



DBCT MANAGEMENT

2010 ACCESS UNDERTAKING SUBMISSION



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1 Commercial overview

DBCT Management has submitted a Draft Access Undertaking (the 2010 Draft Access Undertaking) to the Queensland Competition Authority (QCA) for the coal handling service at the Dalrymple Bay Coal Terminal ("the Terminal"). This Draft Access Undertaking will replace the current Access Undertaking, which was approved by the QCA in June 2006 (the 2006 Access Undertaking).

This document provides the accompanying submission for the 2010 Draft Access Undertaking. The submission gives an overview of the commercial and institutional developments that have affected the Terminal since the 2006 Access Undertaking was approved and explains the proposed changes. It also describes each component of the building blocks approach that is used to determine the revenue requirement for the Terminal and the form of regulation to apply.

DBCT Management considers that the 2006 Access Undertaking has, in general, worked well and to the benefit of all stakeholders. Most importantly, this has been reflected in an increase in the capacity of the Terminal of around 52 per cent since the 2006 Access Undertaking was approved. As a result, DBCT Management is strongly of the view that the interests of all stakeholders will be best served by the approval of a 2010 Access Undertaking which reflects some relatively minor enhancements to the 2006 Access Undertaking rather than wholesale changes to its content. Moreover, based on recent expressions of interest received from coal producers, the 2010 Access Undertaking also will potentially provide the framework within which further costly expansion of the Terminal is undertaken.

DBCT Management has been undertaking extensive consultations with the coal producers currently exporting through the Terminal, through their representatives on the DBCT User Group, for a period of 2 years prior to the submission of the 2010 Draft Access Undertaking. Importantly, users broadly support the proposed changes to the access framework as set out in the 2010 Draft Access Undertaking (while recognising there are some areas where individual users may have a different view). DBCT Management is pleased to be able to submit a Draft Access Undertaking that essentially reflects a commercially negotiated outcome.

1.1 Background

The Terminal is a deepwater coal loading terminal situated in the Port of Hay Point, 40 kilometres south of Mackay in Queensland. DBCT was developed by the Queensland Government and commenced operations in 1983, with an annual through put capacity of 14.55 million tonnes per annum (mtpa). The Terminal has operated as a 'common user' coal export facility servicing mines in the Goonyella system of the Bowen Basin coal fields. The Terminal has expanded in stages since then in response to

the growth in demand for coal from the region. Following the completion of the Stage 7X expansion in June 2009, the Terminal is currently the largest coal terminal in the world, having a capacity of 85 mtpa.

The Terminal is owned by the Queensland Government and leased to DBCT Trustee, as trustee of the DBCT Trust, and DBCT Management Pty Ltd (“DBCT Management”) under a long term leasing arrangement. In 2001, the Queensland Government, through its wholly owned entity DBCT Holdings, awarded a 50 year lease (with an option to extend for a further 49 years) to DBCT Trustee and DBCT Management. Management of the Terminal is undertaken by Dalrymple Bay Coal Terminal Pty Ltd, a company owned by five of the existing users of the Terminal, under an Operations and Maintenance Contract.

Prior to granting the lease, the Queensland Government declared the coal handling service at the Terminal for third party access under Part 5 of the *QCA Act 1997*. It was a requirement of one of the lease documents – the Port Services Agreement (PSA) – that DBCT Management prepare and submit a Draft Access Undertaking on behalf of DBCT Holdings (which as owner of the Terminal was formally responsible for submitting the draft access undertaking) to the QCA for approval. This 2010 Draft Access Undertaking, if approved by the QCA, will replace the 2006 Access Undertaking.

DBCT Management intends that this 2010 Draft Access Undertaking will take effect from 1 January 2011, regardless of the date of approval.

1.2 Structure of the 2010 Draft Access Undertaking

The 2010 Draft Access Undertaking adopts a similar structure to the 2006 Access Undertaking. The areas it covers include:

- introduction;
- definitions and interpretations;
- role of DBCT Management;
- services to be provided;
- negotiation arrangements;
- Terminal Regulations;
- information provision;
- confidentiality requirements;
- ring-fencing arrangements;

- reporting by DBCT Management;
- pricing arrangements;
- Terminal capacity expansion;
- terms and conditions of access;
- whole of supply chain efficiency;
- master plans;
- transitional arrangements; and
- dispute resolution.

Many of the provisions from the 2006 Access Undertaking remain unchanged. DBCT Management has not sought to explain these existing provisions in this submission. The focus of this submission is on the changes that have been made to the undertaking.

1.3 Structure of this submission

This submission is structured as follows:

- chapter 2 provides an overview of the important commercial developments that have occurred since the 2006 Access Undertaking was approved;
- chapter 3 explains the rationale for the more significant changes made in the 2010 Draft Access Undertaking;
- chapter 4 describes other drafting amendments to the access undertaking; and
- chapter 5 sets out the components of the revenue building blocks and pricing arrangements.

2 Commercial overview

There have been a number of significant commercial and institutional developments that have implications for the Terminal since the 2006 Access Undertaking was approved. These developments include:

- a major expansion of Terminal capacity;
- the growth in demand for coal from the region, leading to a ‘boom’ in associated infrastructure development. This has had significant implications for labour and materials costs;
- the Long Term Solution (LTS) process has significant implications for supply chain governance, with new institutional arrangements being developed. This will have an impact on key undertaking terms, such as commitments with respect to master planning, capacity expansions and contractual alignment; and
- the process of negotiations with DBCT Users which DBCT Management has undertaken. This has led to agreement on a wide range of matters, as indicated in the letter provided by the DBCT User Group.

This chapter provides an overview of each of the above matters and explains the implications for the 2010 Draft Access Undertaking. DBCT Management considers that these are significant issues affecting Terminal operations and commercial arrangements which the QCA should take into account in assessing this 2010 Draft Access Undertaking.

2.1 Terminal capacity expansion

DBCT Management has undertaken significant expansion of Terminal capacity since the 2006 Access Undertaking was approved. This expansion has been in response to a significant growth in demand for coal from the Goonyella region and a consequent growth in demand for access to Terminal capacity. In this time, the Terminal has increased from a capacity of 56 mtpa to 85 mtpa.

The 2006 Access Undertaking includes a process for gaining regulatory approval for a number of key elements of the capacity expansions during the term of the undertaking. This regulatory approval process has several steps:

- approval of DBCT Management’s Tender and Contract Management Process (TCMP);
- approval of the scope of expansion works, including sufficiency of evidence that the expansion is supported by at least 60% of new users and that 60% of existing users do not oppose it (the “60/60 requirement”);

- approval of standard and specification of works; and
- approval of prudence of other costs.

During the term of the 2006 Access Undertaking, the QCA also adopted a two-stage process for modifying access charges to recover the cost of the Stage 7X expansion. This process involved:

- approval of forecast expansion costs, including an adjustment to the Annual Revenue Requirement (ARR), Revenue Cap and TIC for the Terminal based on forecast costs. This also involves an 'unders and overs' mechanism to ensure any subsequent adjustments to the ARR, revenue cap and TIC occurs in a revenue neutral manner;
- approval of actual expansion costs following commissioning of the expansion. This involves amending the ARR, Revenue Cap and TIC for the Terminal based on the actual costs of expansion, utilizing the 'unders and overs' mechanism to ensure revenue neutrality.

This process has involved the submission and approval of a number of Draft Amending Access Undertakings (DAAUs) in the last few years.

The expansion of the Terminal has occurred in a number of stages. Each stage and the corresponding QCA approval are outlined in Table 1 below.

Table 1 Recent capacity expansion at the Terminal and QCA approval process

Expansion	Terminal Capacity (mtpa)	QCA Approval	Date
Short Gain	59	Approval of revised ARR, Revenue Cap and TIC	20 June 2007
DBCT 7X			
Phase 1	68	TCMP	17 August 2006
		Scope/sufficiency of 60/60 requirement	
		Approval of revised ARR, Revenue Cap and TIC based on forecast costs	17 October 2007
		Approval of ARR, Revenue Cap and TIC based on actual costs	10 December 2009)
Phase 2/3	85	Scope/sufficiency of 60/60 requirement	18 October 2006
		Approval of revised ARR, Revenue Cap and TIC based on forecast costs	20 November 2008
		Approval of ARR, Revenue Cap and TIC based on actual costs	Final Cost DAAU due by end October 2010.

DBCT Management is not seeking approval for any specific capital expenditure as part of its 2010 Draft Access Undertaking. However, indications have already been received from coal producers for a further 79 Mtpa of export capacity at the Terminal beyond the capacity of the Stage 7X expansion. Studies are currently underway to determine the scope and viability of future expansion pathways. DBCT Management will utilise the capital expenditure approval processes in the Access Undertaking to obtain regulatory approval should any further expansions occur during the term of the next undertaking.

DBCT Management considers that this approach is reasonable based on the experience to date with the Stage 7X expansion. In particular, all parties are now familiar with this process and how it is applied. Moreover, the evidence of the past few years indicates that this approach to gaining regulatory approval of capacity expansions during the term of the undertaking has not delayed expansions, but rather has allowed them to proceed as required while providing certainty to all parties. Subject to some relatively minor modifications (described in chapter 3), DBCT Management proposes to continue with this framework.

The QCA approved the actual cost of the Phase 1 expansion in December 2009. The actual costs for the Phase 2/3 expansion are yet to be approved by the QCA. Approval of actual costs for these expansions, including consequent adjustments to ARR, the Revenue Cap and TIC, will occur through the submission of a DAAU.

2.2 Mining and infrastructure boom

The growth in demand for coal from the Bowen Basin region in recent years has driven demand for the Terminal's services and the need to expand Terminal capacity. As outlined above, the Terminal has increased its capacity from 56 mtpa to 85 mtpa during the course of the first Access Undertaking alone. This sharp increase in capacity in recent years has occurred in a 'boom' commercial environment for infrastructure investment in Queensland. This high demand for construction and labour by infrastructure industries has implications for the cost of undertaking expansions.

This significant increase in Terminal capacity has been driven by the coal mining boom, which has in turn increased the demand for all infrastructure servicing the industry, including both port terminal capacity and above and below rail capacity. Despite some uncertainty following the global financial crisis in 2008, the demand for coal exports from the region has continued. The RBA has noted that investment in the resources sector is at historically high levels and is expected to increase further. Specifically, the RBA considered that the outlook for iron ore and coal remains strong, with investment expected to remain at its current high level, or increase further, as a share of GDP.¹

Consistent with this positive outlook, infrastructure service providers servicing the mining industry, including DBCT Management and Queensland Rail, have undertaken capacity expansions and have long term infrastructure master plans which set out future expansion paths should demand from users warrant this. The Stage 7X expansion at the Terminal is fully contracted up to 85 mtpa. Moreover, as previously noted, coal producers have already expressed interest in further export capacity at the Terminal beyond the Stage 7X expansion.

2.3 Long Term Solution

Following the Goonyella Coal Chain Capacity Review undertaken by Stephen O'Donnell² there has been greater focus by all Goonyella supply chain participants on the need to act in a more coordinated manner to optimise overall supply chain capacity and efficiency. This has resulted in the appointment of a Central Coordinator for the Dalrymple Bay coal chain (DBCC) tasked with ensuring alignment across the supply chain to ensure efficiencies are realised.

¹ Reserve Bank of Australia, Statement on Monetary Policy, 6 November 2009, p. 46

² Stephen O'Donnell, Goonyella Coal Chain Capacity Review, Final Report, 11 January 2008

A process has since been undertaken under the auspices of the Central Coordinator to develop a long term solution (LTS) for DBCC. Key milestones in this process include the Memorandum of Understanding of April 2008 between supply chain participants and the Long Term Solution (LTS) Implementation Memorandum (yet to be signed by all parties). The overall aim of the LTS framework set out in the LTS Implementation Memorandum is to:³

(a) promote alignment between the planning and contracting of rail and Terminal capacity, which will provide more certainty that present and future contracted tonnages will be able to be accommodated across the entire DBCT Coal Chain; and

(b) ensure that System Capacity is expanded in a timely, coordinated and efficient manner to meet future contracted demand

each of which will promote optimum efficiency and reliability in respect of the DBCT Coal Chain.

The LTS framework sets out key principles and intended actions to achieve this, including measures relating to promote:

- contractual alignment
 - aligning contracts;
 - system operating assumptions;
 - securing access to capacity;
 - aligning capacity entitlements post expansion;
 - managing capacity entitlements; and
 - managing information flows;
- accountability for capacity consumption;
- coal chain master planning; and
- corporate governance.

The implementation of the LTS framework has significant implications for elements of the DBCT Access Undertaking, particularly regarding master planning obligations and commitments around capacity expansions and alignment of contracts. As a participant in the LTS process, DBCT Management is committed to implementing the principles agreed as part of this framework. The key changes to the undertaking as a result of the LTS and the rationale for them are discussed in the next chapter.

³ LTS Implementation Memorandum, p. 5

2.4 Negotiations with Users

In developing the 2010 Draft Access Undertaking, DBCT Management has consulted extensively with current Terminal users (as represented by the DBCT User Group) with a view to reaching an agreement with them on the terms of the undertaking prior to its submission to the QCA.

As a result of this negotiation process, DBCT Management has the support of the DBCT User Group for the proposed changes to the current access framework reflected in the 2010 Draft Access Undertaking. DBCT Management understands that the DBCT User Group will submit a letter to the QCA signifying its support for the framework in the 2010 Draft Access Undertaking. In particular, the DBCT User Group has noted its support with respect to:

- the broad structure of the 2010 Draft Access Undertaking, including the LTS amendments and commitments with respect to the LTS initiative;
- the proposed term of the 2010 Draft Access Undertaking, being 5 ½ years from 1 January 2011 to 30 June 2016;
- a roll-forward of the current regulatory asset base (RAB) valuation, incorporating asset additions as a result of the recent Terminal expansions commissioned prior to 1 January 2011;
- a roll-forward of the regulatory weighted average cost of capital (WACC), consistent with the 'package' approach proposed by DBCT Management; and
- retaining unchanged the current approach to depreciation, the allowance for corporate overheads and remediation costs, working capital and existing tax-sharing arrangements.

DBCT Management understands that users are endorsing a pricing 'package' rather than each individual WACC parameter, and that some users may comment further on specific issues.

DBCT Management considers that this agreement between DBCT Management and Terminal users reflects a commercially negotiated outcome. Commercial negotiation between access providers and access seekers, with recourse to dispute resolution where required, is the underlying principle of third party access, including under Part 5 of the QCA Act. Given the option open to users of having matters resolved by the QCA as part of the undertaking assessment process, a negotiated outcome on matters in this 2010 Draft Access Undertaking is significant. DBCT Management considers that this reflects a commercial negotiation, where the outcome reflects a mutually acceptable balance in the interests of the access provider and access seekers.

Accordingly, while recognising that there are other factors to be taken into account by the QCA in its assessment, DBCT Management considers that the QCA should regard an agreed position between users and DBCT Management as signifying a genuine market outcome, and therefore urges the QCA to look favourably on this negotiated agreement.

3 Major changes to 2006 Access Undertaking

This chapter details the more significant changes from the 2006 Access Undertaking that are proposed in the 2010 Draft Access Undertaking.

3.1 Implementing the LTS

DBCT Management is committed to giving effect to its obligations as a signatory to the Memorandum of Understanding of April 2008 and also to the LTS framework (when the LTS Implementation Memorandum, signed by DBCT Management, is signed by all parties) through the DBCT Access Undertaking. The following elements of the 2010 Draft Access Undertaking have been included to achieve this.

3.1.1 Whole of supply chain efficiency (section 14)

The proposed amendments to this section of the 2010 Draft Access Undertaking are intended to recognise the LTS Process. Specifically, this section includes a commitment by DBCT Management to engage with stakeholders on a “best endeavours” basis to develop and implement mechanisms to improve the overall efficiency of the Goonyella Coal Chain. It also includes a commitment to participate in any forum established pursuant to or arising out of the Memorandum of Understanding of 1 April 2008 between stakeholders in the DBCT coal chain or any subsequent agreement, including the LTS Process.

DBCT Management further commits that, in the event that the LTS Process results in the LTS Outcome, DBCT Management will promptly submit a draft amending access undertaking to the QCA for approval, which contains amendments as reasonably necessary to implement the elements of the LTS Outcome that are relevant to DBCT Management.

3.1.2 System Master Plan (section 15)

The LTS framework states that there will be a System Master Plan (SMP) which will identify the feasible investment options (including load points to port and changes in operating arrangements) for increasing DBCT coal chain capacity and that these options will be evaluated from a cost, risk and timing perspective. All participants are to cooperate in developing the common set of system operating assumptions which will underpin the SMP.

According to the LTS Implementation Memorandum, the SMP will be developed by the Central Coordinator in consultation with supply chain participants. It includes an obligation to amend both the DBCT and QR Network Access (QRNA) access undertakings to:⁴

- acknowledge the existence of the SMP;
- contain a commitment to participate in the development of the SMP;
- clarify the SMP's relationship with the service provider's master plan;
- where a service provider intends to invest other than in accordance with an agreed SMP, specify a requirement to be clear and transparent in identifying and explaining the reasons for this as part of the master plan;
- where a service provider does not agree to the SMP, specify a requirement to be clear and transparent in identifying and explaining the reasons for this as part of the master plan;
- specify a role for the QCA in resolving disputes in regard to system operating assumptions (consistent with the dispute resolution framework specified in the memorandum). The dispute resolution process to be developed will involve informal measures, such as referral to an expert and, as a last resort, referral to the QCA.

In accordance with these commitments, the 2010 Draft Access Undertaking includes a new section relating to master plans, in which a distinction is drawn between the Terminal Master Plan (TMP, which is at Schedule F) and the SMP. This new section 15 of the 2010 Draft Access Undertaking includes the following in regard to the TMP:

- clarifies the role of the TMP as the framework for the expansion of the Terminal in the most logical and efficient way. It is intended to be a part of, and integrated with, the SMP. To the extent there is no SMP in place, the TMP will have regard to DBCT Management's knowledge of the system and system capacity for the relevant period;
- a commitment that DBCT Management will review the TMP at least annually and otherwise in accordance with its Port Services Agreement obligations. DBCT Management must consult with stakeholders regarding any proposed amendments; and

⁴ LTS Implementation Memorandum, p. 22

- DBCT Management must make a copy of the TMP available to each other service provider and to each access holder and access seeker, the operator and the QCA promptly after each amendment.

The 2010 Draft Access Undertaking includes the following provisions in regard to the SMP:

- a commitment by DBCT Management to use reasonable endeavours to agree a SMP with other service providers and DBCT Holdings, after consultation with stakeholders and with all access holders, access seekers and the operator. It also commits to review and, if necessary, revise, the SMP by agreement with each other service provider, following ongoing consultation with stakeholders;
- DBCT Management retains the right to at any time to, acting reasonably, propose amendments to an existing or proposed SMP. If, after a reasonable period of time each other service provider does not agree to the amendments, DBCT Management has the right to withdraw its agreement in respect of a SMP. In this case, there is assumed to be no SMP in place for the purposes of the Access Undertaking. DBCT Management commits to publish on its website its reasons for withdrawing its agreement;
- clarification that, if no SMP is in place (for any reason), then DBCT Management (or the QCA) will have regard to the Terminal Master Plan together with what it reasonably considers to be the present and likely future state of the other relevant components of the system and what DBCT Management (or the QCA) reasonably understands to be generally accepted system operating assumptions;
- clarification that DBCT Management will not be liable to the QCA or an access seeker (or an access holder under the Standard Access Agreement) if it makes a good faith and reasonable attempt to comply with the above provisions and
- obligations on DBCT Management regarding its endeavours to agree a SMP, namely a commitment to fully and promptly provide information to relevant stakeholders as required and to work cooperatively with other service providers (for example, to regularly provide information relevant to system capacity and to use reasonable endeavours to agree on the joint engagement of experts where required).

DBCT Management considers that the above provisions in the 2010 Draft Access Undertaking give effect to DBCT Management's commitments under the LTS framework (recognising that some elements of the LTS framework are yet to be developed in detail). The provisions give certainty to stakeholders regarding DBCT

Management's commitment to participate in developing a SMP and applying this to future expansions at the Terminal, where it has been agreed to by DBCT Management.

DBCT Management considers that the proposed framework for developing a SMP is appropriate and is consistent with the intent of the LTS framework. This approach is supported by Terminal users. DBCT Management would not support any proposal to impose a SMP on it (or any other service provider), should an SMP not be agreed, on the basis that it would be unreasonable for DBCT Management (or other service providers) to be bound by the decisions of other parties in such a commercially critical area as capacity expansions.

In any case, the PSA and the 2010 Draft Access Undertaking include clear obligations on DBCT Management to expand the Terminal in certain circumstances. This should provide stakeholders with considerable certainty in terms of capacity expansions.

DBCT Management considers that the proposed provisions in the 2010 Draft Access Undertaking provide sufficient certainty to stakeholders around developing a SMP and applying it, where it has been agreed. As such, DBCT Management considers that the proposed provisions give full effect to the LTS framework commitments and achieve a reasonable balance in the interests of all parties.

3.1.3 System capacity (section 12.1)

The concept of 'system capacity', which has been developed as part of the LTS framework, has been incorporated into the 2010 Draft Access Undertaking. System Capacity is distinct from stand-alone 'Terminal capacity' and is defined in the Draft Access Undertaking as:

System Capacity means at a relevant time, the maximum reasonably achievable estimated capacity of the System (measured in tonnes per financial year) as determined pursuant to Section 12.1 in respect of that time. Where System Capacity is required to be estimated in respect of a future time (for example, for the purposes of Section 5.4) DBCT Management will estimate it taking all relevant factors into account (including System Capacity expected to arise out of a System Capacity Expansion which has been or can reasonably be expected to be committed to at the time of the estimation)..

'System' is defined as follows:

System means, in respect of the Goonyella Coal Chain, the following components of infrastructure relating to the transport of coal from mines whose coal is Handled by the Terminal:

- (a) rail loading facility of mines whose coal is Handled by the Terminal;
- (b) railway infrastructure in the Goonyella Coal Chain;
- (c) railway locomotives and rolling stock used in the Goonyella Coal Chain; and
- (d) Terminal unloading, stacking, loading and other Handling facilities.

The 2010 Draft Access Undertaking commits DBCT Management to estimate (or accept an estimation as provided for by an expert under section 12.1(m)(3)) Terminal Capacity and System Capacity in accordance with the relevant terms of an LTS Outcome which deals with this issue. Where there is no relevant LTS Outcome, DBCT Management will determine Terminal Capacity and System Capacity after taking expert advice and following consultation with stakeholders.

The 2010 Draft Access Undertaking sets out the factors that must be taken into account in determining both Terminal Capacity and System Capacity. The factors affecting Terminal Capacity are the same as in the 2006 Access Undertaking. The factors that must be considered in determining System Capacity are the system operating assumptions that impact on system operations, including among other things, operating modes of the system, rail infrastructure characteristics, mine loading facilities, System Master Plan and rolling stock configurations.

The calculation of both Terminal Capacity and System Capacity will make allowance for expected outages due to maintenance, breakdowns, derailments etc. Further, the estimates will apply for 2 years and are assumed to continue at no lesser rate indefinitely after that period, except to the extent that DBCT Management or the expert are aware of a reasonably certain future material decrease in capacity (for example, caused by a planned shutdown in another part of the system).

The transparency of this process is supported by the commitment by DBCT Management to, subject to any confidentiality restrictions, disclose to the QCA, access holders, access seekers, the operator and other service providers its decision making process and to provide a copy of the expert's report. Further, DBCT Management commits to not enter into confidentiality restrictions preventing disclosure beyond what may be commercially reasonable and customary.

The 2010 Draft Access Undertaking specifies the process for appointment of an independent expert on the matters of determination of capacity. DBCT Management proposes to appoint an independent expert, unless access holders with a combined Annual Contract Tonnage for that financial year of greater than 50% object. In this case, an independent expert will be appointed by the QCA. The outcome determined under

this process applies until it is next reassessed and is unable to be disputed by other parties except in certain defined circumstance, namely:

- if it has been determined in bad faith, in breach of the Access Undertaking or and access agreement or on the basis of manifest error; or
- access holders with a combined Annual Contract Tonnage for the then current financial year is greater than 50% of the Aggregated Annual Contract Tonnage for that year, each object on the same or similar grounds.

It is proposed that re-determination of Terminal Capacity and System Capacity will occur no later than 6 months after completion of a Terminal expansion, completion of a material and discrete expansion of another part of the system or otherwise at DBCT Management's discretion. However, re-determination must occur at least once per financial year.

The 2010 Draft Access Undertaking includes commitments by DBCT Management to work cooperatively with other service providers and to use reasonable endeavours to agree on the joint engagement of experts.

It is also proposed that the expert be bound to accept any agreement or broad consensus that exists amongst Goonyella Coal Chain stakeholders as to Terminal Capacity or System Capacity (even if not resulting in an LTS Outcome), except where the expert forms the view that there is compelling evidence to the contrary. The aim of this provision is to facilitate agreement amongst stakeholders and to help prevent a situation of 'hold up' of an agreement on these key matters where the majority of stakeholders are in accord.

The 2006 Access Undertaking included a commitment that DBCT Management would not enter into any access agreement if it would result in Annual Contract Tonnage exceeding Terminal Capacity. Consistent with the LTS framework, this has now been changed to a commitment not to exceed System Capacity. This will help ensure that access rights for one part of the supply chain (ie. the Terminal) do not exceed access rights to total System Capacity, thereby promoting efficient use of supply chain capacity.

However, the 2010 Draft Access Undertaking clarifies that this does not preclude DBCT Management from entering into an access agreement which is conditional upon a Terminal capacity expansion (provided this does not result in Aggregate Annual Contract Tonnage exceeding System Capacity after the Terminal is expanded). Nevertheless, where DBCT Management has acted in good faith and made reasonable attempts to comply, it will not be in breach of the undertaking if an assessment of

System Capacity following a Terminal capacity expansion reveals that Aggregate Annual Contract Tonnage exceeds System Capacity.

Section 12.1(o) states that DBCT Management will not have any liability for delays or breaches, factors impacting on system capacity that are beyond its control or error on the part of the expert, provided DBCT Management makes a good faith and reasonable attempt to comply with this part of the Undertaking. This provision is broadly consistent with the corresponding provision in the 2006 Access Undertaking and is reasonable given that many of the factors impacting on system capacity are beyond DBCT Management's control.

Section 12.1(p) also clarifies that DBCT Management will bear the cost of any expert appointed under this provision and that this cost will be included in the regulated asset base where the determination is required following the completion of an expansion. The costs incurred in the determination of capacity under other circumstances will be borne by DBCT Management.

Finally, to facilitate access, the 2010 Draft Access Undertaking clarifies that it remains open to DBCT Management to allocate anticipated capacity increases after the completion of a Terminal capacity expansion on a provisional basis until Terminal and System Capacity are determined.

DBCT Management considers that the approach to determining capacity outlined in the 2010 Draft Access Undertaking is fair and reasonable as it provides stakeholders with considerable opportunity to provide input into the capacity assessment process as well as into the appointment of the expert, while at the same time safeguarding the legitimate business interests of DBCT Management.

3.2 Capacity expansions

3.2.1 General obligation to expand (section 12.3)

The 2010 Draft Access Undertaking retains the general obligations in the 2006 Access Undertaking in regard to undertaking Terminal capacity expansions. However, this general obligation to expand to accommodate actual and reasonably anticipated future growth now includes reference to the System Master Plan and system-wide factors. Specifically, it places this obligation to expand in the context of the SMP and the expected capacity of the other components of the system. This is to give effect to the intention of aligning capacity throughout the system by ensuring, as far as reasonably practicable, that the Capacity of the Terminal will not significantly exceed System Capacity for more than 12 months following an expansion.

The provision sets out some matters to be taken into account in this assessment, including recognition that DBCT Management does not have control over any part of the system other than the Terminal. Because of this, DBCT Management should not be liable if it fails to comply with this section, provided it has acted in good faith and made reasonable attempts to comply.

However, DBCT Management does not consider it should be required to undertake Terminal expansion works beyond that necessary to align Terminal Capacity with System Capacity on a long term basis. Such expansion is not commercially justifiable in circumstances where the capacity levels of the infrastructure inputs into the Terminal will mean that access holders and access seekers will not be able effectively utilise the increase in Terminal Capacity which becomes available as a result of the expansion.

An additional commitment has been included to undertake an expansion where required to eliminate sustained shortfalls in actual Terminal capacity below the total of Annual Contract Tonnages of all access holders, regardless of the reason for the shortfall. This additional expansion criteria is in line with other amendments intended to protect existing access holders by ensuring that entitlements under existing access agreements are met.

3.2.2 Accommodation of capacity (section 12.4)

The 2006 Access Undertaking included a commitment by DBCT Management to use best endeavours to accommodate access seekers willing to enter into an access agreement within 12 months. This commitment is for DBCT Management to ensure that the Terminal is able to handle the coal subject to the access agreement without a material and sustained increase in demurrage costs or the average net costs across all access holders of raiing coal over a consecutive three month period.

In light of experience over the term of the current Access Undertaking, DBCT Management is proposing some minor amendments to this provision as it has serious concerns about the practical operation of certain elements. It has proven to be unworkable and impractical in terms of the 12 month timing commitment to accommodate access seekers. Even with best efforts to undertake expansions in a timely way, it will not be practical in all cases to deliver the additional capacity required within 12 months. Recent experience with the Stage 7X expansion demonstrates this. For this reason, DBCT Management has proposed the removal of the 'within 12 months' commitment from the Draft Access Undertaking. However, access seekers interests are still protected by retaining the commitment to accommodate an access seeker 'as soon as reasonably practical' and given the clear obligations regarding expanding capacity and approval mechanisms included in the

2010 Draft Access Undertaking, in particular section 12.3. The TMP and SMP processes, and the mechanism for user approval of scope, provide considerable certainty for all parties around future expansion paths. Another amendment to this provision is the deletion of a material and sustained increase in 'demurrage costs' as a guiding factor in determining whether an access seeker can be accommodated. Instead, DBCT Management has proposed replacing this with 'vessel waiting times' as this is a more appropriate and practical indicator of Terminal capacity constraints.

3.2.3 Other amendments to capacity expansion approval process (section 12.5)

Scope of terminal capacity expansion (s. 12.5(a)(1) and (f))

There is a minor modification made to this provision to take account of the LTS framework. Specifically, in making its application to the QCA regarding expanding the Terminal, DBCT Management must provide details of how the scope complies with both the current TMP as well as the SMP.

Similarly, the QCA must take into account whether an expansion is consistent with the TMP and SMP in deciding whether to accept the scope of works as prudent (s. 12.5(f)). The QCA must also consider in its approval whether the expansion will result in Terminal Capacity significantly and disproportionately exceeding System Capacity for more than 12 months after completion of the expansion.

Monthly reporting to the QCA (section 12.5(b))

The commitment to provide 6 monthly reports to the QCA regarding the status of each contract awarded under the Tender Contract Management Process (TCMP) has been changed to monthly reporting, ensuring the QCA remains well informed of progress and compliance.

60/60 requirement (s. 12.5(h)(2))

To ensure transparency in the process for determining whether the 60/60 requirement can be complied with, DBCT Management proposes that access holders be provided with additional information, specifically a schedule of likely reductions in Terminal Capacity and System Capacity during construction, and an estimate of the effect the proposed Terminal Capacity Expansion will have on Capital Charges and Operation and Maintenance Charges. DBCT Management considers the provision of this additional information will allow access holders to make a more informed decision about whether to object to the proposed expansion works.

Amendments to Tender Contract Management Process (s. 12.5(i)(4))

The 2006 Access Undertaking includes a process whereby the QCA can approve DBCT Management's Tender Contract Management Process (TCMP) if it is satisfied, among other things, that it will generate an efficient and competitive outcome. Where capital expenditure can be shown to be undertaken in accordance with an approved TCMP, the QCA will accept the value of the contract so awarded as being prudent.

While this process has generally been successfully applied during the term of the 2006 Access Undertaking, it is apparent that some additional flexibility would be beneficial. In particular, additional flexibility allowing DBCT Management to seek QCA approval to amend the TCMP would give it the ability to adjust its purchasing policies in response to changing circumstances. The interests of users are protected as any such change would be subject to QCA approval. This amendment is intended to improve the existing process by enhancing its flexibility.

Advisers' costs (s. 12.5(m)(6) & (7))

The clause recognises that, in assessing the prudence of capital expenditure undertaken at the Terminal, the QCA will take advice as required from independent advisors and will consult with relevant stakeholders. A minor amendment has been made to the 2010 Draft Access Undertaking to clarify that the cost of such advisers may be borne by DBCT Management if required by the QCA. This is a matter for the QCA's discretion. In the event QCA requires recovery of adviser costs (and auditor costs under s. 12.5(l)) from DBCT Management, these costs will form part of 'Other Costs' (s. 12.5(m)).

Approval of capital expenditure prior to completion (s. 12.5(o) - (q) and Schedule C, Part A, s. 4)

The 2006 Access Undertaking provides for capital expenditure to be included in the RAB, with adjustments to the ARR, Revenue Cap and Reference Tariff, once capital works are commissioned. However, given DBCT Management's debt financing arrangements, this process leaves DBCT Management in a position where it is unable to recover its increased financing commitments until after commissioning. This poses a significant cash flow problem for DBCT Management given the scale of the capital expenditure involved in the Stage 7X expansion.

To overcome this issue, DBCT Management proposed to the QCA during the term of the 2006 Access Undertaking a two-stage process to expedite the adjustment of access charges to more closely align with the timing of actual expenditure. This process involves:

- the submission of a Draft Amending Access Undertaking (DAAU) to adjust the ARR, Revenue Cap and Reference Tariff on an interim basis to reflect capital expenditure incurred prior to completion of the works based on forecast costs;
- a second DAAU to be submitted following commissioning of works to adjust the approved ARR, Revenue Cap and Reference Tariff based on actual costs. The intention of this mechanism is to ensure DBCT Management and access holders are no worse off than if the adjusted access charges were originally based on actual costs rather than forecast costs.

The QCA accepted and has applied this process for both Phase 1 and Phase 2/3 of the Stage 7X expansion (see section 2.1 of this submission).

Accordingly, DBCT Management has now formally included this process in the 2010 Draft Access Undertaking. This includes new provisions in section 12.5 (o) and (p) that establishes the process which may apply to future expansions should they occur during the term of the next access undertaking.

A new provision has also been included to clarify that the relevant s. 12.5 of the Access Undertaking for the purposes of the QCA's assessment of the Stage 7X expansion is the provision in force on 6 October 2008. This clarification is important in light of possible future changes to the Access Undertaking to provide certainty regarding the assessment process that will apply to this major capital expenditure.

Further detail on the mechanics of the reconciliation of ARR, Revenue Cap and Reference Tariff between forecast and actual costs is included in Schedule C. The amendments in Schedule C apply to the Stage 7X expansion phases only and are consistent with the approach taken by the QCA on this issue.

DBCT Management considers that this two-stage process has been effective in addressing an important financing issue relating to recovery of costs associated with significant capital expenditure projects while at the same time safeguarding the interests of the users of the Terminal. The process has provided DBCT Management with the ability to service increased financing costs more expeditiously than would otherwise be the case. Importantly, users' interests are also protected by the nature of the adjustment mechanism which ensures they are no worse off as a result of the adjustment in access charges. Accordingly, this process has been included in the 2010 Draft Access Undertaking both to clarify the process that will apply to assessment of any Stage 7X capital expenditure and to allow this mechanism to be used in future if required.

3.3 Non-expansionary capital expenditure (section 12.10)

Experience with the operation of the 2006 Access Undertaking has highlighted the fact that there needs to be greater flexibility around the treatment of non-expansionary capital expenditure (NECAP). While the 2006 Access Undertaking provides significant detail on the treatment of capital expenditure that results in an expansion of Terminal capacity, it does not expressly address expenditure which falls within the definition of 'capital expenditure' but which does not relate to a capacity expansion (other than the allowance of \$3m for 'minor capital expenditure' which is recovered via the pass-through of Terminal Operating Costs).

At present, a DAAU is required for any capital expenditure to be recognised in the RAB during the term of the Access Undertaking. DBCT Management considers that a more streamlined process for smaller sums of NECAP would benefit all stakeholders as it would minimise administrative costs associated with a DAAU for less substantial sums. It is not proposed that this streamlined process apply to expansionary capital expenditure, which would remain subject to the processes outlined in s. 12.5.

The 2010 Draft Access Undertaking therefore includes a new section addressing the circumstances in which DBCT Management will incur NECAP and the QCA's treatment of it. Specifically, it provides that DBCT Management will incur NECAP as necessary to ensure the Terminal complies with good operating and maintenance practice and to ensure it complies with its obligations under the PSA.

The QCA will accept it as prudent and include it in the regulated asset base (RAB) where:

- such expenditure is less than or equal to \$110,000,000 for the term (which is derived from an estimated budget of \$20,000,000 per year) of the undertaking and is considered as being a reasonable and prudent amount for a terminal of this type and nature;
- DBCT Management confirms to the reasonable satisfaction of the QCA, that the expenditure falls within the definition of Capital Expenditure;
- no access holder at the time objected to the Capital Expenditure within 15 business days after receiving notice of the estimate; and
- if the operator has recommended in writing incurring that expenditure.

For NECAP amounts greater than \$20,000,000 or which do not comply with the above conditions, the QCA will accept it into the RAB if it forms the view it is prudent having regard to, among other things:

- the need for the work;
- the scope of the work;
- the standard of the work;
- the circumstances prevailing in the markets for engineering, equipment supply and construction;
- safety during construction and operation;
- compliance with environmental requirements during construction and operation;
- minimizing whole of asset life costs; and
- the advice of independent advisors using appropriate benchmarks and experience and which are appointed (and paid for) by the QCA or paid for by DBCT Management and included in the RAB in accordance with the process above.

DBCT Management submits that these provisions are necessary to provide DBCT Management with required certainty to undertake NECAP expenditure which is needed for the efficient operation of the Terminal. It provides for a more streamlined approval process for expenditure beneath a specified threshold. The aim of this is to reduce regulatory uncertainty and the compliance burden in obtaining approval of less material amounts.

For larger amounts (ie. above \$20,000,000), or where user agreement is not obtained, the provision specifies the key factors that the QCA should have regard to in determining if the expenditure is prudent. DBCT Management submits that this approach reflects a reasonable balance in the interests of users and DBCT Management by seeking to ensure greater certainty regarding the recovery of efficient NECAP.

It should also be recognised that it is the role of Dalrymple Bay Coal Terminal Pty Ltd, owned by the Terminal users, to propose the NECAP projects and expenditure amounts to DBCT Management under the Operations and Maintenance Contract. This gives users considerable control and discretion with regard to NECAP. DBCT Management understands that the DBCT User Group supports this proposed process. In addition, the ability of access holders to object to automatic QCA approval of sums under the threshold level further protects users' interests.

4 Other changes to 2006 Access Undertaking

This chapter outlines the range of other, less significant, amendments incorporated in the 2010 Draft Access Undertaking. The key changes addressed in this chapter relate to the negotiation framework. Further submissions provided to the QCA show a mark up of these changes against the 2006 Access Undertaking. This mark up includes text boxes summarising important changes.

4.1 Negotiation arrangements

4.1.1 Term of Access Undertaking

DBCT Management has proposed that the term of the 2010 Draft Access Undertaking be 5 ½ years, terminating on 30 June 2016 (or when the operator changes, whichever is earlier). This longer term will provide greater certainty to all stakeholders regarding the terms and conditions of access that will apply and regarding future capacity expansions. However, some flexibility is required to amend the Access Undertaking in response to material changes in circumstances. In this regard it is open to DBCT Management to submit a draft amending access undertaking if required. There is also an expanded list of review trigger events specified in the 2010 Draft Access Undertaking. DBCT Management notes that this longer term is supported by the DBCT User Group.

4.1.2 Review of Undertaking

The 2010 Draft Access Undertaking includes an expanded list of review trigger events.

The general review by the QCA and DBCT Management after one and three years will take place (as under the current Access Undertaking), however, greater clarity is provided about the trigger for submitting a draft amending access undertaking.

In addition to when DBCT Management and the QCA agree an amendment is desirable, section 1.4(a)(2) now states that if the QCA considers it necessary that the Undertaking be amended to rectify a significant inequity or significant unfairness suffered by an access seeker, access holder or DBCT Management, which was not foreseen at the commencement date, then DBCT Management will submit a draft amending access undertaking addressing the issue.

Another trigger specified is if section 14(b) applies – this refers to submitting a draft amending access undertaking in response to an LTS Outcome. An LTS Outcome may

be reached as a consequence of the LTS Process. That is, as a result of DBCT Management's engagement with other supply chain participants as part of the LTS Process, an agreement may be reached between stakeholders (including DBCT Management) as to how the Goonyella Coal Chain initiative will be implemented. This review trigger places a positive obligation on DBCT Management to submit a draft amending access undertaking if required to implement an LTS Outcome.

A number of other review trigger events are also specified:

- Review arising out of System Capacity principles - this recognises that the change incorporated in this Draft Access Undertaking of allocating access by reference to System Capacity rather than Terminal Capacity is a significant and untested change. It is therefore recognised that, after a period of implementation, some amendment may be required to address any issues that emerge. In this case, DBCT Management may submit a draft amending access undertaking;
- Review arising out of LTS Outcomes - DBCT Management will submit a draft amending access undertaking if a LTS Outcome is reached which relates to the 2010 Access Undertaking;
- Review relating to pricing principles - DBCT Management will submit a draft amending access undertaking if it believes the access charge framework in the 2010 Access Undertaking no longer satisfies the pricing objectives or could be structured more effectively or is creating a manifest error. The QCA may approve such an amendment only if it considers it appropriate having regard to the pricing objectives in section 11.1.

4.1.3 Warranty relating to other contracts (s. 5.2, 5.3 and Schedule A)

DBCT Management is proposing that, as part of the access application process, an access seeker must provide a warranty that it either has rights, or has applied for rights, to above and below rail infrastructure which is consistent with the access to the Terminal being sought. The purpose of this is to promote contractual alignment across all elements of the supply chain in order to promote efficiency of the system as a whole. This is a key objective of the LTS framework.

To give effect to this, as part of the Access Application Form (Schedule A), there is now a cover letter to the Access Application which includes the following warranty:

The Access Seeker warrants that it has:

- (a) rights to below rail infrastructure and rail haulage; and/or

- (b) made, or will promptly make, an application to the relevant railway infrastructure service provider to obtain rights to rail infrastructure (which it reasonably expects will be granted if this Access Application is granted); and/or
- (c) otherwise made arrangements

which enable the delivery of tonnage to the Dalrymple Bay Coal Terminal that are sufficient to satisfy the capacity the subject of this Access Application.

The Access Application Form also requires the access seeker to identify the category of the access application, namely: if it is for a new access seeker; an existing access holder seeking additional capacity (including extension of the term) under a mechanism in its access agreement (as contemplated by s. 5.11 of the Access Undertaking); or an existing access holder seeking additional capacity (including extension of term) other than in the circumstances contemplated by s. 5.11 of the Access Undertaking. Section 5.11 is the Existing Agreement Process. New access seekers must also provide evidence of creditworthiness (section 5.9).

Section 5.3 (Acknowledgement) also clarifies that if the access application fails to comply with s. 5.2 (including a failure to provide the warranty in Schedule A), then DBCT Management must reject the application. In this case, no application will be deemed to have been received. This clarification is important given queuing arrangements.

4.1.4 Priority of access applications (s. 5.4)

DBCT Management has made a number of amendments to the queuing arrangements in the 2010 Draft Access Undertaking to promote efficient use of capacity and to reflect the LTS arrangements.

Available System Capacity

In the 2006 Access Undertaking, this section relating to priority of access applications referred to 'Available Capacity', which related specifically to Terminal capacity. This has been amended in the 2010 Draft Access Undertaking to refer to 'Available System Capacity' throughout s. 5.4.

'Available System Capacity' is defined as the amount of System Capacity not contracted to be handled at the Terminal at a time relevant to an access application. It is calculated by subtracting the Aggregate Annual Contract Tonnage as at the relevant time from System Capacity at that time (with System defined to encompass all elements of the Goonyella Coal Chain relating to the transport of coal from mines whose coal is handled by the Terminal – see Definitions). Where Available System

Capacity is to be determined in respect of a future time, DBCT Management will estimate it taking all relevant factors into account (including System Capacity expected to arise out of an expansion).

This proposed amendment recognises the LTS framework, specifically, the fact that any queue must be formed having regard to Available System Capacity, and not just Terminal Capacity. This is intended to help prevent misalignment of contractual entitlements across the supply chain. While it still reflects a Terminal queue (and not a single system queue), it is formed taking account of system-wide capacity constraints, and not just Terminal capacity constraints.

Notification of queue or changes to queue (s. 5.4(c))

A new provision has been included which commits DBCT Management to notify each access seeker in the queue after a queue is formed and after each change to the queue. This reflects a commitment to transparency in queuing arrangements so that access seekers can make a reasonable assessment of the likelihood of securing access, the likely timing and the key factors which influence that timing. There will be no disclosure of individual access seekers' identity or of otherwise confidential information as part of this notification process.

Provision of security (s. 5.4(d) and (e))

The 2006 Access Undertaking gives DBCT Management a right to require an access seeker to provide security as a condition of Access. Sections 5.4(d) and (e) have been amended to expressly allow DBCT Management to require security in circumstances where a notifying access seeker has indicated it wishes to enter into an access agreement with DBCT Management under section 5.4(d), or a notified access seeker has indicated it wishes to enter into an access agreement under section 5.4(e). These provisions extend the circumstances in which an access seeker may be required to provide security. Any such request for security must be consistent with the terms of the undertaking.

Access agreements not to exceed Available System Capacity (s. 5.4(g))

This section has been modified to ensure consistency with the System Capacity approach. It expressly precludes DBCT Management from entering into an access agreement for tonnage which would exceed the Available System Capacity. It further requires DBCT Management to inform an access seeker in the event there is insufficient System Capacity, notwithstanding that an access seeker may otherwise have a right to enter into an access agreement.

Agreement subject to condition precedent (s. 5.4(h)(2))

The 2006 Access Undertaking gave DBCT Management the ability to invite each applicant in a queue to enter into an access agreement subject to a condition precedent relating to the triggering of an obligation by DBCT Management to expand the Terminal.

A new condition precedent has been added to the 2010 Draft Access Undertaking which relates to other parties in the supply chain committing to expand a relevant part of the system. Specifically, it states that a service provider (other than DBCT Management), rail haulage provider, access holder or access seeker unconditionally committing to an expansion which is necessary to create sufficient Available System Capacity.

Again, this amendment is necessary to reflect the increasing cooperation among supply chain participants that is occurring under the LTS framework. Consistent with the change to having regard to Available System Capacity in forming a queue for Terminal Capacity, this proposed amendment recognises that an expansion in another part of the supply chain may be a relevant condition precedent to DBCT Management entering into an access agreement with an access seeker in the queue.

Compression of entitlements following expansion (s. 5.4(h)(7) - (9))

Additional provisions have been included in s. 5.4 to address the scenario where the actual capacity delivered following an expansion is less than anticipated. This can occur for a variety of reasons that are beyond the control of the infrastructure owner, such as issues that emerge during construction or which become apparent only after a period of time operating. This has also been identified as a past problem in the Goonyella Coal Chain that has contributed to congestion.

The 2010 Draft Access Undertaking includes a new provision (s. 5.4(h)(7)) requiring that access agreements for expanded capacity must include provisions entitling DBCT Management to proportionately reduce the tonnage allocated under the access agreement to the access seeker if the actual capacity of the System following expansion is less than was estimated at the time of entering into the agreement. The reduction will be proportionate to the capacity shortfall, after deduction of any capacity required to 'make up' any existing capacity shortfalls (ie. prior to the Terminal capacity expansion).

To clarify the affected access seeker's position in the queue following such an adjustment, s. 5.4(h)(8) states that, in respect of those reduced tonnes, the access seeker will reserve its position in the queue. Further, s. 5.4(h)(9) clarifies that this provision is

not in any way contrary to the principle of handling tonnages only able to be availed of to the extent of matching rail access entitlements.

Section 5.4(i)(3) further clarifies the priority to be given to making up capacity shortfalls under existing access agreements. It expressly states that additional Terminal capacity resulting from an expansion will be firstly utilised by meeting Annual Contract Tonnages under existing agreements and, thereafter, allocated according to access applications.

This mechanism to 'compress' access entitlements is necessary to allow a fair response to this scenario of a capacity shortfall following an expansion. It allows for a proportionate reduction in entitlements where there is insufficient capacity, while allowing the access seeker whose entitlements have been compressed to retain their place in the queue for new capacity. It is also fair and reasonable to give priority to addressing any existing capacity shortfalls over new access seekers.

Under this new provision, existing access holders will be unaffected by any such compression as it would only apply to access seekers who have entered into agreements for expanded capacity. This protection of existing access holder entitlements is reinforced by the express priority given to capacity shortfalls under existing access agreements.

Disclosure of certain access application details (s. 5.4(l))

For the purposes of transparency, it is proposed that DBCT Management may disclose aggregate tonnage information that is the subject of an access application. However, access seekers' interests are protected by ensuring that individual access seekers' details are not disclosed. This disclosure will allow access seekers to make a reasonable assessment of the likelihood of securing access, the likely timing and the key factors which influence that timing. It is also envisaged that aggregate tonnage information may be provided to service providers for the purposes of considering and determining System Capacity. This will facilitate achievement of LTS objectives.

4.1.5 Terminal access to align with rail access (s. 5.4(m))

To facilitate contractual alignment throughout the supply chain, a new provision has been included which states that DBCT Management must not enter into an access agreement with an access seeker unless it contains the clause that is in the Standard Access Agreement which prohibits the handling of a user's Annual Contract Tonnage at the Terminal to the extent that tonnage is not matched by a rail track access entitlement.

DBCT Management considers that this provision is important to ensure that Terminal capacity is not held by an access holder but unable to be used due to a lack of a matching rail access entitlement. This type of contractual mismatch has adversely affected overall supply chain efficiency in the past. As such, it is in the interests of all stakeholders to ensure this problem is avoided in future through implementing the appropriate mechanisms in access contracts. This provision is also consistent with the LTS framework.

4.1.6 Funding of feasibility studies (s. 5.10)

There may be circumstances where it is necessary for DBCT Management to undertake a feasibility study for a Terminal capacity expansion given demand for Terminal capacity. In this situation, it is reasonable that access seekers in the queue fund any such feasibility study.

The 2010 Draft Access Undertaking includes a new s. 5.10 which provides a mechanism to allow DBCT Management to seek funding of any such expansion feasibility studies from access seekers in the queue (proportional to the tonnage each access seeker is requesting). It also provides that an access seeker that does contribute to funding will have priority in the queue ahead of an access seeker which has declined to provide feasibility funding. To protect the interests of access seekers, the proposed provision allows for referral to the QCA if an access seeker does not consider that the terms of funding or the amount or type of security for funding requested by DBCT Management is reasonable.

The provision also draws a distinction between different types of feasibility studies. FEL 1 Feasibility Study is a conceptual desktop engineering study to be undertaken in advance of a pre-feasibility study. FEL 2 Feasibility Study is a pre-feasibility engineering study, and FEL 3 Feasibility Study is a definitive engineering study. If justified on the basis of the FEL 1 and FEL 2 feasibility studies, DBCT Management may, at its own cost, undertake a FEL 3 study.

The 2010 Draft Access Undertaking also includes transitional arrangements for previous funding of studies by DBCT Management. These arrangements provide for DBCT Management to request from access seekers in the queue funding for FEL 1 or FEL 2 feasibility studies in progress at the commencement date. Funding already provided by access seekers in this case will be taken into account as a contribution (and may be refunded if in excess of what is required).

This provision also clarifies that DBCT Management has the right to apply to include such sums in the RAB if the relevant expansion proceeds, or apply to have sums expended by it and not underwritten by access seekers (not exceeding 20% of the

prudent cost of the FEL 1 Feasibility Study or FEL 2 Feasibility Study, as relevant) included in the RAB on a review event if the proposed expansion does not proceed. DBCT Management has also committed to refund FEL 1 and FEL 2 contributions, and release any underwriting, if the Terminal capacity expansion proceeds.

Should a Terminal capacity expansion the subject of a FEL 1 and FEL 2 Feasibility Study proceed, DBCT Management commits to refund access seeker expenditure on these Feasibility Studies.

Section 5.10(l) clarifies that, should DBCT Management be required by the PSA or section 12 of the undertaking to undertake an expansion, it may fund any feasibility study itself. This will not affect DBCT Management's right to seek to have such funds included in the RAB. This provision is necessary to address the scenario where an expansion is required under the PSA or undertaking.

DBCT Management considers these provisions are important to provide appropriate incentives to investigate expansions where justified by the level of demand. In this regard, it is appropriate that potential beneficiaries of the expansion (ie. access seekers in the queue) fund any initial feasibility study required. Access seekers' interests are protected by providing for a refund of these costs in the event the expansion proceeds.

This set of amendments is necessary to ensure there are appropriate incentives in place to investigate possible future capacity expansions at the Terminal. DBCT Management understands that the DBCT User Group supports this proposed amendment

4.2 Reporting by DBCT Management

Section 10 of the 2010 Draft Access Undertaking has been amended to identify specific key performance indicators which DBCT Management must report on a quarterly basis. These include indicators relating to:

- system delivery;
- inloading performance;
- stockyard performance;
- outloading performance;
- vessel performance;
- vessel queuing;
- operating efficiency;

- environmental performance; and
- any other additional or alternative service quality indicators as agreed by the QCA, DBCT Management and access holders from time to time.

This additional service quality reporting requirements reflects a commitment by DBCT Management to ensuring transparency around the key indicators of Terminal performance.

4.3 Standard Access Agreement

The Standard Access Agreement (SAA) is included at Schedule B to the 2010 Draft Access Undertaking.

There are a number of proposed amendments to the SAA, which are generally consequential on proposed changes in the 2010 Draft Access Undertaking and have been made to ensure consistency. Explanation of these changes is therefore included elsewhere in this submission. In summary, key changes include:

- recognition of the LTS framework;
- the change to a System Capacity as opposed to Terminal Capacity approach;
- the ability to reduce tonnages handled where the user fails to obtain rail access;
- deletion of transitional provisions from the 2006 Access Undertaking;
- allowing for compression of access entitlements in the event the actual capacity delivered by a Terminal expansion is less than estimated. In this case, any shortfalls under existing access agreements must be taken into account (to ensure this shortfall is met as a priority); and
- deletion of provisions relating to joint venture liability.

5 Regulated revenue and pricing

The regulated revenue and Terminal Infrastructure Charge (TIC) structure proposed in the 2010 Draft Access Undertaking reflect a pricing ‘package’ agreed between DBCT Management and Terminal users, through their representatives in the DBCT User Group. This agreement applies to the package as a whole and, as such, should be considered by the QCA as comprising a commercially negotiated outcome. As a result, the discussion of revenue and pricing issues in this chapter has been simplified and curtailed. As a result, if the QCA decides to open up any of these issues to detailed assessment, DBCT Management seeks the opportunity to respond in more detail on the relevant matters.

Under the 2006 Access Undertaking, the annual revenue requirement (ARR) for the Terminal was established using the building blocks methodology favoured by Australian economic regulators.

The approved ARR for the Terminal is the sum of the following building block components:

- the return on capital, calculated by applying the cost of capital to the RAB; plus
- the return of capital (regulatory depreciation); plus
- the recovery of corporate overhead costs⁵ and remediation charges; plus
- tax; minus
- the return received via inflation of the RAB.

Under the 2006 Access Undertaking, the existing TIC at the Terminal is set under the revenue cap form of regulation with associated take or pay and rebate components to dampen DBCT Management’s revenue variations associated with volume fluctuations.

As part of the pricing package agreed with the DBCT User Group, DBCT Management does not propose to make any changes to the revenue building block and pricing arrangements in the 2010 Draft Access Undertaking, other than formally incorporating the interim revenue and pricing adjustment arrangements at the completion of expansion stages, before final costings for that stage are verified, which arrangements

⁵ Operating and maintenance costs are treated as a cost pass-through because the DBCT operator is an entity owned by users.

have been accepted by the QCA in relation to the Stage 7X expansion - refer to the last subsection in Section 3.2.3 of this submission.

The following sections of this chapter discuss the building block components, the form of regulation and pricing as applied in the context of the 2010 Draft Access Undertaking.

5.1 Regulatory asset base

The QCA valued the Terminal on the basis of a single stage depreciated optimised replacement cost (DORC) methodology, adopting a similar terminal configuration to the one existing at the time of valuation. In its 2005 Final Decision, the Authority adopted a DORC value for the Terminal of \$850 million.

To determine the return on capital for each year of the current regulatory period, this RAB value has been rolled forward to account for capital expenditure, inflationary gain and depreciation, including the Phase 1 Capacity Expansion costs. However, the QCA did not state what its intentions were as regards to rolling forward the RAB value from the end of the current regulatory period to the start of the next regulatory period.

DBCT Management has adopted an asset roll-forward approach for the purpose of establishing ARR under the 2010 Draft Access Undertaking. As part of this asset roll-forward, no change has been made to the QCA-approved assumption for depreciation purposes of an economic constraint on the Terminal's fixed assets' technical lives of 50 years. The details of the asset roll-forward approach used by DBCT Management are set out in Section 5.10.2 of this submission.

5.2 Economic life of assets

DBCT Management is proposing to continue the approach adopted in the 2006 Access Undertaking with regard to the economic life of assets.

In its 2005 Final Decision, the QCA applied real straight-line depreciation to the Terminal's fixed assets assuming an economic constraint on the assets' technical lives of 50 years, which implies an end date of 30 June 2054.

This assumption had regard to evidence presented by Barlow Jonker (DBCT Management's consultants) and Energy Economics (the Authority's consultants) regarding the economic life of coal reserves in the Bowen Basin.

DBCT Management and users have agreed the regulatory depreciation charge should be derived assuming a remaining mine life of 43.5 years, implying no change to the end date of 30 June 2054.

5.3 Operating expenses

The operation and maintenance of the Terminal continues to be undertaken by Dalrymple Bay Coal Terminal Pty Ltd under the Operations and Maintenance Contract with DBCT Management. Under this agreement, operating expenses incurred by Dalrymple Bay Coal Terminal Pty Ltd are directly passed through to users of the Terminal. In approving the 2006 Access Undertaking, the QCA accepted that this arrangement provided appropriate incentives for ensuring operating costs are efficient given that the users own Dalrymple Bay Coal Terminal Pty Ltd.

As this arrangement with Dalrymple Bay Coal Terminal Pty Ltd continues, DBCT Management is proposing to adopt the same approach to recognising operating expenditure in the 2010 Draft Access Undertaking. That is, operating expenses incurred by the Terminal operator (Dalrymple Bay Coal Terminal Pty Ltd) will be automatically passed through to users.

5.3.1 Corporate overheads

DBCT Management has adopted an approach in its 2010 Draft Access Undertaking of rolling forward the corporate overhead allowance from the 2006 Access Undertaking, reflecting agreement with users on a package of measures. The allowance for corporate overheads that was approved in the 2006 Access Undertaking was \$4.6 million.

5.3.2 Remediation charge

DBCT Management has proposed to roll forward the remediation charge of \$952,712 per annum, which was approved as part of the 2006 Access Undertaking. In view of recent expansion at the Terminal, DBCT Management considers that this is a conservative figure. However, in line with its agreement with users on a package of measures for this 2010 Draft Access Undertaking, DBCT Management is proposing to roll forward this amount for the next regulatory period.

5.4 Tax sharing benefits

Under the building block approach applied to the Terminal, the QCA estimates tax payable and includes this value in the cash flows for revenue modelling purposes.

However, the QCA decided that the tax benefits arising from the leasing arrangements particular to the Terminal should be shared between DBCT Management and Terminal users. The QCA decided to smooth these tax benefits over the initial lease term, because their timing is skewed and to do otherwise would result in a significant imbalance between existing and future users in the sharing of the benefits.

For revenue modelling purposes, the tax sharing benefit is recognised as a downward adjustment to the ARR and has been \$695,000 per annum over the current regulatory period.

However, the ATO is currently auditing DBCT Management's tax planning, including the Terminal leasing arrangements.

If the ATO's ruling, once made, is adverse for DBCT Management, the tax sharing with users will need to cease, with the revenue model adjusted accordingly. However, this modelling adjustment would be forward not backward-looking. Any such adjustment would be undertaken through a DAAU process. Pending an ATO ruling on this issue, DBCT Management intends to maintain the status quo as far as the sharing of the leasing tax benefits with users is concerned.

5.5 Cost of capital

DBCT Management is proposing to roll forward the WACC parameters determined in the 2006 Access Undertaking. Under this approach, the rate of return is set by reference to a nominal 'vanilla' post-tax WACC. This is consistent with the 'package' approach proposed by DBCT Management and agreed with users.

For those parameters that are set by reference to observable market data, such as the risk free rate, the debt margin and the expected rate of inflation, DBCT Management is proposing that they be re-estimated in a manner consistent with the 2006 Access Undertaking. The period over which the risk free rate, the debt margin and the expected rate of inflation has been re-estimated is 20 days. For the purposes of the 2010 Draft Access Undertaking proposal an indicative WACC has been calculated based on a 20 day sampling period up to 26 February 2010 (inclusive). This will need to be updated using a 20 day period specified in late 2010 as agreed between the QCA and DBCT Management.

DBCT Management commissioned NERA Economic Consulting (NERA) to review and update the relevant WACC parameters, consistent with this roll forward approach. As a result of this analysis, DBCT Management is proposing an indicative WACC to apply to Terminal assets for the next regulatory period of 10.31%.

A summary of the indicative WACC parameters derived by NERA is below.

Table 2 Indicative WACC parameters for 2010 Access Undertaking Term

Parameters	Current Regulatory Period ⁶	Next Regulatory Period
Nominal risk free rate	5.84%	5.61%
Real risk free rate	3.26%	3.06%
Expected inflation	2.50%	2.48%
Debt margin ^a	1.30%	3.83%
Nominal pre-tax cost of debt	7.14%	9.44%
Market risk premium	6.00%	6.00%
Equity beta	1.0	1.0
Proportion of equity finance	40%	40%
Proportion of debt finance	60%	60%
Corporate tax rate	30%	30%
Dividend imputation	0.50	0.50
Post-tax nominal return on equity	11.84%	11.61%
Nominal 'vanilla' post-tax WACC	9.02%	10.31%
Real 'vanilla' post-tax WACC	6.36%	7.65%

^a Includes 12.5 basis points for debt raising costs.

Source: NERA Economic Consulting

Risk Free Rate

The proposed indicative risk free rate is 5.61 per cent, based on the average annualised yield on ten-year Commonwealth Government Securities (CGS). NERA calculated the risk free rate by the following steps:

- reference the indicative mid rates published by the Reserve Bank of Australia;
- calculate a ten-year CGS yield by interpolating, on a straight-line basis, the two CGSs closest to the 10-year term and which also straddle the 10-year expiry date (ie, 15 March 2019 and 15 April 2020);
- annualise the reported 10-year CGS yields;⁷ and
- calculate the arithmetic average of the annualised yield on a 10-year CGS maturing over the 20 trading days up to 26 February 2010 (inclusive).

⁶ Note that the WACC applying to capacity expansions made during the current access period are updated for current estimates of the inflation and risk free rates. The current WACC referred to in this section is the rate of return allowed on assets in existence at the beginning of the access period.

⁷ Reported yields are calculated as the sum of the semi annual payments. See the Reserve Bank of Australia, *Terms and Conditions of Issue – Treasury Bonds*, 18 February 2002, pages 2 and 3.

This method for estimating the risk free rate is unchanged from the 2006 Access Undertaking.

Inflation rate

DBCT Management proposes an indicative inflation rate of 2.48 per cent based on NERA's analysis. The forecast inflation rate is the geometric average of the forecast annual inflation rate for each of the ten financial years 2009/10 to 2018/19 as follows:

Table 3: Inflation forecasts

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Inflation	2.5%	2.25%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Geometric average										2.48%

Source: Reserve Bank of Australia, Statement of Monetary Policy (November 2009), Table 13, page 72.

The ten annual inflation forecasts for the:

- first three years, are the inflation forecasts contained in the Reserve Bank of Australia's (RBA's) Statement on Monetary Policy (November 2009); and
- subsequent seven years, are equal to the midpoint of the RBA's long-term inflation target range of two to three per cent.

Gearing

DBCT Management proposes a gearing ratio of 60 per cent debt financing and 40 per cent equity financing. This is consistent with the gearing ratio assumed in the current assess undertaking for the Terminal.

Market risk premium

DBCT Management proposes a market risk premium (MRP) of 6 per cent, which is unchanged from the premium adopted in the 2006 Access Undertaking. A 6 per cent MRP has been the premium generally accepted by Australian regulators as a best estimate of the forward looking premium of a market portfolio over the risk free rate.

Equity beta

DBCT Management proposes an equity beta of 1.0, which is unchanged from the 2006 Access Undertaking. This is consistent with a return on equity consistent with the basis upon which the recent Stage 7X expansion was undertaken.

Debt margin

The indicative debt margin is 3.83 per cent, based on the difference between 10 year BBB+ corporate bond yields and the risk free rate calculated. The indicative debt margin has been calculated in a manner that is consistent with the approach adopted under the 2006 Access Undertaking. The proposed approach to calculate the debt margin is as follows:

- the observed annualised Australian benchmark BBB+ corporate bond yield with a term to maturity of 10 years over the sampling period; *less*
- the risk free rate; *plus*
- a debt-issuing cost of 12.5 basis points.

The debt margin has been calculated using the average annualised CBASpectrum BBB+ 10 year fair value yields and the Bloomberg 7 year BBB fair value yields. The longest BBB+ corporate bond yield now provided by the Bloomberg data service is 7 years. Therefore, DBCT Management has used the debt margin derived from Bloomberg 7 year BBB+ rated bonds as a proxy for the benchmark 10-year debt margin.

Value of imputation credits (gamma)

The Australian imputation tax system allows domestic investors to receive a credit for tax paid at the company tax level. For eligible shareholders, imputation credits represent an additional benefit from a company over and above any cash dividend or capital gains received.

DBCT Management proposes to value imputation credits (gamma) at 50 per cent. This is consistent with the value applying in the current regulatory period.

5.6 Revenue cap

For the 2006 Access Undertaking, the QCA considered the form of regulation that best manages the risks associated with the Terminal is a revenue cap with an unders and overs mechanism.

The QCA argued at the time that the revenue cap form of regulation will provide DBCT Management with revenue certainty over all possible volume outcomes and provide both DBCT Management and users with increased certainty in relation to capacity expansions.

In the current regulatory period, DBCT Management has been satisfied with the arrangements established by the QCA for the recognition of forecast and actual costs in the ARR and TIC. As was discussed in section 3.2.3 of this submission, these arrangements have been reflected in Schedule C of the 2010 Draft Access Undertaking.

DBCT Management and users have agreed to maintain the revenue cap form of regulation as applied under the 2006 Access Undertaking.

5.7 Revenue cap incentive mechanism

In contrast to a fixed revenue cap, the QCA approved a revenue cap under the 2006 Access Undertaking that allows DBCT Management to earn, and permanently retain, up to 2% above the revenue cap in a given year provided it can show that it contributed to the over-recovery through participation in projects which resulted in improved capital productivity.

The 2010 Draft Access Undertaking retains the revenue cap incentive mechanism. However, it has been amended to include improvements in operational as well as capital productivity.

5.8 Terminal Infrastructure Charge

Section 11.3 of the 2006 Access Undertaking specifies the following pricing objectives of DBCT Management:

- (a) achieve the AAR in each financial year in accordance with this undertaking;
- (b) achieve the revenue cap plus any additional tonnage amount in each financial year in accordance with this undertaking;
- (c) provide incentives for efficient utilisation of Terminal capacity;
- (d) ensure equitable treatment of access holders and access seekers;
- (e) encourage efficient future investment in the Terminal;
- (f) ensure full recovery (but not over-recovery) from access holders of Terminal operating costs; and
- (g) ensure efficient Terminal operating costs.

DBCT Management's access charges have two components: a capital charge and an operating and maintenance charge. The capital charge (the reference tariff) comprises a single component TIC, being an amount per tonne payable by an access holder.⁸

Given the generally effective operation of the TIC structure under the 2006 Access Undertaking, DBCT Management has not made any change to it in the 2010 Draft Access Undertaking.

5.9 Take or pay arrangements

For the approved take or pay arrangements under the 2006 Access Undertaking, each user makes constant monthly payments to DBCT Management (at the rate of the TIC) equal to one-twelfth of that user's annual reference tonnage regardless of the volume of coal actually shipped in each month. Under this approach, users pay their take-or-pay liabilities to DBCT Management on a monthly 'pay-as-you-go' basis such that, by the end of the financial year, DBCT Management has fully recovered its revenue.

DBCT Management considers that the existing take or pay provisions have generally operated effectively under the 2006 Access Undertaking. Accordingly, DBCT Management has retained the existing take or pay arrangements in the 2010 Draft Access Undertaking.

5.10 Annual Revenue Requirement and price modelling

DBCT Management engaged NERA to calculate the annual revenue requirements (ARR) and TIC charges that will apply under the 2010 Access Undertaking term (commencing on 1 January 2011).

NERA has adopted the same modelling approach as that used for the 2006 Access Undertaking and subsequent capacity expansions at the Terminal.

This submission also contains a proposed set of estimates for the ARR for the next regulatory period, based on the methodology applicable in the current undertaking, with adjustments for the time variants of the WACC. It is understood that these may have to be subsequently adjusted based on the Authority's consideration of a range of factors, including the 20 day averaging period, future capex submission this year and the ARR roll forward.

⁸ The operating and maintenance charge is effectively a pass-through of the costs incurred by the operator of DBCT.

5.10.1 Summary of revenue and price modelling

A summary of the key inputs and outputs of NERA's revenue and price modelling is set out in Table 4.

Table 4: Indicative ARRs and TICs for 2010 Access Undertaking Term

	2010-11 (H2)	2011-12	2012-13	2013-14	2014-15	2015-16
Opening RAB t value	2,262,443	2,257,540	2,247,396	2,235,965	2,222,592	2,207,188
Working Capital	19,980	20,421	20,522	20,635	20,756	20,776
Total assets	2,282,423	2,277,961	2,267,918	2,256,601	2,243,349	2,227,964
Return on assets	108,379	223,620	222,634	221,523	220,222	218,712
Depreciation	30,875	62,860	63,845	65,425	67,045	68,704
Inflationary gain	(26,205)	(53,201)	(52,962)	(52,693)	(52,378)	(52,015)
Corporate overheads	3,343	6,909	7,080	7,255	7,435	7,619
Net tax payable	4,156	8,946	9,084	9,553	10,212	10,449
Annual Revenue Requirement	120,548	249,134	249,681	251,065	252,536	253,469
NCT and ART (tonnes)	84,820,000	84,820,000	85,000,000	85,000,000	85,000,000	85,000,000
TIC (\$/tonne)	2.8424	2.9372	2.9374	2.9537	2.9710	2.9820

Source: NERA

5.10.2 Roll forward of RAB

The RAB for regulated port Terminal assets at DBCT at 1 January 2011 will be \$2,262,443. The methodology for rolling forward the RAB is unchanged from that used in the 2006 Access Undertaking and subsequent capacity expansions for the purpose of deriving the ARR.

The initial asset values rolled forward are set out below:

- the DORC assets of \$849,961,325 as at 1 July 2004;
- the short gain assets of \$33,295,854 entering the RAB on 1 September 2006;
- the Phase 1 assets of \$618,963,276 entering the RAB on 1 April 2008;
- the Phase 2/3 (A) assets of \$341,704,644 entering the RAB on 1 January 2009; and
- the Phase 2/3 (B) assets of \$419,022,445 entering the RAB on 1 July 2010.

These asset values are indexed by:

- the outturn inflation as reported by the Australian Bureau of Statistics, Consumer Price Index (6401.0) All Groups - Weighted Average of Eight Capital Cities, ie:
 - 144.1 - March 2004;
 - 147.5 - March 2005;
 - 151.9 - March 2006;
 - 155.6 - March 2007;
 - 162.2 - March 2008;
 - 166.2 - March 2009; and
 - 168.6 - September 2009
- an expectation of outturn CPI of:
 - 171.2 - March 2010, which is estimated by increasing the reported March 2009 CPI figure by 3.0 per cent which is consistent with the RBA forecasts for the 12 Months to June 2010;¹ and
 - 172.8 - September 2010 which is estimated by increasing the reported September 2009 CPI figure by 2.5 per cent which is consistent with the RBA forecasts for the 12 Months to December 2010.²

Depreciation on each Terminal asset in the RAB is calculated within the model by either the expected remaining lives of the assets or the standard lives of new Terminal assets.