

# MALLESONS STEPHEN JAQUES

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

23 October 2007

**Attention:** Mr Hew Atkin

Dear Mr Gregson

**Dalrymple Bay Coal Terminal Pty Limited - Applications for-  
revocation and substitution of authorisations No. A91060 -  
A91062**

We refer to Mr Atkin's conversation with Stefanie Benson on Friday 19 October 2007 seeking clarification of Dalrymple Bay Coal Terminal Pty Limited's ("DBCTPL") applications for revocation and substitution of authorisation No. A91060 - A91062, dated 26 September 2007.

We set out our responses to your query below.

## **1. Meaning of "sustained"**

The Commission has sought clarification of the term "sustained" as it appears in the proposed amendment to the QMS, set out below:

*"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."*

We have been instructed that no particular quantitative measure has been attributed to the term "sustained" in the existing QMS or in the proposed amendment for which DBCTPL is seeking authorisation. As such, we have been instructed that the term "sustained" is intended, for the purposes of this matter, to have its ordinary dictionary meaning and describes a situation which has been constant for a period of time and is capable of being maintained for the foreseeable future.

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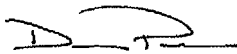
## 2. Updated estimate of the vessel queue

The Commission has also sought an updated estimate of the vessel queue. We have been instructed that the vessel queue is presently forecast to be in the vicinity of 33 vessels as at 31 October 2007.

We confirm that the Commission may place this letter on the public register.

If you require any further information, or if we can assist in any way, please do not hesitate to contact me, or Kate Newman on (02) 9296 2119.

Yours sincerely



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