

22 MAR 2006

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## DELIVERY

Mr E.J. Hall  
Chief Executive  
Queensland Competition Authority  
Level 19  
12 Creek Street  
BRISBANE QLD 4000

Dear Mr Hall

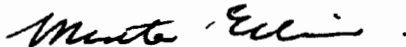
### **Submission by Peabody Pacific Dalrymple Bay Coal Terminal - Draft Access Undertaking**

**Enclosed** is Peabody Pacific's submission in response to the Queensland Competition Authority's letter to Peabody Pacific, dated 3 March 2006.

The submission relates to point 1 raised in Peabody Pacific's letter to the Queensland Competition Authority on 31 January 2006 (establishment and management of the queue at the commencement date). Peabody Pacific does not wish to make any further submissions in relation to points 2 (split of revenue) or 3 (calculation of an excess charge for users shipping at more than 110% of contract).

Yours faithfully

**MINTER ELLISON**



Contact: Margaret Brown Direct phone: +61 7 3119 6388 Direct fax: +61 7 3119 1388  
Email: [margaret.brown@minterellison.com](mailto:margaret.brown@minterellison.com)  
Partner responsible: Margaret Brown  
Our reference: MAB 40-5160786

enclosure





## SUBMISSION

### Background

1. At the request of Users, the service of handling coal at DBCT was declared a service, by regulation, under s 97 of the QCA Act.<sup>1</sup> As the QCA recognises on its webpage, this 'allows for the determination of *fair and reasonable terms and conditions*'<sup>2</sup> of third party access to DBCT under part 5 of the QCA Act.
2. On 20 June 2003, the QCA received a draft Access Undertaking (**the first DAU**) for coal handling services at DBCT.<sup>3</sup> The first DAU was submitted by Prime Infrastructure (DBCT) Management (which changed its name to Babcock & Brown Infrastructure (DBCT) Management in July 2005) (**DBCT Management**) on behalf of DBCT Holdings. In April 2005, the QCA decided not to approve the draft Access Undertaking (**the Final Decision**).<sup>4</sup>
3. On 3 January 2006, DBCT Management submitted a revised draft Access Undertaking (**the second DAU**).<sup>5</sup> The covering letter to that submission indicated that on some issues there had been a failure to reach unanimous agreement of all Users and foreshadowed individual Users making submissions concerning the second DAU.<sup>6</sup>
4. Peabody Pacific is a User of coal handling services at DBCT and does not accept or support the method for establishing and managing the queue *at the commencement date of the Access Undertaking* as set out in the second DAU.

### Method for the establishment and management of the queue for expanded capacity at the commencement date of the Access Undertaking under the second DAU

5. Clause 5.4(b) of the second DAU governs the priority to be given to Users where there is insufficient capacity to accommodate all Users. Clause 5.4(b) relevantly states:

*'... the priority of an Access Seeker in the Queue will be determined by the Access Application, with an earlier Access Application Date having priority in the Queue over any later Access Application Date.'*

6. Section 5.4(b) applies to applications made *before the commencement date of the Access Undertaking* by virtue of the definition of 'Access Application' in Schedule G to the second DAU. The definition in Schedule G relevantly states:

*'Access Application means ... for the purposes of Sections 5.4, ... an application (in such a form as is acceptable to DBCT Management (in its absolute discretion)) which was submitted in writing to DBCT Management prior to the Commencement Date and in respect of which the Access Seeker has also submitted to DBCT Management the information set out in Schedule A.'*

<sup>1</sup> *Queensland Competition Authority Regulation 1997 (Qld)*, s 5.

<sup>2</sup> QCA, 'DBCT Draft Undertaking' <<http://www.qca.org.au/ports/dbct-dau/>> (accessed 8 March 2006) (emphasis added).

<sup>3</sup> Draft Access Undertaking available at <<http://www.qca.org.au/files/ACF143C.pdf>> (Vol 1) and <<http://www.qca.org.au/files/FinalDAUVolume219June03.pdf>> (Vol 2) (accessed 8 March 2006).

<sup>4</sup> Decision of the QCA available at <[http://www.qca.org.au/files/DBCT\\_DAU\\_FINAL\\_plus\\_Part\\_B.pdf](http://www.qca.org.au/files/DBCT_DAU_FINAL_plus_Part_B.pdf)> (accessed 8 March 2006).

<sup>5</sup> DAU available at <<http://www.qca.org.au/files/BBI%20DAU.pdf>> (accessed 8 March 2006).

<sup>6</sup> Covering letter available at <[http://www.qca.org.au/files/BBI%20DAU\\_Covering%20Letter.pdf](http://www.qca.org.au/files/BBI%20DAU_Covering%20Letter.pdf)> (accessed 8 March 2006).

**Peabody Pacific's original submission in response to the second DAU dated 31 January 2006 (Peabody Pacific's first submission)**

7. By letter to the QCA, dated 31 January 2006, Peabody Pacific expressed the view that the protocol outlined in clause 5.4 does not establish a workable process for requests for additional capacity that may be in existence at the *commencement* of the Access Undertaking. Peabody Pacific proposed a protocol whereby all Users would be given a fair and reasonable opportunity, at the commencement of the Access Undertaking, to submit their requests for allocations of expanded capacity at DBCT.
8. Essentially, Peabody Pacific's proposal (with certain amendments for clarity) was as follows:
  - (a) within 5 Business Days after the Commencement Date, DBCT Management notifies all Access Seekers who have given notice to DBCT Management in writing of their request for allocation of any expanded capacity that their notices will be deemed to have been given at 12.00noon on the twentieth (20th) Business Day after the Commencement Date, provided the Access Seeker confirms prior to that time that its notice remains valid;
  - (b) all Access Seekers (being those that have confirmed their notice remains valid and any other Access Seekers giving notice on or before the day 20 Business Days after the Commencement Date) be classified as 'Initial Access Seekers';
  - (c) a pro-rata allocation of capacity available as at or after 20 Business Days after the Commencement Date and each additional tranche of capacity that becomes available be made to the Initial Access Seekers, until those requests for access are satisfied;
  - (d) the terms of clause 5.4 in respect of executing Access Agreements and provision of security apply to those processes;
  - (e) if an Initial Access Seeker cannot use the pro-rataed capacity allocated to it (because the allocated capacity does not permit economic development of the relevant mine), that capacity be re-distributed among the remaining Initial Access Seekers. Any Initial Access Seeker that relinquishes capacity in this manner is included in any future pro-ratings of capacity until its request for capacity is satisfied; and
  - (f) the proposed Queue forms behind the Initial Access Seekers.

**QCA's response to Peabody Pacific's submission**

9. In QCA's letter to Peabody Pacific, dated 3 March 2006 (**QCA's response**), the Chief Executive replied to the Peabody Pacific's original submission by stating that the Secretariat is *'currently minded to recommend to the QCA that it not reject the second DAU on the grounds that the second DAU provides for recognition of the pre-existing queuing arrangements'* and identifies a number of bases for that preliminary review including:
  - DBCT Management has previously written to users, communicating its intention to allocate capacity arising from capacity expansions on a 'first to commit' basis.

- DBCT Management subsequently sought details from current and potential new users in relation to their expected capacity requirements in the context of ascertaining users' requirements at DBCT.
- Given the correspondence from DBCT Management, the Secretariat understands that a number of users have made substantial investments based on their perceived position in the queue in advance of entering into binding contracts for expansion capacity.
- Given this, the alternative queuing mechanism proposed by Peabody Energy Australia could displace some users in the pre-existing queue, creating disruption costs for those users.
- S.138(2)(d) of the QCA Act requires the Authority to consider the interests of persons who may seek access to the terminal but only if existing users are compensated where their rights are affected.

**Communication by DBCT Management of its intention to allocate capacity arising from capacity expansions on a 'first to commit basis'**

10. In QCA's response (page 1), the QCA identifies as a basis for its preliminary view that DBCT Management has previously written to Users communicating its intention to allocate capacity arising from capacity expansions on a 'first to commit' basis.
11. Peabody Pacific submits that DBCT Management failed to disclose in any proper or timely way to Users of DBCT that it had formulated rules or a protocol for the priority of access to allocation of expanded capacity at DBCT, what those rules/protocol were and how they would operate.
12. A review of correspondence and notes of meetings between Peabody Pacific and DBCT Management over the past 14 months (January 2005 to February 2006) does not reveal any statement or notification by DBCT Management to Peabody Pacific of the rules/protocols which would govern the priority of access to allocation of expanded capacity at DBCT, subject to the matters referred to in paragraphs 14 and 15.
13. Peabody Pacific has a representative on the DBCT User Group. A committee of the DBCT User Group was appointed in 2005 to negotiate the terms of the second DAU with DBCT Management. The committee reported to the DBCT User Group on a regular basis. It was not communicated to Peabody Pacific's representative, either through the DBCT User Group or in any other capacity, that DBCT Management would grant priority of allocation of the expanded capacity on a 'first to commit' basis.
14. By letter dated 19 April 2005, Prime Infrastructure Management Limited (DBCT Management) advised Peabody Pacific (then Peabody Energy Australia Pty Ltd) that:
  - (a) *'Recent QCA guidance suggests that its final decision on the DBCT access undertaking is imminent.'*
  - (b) *'A number of Users have indicated to us over the last year their requirements for additional entitlements going forward. Some of these indications were in the form of binding offers purportedly capable of acceptance (**Binding Indications**) had Prime Infrastructure been able to accept the commercial terms proposed.'*
  - (c) *'In the event that not all additional requirements of Users and future Users are capable of being accommodated, Prime Infrastructure is contemplating allocating*

*scarce capacity to Users based on the order that it received Binding Indications, where those Binding Indications have not been subsequently withdrawn in writing or otherwise.'*

- (d) *'In order to allocate further scarce capacity at DBCT on a fair and equitable basis, we are writing to all Users seeking their confirmation of pre-advised capacity requirements.'*
- (e) *'Our records indicate that Peabody has not made any binding request for increased annual capacity above its existing contractual Annual Limit for North Goonyella and Burton, about which we now seek your confirmation.'*
- (f) *'In addition to your confirmation, we would welcome any other detailed suggestion as to how uncommitted capacity might be allocated.'*

Letter dated 19 April 2005 from Prime Infrastructure Management Limited (DBCT Management) to Peabody Pacific is **Annexure 'A'**.

15. By letter 3 June 2005, Prime Infrastructure Management Limited (DBCT Management) advised Peabody Pacific that:

- (a) *'Prime Infrastructure recently wrote to all Users (19/04/05) asking those who had previously indicated a requirement for increased tonnage entitlements at DBCT to confirm the quantity and timing of these additional capacity entitlements and to confirm the dates upon which they first submitted an offer to Prime Infrastructure for the additional entitlement.'*
- (b) *'Prime Infrastructure has received responses from all Users and is currently in the process of determining the additional entitlements that it is able to offer individual Users, based on the methodology outlined in that letter.'*
- (c) *'Therefore, we intend by this letter, to offer all Users with existing contractual entitlements the opportunity to renew their current annual entitlements for a period of not less than five years from expiry of those contracts. This offer will remain open for two weeks from the date of this letter. We would then proceed to finalise details as regards additional entitlements and make offers to the relevant Users based on the 'first in time' methodology previously outlined.'*
- (d) *'Should you want to take advantage of the offer to extend your DBCT contracts at the current level of entitlements for a period of not less than five years, please contact Greg Smith within fourteen (14) days from the date of this letter and formally respond. We will then provide appropriate documents to effect the renewal.'*
- (e) *'Following the expiry of this 14 day period, Prime Infrastructure will write to those Users who have indicated a requirement for additional contractual entitlements outlining what we are able to offer.'*

Letter dated 3 June 2005 from Prime Infrastructure Management Limited (DBCT Management) to Peabody Pacific is **Annexure 'B'**.

16. By letter dated 15 June 2005 to DBCT Management, Peabody Pacific made a request for allocation of expanded capacity.



established User of DBCT, has demonstrated its ability to ship its contracted tonnage and has an established record of credit-worthiness in fulfilling its financial obligations.

*Peabody Pacific's Investment*

25. Peabody Pacific developed its strategic plan, in respect of the Burton, North Goonyella and Eaglefield Mines, in reliance on:
- its knowledge that DBCT Management was planning an expansion of DBCT;
  - its understanding that the rules/protocols for allocation of expanded capacity to Users were not established and that any such rules/protocols would be inserted in the terms and conditions of an Access Undertaking which would be approved by the QCA;
  - its communication with DBCT Management requesting an allocation of the expanded capacity; and
  - the QCA's Final Decision refusing to approve the terms and conditions of the first DAU.
26. Specifically, North Goonyella Mine is an underground mine with a state-of-the-art operating facility for extraction of coal in an underground mine with the geological features of North Goonyella (ie. a Longwall). In implementing its strategic plan at North Goonyella, to ensure that Peabody Pacific's sales and shipping reached and continued at 6.8 million tonnes per annum into the future, in May 2004 Peabody USA approved the expenditure of \$AUD80 million to purchase a new 300 metre-wide Longwall (to replace the existing 250 metre-wide Longwall). Negotiations with the suppliers/manufacturers of the equipment, based in the USA, Europe and Asia, had been ongoing for several months before this and approvals were ongoing intensively from January 2004 until the final approval in May 2004.
- The Longwall equipment included a new shearer, new pans, a new armoured fixed conveyor, a new beam stage loader, a new crusher and new roof supports (a total new Longwall). The equipment began arriving in November 2005 and is currently being installed underground.
27. On 6 March 2006, at Peabody Pacific's invitation representatives of the QCA met with representatives of Peabody Pacific at which meeting Peabody Pacific outlined its strategic plan for 2006/2011. It conveyed to the QCA representative projected sales tonnages of coal from the three Peabody Pacific owned mines, the investment undertaken at North Goonyella Mine and the total expenditure related to that investment. Peabody Pacific made a copy of its strategic plan available for inspection by QCA representatives and in particular the information in the plan relating to sales and investments in mines in Queensland specifically North Goonyella.
28. In making this investment, Peabody Pacific acted in reliance on the legitimate expectation that all Users would be treated reasonably and fairly so as to receive an equitable allocation of the expanded capacity.<sup>9</sup> The QCA itself recognises that declaration for third

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<sup>9</sup> See the reference to 'equity considerations' in the Second Reading Speech for the *Queensland Competition Authority Bill*.

party access under part 5 of the QCA Act 'allows for the determination of fair and reasonable terms and conditions of access to the terminal'.<sup>10</sup>

29. Peabody Pacific has made a substantial investment in reliance on the legitimate expectation that it would receive an equitable allocation of the expanded capacity. Further, this investment was made when Peabody Pacific had a legitimate expectation that the terms and conditions upon which access to capacity at DBCT would be provided to Users would be in accordance with the terms and conditions of an access undertaking approved by the QCA.

### Further submissions

#### *Acceptance/rejection of the first and second DAUs by the QCA*

30. All Users have been aware, at least since DBCT Management lodged the first DAU on 19 June 2003, that Access Agreements to DBCT would be on terms approved by the QCA. The QCA rejected the first DAU in its Final Decision in April 2005. Therefore it was clear to Users at this time that the terms of the first DAU submitted by DBCT Management to the QCA were not acceptable.
31. Negotiations between DBCT Management and Users on the second DAU commenced after the QCA handed down its Final Decision in April 2005 and it was lodged with the QCA on 3 January 2006. The second DAU was therefore under consideration by DBCT Management and Users for a period of approximately eight months. Although the DBCT User Group reached broad agreement with DBCT Management on the terms of the second DAU,<sup>11</sup> Peabody Pacific did not agree with the protocol established by clause 5.4 for dealing with requests for allocation of the expanded capacity.<sup>12</sup>
32. Peabody Pacific understood that terms and conditions of access to capacity, including any expanded capacity at DBCT, would be governed by the Access Undertaking as accepted by the QCA.
33. Peabody Pacific acted in reliance on this legitimate expectation and understanding.

#### *DBCT Management's plans for expanding capacity at DBCT*

34. DBCT Management first conveyed its plans of a possible expansion of DBCT in a letter to Users dated 2 July 2004. This letter was sent some 12 months after DBCT Management lodged the first DAU with the QCA, and some 9 months before the QCA rejected the first DAU in its Final Decision. At this stage it was unclear to Users what terms would govern additional entitlements at DBCT and whether any proposed 'binding contract for the provision of additional entitlements at DBCT' would be approved by the QCA as a term of any DAU.

Letter dated 2 July 2004 from Prime Infrastructure Management Limited (DBCT Management) to Peabody Pacific is **Annexure 'C'**.

<sup>10</sup> QCA, 'DBCT Draft Undertaking' <<http://www.qca.org.au/ports/dbct-dau/>> (accessed 8 March 2006) (emphasis added).

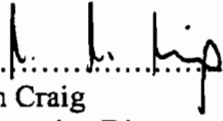
<sup>11</sup> DBCT User Group submission available at <[http://www.qca.org.au/files/Submission\\_DBCT%20User%20Group.pdf](http://www.qca.org.au/files/Submission_DBCT%20User%20Group.pdf)> (accessed 8 March 2006).

<sup>12</sup> Peabody's submission to the QCA available at <[http://www.qca.org.au/files/Submission\\_Peabody%20Energy%20Australia%20Coal.pdf](http://www.qca.org.au/files/Submission_Peabody%20Energy%20Australia%20Coal.pdf)> (accessed 8 March 2006).



45. Peabody Pacific submits that a protocol governing the priority of access to allocation of expanded capacity reflecting the terms set out in paragraph 8 of this submission should be incorporated in the second DAU. A draft additional Clause 5.4A is set out in Annexure 'D' for your consideration.

**PEABODY PACIFIC PTY LTD**

  
.....  
Ian Craig  
Managing Director

Dated: 22 March 2006



19 April 2005

Mr Ian Craig  
Managing Director  
Peabody Energy Australia Pty Ltd  
Level 27 AMP Place  
10 Eagle Street  
BRISBANE QLD 4000

**FILE COPY**

Dear Ian

**Re: DBCT – Requests for Additional Contract Capacity**

Recent QCA guidance suggests that its final decision on the DBCT access undertaking is imminent. Whilst that decision will not directly impact on the current arbitration under the existing DBCT User Agreements, we expect that the QCA's decision will provide strong guidance as to its position on the various building blocks to the arbitrated price.

As you are aware, Prime Infrastructure has undertaken a significant amount of work in preparation and planning for a major expansion of DBCT and is presently on the critical path to achieve terminal capacity of 68 Mtpa by July 2007.

On the assumption that the QCA's final decision provides for a tariff that makes expansion of DBCT reasonable and economic, Prime Infrastructure will be seeking additional commitments from DBCT Users for long term contracts to support the expansion proposed. In the meantime, we intend to remain on the critical path to meet the currently anticipated timetable for expansion, briefings on which have been provided to the User Group.

A number of Users have indicated to us over the last year their requirements for additional entitlements going forward. Some of these indications were in the form of binding offers purportedly capable of acceptance ("Binding Indications") had Prime Infrastructure been able to accept the commercial terms proposed.

In the event that not all additional requirements of Users and future Users are capable of being accommodated, Prime Infrastructure is contemplating allocating scarce capacity to Users based on the order that it received Binding Indications, where those Binding Indications have not been subsequently withdrawn in writing or otherwise.

In order to allocate future scarce capacity at DBCT on a fair and equitable basis, we are writing to all Users seeking their confirmation of pre-advised capacity requirements.

Our records indicate that Peabody has not made any binding request for increased annual capacity above its existing contractual Annual Limit for North Goonyella and Burton, about which we now seek your confirmation.

Level 25 Waterfront Place

1 Eagle Street Brisbane Qld 4000

Telephone +61 7 3229 0600 Facsimile +61 7 3229 6996

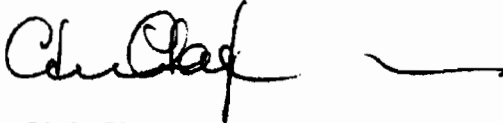
Email info@primeinfrastructure.com.au

Website www.primeinfrastructure.com.au

PRIME INFRASTRUCTURE MANAGEMENT LIMITED  
ACN 100 364 234

In addition to your confirmation, we would welcome any other detailed suggestion as to how uncommitted capacity might be allocated.

Yours sincerely

A handwritten signature in black ink, appearing to read "Chris Chapman", followed by a horizontal flourish line.

**Chris Chapman**  
Managing Director

Annexure 'B'

PRIME  
INFRASTRUCTURE



3 June 2005

**FILE COPY**

Mr Ray Smith  
Manager - Sales Contracts & Shipping  
Peabody Energy Australia Coal Pty Ltd  
Level 27 AMP Place  
10 Eagle Street  
BRISBANE QLD 4000

Dear Ray

**Re: Extension of Contract**

Prime Infrastructure recently wrote to all Users (19/04/05) asking those who had previously indicated a requirement for increased tonnage entitlements at DBCT to confirm the quantity and timing of these additional capacity entitlements and to confirm the dates upon which they first submitted an offer to Prime Infrastructure for the additional entitlements.

Prime Infrastructure has received responses from all Users and is currently in the process of determining the additional entitlements that it is able to offer individual Users, based on the methodology outlined in that letter.

Increased tonnage requirements can potentially be met through expansion of DBCT, through 're-assignment' of existing capacity currently covered by contracts due to expire from the date these contracts expire, or a combination of both. However, during negotiations between Prime Infrastructure and the User Group representatives on the existing User Agreements/Draft Access Undertaking, User Group representatives requested that an "option to extend term" clause be included in any re-negotiated User Agreement. This appeared to be on the basis that it would be manifestly unfair to re-allocate an existing User's expiring contract capacity to another User without the existing User first having the opportunity to extend its expiring contract.

Therefore, we intend by this letter, to offer all Users with existing contractual entitlements the opportunity to renew their current annual entitlements for a period of not less than five years from expiry of those contracts. This offer will remain open for two weeks from the date of this letter. We would then proceed to finalise details as regards additional entitlements and make offers to the relevant Users based on the "first in time" methodology previously outlined.

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PRIME INFRASTRUCTURE MANAGEMENT LIMITED  
ACN 100 364 234

In the first instance, any extension effected in response to this letter would be on identical terms to your existing User Agreement. As you would be aware however, Prime Infrastructure's preference (and we understand the Users' preference) is for all existing contracts to be amended so that they align with the QCA's final decision on the draft access undertaking. In this regard, we have been in discussions with representatives of Rio Tinto and Xstrata on behalf of the User Group and the User Group's legal advisor John Gallimore. Notwithstanding the extension of contracts (initially) on current terms our intention is that when new contract terms as regards existing entitlements are finally agreed, such new contract terms would then apply to all contracted entitlements at DBCT (including extension).

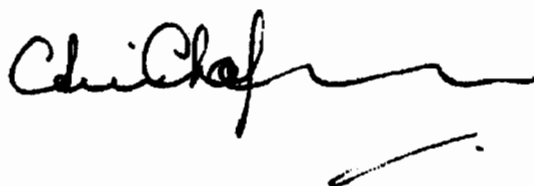
Should you want to take advantage of the offer to extend your DBCT contracts at the current level of entitlements for a period of not less than five years, please contact Greg Smith within fourteen (14) days from the date of this letter and formally respond. We will then provide appropriate documentation to effect the renewal.

Following the expiry of this 14 day period, Prime Infrastructure will write to those Users who have indicated a requirement for additional contractual entitlements outlining what we are able to offer.

The timetable is tight but it is driven by an even tighter 'critical path' timetable for phase 1 of the expansion.

We would welcome any feedback on this offer which we have proffered in a spirit of fairness and in the interests of total transparency. We would be disappointed if any one customer was opposed to the process, but clearly initial concerns or clarifications should be raised with Greg Smith.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Chris Chapman', with a horizontal line underneath it.

**Chris Chapman**  
Managing Director

Annexure 'C'

**PRIME**  
INFRASTRUCTURE

2 July 2004

Mr Ray Smith  
Manager, Sales Contracts & Shipping  
Peabody Energy Australia Coal Pty Ltd  
Level 27, 10 Eagle Street  
BRISBANE QLD 4001

Dear Ray

As you would be aware, Prime Infrastructure has recently conducted briefing sessions with all Users on the Dalrymple Bay Coal Terminal (DBCT) draft Master Plan 2004. During these briefing sessions and in other forums, a number of Users have indicated to us that they may require additional entitlements to ship coal through DBCT over and above their entitlements under current User Agreements. Furthermore, Prime Infrastructure has been approached by potential new Users seeking entitlements to coal handling services at DBCT.

If all User and potential new User indications of additional capacity requirements were to crystallise as contracts, then expansion of DBCT beyond that contemplated under the "short gain" capacity expansion as detailed in our draft Master Plan presentations (i.e. expansion beyond 60 Mtpa) may be required.

In order to appropriately plan for expansion beyond 60 Mtpa at DBCT, assuming that a firming in User Indications resulted in such expansion being required, Prime Infrastructure is now seeking additional information from Users regarding their future additional capacity requirements at DBCT.

Accordingly, to assist us in determining whether an expansion beyond 60 Mtpa at DBCT is required and, if so, to assist us in determining the appropriate expansion path and the appropriate size of expansion, we request the following information (which we have requested from all Users):-

- (1) Please confirm whether you will require or are likely to require, prior to the expiry of your current contract, any further annual entitlement to coal handling services at DBCT that are in addition to your existing entitlement.
- (2) If you require additional entitlements, please indicate the quantities and the years for which these additional entitlements are required (i.e. start date, end date and annual requirements, including any "ramp-up" or "fall-off" requirements).
- (3) With regard to (1) and (2) above, please provide details of the basis of your indicative requirement and supporting information, including:
  - (a) whether the additional entitlements required stem from currently operating mines (ie increasing production) or from new mine developments;

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ACN 100 364 234

- (a) whether sales contracts have been entered into for the additional tonnage. If sales contracts have not yet been entered into, then confirmation that sales contracts are currently being negotiated and, if so, the likely timing of completion of these negotiations. There is a possibility that some Users may be negotiating with the same end customer to meet the same requirements of that customer. In order to ensure there is no resultant "double counting" of DBCT capacity requirements, we would ideally ask that you provide details of who you are negotiating sales contracts with. We understand that you may view such information as extremely sensitive. We are open to suggestions as to any other means by which Prime Infrastructure can form a view on whether there is "double counting" of potential DBCT capacity requirements, in the absence of this information;
  - (b) whether rail haulage contracts have been negotiated or, if they have not been negotiated, then confirmation that they are currently being negotiated and the likely timing of completion of these negotiations;
  - (c) at what stage is your current mine development plan (e.g. feasibility, pre-feasibility etc), irrespective of whether this plan be to increase production at a current mine or development of a new mine and what is your current development timetable;
  - (d) What internal and external approvals are required and what are their current status (i.e. have such approvals been obtained and, if not, have they been sought and, if not, when are they likely to be sought). Also, what is the likely timing on obtaining each internal and external approval.
- (4) What is the likely timing of the final 'go/no go' decision on mine development (or increased production at a current mine) and what is such a decision contingent on.
- (5) What is your assessment of the probability of the additional requirement foreshadowed at (1) and (2) eventuating (eg 40%, 60%, 80% etc).
- (6) When do you expect to be in a position to enter into a binding contract for the provision of additional entitlements at DBCT.
- (7) It is possible that some Users may wish to relinquish part of their take-or-pay commitments under current User agreements (i.e. where the User no longer expects to utilise their full take-or-pay commitment for part or all of their current contract term). If you are in such a position, Prime Infrastructure would be happy to consider any request to relinquish entitlements where replacement take-or-pay tonnage can be taken up by another User. Accordingly, please confirm whether you want to relinquish existing take-or-pay tonnage and if so, the relevant quantity(ies) and period(s).
- (8) Please indicate whether you are likely to seek an extension to your current contract term and if so please indicate:
- (a) the period of such extension;
  - (b) the annual tonnage requirement associated with such extension;
  - (c) when you would be in a position to finalise your requirement for and commit to any such extension; and
  - (d) the probability of such extension being required (eg 40%, 60%, 80% etc).

(9) Please indicate the extent to which you would support the construction of 'buffer' capacity (ie capacity above that required to satisfy contracted capacity). 'Buffer' capacity would reduce the risks for Users associated with just-in-time expansion, by potentially allowing additional User capacity requirements relating to mine expansions or new developments to be immediately accommodated. 'Buffer' capacity should reduce operational risks and may also have a positive impact in potentially reducing demurrage, particularly during demand peaks resulting from unevenness in shipping. Prime Infrastructure is prepared to finance the construction of 'buffer' capacity if it receives a reasonable return on its investment (for example, via a TIC charge that takes into account the investment in the "buffer").

(10) Do you have a view on the likely sustainable long term aggregate demand for capacity at DBCT (e.g. 70 Mtpa, 80 Mtpa etc) and what is this view based on.

We recognise that some of the information we have requested here would be considered by you to be commercially sensitive and confidential and it goes without saying that we would respect this confidentiality. It should be noted, however, that the information, once aggregated, and where possible appropriately "sanitised", may be used in any submission to the Queensland Competition Authority that may be required to facilitate the capacity expansion decision at DBCT.

We would appreciate your response to this letter by Friday, 16 July 2004. If you are unable to respond by that date, please advise the date by which you would be able to respond. In the absence of a response by Friday, 16 July 2004 or a notification that you will respond by another reasonable later date (as nominated by you), we will assume for expansion planning and internal approval purposes that you have no additional requirements for capacity at DBCT above your current User Agreement entitlements.

As time is most certainly of the essence in initiating further well planned DBCT expansions via the most appropriate and cost effective expansion path, it is in all our interests to ensure that any expansion planning at DBCT is based on the best possible data.

We thank you in advance for your co-operation in this matter.

Yours sincerely  
**PRIME INFRASTRUCTURE MANAGEMENT LIMITED**



Jeff Pollock  
**CHIEF FINANCIAL OFFICER**

cc: Darian Hielscher

## Annexure 'D'

### 5.4A Priority of Access Applications for the Stage 7X Expansion

- (a) In respect of requests for allocation of capacity from the planned staged expansions of DBCT at the Commencement Date – Stage 7X Expansion (the **Available Expanded Capacity**) – the priority of an Access Seeker for the Available Expanded Capacity (the **Expanded Capacity Access Seeker**) is determined by its place in a separate Queue (the **Expanded Capacity Queue**).
- (b) All Access Seekers will have 20 Business Days, from the Commencement Date, to lodge an Access Application for the Available Expanded Capacity (**Expanded Capacity Access Application**) with DBCT Management.
- (c) Within 5 Business Days, from the Commencement Date, DBCT Management must notify all Users with existing contracts, or binding offers, for allocation of the Available Expanded Capacity (the **Existing Expanded Capacity Access Seekers**), that they are deemed to be Expanded Capacity Access Seekers. Existing Expanded Capacity Access Seekers will have 20 Business Days, from receiving this notice from DBCT Management, to lodge an Expanded Capacity Access Application with DBCT Management.
- (d) If there is insufficient Available Expanded Capacity to accommodate all of the Expanded Capacity Access Applications lodged with DBCT Management, the Expanded Capacity Queue will be formed. All Expanded Capacity Access Applications will be given an equal place in the Expanded Capacity Queue.
- (e) If the Expanded Capacity Queue is formed, there will be a pro-rata allocation of the Available Expanded Capacity (**Allocated Expanded Capacity**) to each Expanded Capacity Access Seeker in accordance with the Expanded Capacity Access Applications.
- (f) If an Expanded Capacity Access Seeker cannot use the Allocated Expanded Capacity allocated to it, that Allocated Expanded Capacity must be offered for re-distribution among the remaining Expanded Capacity Access Seekers on a pro-rata basis. Any Expanded Capacity Access Seeker that relinquishes Allocated Expanded Capacity in this manner is included in any future offers for re-distribution of Allocated Expanded Capacity until its request for capacity is satisfied.
- (g) The priority of Access Seekers to allocation of capacity for any future expansions, for which plans are made after the Commencement Date, will be determined by application of clause 5.4(b).