08	31	58.097	4,934,261	5,752,787	50	23.17	\$393,944	\$639,794	\$19,833,618	402	\$45,242	\$1,402,500	32	\$45,242
Apr-08	30	58.097	4,775,092	5,567,213	59	27.50	\$467,500	\$919,417	\$27,582,500	578	\$46,750	\$1,402,500	32	\$46,750
May-08	31	52.778	4,482,535	5,752,787	59	27.50	\$467,500	\$896,562	\$27,793,419	620	\$45,242	\$1,402,500	32	\$45,242
Jun-08	30	56.621	4,653,758	5,567,213	59	27.50	\$467,500	\$926,447	\$27,793,419	597	\$46,750	\$1,402,500	32	\$46,750
Jul-08	31	58.097	4,934,261	5,752,787	59	27.50	\$467,500	\$896,562	\$27,793,419	563	\$45,242	\$1,402,500	32	\$45,242
Aug-08	31	58.097	4,934,261	5,752,787	59	27.50	\$467,500	\$896,562	\$27,793,419	563	\$45,242	\$1,402,500	32	\$45,242
Sep-08	30	58.097	4,775,092	5,567,213	59	27.50	\$467,500	\$926,447	\$27,793,419	582	\$46,750	\$1,402,500	32	\$46,750
Oct-08	31	54.148	4,598,856	5,752,787	59	27.50	\$467,500	\$896,562	\$27,793,419	604	\$45,242	\$1,402,500	32	\$45,242
Nov-08	30	61.178	5,028,348	5,567,213	59	27.50	\$467,500	\$926,447	\$27,793,419	553	\$46,750	\$1,402,500	32	\$46,750
Dec-08	31	62.641	5,320,225	5,752,787	59	27.50	\$467,500	\$896,562	\$27,793,419	522	\$45,242	\$1,402,500	32	\$45,242
	366		57,420,220	67,920,000	658.0302572		\$441,169	\$793,177	\$24,191,894	506	\$45,953	\$1,402,500	32	
									\$290,302,732			\$16,830,000		
									Annual Total			Annual Total		

Schedule 3 - Capacity Expansion Initiatives on the Goonyella Coal Chain

In September 2006 Queensland Rail Network Access released its 2006 Coal Rail Infrastructure Master Plan. Set out below is a table showing the proposed expansion for the Goonyella coal chain forecast as at September 2006.

Table 4: Goonyella System expansion path

Project	Estimated Cost (\$m) (2006\$)	Expected Infrastructure Completion	Predominant Reason for the Project	Potential Sustainable System Capacity ²³ (mtpa) & [no. of trains]
Rail Loop for Third Pit at DBCT	83.4	Aug 2007 (a)	To maximise utilisation of the third unloading pit at DBCT	92-101 [21 - 23]
Power System Strengthening (Mindi Substation)	14	May 2007	Strengthening electric overhead system to reduce train separation Coppabella to DBCT/HPSCT	
Connors Range Signalling	3	Aug 2007	To reduce train separation down the Connors Range, and hence increase capacity	102 - 109 [22 - 24]
Coppabella Yard upgrade	33 (b)	Nov 2007	To provide a staging area for loaded trains towards the ports of DBCT and HPSCT, as well as staging empty trains to the mines	
Power System Strengthening (Bolingbroke Substation)	16 (b)	Jun 2008	Strengthening of electric overhead system to reduce train separation between Coppabella and DBCT/HPSCT	117 - 129 [26 - 29]
Jilalan Upgrade (Bypass Roads)	65 (b)	Dec 2009	To allow loaded coal trains to bypass the congested area around Jilalan Yard and to allow loaded coal trains to be staged and sequenced into the pits to maximise pit utilisation	
Additional Infrastructure Jilalan to the Junction to the DBCT/HPSCT loops	TBA	TBA	To ease congestion in the heavily trafficked area from Jilalan Yard to the junction to the DBCT/HPSCT loops	123 - 140 [27 - approx 32]
South Goonyella Branch				
Winchester Passing Loop	7	Completed Dec 2005	To ease congestion with opposing trains (reduce below-rail transit time and cycle time) on the branch and thus increase throughput capability	48
Crossing Loop Peak Downs - Saraji	10 (b)	Jun 2008		50-53 (d)
Crossing Loop Dysart - Norwich Park	10 (b)	Jun 2009		52-55 (d)
Coppabella - Ingsdon Duplication	TBA	TBA (d)		54-58 (d)

Project	Estimated Cost (\$m) (2006\$)	Expected Infrastructure Completion	Predominant Reason for the Project	Potential Sustainable System Capacity ²³ (mtpa) & [no. of trains]
Red Mountain - Winchester Duplication	TBA	TBA (d)		
West Goonyella and North Goonyella Branches				
Broadlea - Mallowa - Wotonga Duplication	67 (b)	Aug 2008	To ease congestion with opposing trains (reduce below-rail transit time and cycle time) on the corridor and thus increase throughput capability	57
TOTAL	308.4 (c)			

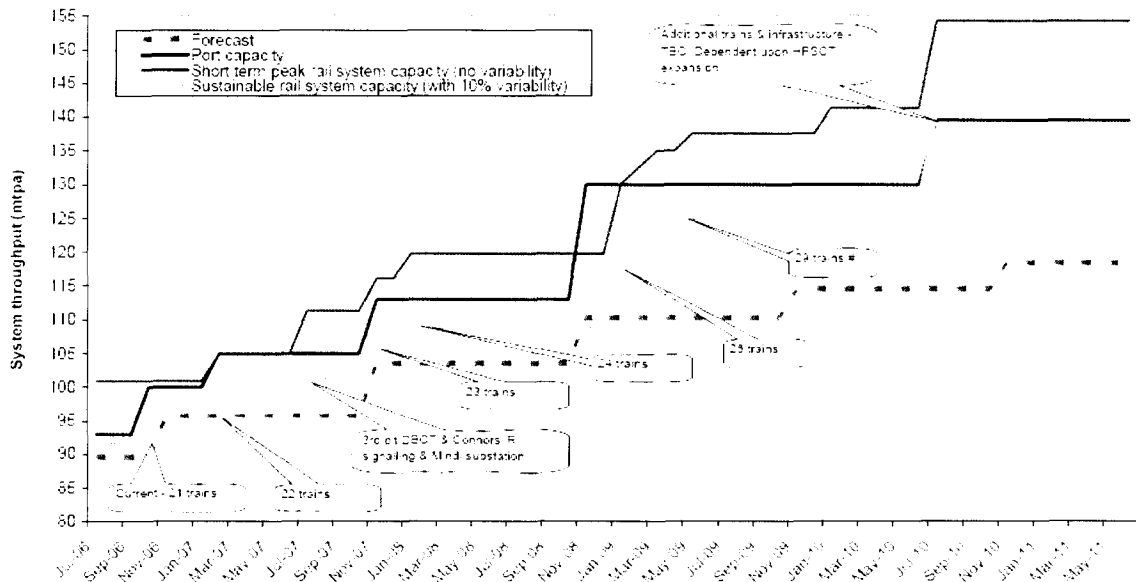
- (a) Track to third dump station available May 2007, extended roads available August 2007, overhead expansion will run through to 2009
(b) Preliminary estimates only
(c) Cost associated with additional infrastructure between Jilalan and the junction to the DBCT/HPSCT loops, as well as the duplications Coppabella - Ingsdon and Red Mountain - Winchester required to achieve a sustainable 140mtpa capacity is not included in this estimate
(d) Dependant on where additional tonnes originate from, including but not limited to location of planned Isaac Rivers mine spur connection

Source: Queensland Rail Network Access 2006 Coal Rail Infrastructure Mast Plan, September 2006

Following the O'Donnell Review Queensland Rail has announced that in accordance with the recommendations contained in the O'Donnell Review it has commenced discussions in relation to the acquisition of additional rollingstock, which will complement the existing rollingstock program.²⁰

Set out below is a table showing the forecast growth in capacity of the Goonyella coal chain until May 2011.

Table 5: Goonyella System forecast capacity (short term peak and sustainable capacity range)



Timing of additional trains from early 2009 dependent on re-location of operator's fleet to better align to the needs of the industry and port capacity, subject to appropriate commercial arrangements being in place

Source: Queensland Rail Network Access 2006 Coal Rail Infrastructure Mast Plan, September 2006

²⁰ Queensland Government Press Release "Report released into coal chain capacity" 30 July 2007