



26 August 2016

Mr John Hindmarsh
Chief Executive Officer
Queensland Competition Authority

Dear Mr Hindmarsh

Other issues relating to QCA draft decision on DBCT 2015 DAU

On 3 August 2016, QCA staff released a paper that sought stakeholder submissions on issues relating to DBCTM's 2015 DAU. DBCTM responded to that paper on 25 August 2016.

DBCTM wishes to make a further submission on other important matters. The purpose of this submission is to provide:

- updates on positions that DBCTM put forward in its 8 July 2016 submission
- comments on positions in the DBCT User Group's submission that DBCTM's legal advisors have concerns with from policy-intent and drafting perspectives. DBCTM has provided supporting drafting (a mark-up against the DBCT User Group's proposed drafting) in Appendix A.

Please contact me or Jonathan Blakey if you have any queries or require more information on DBCTM's submission.

Yours sincerely

Anthony Timbrell
Chief Executive Officer
DBCT Management

DBCT MANAGEMENT



**Other issues relating to QCA draft decision
on DBCT 2015 DAU
26 August 2016**

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INTRODUCTION

This submission sets out DBCTM's views on issues that were not raised in the recent QCA staff issues paper. This submission provides:

- updates on positions that DBCTM put forward in its 8 July 2016 submission
- comments on positions in the DBCT User Group's submission with which DBCTM has concerns from policy-intent and drafting perspectives.

The structure of DBCTM's submission is as follows:

- (1) Update on contract profile
- (2) Ring-fencing
- (3) DBCTM's involvement in amending the Terminal Regulations
- (4) Coal Supply Business and Trading SCB
- (5) Responsibility for acts or omissions of the Operator
- (6) Notional contracted tonnage.

For issues 2 to 4, and for matters concerning the independence of the Operator, DBCTM has provided a mark-up (see Appendix A) against the drafting that the DBCT User Group supplied in its first submission on the QCA's draft decision.

1 CONTRACT PROFILE

This section provides an update to the QCA on DBCTM's contract profile over the upcoming regulatory period.

1.1 DBCTM'S RESPONSE TO DRAFT DECISION

DBCTM's views on evergreen contracts and prospects for renewals were discussed in section 1.1.3 of DBCTM's response to the QCA's draft decision. Among other things, DBCTM's response noted that:

... its users could significantly reduce their take-or-pay obligations by way of:

- *renewing only a portion of their contracted capacity*
- *managing ad hoc capacity requirements through the secondary market for access.*

DBCTM also notes any increase in the number of users that default or choose not to renew their agreements would lead to further access charge increases, which could result in unsustainable prices for remaining customers. This would exacerbate DBCTM's asset-stranding risk.¹

Recent events, including the release of Peabody's 2017-2021 Business Plan, confirm DBCTM's position above.

1.2 UPDATE CONCERNING PEABODY

Peabody's 2017-2021 Business Plan² provides, among other things, a forecast of coal sales from Peabody's mines in Australia (see Figure 1). Peabody's metallurgical coal originates primarily from Bowen Basin mines.

Figure 1: Peabody's expectations on its coal sales in Australia (in million US short tons)³

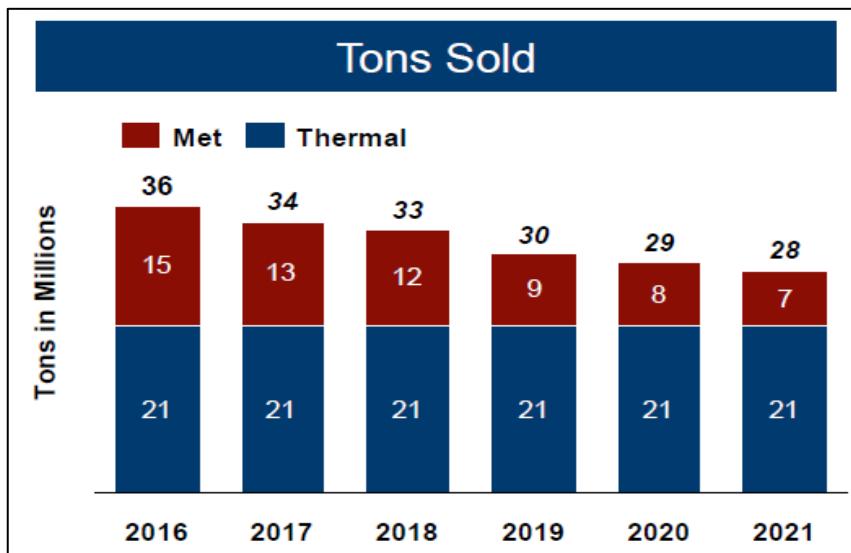


Figure 1 shows that Peabody expects metallurgical coal sales in Australia to decline by more than 50% from 2016 to 2021, despite its forecast that metallurgical coal prices will increase by more than 40% over the period.⁴ DBCTM notes the Business Plan⁵ states that Peabody intends to:

- divest, sell or suspend non-strategic assets. A recent article⁶ indicated that Peabody intended to sell its Millennium mine⁷, close its Moorvale mine and place its Burton mine under care and maintenance
- restructure or mitigate Australian operations take-or-pay agreements to improve cash flows.

¹ DBCTM's response to QCA draft decision on 2015 DAU: 7

² See <https://mscusppegr01.blob.core.windows.net/mmfiles/files/ch11/peabody-energy-business-plan.pdf>

³ Peabody's 2017-2021 Business Plan: 39

⁴ Peabody's 2017-2021 Business Plan: 27. Peabody forecasts met coal prices will increase from US\$87 to US\$123/ton.

⁵ Peabody's 2017-2021 Business Plan: 15

⁶ The Australian (Bridget Carter & Gretchen Friemann) 24 August 2016 Peabody gets ducks in row for coalmine sales

⁷ The Daily Mercury (Jason Sferruzzi) 24 August 2016 Peabody now unconfirmed over reports it could sell Mackay region mine

There is therefore a strong likelihood that any Peabody access agreements expiring over DBCTM's upcoming regulatory period will only be partially renewed.⁸ While other access holders or seekers could absorb the rights that Peabody does not renew, prospects for this occurring over the upcoming regulatory period are not promising.⁹ DBCTM has also identified a new source of risk that further threatens these prospects; the subsection below discusses this.

1.3 UPDATE CONCERNING RIO TINTO

In its first submission on the QCA's draft decision, DBCTM observed that existing AAPT-GAPE access agreements (e.g. Rio Tinto's Clermont-AAPT contract) demonstrated that competition from other ports had already materialised.¹⁰

In August 2016, Rio Tinto announced a \$934m onerous contract¹¹ provision relating to its exposure to 15-year take-or-pay port and rail contracts for 11 mtpa at AAPT-GAPE.¹² Rio Tinto also declared that it is unlikely to use this capacity. DBCTM considers this could result in the emergence of another form of competition: Rio Tinto could offload its AAPT-GAPE capacity to other users at lower prices than those for DBCT-Goonyella capacity.

Goonyella users closest to AAPT (i.e. along the North Goonyella branchline) are likely contenders for benefitting from such an arrangement. As long as these users are willing to cover Rio Tinto's port and rail contracts' variable costs and *any* portion of fixed costs, Rio Tinto would be better off. If the sum of those costs is lower than the costs of contracting/renewing capacity at DBCT, then DBCTM faces increased demand risk.

1.4 CONCLUSION

The observations regarding Peabody and Rio Tinto support DBCTM's position that the short-term risks of non-renewal of contracts at DBCT are highly likely to eventuate. They also support the view that DBCTM's risk profile over the upcoming regulatory period is higher than that of the regulatory period to which the 2010 AU applies, as noted in DBCTM's first submission on the QCA's draft decision.¹³

In concluding, DBCTM notes that users have still not expressed interest in the 4.3 mtpa of DBCT capacity currently available for contracting, nor for the additional 2.0 mtpa of capacity that will become available from 1 July 2017.¹⁴

⁸ DBCTM estimates a reduction in Peabody contracted capacity at DBCT to be in the order of 7 mtpa to 9 mtpa.

⁹ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 6-8

¹⁰ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 3

¹¹ An onerous contract is considered to exist if the unavoidable costs of meeting the obligations exceed the economic benefits expected to be received. Present obligations arising under onerous contracts are recognised and measured as provisions. The provisions will be released to costs of goods sold as the underlying commitments are incurred.

¹² The Australian (Matt Chambers) 4 August 2016 [Take-or-pay coal contracts puts hefty dent in bottom line](#)

¹³ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 6-8

¹⁴ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 6-7

2 RING-FENCING

This section provides further context for DBCTM's position on ring-fencing-related matters.

2.1 QCA'S DRAFT DECISION

The QCA's draft decision on the 2015 DAU proposed three options in respect of ring-fencing:

- (1) reinstate the ring-fencing provisions as approved in the 2010 AU
- (2) retain the detailed ring-fencing provisions proposed for the Brookfield-Asciano transaction
- (3) develop a 'compromise' approach, which incorporates additional ring-fencing requirements only to the extent appropriate in the absence of imminent vertical integration or which relate to DBCTM's other existing activities (for example, DBCTM's Trading SCB).

2.2 DBCT USER GROUP'S SUBMISSION

The DBCT User Group's submission on the QCA's draft decision supports a 'compromise' approach. The User Group recognises that the full breadth of ring-fencing provisions which were proposed in the context of the Brookfield-Asciano transaction is no longer appropriate.¹⁵ Despite that acknowledgement, the DBCT User Group proposes drafting which adopts those detailed ring-fencing provisions in many cases.

2.3 DBCTM'S RESPONSE

DBCTM agrees that a compromise approach is required and accepts that some improvements could be made to the existing 2010 AU ring-fencing provisions to (amongst other things):

- embed the independence of the Operator
- govern DBCTM's capacity trading business (which it acknowledges was not contemplated at the time the 2010 AU was approved).

DBCTM proposes that, at this time, amendments to the ring-fencing provisions focus on these key areas of improvement. The focus should be to develop effective and directed provisions in light of current issues, rather than adopting ill-fitting ring-fencing provisions designed to specifically address the proposed investment by the Brookfield Group in an above-rail business (which is no longer occurring). To address future concerns that may materialise, mechanisms can be adopted to require amendments to the undertaking in certain circumstances, including if:

- the Operator ceases to be a user-controlled entity; or
- DBCTM (or any other entity within the Brookfield group) obtains a direct or indirect interest in any Supply Chain Business (other than the existing interest in the capacity trading business).

The User Group suggests that the Brookfield-Asciano transaction is demonstrative of why robust ring-fencing provisions are required in the 2015 DAU notwithstanding that at this time, the Brookfield-Asciano transaction will not be proceeding as initially structured.¹⁶ DBCTM disagrees with this view. The 2010 AU does not attempt to 'cover the field' with broad ring-fencing requirements. Rather, it provides a mechanism which, if triggered (by vertical integration), requires DBCTM to amend the access undertaking.

In DBCTM's view, the Brookfield-Asciano transaction was demonstrative of the success of that mechanism. In light of the proposed transaction, DBCTM submitted draft ring-fencing provisions which centred on the specifics of that transaction to alleviate stakeholder concerns. DBCTM considers that the DBCT User Group's submission does not identify any fault with DBCTM's proposed mechanism.

¹⁵ DBCT User Group submission on QCA draft decision on 2015 DAU: 34-39

¹⁶ DBCT User Group submission on QCA draft decision on 2015 DAU: 35

3 TERMINAL REGULATIONS

This section provides DBCTM's views on its involvement in amending the Terminal Regulations.

3.1 DBCT USER GROUP'S SUBMISSION

The DBCT User Group's submission proposes to incorporate detailed provisions in respect of the amendment and approval of the Terminal Regulations in the 2015 DAU.¹⁷

3.2 DBCTM'S RESPONSE

As the Operator is DBCT PL (i.e. a user-controlled company), users have sufficient oversight and control in respect of the Terminal Regulations and any amendments to those regulations. If this ceases to be the case (due to a change in Operator, for example), appropriate undertaking amendments can be proposed at that time.

DBCTM's proposed drafting in respect of the Terminal Regulations is aligned with the existing form of Standard Access Agreement approved under the 2010 AU. Altering the Terminal Regulations' provisions in the way reflected in the User Group's submission would cause an inconsistency between the undertaking and existing user agreements. Given more robust provisions are not warranted at this time, DBCTM considers the better approach is to avoid creating any such inconsistency.

As per section 11.4 of the User Group's submission, DBCTM did attempt to engage with the User Group on the ring-fencing changes, including the changes to the approval process for the Terminal Regulations. However, DBCTM advises that the following statement by the User Group represents a misunderstanding of DBCTM's position:

DBCTM expressed a view to the DBCT User Group that any requirement to give reasons for its decision to give or withhold consent is an unnecessary regulatory burden on DBCTM, and would be willing to have amendments to the Terminal Regulations made under clause 6 of the 2015 DAAU be resolved between the Operator, users of the Terminal and the QCA (i.e. without DBCTM's involvement).¹⁸

DBCTM submits that this view provided to the DBCT User Group was only in respect of the ring-fencing arrangements associated with the original (and now obsolete) Brookfield-Asciano transaction, in relation to Brookfield's involvement in the above-rail business.

In DBCTM's view, the Terminal Regulations are essentially the Operator's document. DBCTM considers that the current arrangement, whereby DBCTM consents to DBCT PL's proposed amendments to the Terminal Regulations, provided the amendments still result in the Terminal Regulations operating equitably between access holders and seekers, works effectively.

If the provisions were amended as proposed by the QCA, DBCTM may be unable to meet its contractual and legal obligations. For example, DBCTM needs to ensure that the way in which the users are permitted to use DBCT under the Terminal Regulations (among other things, in respect of product type and veneering requirements) will allow DBCTM to meet its obligations in respect of dust emissions under its environmental approvals. As such, DBCTM does not support any amendments (as proposed by the DBCT User Group and the QCA) which remove DBCTM from the process for amending the Terminal Regulations. DBCTM only supports the amendments made by DBCTM in its response to the QCA's draft decision.

¹⁷ DBCT User Group submission on QCA draft decision on 2015 DAU, see drafting for section 9 of 2015 DAU

¹⁸ DBCT User Group submission on QCA draft decision on 2015 DAU: 38

4 COAL SUPPLY BUSINESS AND TRADING SCB

The DBCT User Group's submission raises concerns about the existing relationship between the Trading SCB and DBCTM.¹⁹ Those concerns can be broadly categorised as those:

- that may only materialise in the event the Trading SCB is able to hold, obtain or request capacity as principal from DBCTM; or
- relating to the potential for a conflict of interest between the interest of access seekers and access holders and the interest of the Trading SCB (and therefore DBCTM).

DBCTM discusses each of these categories in turn.

4.1 ROLE OF THE TRADING SCB

Explaining the arrangements underpinning the Trading SCB can address the DBCT User Group's concern. The Trading SCB acts as a potential aggregator and reseller of contracted capacity. The Trading SCB acquires unused capacity from users and sells it to other parties.

The Trading SCB operates as an 'anonymous' secondary market mechanism for balancing supply and demand. Neither trading party knows the identity of the counter-parties, as both deal directly with the Trading SCB. The arrangements do not allow the Trading SCB to buy capacity from DBCTM. Therefore, the regulatory arrangements for dealing with uncontracted capacity are unaffected.

To provide assurance to users, DBCTM agrees to include provisions in the 2015 DAU to acknowledge that the Trading SCB can only acquire access from access holders (i.e. secondary capacity) and cannot obtain access from DBCTM.

4.2 PROTECTIONS AGAINST A CONFLICT OF INTEREST

The User Group has proposed amendments to the 2015 DAU to protect against the Trading SCB or DBCTM conducting activities in a way which prevents or hinders access or otherwise unfairly differentiates between parties.²⁰ Whilst DBCTM supports those amendments in substance, DBCTM has suggested some changes to the drafting proposed by the User Group to (amongst other things):

- acknowledge that a related body corporate of DBCTM has an existing interest in a Trading SCB which is a Supply Chain Business
- focus the relevant provisions on the activities of the Trading SCB with the intention that if additional amendments are required in the event DBCTM or its related bodies corporate obtain a direct or indirect interest in another Supply Chain Business, those amendments can be implemented at that time.

¹⁹ DBCT User Group submission on QCA draft decision on 2015 DAU: 37-38

²⁰ DBCT User Group submission on QCA draft decision on 2015 DAU, see drafting for section 9 and Schedule I of 2015 DAU

5 RESPONSIBILITY FOR ACTS OR OMISSIONS OF THE OPERATOR

The QCA's draft decision proposed introducing language to clause 4(b) of the 2015 DAU:

DBCT Management may subcontract some or all of the Services, in which case DBCT Management will:

- (1) *ensure that the subcontractors and employees and agents of subcontractors comply with the requirements of this Undertaking; and*
- (2) *be liable for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors with respect to the subcontracted Services as if they were those of DBCT Management.²¹*

DBCTM's 8 July 2016 submission had proposed deleting this clause.²²

5.1 DBCTM'S RESPONSE

5.1.1 PARAGRAPH 1 OF CLAUSE 4(B)

The OMC does not oblige the Operator to comply with the AU. There is therefore no ability for DBCTM to comply with paragraph (1).

5.1.2 PARAGRAPH 2 OF CLAUSE 4(B)

The DBCT User Group's submission on the draft decision supports the QCA's drafting but proposes the addition of the qualifier "except as otherwise provided for under an Access Agreement" to the end of subclause (2).²³

The User Group's proposed change acknowledges that under the current user agreements, DBCTM is not liable for the acts of the Operator. The user agreements have a liability regime that acknowledges that the day-to-day operation of DBCT has been contracted to a user-owned operator and as such, makes DBCTM liable to the access holders only for actions which can be considered DBCTM's own "Wilful Default" (as defined).

DBCTM submits that as long as the operator is DBCT PL, it is inappropriate to amend the section 4 drafting in the manner that the QCA proposes. The User Group's exception, while helpful, does not ultimately assist because DBCTM's liability for the performance of the services should be solely governed by the user agreements. Paragraph (2) would seem to serve no purpose since the DBCT User Group's proposed amendment to the paragraph is already contemplated by the user agreements. In DBCTM's view, paragraph (2) has the capacity to be misinterpreted.

In summary, DBCTM maintains its view that the QCA's proposed drafting for clause 4(b) of the 2015 DAU should be deleted.

²¹ QCA's proposed mark-up of 2015 DAU, clause 4(b)

²² DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 63

²³ DBCT User Group submission on QCA draft decision on 2015 DAU: 50

6 NOTIONAL CONTRACTED TONNAGE

This section sets out DBCTM's response on issues concerning the revised definition of notional contracted tonnage (NCT).

6.1 DBCT USER GROUP'S SUBMISSION

The DBCT User Group's submission has asked that the 'Revenue Cap' calculation in section 2, Part A, Schedule C of the 2015 DAU be amended to take into account the revised NCT definition. In particular, the User Group requested that the 'Revenue Cap' calculation recognise the security that DBCTM already holds from defaulting users before access-charge-related losses are socialised.²⁴

The User Group said that not making this change creates:

*...the potential for an unjustified windfall gain by DBCTM, but also reduces their incentive to seek appropriate security from users.*²⁵

The User Group also said some of its members were in dispute with DBCTM about requests for security (members that the User Group considered were clearly of good standing, credit worthy and of financial substance).

6.2 DBCTM'S RESPONSE

DBCTM notes that its response to the QCA's draft decision, albeit for a different NCT-related matter, is consistent with the DBCT User Group's proposed revision:

Consistent with the Review Event process in the 2015 DAU, DBCTM would seek QCA approval of the net-loss calculations and the proposed adjustment of the subsequent year's revenue cap. [...]

*Net-loss calculations would account for security deposits, bank guarantees and/or other measures that have offset the unpaid access charges, in order to address any revenue over-recovery concerns the QCA may have with DBCTM's proposal.*²⁶

To implement this, DBCTM's legal advisors had proposed the following drafting in the definition of 'Review Event' in the 2015 DAU:

(c) User wrongfully failing to pay Access Charges after DBCTM has taken reasonable steps to recover such Access Charges²⁷ (emphasis added)

DBCTM supports extending this requirement in a way that addresses the DBCT User Group's request.

In doing so, however, DBCTM notes that it disagrees with the User Group's characterisation of the recent events concerning security requests. Under the current regime, DBCTM seeks to manage its exposure to risk by obtaining appropriate security from individual users. As the User Group has noted in its submission, DBCTM is currently in dispute with certain users over requests to provide security or additional security. DBCTM has sought this security, following advice from its third-party financial advisor, because of the *declining*²⁸ financial standing of those users.

²⁴ DBCT User Group submission on QCA draft decision on 2015 DAU: 48

²⁵ DBCT User Group submission on QCA draft decision on 2015 DAU: 48

²⁶ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 61

²⁷ See definition of 'Review Event' in DBCTM's proposed mark-up to 2015 DAU

²⁸ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: see Figure 5 on page 23

6.3 MINOR DRAFTING CLARIFICATION

Section 12.2 of DBCTM's 8 July 2016 submission on the QCA's draft decision set out DBCTM's response on the revised definition of NCT.²⁹

DBCTM has identified a drafting-related amendment to the "Review Event" mechanism.³⁰ The relevant clause currently reads:

f) If a Review Event occurs, and where described in Section 12.5(p), DBCT Management will submit to the QCA for approval:

(1) in the case of a Review Event referred to in paragraphs (a) or (b) of the definition of Review Event, a request to amend;...

The clause has inadvertently missed the new NCT-related amendment for the list of Review Events.

DBCTM proposes revising the clause to read as:

f) If a Review Event occurs, and where described in Section 12.5(p), DBCT Management will submit to the QCA for approval:

(1) in the case of a Review Event referred to in paragraphs (a), (b) or (c) of the definition of Review Event, a request to amend;... (emphasis added)

²⁹ DBCTM 8 July 2016 submission on QCA draft decision on 2015 DAU: 60-61

³⁰ See clause 4(f)(1), Part A of Schedule C of DBCTM's proposed mark-up to the 2015 DAU

APPENDIX A: DBCTM'S PROPOSED DRAFTING

Amended Definitions

Supply Chain Business means an entity (or group of entities) ~~in the Brookfield Group~~ which:

- (a) provides, or proposes to provide, above rail services in Queensland;
- (b) owns or holds an interest in, or proposes to acquire such an interest in, coal-producing mines in Queensland;
- (c) purchases coal that has been produced in Australia;
- (d) provides shipping services from the Terminal; or
- (e) trades in capacity at the Terminal.

Trading SCB means a Supply Chain Business ~~in the Brookfield Group~~ that solely engages in the trading of secondary capacity at the Terminal and which includes, as at the Commencement Date, Brookfield Port Capacity Pty Ltd ACN 134 741 567.

Brookfield Group means the group of companies that are Controlled by Brookfield Asset Management Inc.

3 Role of DBCT Management and the Operator

3.1 Role of DBCT Management

- (a) The owner or operator of a declared service may voluntarily submit a draft access undertaking to the QCA under section 136(1) of the QCA Act or be required to do so under section 133(1) or 134(2) of the QCA Act.
- (b) The owner of the Terminal (and consequently the declared service) is DBCT Holdings.
- (c) DBCT Trustee and DBCT Management, under the Leases, are the lessee and sublessee of the Terminal. Under the terms of the leases and the Port Services Agreement, DBCT Management is solely responsible for providing Access to Access Holders and Access Seekers during the Lease Term. Accordingly, DBCT Management is the operator (within the meaning of that term in the QCA Act) of the declared service.
- (d) DBCT Management will comply with and give effect to this Undertaking and any applicable laws relating to the provision of Access as the operator.
- (e) Where the performance of an obligation under this Undertaking requires a ~~Related Party~~Related Body Corporate of DBCT Management (including Trading SCB) to take or refrain from taking some action, DBCT Management must use its best endeavours to procure ensure that the ~~Related Party~~Related Body Corporate takes or refrains from taking that action ~~[Note: We have removed the reference to Related Party as it is no longer a defined term. We consider the correct reference in this context is to Related Body Corporate.^{1]}~~
- (f) ~~As soon as practicable after the Commencement Date, DBCT Management and the Brookfield Group will direct their respective personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with any obligations under this Undertaking. DBCT Management must procure that any Related Body Corporate provides all necessary~~

¹ There are some other references in the undertaking to "Related Party". These should also be revised given "Related Party" is no longer a defined term.

assistance and information so that it is in a position to comply with this Undertaking, including (without limitation) with any direction from the QCA under this Undertaking.

3.2 Role of the Operator

- (a) DBCT Management acknowledges and agrees that:
- (1) as at the date of this Undertaking, the Operator is Dalrymple Bay Coal Terminal Pty Limited ACN 010 268 167 (**DBCT PL**) and that DBCT PL is majority owned or wholly owned by Access Holders;
 - (2) each Access Holder has a right under the constitution of DBCT PL to become a shareholder of DBCT PL;
 - (3) if an Access Holder is not a shareholder of DBCT PL but wishes to become a shareholder of DBCT PL then that Access Holder may, in accordance with the constitution of DBCT PL, apply to become a shareholder of DBCT PL by making an application to DBCT PL at the following address:

Dalrymple Bay Coal Terminal Pty Limited
M.S. F283
Mackay, Queensland, 4740
Attention: Chief Executive and General Manager; and
- (b) the Operator carries out its obligations under the Operation & Maintenance Contract independently of DBCT Management.

3.3 Independent Change in the Operator

- (a) In the event that:
- (1) DBCT PL ceases to be the Operator for any reason whatsoever; or
 - (2) there is a change in Control of DBCT PL (whilst appointed as the Operator) such that Access Holders (and their Related Bodies Corporate) no longer hold more than 50% of the issued shares in DBCT PL;
- DBCTM must:
- (3) promptly notify the QCA and all Access Holders giving reasons for DBCT PL ceasing to be the Operator or providing details of the change in Control;
 - (4) consult with Access holders and Access Seekers about the amendments necessary to the Undertaking as a result of DBCT PL no longer being the Operator or as a result of the change in Control;
 - (5) submit a draft amending access undertaking to the QCA within 28 days of DBCT PL ceasing to be the Operator or the change in Control, which amendments detail the proposed changes necessary to the Undertaking as result of DBCT PL ceasing to be the operator or because of the change in Control, including in relation to operating charges and Terminal Regulations; and
 - (6) promptly following a decision by the QCA, submit any amendments to the Undertaking required by the QCA.
- (b) Any entity appointed by DBCT Management as the Operator must not be:

- (1) a Related Body Corporate of DBCT Management; or
- (2) an entity in which DBCT Management has a direct or indirect investment.
- (a) Other than in accordance with the QCA's prior written approval, DBCT Management undertakes to maintain:
- (1) the Operation & Maintenance Contract; or
- (2) a contract which is substantially on the terms specified in Schedule I with a party (as Operator):
- (A) in which more than 50% of the issued shares in the party are held by Access Holders;
- (B) in which DBCT Management holds no economic interest; and
- (C) that is not a Related Body Corporate of DBCT Management, to the extent that maintaining the relevant contract, or contracting on substantially the same terms as those specified in Schedule I, is within DBCT Management's reasonable control.
- (b) DBCT Management undertakes not to terminate the Operation & Maintenance Contract or any contract which replaces the Operation & Maintenance Contract (each, an **Existing Operation & Maintenance Contract**) unless:
- (1) DBCT Management has engaged a replacement operator which satisfies the criteria specified in Section 3.3(a)(2) under a contract which is on substantially the same terms as those specified in Schedule I (**Replacement Operation & Maintenance Contract**); and
- (2) the Replacement Operation & Maintenance Contract will take effect on termination of the Existing Operation & Maintenance Contract.
- (c) Any contract entered into by DBCT Management which replaces the Operation & Maintenance Contract must be approved by the QCA, including any associated amendments proposed to the Terminal Regulations.
- (d) DBCT Management must, at least 18 months before the scheduled expiry of the Operation & Maintenance Contract, submit a draft amending access undertaking to the QCA for approval by the QCA in accordance with the QCA Act which specifies amendments that DBCT Management, acting reasonably, considers are required to be made to this Undertaking due to the expiry of the Operation & Maintenance Contract.
- (e) DBCT Management must not:
- (1) terminate the Operation & Maintenance Contract;
- (2) seek or permit the assignment of the Operation & Maintenance Contract; or
- (3) permit a change in Control of the Operator, unless a draft amending access undertaking has been approved by the QCA in accordance with the QCA Act which specifies any amendments that DBCT Management, acting reasonably, or the QCA considers are required to be made to this Undertaking due to the termination or assignment of the Operation & Maintenance Contract or a change in Control of the Operator (as applicable).

6 Terminal Regulations

- (a) **(Compliance by DBCT Management and Operator)** DBCT Management acknowledges that under the Operation & Maintenance Contract DBCT Management and the Operator must comply with the Terminal Regulations. DBCT Management must comply with, and will procure that the Operator complies with, the Terminal Regulations in force from time to time.
- (b) **(Compliance by Access Holders is condition of access)** Each Access Holder must observe the Terminal Regulations, in force from time to time, as a condition of access to and the right to have its coal Handled at the Terminal.
- (c) **(Process for amending Terminal Regulations)** The Operator may, from time to time, by written notice to DBCT Management, propose amendments to the Terminal Regulations regarding operational issues. DBCT Management must not implement or consent to a proposed amendment to the Terminal Regulations without reasonable consultation with Access Holders and Access Seekers. DBCT Management will only give its consent to an amendment of the Terminal Regulations if it reasonably considers that the Terminal Regulations, as a whole, will operate equitably amongst Access Holders and Access Seekers (should they become Access Holders). If the Operator submits to DBCT Management a proposed amendment to the Terminal Regulations DBCT Management must:
 - (1) ~~conduct reasonable consultation with Access Holders and Access Seekers that have entered into a Funding Agreement or Underwriting Agreement with DBCT Management (Funding Access Seekers) in relation to the proposed amendment;~~ and
 - (2) ~~following the completion of such reasonable consultation, notify the Access Holders and Funding Access Seekers of:~~
 - (A) ~~the wording of the proposed amendment;~~ and
 - (B) ~~whether it has given its consent to the proposed amendment;~~
 - (C) ~~the detailed reasons for its decision to give (or not give) consent to the proposed amendment;~~
 - (D) ~~that there is a 30-day period for notifying DBCT Management of any objections to the decision to consent or not consent (as applicable) to the amendment.~~
- (d) **(Implementation of amended Terminal Regulations)** A proposed amendment to the Terminal Regulations will not be implemented unless:
 - (1) ~~DBCT Management has conducted reasonable consultation with Access Holders and Funding Access Seekers in accordance with Section 6(c)(1); and~~
 - (2) ~~one of the following has occurred:~~
 - (A) ~~DBCT Management has consented to the proposed amendment to the Terminal Regulations and no Access Holder and Funding Access Seeker has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days after being notified of the amendments by DBCT Management;~~
 - (B) ~~DBCT Management has consented to the proposed amendments to the Terminal Regulations and while an~~

- ~~Access Holder and Funding Access Seeker has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days after being notified of the amendments by DBCT Management, the QCA has rejected that objection; or~~
- (e) ~~DBCT Management has not consented to the proposed amendments to the Terminal Regulations, but an Access Holder and Funding Access Seeker has given notice to DBCT Management objecting to consent not being provided, and the QCA has upheld that objection.~~
- (f) ~~(Consent of DBCT Management) DBCT Management will only give its consent to a proposed amendment to the Terminal Regulations under Section 6(d)(2)(A) or 6(d)(2)(B) if it has conducted reasonable consultation with Access Holders and Funding Access Seekers in accordance with Section 6(c)(1) and, taking into account the results of such consultation, it reasonably considers that:~~
- (1) ~~the amendments relate to operational issues;~~
- (2) ~~the amended Terminal Regulations, as a whole, will operate equitably amongst Access Holders and Funding Access Seekers (should they become Access Holders);~~
- (3) ~~the amendments are not inconsistent with this Undertaking, an Existing User Agreement or an Access Agreement; and~~
- (4) ~~the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.~~
- (g) ~~(Criteria for disputing refusal to provide consent) If DBCT Management does not provide its consent to a proposed amendment to the Terminal Regulations, each Access Holder and Funding Access Seeker may object to DBCT Management's refusal to provide consent if they reasonably consider that:~~
- (1) ~~the amendments relate to operational issues;~~
- (2) ~~the amended Terminal Regulations, as a whole, will operate equitably amongst Access Holders and Funding Access Seekers (should they become Access Holders);~~
- (3) ~~the amendments are consistent with this Undertaking, an Existing User Agreement or an Access Agreement; and~~
- (4) ~~the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.~~
- (h) ~~(Notice of amendments to Terminal Regulations) DBCT Management must notify the Access Holders, and Funding Access Seekers and the QCA of any amendments to the Terminal Regulations that have been approved by the QCA and will provide a copy of the amended Terminal Regulations to these parties, (which may be by way of reference to the website on which the amended Terminal Regulations are available in accordance with Section 6(i)).~~
- (i) ~~(Objection to DBCT Management decision to approve amendment of Terminal Regulations)~~

- (1) If:
- (A) DBCT Management has given its consent to a proposed amendment to the Terminal Regulations; and
- (B) If an Access Holder and Funding or an Access Seeker Seeker reasonably considers that a objects to the proposed amendment en-to the Terminal Regulations, as a whole, will not operate equitably among the Access Holders and Access Seekers (should they become Access Holders) then the Access Holder or Access Seeker may request DBCT Management not to consent to it.the basis that it reasonably considers that the criteria specified in 6(e)(1) to 6(e)(4) are not satisfied,
then the Access Holder and Funding Access Seeker may, within 30 days after being notified of DBCT Management's consent, notify DBCT Management and the QCA of its objection to the consent to the proposed amendment.
- (2) If that request has been made and DBCT Management nevertheless consents to the amendment, then the Access Holder or the Access Seeker may within 30 days after being notified of DBCT Management's consent, refer the matter to the QCA for its consideration. If the Access Holder or Access Seeker has duly exercised its right to refer the matter to the QCA, DBCT Management will be taken to have implemented the amendments to the Terminal Regulations on an interim basis until the objection is resolved. If pursuant to an objection by the Access Holder or the Access Seeker (whether under this Undertaking, an Access Agreement or an Existing User Agreement), the QCA determines that any part of the Terminal Regulations does not as far as is practicable operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) then the amendment will lapse. The Operator may implement any transitional arrangements which may be needed as a consequence of that lapsing. ,in response to an objection notified to the QCA by an Access Holder and Funding Access Seeker (whether under Section 6(g)(1) of this Undertaking or any corresponding provision of an Access Agreement or an Existing User Agreement), the QCA determines in accordance with the process under Section 17.4(2) that the criteria specified in Section 6(e)(1) to 6(e)(4) are not satisfied, then:
- (A) the proposed amendment and DBCT Management's consent to the proposed amendment will be taken to have been withdrawn; and
- (B) the proposed amendment will not be made.

7. (Protection of DBCT Management) Subject to DBCT Management complying with Section 6(d), DBCT Management will not be liable to the QCA or Access Seekers (and the Standard Access Agreement will provide that DBCT Management will have no liability (on any basis whatsoever) to an Access Holder which executes it) as a result of DBCT Management consenting to an amendment to the Terminal Regulations (on an interim basis) or the due implementation and observance of an amendment to the Terminal Regulations (whether on an interim or final basis), as long as DBCT Management had in all respects acted reasonably and in good faith and (acting reasonably and in good faith) had formed the opinion required by Section 6(c)6(e). For clarification, this does not affect DBCT Management's obligation to do anything required on its

part to cause the termination or consequential amendment of a Terminal Regulation after any determination that the Terminal Regulation breaches this Undertaking or a relevant Access Agreement.

(f)

(a)(g) **(DBCT Management to make copies available)** DBCT Management must make a copy of the Terminal Regulations available to each Access Holder, ~~and Funding~~ Access Seeker and the QCA (which may be by displaying it on DBCT Management's website).

9 Ring-fencing arrangements

9.1 Amended undertaking if need for ring-fencing arises

- (a) As at the Commencement Date, DBCT Management and its Related Bodies Corporate do not directly or indirectly have an interest in any Supply Chain Business (other than any Trading SCBs) that is connected to or uses the Terminal.
- (b) If DBCT Management or any of its Related Bodies Corporate directly or indirectly acquire an interest in a Supply Chain Business (other than any Trading SCBs) that is connected to or uses the Terminal, DBCT Management must within 30 days submit a draft amending access undertaking to the QCA which undertaking explains how DBCT Management will ~~resolve the adverse impacts address arising from~~ that vertical integration (including ~~to~~ protecting the confidentiality of information, avoiding discrimination and avoiding conflicts of interest).
- (c) The QCA will promptly consider a draft amending access undertaking submitted under Section 9.1(b) and consult with ~~stakeholders~~shareholders.
- (d) DBCT Management must submit an amending access undertaking which complies with the QCA's final decision on a draft amending access undertaking referred to in Section 9.1(c).

9.2 Non-discrimination

- (a) DBCT Management will not:
 - (1) engage in conduct for the purpose of preventing or hindering an Access Holder's or Access Seeker's Access (including on the basis that an Access Holder is or is not a customer of a Trading SCB or is a competitor, or the customer of a competitor, of a Trading SCB);
 - (2) unfairly differentiate between Access Seekers and Access Holders (including on the basis that an Access Holder is or is not a customer of a Trading SCB or is a competitor, or the customer of a competitor, of a Trading SCB); or
 - (3) ~~provide Access directly to a Supply Chain Business or a customer, or a person who is negotiating to become a customer, of a Supply Chain Business in relation to the provision of a service by the Supply Chain Business which relates to Access, on more favourable terms than the terms on which DBCT Management provides Access directly to other Access Seekers or Access Holders; or~~

~~(4)(3)~~ exercise rights or power (including the right to withhold consent) under an Access Agreement in relation to assignments or transfers of Access Rights or an Access Agreement for the sole purpose of unfairly benefiting ~~a Supply Chain Businessa Trading SCB.~~

9.3 SCB Trading

- (a) As at the Commencement Date a Related Body Corporate of DBCT Management intends trading spare Terminal capacity.
- (b) DBCT Management:
 - (1) acknowledges that Trading SCBs may only acquire Access from Users-Access Holders and must not acquire, or seek to acquire, from DBCT Management any Access which DBCT Management has not previously granted to an UserAccess Holder; and
 - (2) will not grant, or seek to grant, to a Trading SCB any Access which DBCT Management has not previously granted to an UserAccess Holder.
- (c) A complaint in respect of a breach of the requirements of this Section 9 by an entity within the Brookfield Group will be dealt with in accordance with Section 9.4.[Note: The obligations under this Section 9 are on DBCTM. Any complaints relating to the actions of DBCTM are appropriately dealt with under clause 9.5.]
- (d)(c) DBCT Management must ensure that any Trading SCB gives the undertaking contained in Schedule I before that Trading SCB commences any activities related or connected to the trading of capacity at the Terminal.

9.4 Confidentiality undertaking by board members

DBCT Management will ensure that each of its directors executes a confidentiality deed pursuant to which the relevant director agrees:

- (a) to only use confidential information obtained as a director of DBCT Management in connection with its role as a director of DBCT Management; and
- (b) not to disclose such confidential information to any company that holds an interest in a coal mine, rail haulage business or below rail infrastructure that it is connected to or uses the Terminal.

9.49.5 Complaint handling

- (a) If an Access Holder, Access Seeker or other affected party considers that DBCT Management may have breached one or more of its obligations under this Section 9 they may lodge a written complaint with DBCT Management.
- (b) DBCT Management will provide to the QCA, as soon as practicable, a copy of any complaint it receives pursuant to Section 9.5(a)~~9.4(a)~~.
- (c) DBCT Management will:
 - (1) investigate complaints received pursuant to Section 9.5(a)~~9.6(a)~~; and
 - (2) promptly following that investigation, advise the complainant and the QCA in writing of the outcome of that investigation and DBCT Management's proposed response, if any, and use reasonable endeavours to do so within 20 Business Days after receiving such a complaint.

Schedule I – Undertaking by Trading SCB

This deed poll is given on by:

[**Trading SCB name**] ACN [number] of [address] (**Trading SCB**)

in favour of:

DBCT Management Pty Limited ACN 097 098 916 of Level 15, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 (**DBCT Management**);

each Access Holder (as that term is defined in the Access Undertaking) from time to time;

each Access Seeker (as that term is defined in the Access Undertaking) from time to time; and

the Queensland Competition Authority

Recitals

- A. Under the Access Undertaking, DBCT Management must procure an undertaking from Trading SCB in the form of this undertaking.
- B. At the request of DBCT Management, Trading SCB has agreed to enter into this deed poll to ensure that DBCT Management complies with the relevant provisions of the Access Undertaking.

This deed witnesses that the Trading SCB agrees to the following terms:

1 Ring-fencing

1.1 Non-discrimination

In carrying out Secondary Capacity Trading, Trading SCB will not:

- (a) engage in conduct for the purpose of preventing or hindering an Access Holder's or Access Seeker's Access; or
- (b) unfairly differentiate between Access Seekers or Access Holders.

1.2 Confidentiality

- (a) Trading SCB will enter into a confidentiality deed poll, substantially in the form specified in Annexure A, in favour of any Trading SCB Customer that discloses, or notifies Trading SCB that it intends to disclose, Confidential Information to Trading SCB.
- (b) Trading SCB will not disclose to a Trading SCB Customer that acquires Access from Trading SCB the identity of the Trading SCB Customer that assigned that Access (or any part thereof) to Trading SCB.

- (c) Trading SCB acknowledges that DBCT Management will not disclose Confidential Information of a Trading SCB Customer to Trading SCB without the prior written consent of the Trading SCB Customer.
-

2 Compliance

- (a) If an Access Holder, Access Seeker or the QCA considers that Trading SCB may have breached one or more of its obligations under this deed the relevant entity (**Complainant**) may lodge a written complaint with Trading SCB.
- (b) Unless otherwise notified in writing by the Complainant, the written complaint and any accompanying information (whether documentary or otherwise) will be Confidential Information until it ceases to be Confidential Information.
- (c) Trading SCB will provide to the QCA, as soon as practicable, a copy of any complaint it receives pursuant to clause 2.1(a) and identify the complaint as Confidential Information.
- (d) Trading SCB will:
 - (1) investigate complaints received pursuant to clause 2.1(a); and
 - (2) advise the Complainant and the QCA in writing of the outcome of that investigation and Trading SCB's proposed response, if any, and use reasonable endeavours to do so within 20 Business Days after receiving such a complaint.
- (e) If the Complainant is not satisfied with the outcome of Trading SCB's investigation, the Complainant can apply to the QCA seeking an audit of the relevant subject of the complaint. The QCA will consider such a request and determine whether to require Trading SCB to conduct an audit.
- (f) If the QCA requires Trading SCB to conduct an audit in accordance with clause 2.1(e), Trading SCB must promptly engage the Auditor to carry out the audit and provide the QCA with a report on the outcomes of that audit within a reasonable period of time, identifying any information contained in that report which is Confidential Information.
- (g) If the QCA is of the view that the outcomes of the audit required under clause 2.1(e) show that Trading SCB has not complied with this deed, it may require Trading SCB to provide a rectification plan to address the issue and implement the rectification plan within a reasonable period of time.
- (h) The QCA may advise the Complainant of:
 - (1) whether any audit referred to in clause 2.1(f) has demonstrated that Trading SCB has or has not complied with this deed; and
 - (2) whether Trading SCB has been required to provide a rectification plan to address the relevant issue in accordance with clause 2.1(g),provided that the QCA must not disclose any Confidential Information.
- (i) Trading SCB will bear the costs of the audit unless the QCA determines that the complaint made by the Complainant is vexatious or has not been made in good faith in which case:
 - (1) Trading SCB will not be liable for the costs of the audit; and
 - (2) the Complainant will bear the costs of the audit.

3 Governing law and jurisdiction

- (a) This deed is governed by the laws of Queensland.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland.

4 Definitions and interpretation

4.1 Definitions

In this deed:

Access Undertaking means the Dalrymple Bay Coal Terminal Access Undertaking prepared in accordance with the requirements of the *Queensland Competition Authority Act 1997* (Qld) and approved on [] as varied or replaced from time to time.

Secondary Capacity Trading means the carrying out of any one or more of the following activities by Trading SCB:

- (a) acquiring contracted Access from **Users****Access Holders**;
- (b) aggregating contracted Access which Trading SCB has acquired from **Users****Access Holders**; and
- (c) selling the contracted Access which Trading SCB has acquired from **Users****Access Holders** to Access Seekers or **Users****Access Holders**.

Trading SCB Customer means a customer, or any person who is negotiating to become a customer, of Trading SCB in respect of Secondary Capacity Trading.

4.2 Interpretation

- (a) Terms defined in the Access Undertaking have the same meaning in this deed unless otherwise defined.
- (b) Headings are for convenience only and do not affect interpretation.
- (c) In this deed, unless the context otherwise requires:
 - (1) words importing the singular include the plural and vice versa;
 - (2) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 4.2(c)(2) implies that performance of part of an obligation constitutes performance of the obligation;
 - (3) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
 - (4) a reference to a person includes that person's successors and legal personal representatives.

Executed as a deed poll:

Signed sealed and delivered by
[**Trading SCB name**] ACN [**number**]

Director/Secretary

Director

Name (please print)

Name (please print)



HERBERT
SMITH
FREEHILLS

Annexure A – Confidentiality deed poll

Deed poll

Deed poll

Confidentiality deed poll

[Trading SCB]

DBCT Management Pty Ltd

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Confidentiality deed poll

Date ►

This deed poll is
made by

Recipient **[Trading SCB]**
 ACN [number] of [address]
 (Trading SCB)

and

DBCT Management **DBCT Management Pty Ltd**
 ACN 097 698 916 of Level 15, 1 Eagle St, Brisbane QLD 4001
 (DBCT Management)

in favour of

Discloser **[User]**
 ACN [number] of [address]
 ([User alias])

Recitals

- 1 The Discloser has consented to DBCT Management disclosing Confidential Information to the Recipient for the Express Purpose and for no other purpose.
- 2 The Discloser may disclose additional Confidential Information directly to the Recipient for the Express Purpose.
- 3 The Recipient agrees that the Confidential Information is provided to it on the terms of this deed poll and that it will not use or disclose the Confidential Information except as provided in this deed poll.

This deed poll witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed poll are set out below.

Term	Meaning
Capacity	up to [insert] mtpa of port capacity at Dalrymple Bay Coal Terminal
Confidential Information	all information which: <ol style="list-style-type: none">1 is disclosed to the Recipient or a Specified Person (whether before or after the date of this deed poll) by the Discloser or DBCT Management;2 relates directly or indirectly to the Discloser or its past, existing or future business, operations, administration or strategic plans; and3 is in oral or visual form, or is recorded or stored in a Document, and includes, without limitation, the fact that:4 Confidential Information is being made available by the Discloser to the Recipient or the Specified Persons; and5 discussions or negotiations have occurred, are occurring or may occur between the Recipient and the Discloser, or their respective advisers or representatives, in relation to a possible Capacity transfer.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Discloser	[Insert User alias].
Document	includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced.
Dudgeon Point Project Management	Dudgeon Point Project Management Pty Ltd ACN 150 261 733.
Express Purpose	a possible transfer of all or part of the Capacity from the Discloser to the Recipient
Recipient	Trading SCB.

Term	Meaning
Specified Person	an officer, employee or adviser of the Recipient who has a specific need to have access to the Confidential Information for the Express Purpose.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) In this deed poll, unless the context otherwise requires:
 - (1) words importing the singular include the plural and vice versa;
 - (2) a reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(b)(2) implies that performance of part of an obligation constitutes performance of the obligation;
 - (3) the term 'related body corporate' has the meaning given to that term under the Corporations Act;
 - (4) the term 'associate' has the meaning given to that term in section 15 of the Corporations Act;
 - (5) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
 - (6) a reference to a person includes that person's successors and legal personal representatives.

2 Confidentiality

The Recipient must:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this deed poll or with the prior written consent of the Discloser (which may be withheld in the Discloser's ultimate discretion);
- (b) keep the Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this deed poll;
- (c) promptly notify the Discloser if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information; and
- (d) maintain such procedures as are necessary to ensure compliance with this deed poll by the Recipient and each Specified Person and, upon request, provide the Discloser details of the procedures adopted.

3 Permitted use and disclosure

- (a) The Recipient must only use the Confidential Information for the Express Purpose.
- (b) The Recipient may:
 - (1) only disclose Confidential Information to a Specified Person, and must only make such disclosure solely for the Express Purpose; and
 - (2) disclose Confidential Information to the Queensland Competition Authority.
- (c) DBCT Management must only disclose Confidential Information to the Recipient, and must only make such disclosure solely for the Express Purpose.
- (d) Without limiting this clause 3, the Recipient and DBCT Management must not disclose or use the Confidential Information in any way that relates to Dudgeon Point Project Management or any proposed Dudgeon Point coal terminal development.

4 Benefit of this deed poll

This deed poll is made by the Recipient and DBCT Management in favour of, and for the benefit of the Discloser.

5 Return and destruction of information

If requested by the Discloser, the Recipient must, within 7 days, return to the Discloser, or destroy or delete as the Discloser directs, all original Documents and copies which:

- (a) are or contain Confidential Information; and
 - (b) reproduce, are based on, utilise or relate to Confidential Information,
- provided however that the Recipient may keep one copy of the Confidential Information for its records.

6 Operation of this deed poll

- (a) Subject to clause 6(c), this deed poll continues without limitation as to time.
- (b) This deed poll does not apply to any Confidential Information that:
 - (1) the Recipient or a Specified Person is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator (including the Queensland Competition Authority); or
 - (2) is in the public domain other than as a result of a breach of this deed poll.

- (c) If the Recipient or a Specified Person must make a disclosure referred to in clause 6(b)(1):
 - (1) the Recipient must disclose, and must ensure that the Specified Person discloses only the minimum Confidential Information required to comply with the applicable law, order or requirement; and
 - (2) before making such disclosure, the Recipient must give the Discloser reasonable written notice of the full circumstances of the required disclosure together with the Confidential Information which it, or the Specified Person, proposes to disclose and consult with the Discloser as to the form of the disclosure.
- (d) Nothing in this deed poll requires the Discloser to disclose Confidential Information to the Recipient.

7 Acknowledgment

The Recipient acknowledges that:

- (a) the Confidential Information is secret and highly confidential to the Discloser;
- (b) disclosure of Confidential Information in breach of this deed poll could cause considerable commercial and financial detriment to the Discloser;
- (c) damages may be inadequate compensation for breach of this deed poll and, subject to the court's discretion, the Discloser may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or would be a breach of this deed poll.

8 Recipient to ensure others comply

The Recipient must:

- (a) inform each Specified Person of the Recipient's obligations under this deed poll;
- (b) procure that each Specified Person strictly observes all of the Recipient's obligations under this deed poll as if those obligations were imposed on that person; and
- (c) ensure that no officer, employee, adviser or agent of the Recipient does anything which, if done by the Recipient, would be inconsistent with this deed poll.

9 Disclaimer

- (a) The Recipient acknowledges that neither the Discloser, nor any of its related bodies corporate nor any of their respective officers, employees or advisers:
 - (1) makes any representation or warranty as to the accuracy or completeness of the Confidential Information;

- (2) accepts any responsibility for any interpretation, opinion or conclusion that the Recipient or a Specified Person may form as a result of examining the Confidential Information; and
 - (3) accepts any responsibility to inform the Recipient of any matter arising or coming to the Discloser's notice which may affect or qualify any Confidential Information which the Discloser provides to the Recipient.
- (b) The Recipient acknowledges that it is making an independent assessment of the Confidential Information and that it will:
- (1) carry out, and rely solely on, its own investigation and analyses in relation to the Confidential Information; and
 - (2) verify all information on which it intends to rely to its own satisfaction.
- (c) The Recipient acknowledges that reliance by the Recipient, or any Specified Person, on any Confidential Information, or any use of any Confidential Information, is solely at its own risk.

10 Governing law and jurisdiction

- (a) This deed poll is governed by the laws of Queensland.
- (b) The Recipient irrevocably submits to the exclusive jurisdiction of the courts of Queensland.

11 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this deed poll must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this deed poll does not result in a waiver of that right, power, authority, discretion or remedy.

Signing page

Executed as a deed poll

Signed sealed and delivered by
[Trading SCB]

By:

sign here ▶ _____
Director/Secretary

print name _____

sign here ▶ _____
Director/Secretary

print name _____

Signed sealed and delivered by
DBCT Management Pty Ltd
By:

sign here ► _____
Director/Secretary

print name _____

sign here ► _____
Director/Secretary

print name _____
