

22

FORM 7

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TERMIN ASSESSMENT

Total Rent \$ 330,000
\$1155.00

B-LEASE

TO BE RE-PRODUCED FOR
FURTHER STAMPING ON 25/07/2001
QUEENSLAND LAND REGISTRY
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OLD STAMP DUTY - BNE
Stamp Duty Imprint
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\$1,155.00 LEAS

1. Lessor	Ports Corporation of Queensland		Lodger Name, address & phone number	Lodger Code
			Blake Dawson Waldron DX 226 BRISBANE Tel:(07) 3259 7000. Ref ACR.12751521	103
2. Description of Lot	County	Parish	Title Reference	
Lot 41 SP 136319 TL 0/216123	Carlisle	Hector	40029905	
Lot 42 SP 136319 TL 0/216123	Carlisle	Hector	40029905	
3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)	
		DBCT Holdings Pty Ltd ACN 096 395 783		
4. Interest being leased	State Leasehold			
5. Description of premises being leased	The whole of the Land			
6. Term of lease	Commencement date: 15 September 2001 *Expiry date: 15 September 2101 25 July 2101 **Options on page nil *not required for leases in a retirement village **insert nil if no option			
7. Rental/Consideration	See attached Schedule			

8. Grant/Execution

The Lessor leases the premises described in item 5 to the lessee for the term stated in item 6 subject to the covenants and conditions contained in:-

- #the attached schedule
- #the attached schedule and standard terms document no.
- #standard terms document no.
- *Option in registered Lease no. has not been exercised
- # * delete inapplicable words

Witnessing Officer *[Signature]* Execution Date 12/9/01

KHORY MC CORNICHO signature
SOLICITOR full name
 as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

The Common Seal of the PORTS CORPORATION OF QUEENSLAND
[Signature] Lessor's Signature
 Director/Secretary

9. Acceptance

The lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

Witnessing Officer Execution Date 12/9/01

[Signature] signature
SHARON MICHELL full name
 LEGAL PRACTITIONER qualification
 as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

DBCT Holdings Pty Ltd
 ACN 096 395 783
[Signature] Lessee's Signature
 Director
[Signature] Director/Secretary

15740781 (Road Sub-lease)

Title Reference 40029905

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, unless a contrary intention appears:

"**Asset Register**" means the asset register of PCQ in relation to DBCT at the date of this Lease, initialled by PCQ, the Lessee and the Primary Lessee for the purposes of identification.

"**Business Day**" means:

- (a) for determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

"**Claims**" means any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities or responsibilities for any Damages and for any Injuries.

"**Costs**" includes all expenses, losses, charges and payments including any professional consultant and legal fees (on a "solicitor and own client" basis).

"**Damages**" means any Costs or damage whatsoever including, but not limited to, direct, indirect, incidental, consequential or special damages, damage to property, to the Premises or to the Environment, or the diminution in value of the Premises or any part thereof.

"**DBCT**" means the facility known as the Dalrymple Bay Coal Terminal comprising all of the assets, fixtures and land described in this Lease, the Onshore Lease, the Offshore Lease and the Plant.

"**Environment**" includes all components of the earth, including:

- (a) land, soil, subsoil, air and water including ground water;
- (b) any layer of the atmosphere;
- (c) flora and fauna;
- (d) biota and habitat;
- (e) any organic or inorganic matter and any living organism including humans;
- (f) human made or modified structures and areas;
- (g) the amenity of an area for human habitation;
- (h) the health of inhabitants;
- (i) characteristics of heritage value or of significance to Aboriginal or Torres Strait Islander people;
- (j) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and

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(k) ecosystems with any combinations of the above.

"Financier" means a financial institution that has provided or provides financial accommodation to the Primary Lessee or Secondary Lessee for the acquisition of the Primary Lessee's or Secondary Lessee's interest in DBCT or the financing of the Primary Lessee's or Secondary Lessee's expenditure in connection with DBCT or any refinancing of such accommodation, together with any substitute, assignee, successor, agent or trustee of that financial institution in respect of such financial accommodation or financing.

"Framework Agreement" means the framework agreement between the Lessee, the State, PCQ, the Primary Lessee, the Secondary Lessee and others dated 31 August 2001.

"Government Agency" means:

- (a) a Minister (other than in the capacity of a shareholding Minister of a party to this document);
- (b) a government or government department or other body;
- (c) a governmental, semi-governmental or judicial person; or
- (d) a person (whether autonomous or not) charged with the administration of a law.

"GST" means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge applicable to the above.

"GST Law" has the meaning given in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

"Huntbury Lease" means the lease by PCQ of the area adjacent to the Premises to Huntbury Pty Ltd commencing on 1 January 1987 and amended by the Deed of Variation dated on or about 6 July 1993.

"Injury" means any injury to the Premises or to the Environment of the Premises or personal injury, or bodily injury, including death resulting therefrom and whether the death occurs before or after the expiry or earlier determination of this Lease.

"Insolvency Event" means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act 2001 to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event and in the case of a trustee includes the beneficiaries of the trust resolving to wind up the trust, the trustee becoming obliged to wind up the trust under the terms of the trust or applicable law and the commencement of winding up of the trust for any other reason.

"Lease" means this lease as amended from time to time.

"Lessee's Agents" means each and every one of the Lessee's agents, contractors, employees, sub-contractors, sub-lessees, licensees and invitees and other persons claiming through or under the Lessee.

"Lessee's Covenants" means the obligations imposed on the Lessee in this Lease.

SCHEDULE

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"**Lessee's Equipment**" means any plant, equipment, vehicles, machinery, appliances, office equipment, computer systems, computer programs, and technology owned by the Lessee and used in connection with, or brought onto, the Premises.

"**Loss or Claim**" means, in relation to any person, any Damage, Cost or liability incurred by the person or a Claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent.

"**Offshore Lease**" means the sub-lease of the Perpetual Lease between PCQ and the Lessee dated on or about the date of this Lease.

"**Onshore Land**" means the land described in item 2 of the Form 7 of the Onshore Lease.

"**Onshore Lease**" means the lease of the Onshore Land between PCQ and the Lessee dated on or about the date of this Lease.

"**Operator**" means:

- (a) Dalrymple Bay Coal Terminal Pty Ltd (ACN 010 268 167) while it is operator of DBCT; and
- (b) any other operator of DBCT appointed from time to time in a way that does not contravene the Port Services Agreement.

"**PCQ**" means Ports Corporation of Queensland a corporation constituted pursuant to the *Government Owned Corporations Act 1994* and a port authority under the *Transport Infrastructure Act 1993* of Floor 24, 300 Queen Street, Brisbane, Queensland.

"**Permitted Use**" means:

- (a) use as a coal terminal for the purpose of providing coal unloading, handling and loading services and associated activities contemplated by the Port Services Agreement; and
- (b) such other use as may be approved in writing by DBCT Holdings,

provided such use shall not be inconsistent with the purposes of the Road Lease..

"**Perpetual Lease**" means perpetual lease number 0/215031, title reference 40027257 and perpetual lease number 0/214944, title reference 40027085, as amended from time to time.

"**Plant**" means the things described in the Asset Register as improved, added to, modified and replaced from time to time and any other plant and equipment referred to in clause 13.11(a) and 13.11(b) of the Port Services Agreement.

"**Port**" means the port of Hay Point or any other Port under the *Transport Infrastructure Act 1994* (Qld) that includes DBCT.

"**Port Authority**" means the port authority for the Port under the *Transport Infrastructure Act 1994* (Qld).

"**Port Services Agreement**" means the port services agreement between PCQ, the Lessee, the Primary Lessee and Secondary Lessee dated on or about the date of this Lease.

"**Premises**" means the Road Area and the Structures (and where the context so requires, either of them).

"**Primary Leases**" has the meaning given in the Framework Agreement.

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"Primary Lessee" means Babcock & Brown Investments Services Limited ACN 052 156 082 as trustee of the CL-NQ Trust.

"Project Documents" has the meaning given in the Port Services Agreement.

"Rehabilitate" means to:

- (a) remove the Structures including fixtures, fittings, plant and equipment from the Road Area and dispose of them in accordance with applicable laws; and
- (b) remediate the Road Area to its natural state and condition as existed prior to any development or construction activity having occurred on the Premises,

and "Rehabilitating" and "Rehabilitation" have corresponding meanings.

"Rent" means the rent specified in clause 4.

"Representative" means, in relation to a person, any officer, employee, contractor or agent of that person.

"Road Area" means the land described in item 2 of the Form 7.

"Road Lease" means the lease of Road Area between the State and PCQ dated 17 August 2001.

"Road Sub-Sub-Lease" means the sub-sub-lease of the Road Area between the Lessee and the Primary Lessee dated on or about the date of this Lease.

"Road Sub-Sub-Sub-Lease" means the sub-sub-sub-lease of the Road Area between the Primary Lessee and the Secondary Lessee dated on or about the date of this Lease.

"Secondary Lessee" means CL-NQ Management Pty Ltd ACN 097 698 916.

"State" means the State of Queensland but does not include any State bodies which are separate legal entities.

"Structures" means all fixtures (including buildings and other improvements of whatever nature) affixed to the Road Area, whether constructed before or after the grant of this Lease, but excluding the Plant.

"Term" means a term of ~~100 years less one day~~ commencing on the Commencement Date referred to in Item 6 of the Form 7 and ending on the expiry date shown in Item 6 of the Form 7.

1.2 Rules for interpreting this Lease

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Lease, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Lease or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

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- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) Where an expression is defined anywhere in this Lease, it has the same meaning throughout.
- (h) A reference to "**dollars**" or "\$" is to an amount in Australian currency.
- (i) A reference to this Lease includes the agreement recorded by this Lease.
- (j) Words defined in the GST Law have the same meaning in this Lease.
- (k) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (l) If a person is notionally liable to pay GST or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the person must pay extend to any notional liability of the person to pay GST and references to an input tax credit extend to any notional input tax credit to which the person is entitled.
- (m) A reference to time is a reference to Brisbane time.

1.3 Multiple parties

If a party to this Lease is made up of more than one person, or a term is used in this Lease to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.4 Business Days

If the day on or by which a person must do something under this Lease is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

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(b) in any other case, the person must do it on or by the previous Business Day.

1.5 PCQ's consent and approval

Where PCQ's consent or approval is required under this Lease it must be requested and provided in writing.

1.6 Lessee not to permit or suffer prohibited matters

Wherever in this Lease the Lessee is prohibited from doing any act, matter or thing, the Lessee is also prohibited from permitting or suffering the act, matter or thing. The Lessee must ensure that the Lessee's Agents do not breach any such prohibition.

2. EXCLUSION OF STATUTORY PROVISIONS

2.1 Implied covenants and powers

Any covenants implied by law are not negated but are deemed to be modified to the extent of any inconsistency with the terms of this Lease.

2.2 Moratorium

To the extent permitted by law, any law extending the Term, reducing or postponing the payment of Rent or otherwise affecting the operation of this Lease is excluded.

3. DEMISE

3.1 Lease

PCQ grants to the Lessee a Lease of the Premises for the Term.

3.2 Reservation of PCQ's rights

PCQ reserves to itself the right to grant to the Port Authority, its Representatives and any other person any easements or licenses over or rights of access or rights of way on, over, under, through or across the Premises for the following purposes:

- (a) the purpose of the supply of electricity, gas, telecommunications cables, water, sewerage, drainage or like services; and
- (b) the purpose of providing a right of access to the lessee of the Huntbury Lease and its invitees to the demised premises of the Huntbury Lease as required by the Huntbury Lease as at the date of this Lease;
- (c) the purpose of the Port Authority storing on the Premises in the areas in which such things are situated at the date of this Lease, rocks and other materials used in the maintenance of the Port and for removing those materials;
- (d) the purpose of facilitating the safe operation of the Port and the safety of users of the Port;
- (e) the purpose of providing navigation aids in the Port and for Port users;
- (f) the purpose of pilots, customs and quarantine services;
- (g) the purpose of enabling the Port Authority or State or any Government Agencies to exercise their statutory rights and discharge their Statutory obligations; and

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(h) the purpose of providing port services by the Port Authority.

PCQ also reserves to itself any right or interest in the Premises which is:

- (a) necessary or desirable as a result of the exercise by PCQ of any right under the Framework Agreement or the Port Services Agreement; or
- (b) which is necessary or desirable to enable PCQ to enjoy any benefit conferred upon it by the Framework Agreement or Port Services Agreement.

3.3 Manner of Exercise of Reservation Rights

In exercising a right under clause 3.2 or 3.6 PCQ must not substantially derogate from the ability of the Lessee to carry on the Permitted Use in any reasonable manner and:

- (a) must act reasonably;
- (b) may have regard to the intention of the parties evidenced by the Framework Agreement and Port Services Agreement (and, in particular, to the rights and obligations conferred and imposed upon the Primary Lessee and the Secondary Lessee under the Framework Agreement and Port Services Agreement); and
- (c) is not obliged to pay compensation or to require any third party that acquires any rights (ie easement, licence, access or the like) to pay any compensation to the Lessee.

Nothing in paragraph (c) prevents the Lessee claiming compensation from any person (including PCQ) for any failure by that person to comply with this clause 3.3 or clause 3.7 or for any Injury caused by that person in the exercise of any rights conferred under clause 3.2, 3.6 and 3.7.

3.4 Exclusive Possession Affected

The parties acknowledge that if PCQ exercises a right under clause 3.2, and as a result the Lessee does not continue to enjoy a right of exclusive possession to the area of land affected by the exercise of the right, then the Lessee releases and discharges PCQ from all Claims arising out of any loss of any right of exclusive possession.

3.5 Further Assurances

The Lessee must do anything (including executing any document) that PCQ may reasonably require to give effect to the exercise of a right by PCQ under clause 3.2.

3.6 Repair of services

PCQ reserves the right (but has no obligation) to access, maintain, repair and replace all services, utilities and associated plant, equipment, fixtures and fittings passing through the Premises.

3.7 PCQ's rights of entry

PCQ may enter the Premises with materials and equipment at reasonable times and on reasonable notice (but at any time and without notice in an emergency):

- (a) to inspect the Premises to ascertain their repair, condition and value or to determine whether there has been a breach of this Lease; or
- (b) to comply with any approval, direction, law, licence, notice, order, permit, regulation, requirement or request affecting the Premises for which the Lessee is not responsible under this Lease; or

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- (c) in connection with the exercise or intended exercise of a right under clause 3.2 or 3.6.

In exercising its rights under this clause, PCQ must not interfere with the Lessee's (or any sub-lessee of the lessee) use of the Premises more than is reasonably necessary and must comply with all safety requirements and other reasonable directions of the Lessee (or any sub-lessee of the Lessee) or the Operator in relation to such access.

3.8 Quiet enjoyment

If the Lessee complies with this Lease, the Lessee may, subject to the provisions of this Lease and the Port Services Agreement, possess and enjoy the Premises during the Term without interruption or disturbance from PCQ.

3.9 Lessee not PCQ's agent

Nothing in this Lease, whether express or implied, constitutes the Lessee the agent of PCQ in respect of any matter or action taken.

3.10 Termination

The Lessee may surrender this Lease by giving written notice of such surrender to PCQ if:

- (a) the Primary Leases have been terminated or have expired in accordance with the terms of the Project Documents or have been surrendered with the consent of DBCT Holdings and the Financiers; and
- (b) clause 28 of the Port Services Agreement has been performed or ceased to have any application, and PCQ will accept such surrender.

4. RENT AND OUTGOINGS

4.1 Rent

The rent payable annually in advance by the Lessee under this Lease is an amount equal to the rent paid by PCQ to the State under the Road Lease.

4.2 Payment of Rent

- (a) The Lessee must during the Term (and any holding over) duly and punctually pay all Rent and other money payable under this Lease.
- (b) All payments by the Lessee to PCQ under this Lease must be paid:
- (i) net of all duties and statutory charges and without any set off or other deduction, and
- (ii) to PCQ or as PCQ may direct in writing.

4.3 Outgoings and other costs

- (a) **Outgoings:** The Lessee must pay to PCQ the Outgoings for each year ending on the date PCQ from time to time nominates in writing (in this clause defined as "year"), or proportionately for any applicable part of a year.

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- (b) **Meaning of Outgoings:** "Outgoings" means all rates, taxes, assessments, charges, duties, fees, levies, outgoings, costs and expenses (for the purposes of this clause 4.3, the "Costs ") of PCQ paid or payable in respect of the Road Area (irrespective of its ownership) or in relation to the administration, control, insurance, management, ownership, repair and maintenance of and provision of services for the Road Area and, without limit, includes:
- (i) **Rates and taxes:** all rates, taxes (excluding income tax and capital gains tax and land tax) assessments, charges, duties fees, impositions and levies of any Government Agency in respect of the Road Area or services to the Road Area;
 - (ii) **Water charges:** all Costs in respect of water, sewerage and drainage (including, without limit, meter rents and Environmental levies);
 - (iii) **Insurance:** all Costs in respect of insurance relating to the Premises including, without limit, public liability, consequential and economic loss, machinery breakdown, insurance of the improvements forming part of the Premises for not more than their full insurable reinstatement value; and
 - (iv) **Repairs:** all Costs of general repairs, up-keep and maintenance of the Premises (nothing in this clause obliges PCQ to incur any such Costs).

4.4 Exclusions

For the purposes of clause 4.3, "Outgoings" does not include any amounts which PCQ is, by law, prohibited from recovering.

4.5 Method of payment of Outgoings

- (a) The Lessee must pay the amount of the Outgoing to the creditor to whom the Outgoing is payable within 14 days of receipt of an invoice for the Outgoing from PCQ or the relevant creditor.
- (b) The Lessee must not withhold any part on account of any dispute in relation to its obligation to pay the Outgoing.
- (c) The Lessee must provide proof of payment of the Outgoing to PCQ immediately following payment.

4.6 Lessee to pay rates and taxes

To remove any doubt, the Lessee must pay to the relevant authorities all rates and taxes properly charged on the Road Area (other than those which the Lessee is not required by law to pay).

4.7 Lessee to pay for services

The Lessee must procure the punctual payment to the relevant authorities of all charges for utility and other services separately metered to the Premises.

4.8 Water and Electricity Supply

The Lessee is solely responsible at its Cost to procure any water or electricity required for performance of the Lessee's Covenants or the operation of DBCT.

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4.9 Administration Costs

The Lessee must pay to PCQ within 30 days of receiving an invoice from PCQ the reasonable Costs of PCQ (including, without limit, wages) of or associated with the control and administration of the Premises. The Lessee acknowledges that PCQ may engage third parties to provide such services.

5. ASSIGNMENT, SUB-LETTING AND MORTGAGING

5.1 Lessee may deal with Interest in Lease

- (a) The Lessee may assign, sub-let, licence, part with possession of, transfer, mortgage, charge, dispose of, grant a trust over or otherwise deal with the Premises (or any part of them) or any interest in this Lease (in this clause 5, "Dealing") without the consent of PCQ.
- (b) The Lessee shall not transfer, assign, sub-let or otherwise part with possession of the Premises without the written consent of the Minister administering the Land Act 1994 first had and obtained.

5.2 Lessee to Notify PCQ

The Lessee must notify PCQ of any intended Dealing. The Lessee must not enter into to any Dealing unless it complies with the terms of this clause 5.

5.3 Consent to Road Sub-Sub-Lease and Road Sub-Sub-Sub-Lease

To remove any doubt, PCQ consents to the Road Sub-Sub-Lease and the Road Sub-Sub-Sub-Lease and any dealings with those leases permitted by the Project Documents.

5.4 Term of Sub-Leases

The Lessee must not grant a sub-lease which would expire after the expiry of the Term.

5.5 Basis of Sub Leases

If the Lessee grants a sub-lease, it must ensure the sub-lessee first enters into a deed in favour of PCQ containing the following terms:-

1. Warranty

1.1 No reliance

The sub-lessee warrants that:

- (a) *it has given PCQ notice before it executed this document of any warranty, promise, undertaking or representation given by or on behalf of PCQ that the sub-lessee has relied on in entering into this document or which has in any material way induced the sub-lessee to enter into this document; and*
- (b) *it has not relied on any express or implied warranty, promise, undertaking or representation made by or on behalf of PCQ in entering into this document:*
 - (i) *in respect of the fitness or suitability of the Premises for any use or for the carrying on of any business; and*
 - (ii) *in respect of the fixtures, fittings, furnishings, plant or equipment in, or the finish of, the Premises.*

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1.2 Indemnity

The sub-lessee indemnifies PCQ against any cost, damage, expense, liability, action, claim, loss or payment directly or indirectly incurred by the Lessor because of a breach of clause (a) by the sub-lessee.

2. PCQ not Liable for Lease

PCQ is not liable for the Lessee's performance of its obligations under the sub-lease.

3. Holding Over

In the event of the sublessee holding over or upon expiry or sooner termination of the sublease, monthly or weekly tenancy shall not exceed 3 months in all.

5.6 PCQ's Consent Not Required

If the sub-lessee is required to obtain the Lessee's consent to any matter under the sub-lease, the Lessee is not required to obtain PCQ's consent to that matter.

5.7 Mortgages

If the Lessee grants a mortgage or charge over all its assets, undertakings or interest in this Lease, the Lessee must ensure the mortgagee or chargee (the "Mortgagee") first enters into a deed in favour of PCQ containing obligations on the Mortgagee to promptly notify PCQ if the Lessee is in default under the mortgage or charge and to perform the Lessee's obligations under this Lease if the Mortgagee (or its appointee) enters into possession of the Premises.

6. USE OF PREMISES

6.1 Premises to be used only for the Permitted Use

- (a) The Lessee must only use the Premises for the Permitted Use.
- (b) The Lessee must obtain, keep current and comply with all approvals, consents and licences of all relevant authorities needed for the Lessee to use the Premises for the Permitted Use and for any works to be effected on the Premises by the Lessee.
- (c) PCQ must not unreasonably withhold any consent necessary for the Lessee to apply for any approval, consent or licence referred to in sub-clause (b). The Lessee must pay PCQ's reasonable Costs of its consent (whether or not consent is given).
- (d) The Lessee must deliver to PCQ copies of all approvals, consents and licences when reasonably required by PCQ.

6.2 No Warranties by PCQ

The Lessee agrees and represents that:

- (a) no promise, representation, warranty or undertaking has been given by or on behalf of PCQ regarding the fitness or suitability of the Premises for the conduct of the Permitted Use or for development of the Premises or for any other use, otherwise than as expressly contained in this Lease;
- (b) the Lessee has not relied on or been materially induced to enter into this Lease by any promise, representation, undertaking or warranty given by or on behalf of PCQ; and

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- (b) the Lessee has not relied on or been materially induced to enter into this Lease by any promise, representation, undertaking or warranty given by or on behalf of PCQ; and
- (c) the Lessee has relied on its own judgment, expertise and experts in satisfying itself as to the fitness, suitability, use, physical condition and adequacy of the Premises and the utilities and services to the Premises prior to entering into this Lease.

6.3 Compliance with laws

- (a) The Lessee must comply with all laws and regulations and all approvals, consents, directions, licences, notices, orders, permits and requirements of any authority in respect of this Lease, the Premises (and its use, including, without limit, Environmental matters and matters in respect of trade waste and dangerous goods), the Lessee's Equipment (and its use) and the health and safety of people in the Premises.
- (b) The Lessee must deliver to PCQ adequate written evidence of the existence and contents of each approval, consent, direction, licence, notice, order or permit issued to the Lessee in respect of the Lessee's use of the Premises (including, without limit, Environmental matters and matters in respect of trade waste and dangerous goods) when reasonably required by PCQ.

6.4 General restrictions about use

The Lessee must:

- (a) not at any time use any of the fixtures, fittings, furnishings, equipment, plant or machinery in the Premises other than for their designed purposes;
- (b) having regard to the Permitted Use, use its best endeavours not to cause nuisance, disturbance or damage to PCQ or to any other occupier or user of the Premises or of nearby land;
- (c) having regard to the Permitted Use, use its best endeavours not to at any time use the Premises in any noisy, noxious or noisome manner; and
- (d) not at any time use the Premises in any unlawful or illegal manner.

7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

7.1 Repair and maintenance of premises

The Lessee must at all times maintain, service and keep the Premises in good working order, repair and condition.

7.2 Specific obligations of repair and maintenance

The Lessee must:

- (a) **damage to Premises:** promptly make good in a workmanlike manner any damage to any part of the Premises;
- (b) **pests:** take all steps necessary to control any pest infestation occurring in the Premises;
- (c) **plumbing facilities:** keep and maintain all waste pipes, drains, gutters, traps, sewerage, plumbing and other such facilities within or servicing the Premises clean, clear and operative; and
- (d) **fire safety equipment:** maintain and keep in good working order and condition any fire protection and safety equipment servicing the Premises (including, without limit, all sprinklers, alarms, hose, cocks,

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reels, extinguishers and detectors) to the higher of the standards required or recommended by law, by the Lessee's insurer, by PCQ's insurer or by the Standards Association of Australia.

7.3 Lessee to give notice of defects

The Lessee must immediately on becoming aware of the same notify PCQ of:

- (a) any Injury, death or material Damage occurring in the Premises;
- (b) any material defect or lack of repair in the Premises; and
- (c) any circumstance likely to cause danger, Damage or Injury to the Premises.

7.4 Rehabilitation

Subject to PCQ providing all necessary access to the Premises, the Lessee will, at its cost, Rehabilitate or procure the Rehabilitation of the Road Area within 3 years after the termination of this Lease unless:

- (a) PCQ or the State intends to operate DBCT or to otherwise dispose of DBCT for use as a coal terminal; or
- (b) the State or PCQ provides or grants further tenure or rights of use over the Road Area to the Lessee or to any other third party for the use of DBCT as a coal terminal.

This clause 7.4 survives termination of this Lease.

8. RELEASE AND INDEMNITY

8.1 Risk

The Lessee occupies and uses the Premises and the Lessee's Equipment at its own risk. Without limiting the preceding sentence, all things which the Lessee is required or permitted to do under this Lease are at its own risk and Cost (unless this Lease expressly provides otherwise in a particular provision).

8.2 Release

Despite any other provision of this Lease, as and from the date of this Lease, the Lessee takes and is subject to the same responsibilities with regard to person and property and otherwise to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Road Area and the owner of the Structures and the Plant, and the Lessee:

- (a) releases PCQ from any Loss or Claim by the Lessee in respect of any Loss or Claim which the Lessee may incur or sustain by reason of any act or omission on the part of PCQ or the performance of this Lease by the Lessee or the use, possession or occupation of the Premises by the Lessee;
- (b) indemnifies PCQ, the Minister administering the Land Act 1994 and the State against any Loss or Claim incurred or sustained by PCQ, the Minister administering the Land Act 1994 or the State, or for which PCQ, the Minister administering the Land Act 1994 or the State may become liable, in respect of any Loss or Claim of or to any person by reason of any act or omission on the part of the Lessee or by the performance of this Lease by the Lessee or the use, possession or occupation of the Premises by the Lessee or any other person or by any breach, default, negligence, omission or wrongful act by any trespasser in the Premises (whether before or after the date of this Lease), but this indemnity will not apply where the Loss or Claim is incurred or sustained by PCQ as a result of the negligent acts or omissions or wilful default of PCQ after the date of this Lease; and

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- (c) must, in any and every event in which PCQ is made a party to any Claim to which the Lessee's obligation to indemnify and hold PCQ harmless under any provision of this Lease extends, if so requested by PCQ, defend such Claim in the name of PCQ and must pay all reasonable Costs of PCQ in connection with the Claim provided that the Lessee may, in any such event, compromise, pay or satisfy any such Claim with the consent of PCQ, such consent not to be unreasonably withheld or delayed.

The obligations of the Lessee under this clause continue after the expiration or earlier determination of this Lease in respect of any act, deed or thing happening before such expiration or determination.

8.3 Public Liability Insurance

The Lessee must at all times during the Term maintain public liability insurance cover of not less than \$10,000,000.00.

9. TERMINATION AND RE-ENTRY

9.1 No Termination

PCQ must not terminate this Lease for any reason, including where the Lessee is in substantial breach of the Lessee's Covenants.

9.2 Power of attorney

- (a) This clause 9.2 does not limit or affect the operation of clause 9.1.
- (b) The Lessee irrevocably appoints PCQ (and, if PCQ is a corporation, each and every one of its directors severally) to be the Lessee's attorney after PCQ has re-entered or accepted the Lessee's repudiation to sign and register a surrender of this Lease.
- (c) The Lessee irrevocably agrees to ratify and confirm whatever the attorney lawfully does or causes to be done and must pay to PCQ any Costs or other liabilities incurred by or on behalf of PCQ or any attorney appointed pursuant to this clause in the exercise of the powers referred to in this clause.

10. COSTS

10.1 Stamp Duty

The Lessor must pay any stamp duty payable on this Lease and any counterpart, together with any registration costs if the Lease is registered.

10.2 Lessee to pay costs

The Lessee must pay to PCQ PCQ's reasonable Costs and all duties and fees of or incidental to:

- (a) the preparation, completion, stamping and registration of this Lease and any further lease;
- (b) any assignment, sub-lease, licence or other dealing by the Lessee or persons claiming through it;
- (c) any request for the consent or approval of PCQ (and any mortgagee of PCQ); and
- (d) any breach of this Lease by the Lessee or the Lessee's Agents and the exercise or attempted exercise of any right or remedy of PCQ (under this Lease, at law or in equity).

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11. NOTICES

11.1 How to give a notice

A notice, consent or other communication under this Lease is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

11.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail:
 - (i) within Australia - 3 Business Days after posting; or
 - (ii) to or from a place outside Australia - 7 Business Days after posting.

11.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

PCQ

Address: Ports Corporation of Queensland
Level 24
300 Queen Street
BRISBANE QLD 4000
Fax number: (07) 3224 7234
Attention: Chief Executive Officer

Lessee

Address: The Company Secretary
DBCT Holdings Pty Limited
c/- Queensland Treasury Corporation
Level 14, 61 Mary Street
BRISBANE QLD 4000
Fax number: (07) 3221 2486
Attention: Director, Corporate Services

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12. **GST**

12.1 **Payment of GST**

- (a) A recipient of a taxable supply made under this Lease must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply.
- (b) The recipient must pay GST to the supplier:
 - (i) on the same day as the due date for the consideration in respect of the relevant taxable supply; or
 - (ii) if there is no due date, within 7 days of receiving a written request or a tax invoice from the supplier.

12.2 **Tax Invoice**

Each party making a taxable supply under this Lease must issue a tax invoice to the other party for each taxable supply within 14 days of making the taxable supply.

12.3 **Adjustment Note**

Each party must issue an adjustment note to the other party within 14 days of becoming aware of an adjustment event relating to a taxable supply by it under this Lease.

12.4 **Reimbursements**

A party's obligation to reimburse another party for an amount paid or payable to a third party (eg a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

12.5 **Indemnities**

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a Cost on which that party must pay GST, the indemnity is for the Cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

13. **AMENDMENT**

This Lease can only be amended, supplemented, replaced or novated by another document signed by the parties.

14. **GENERAL**

14.1 **Governing Law**

- (a) This Lease is governed by the law in force in the State of Queensland.
- (b) The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Queensland and any courts which may hear appeals from those courts, for any proceedings in

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connection with this Lease, and waives any right it may have to claim that those courts are an inconvenient forum.

14.2 Giving effect to this Lease

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Lease.

14.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.4 Operation of this Lease

- (a) The Project Documents contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Project Documents and has no further effect.
- (b) Any right that a person may have under this Lease is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Lease which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Lease enforceable, unless this would materially change the intended effect of this Lease.

14.5 Operation of indemnities

- (a) Each indemnity in this Lease survives the expiry or termination of this Lease.
- (b) A party may recover a payment under an indemnity in this Lease before it makes the payment.

14.6 GST on Claims

- (a) If a payment to satisfy a Claim or a right to claim under or in connection with this Lease (for example, for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against, the amount of that GST.
- (b) If a party has a Claim under or in connection with this Lease for a Cost on which that party must pay GST, the Claim is for the Cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (c) If a party has a Claim under or in connection with this Lease whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

SCHEDULE

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14.7 Attorneys

Each person who executes this Lease on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

14.8 Crown Rent Payments

The lessee under the Road Lease shall be responsible for payment of all Crown rent due and owing in respect of the Road Lease.

GENERAL CONSENT

1.	Description of Lot	County	Parish	Titles Reference
	Lots 41 & 42 on SP136319	CARLISLE	HECTOR	40029905

2. Instrument being consented to

Instrument type Sublease of Term Lease 216123

Dated

Name of Parties PORTS CORPORATION OF QUEENSLAND
AND
DBCT HOLDINGS PTY LTD A.C.N. 096 395 783

3. Instrument under which consent required

Dealing Type

Dealing No

Name of consenting party MINISTER ADMINISTERING THE LAND ACT 1994

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument identified in item 2.

Witnessing Officer

Execution Date

Consenting Party's Signature

Not required

signature

23/08/2001



Full name

Brett Nicholls

Qualification

Delegate of the Minister
administering the Land Act
1994

As per Schedule of Land Title Act (eg Legal Practitioner, JP, C. Dec)

NOTE: Attached to this form must be a Land Registry Form 20 – Schedule, which outlines the conditions in which the Minister's Consent is subject to.

ENLARGED PANEL

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NOTE: Attached to this form must be a Land Registry Form 18 – General Consent, which actually is authorisation of the Minister's Consent.

THIS CONSENT IS TO BE LODGED WITH THE ITEMS LISTED BELOW.

1. Form 7 – Sublease.
2. The Sublease document is to be amended as follows:
 - Form 7. Item 6 – insert Commencement and Expiry dates.
 - Clause 5.5 (3) amend clause to state that “In the event of the sublessee holding over/upon expiry or sooner termination of the sublease, monthly or weekly tenancy shall not exceed three (3) months in all.
 - The term of the Sublease lease must not exceed the term of the Head Lease.
3. Registration fees.



Queensland
Government

Your Ref: PM-04-345-HP1 [k040211]

Our Ref: MKY/020569

Natural Resources and Mines

13 May, 2002

Ports Corporation Queensland
GPO BOX 409
BRISBANE QLD 4001

Dear Sir/Madam

**RE: PROPOSED SUBLEASE OF TERM LEASE 216123
FROM PORTS CORPORATION OF QUEENSLAND
TO DBCT HOLDINGS PTY LTD
PROPOSED SUB-SUBLEASES OF TERM LEASE 216123
FROM DBCT HOLDINGS PTY LTD
TO BABCOCK & BROWN INVESTMENT SERVICES LIMITED AS TTEE FOR THE
CL-NQ TRUST
PROPOSED SUB-SUB-SUBLEASES OF TERM LEASE 216123
FROM BABCOCK & BROWN INVESTMENT SERVICES LIMITED AS TTEE FOR
THE CL-NQ TRUST
TO CL - NQ MANAGEMENT PTY LIMITED**

With reference to your fax dated 24 April 2002, I wish to advise that an extension of time for lodging the transfer of Sublease has been granted by the Delegate of the Minister.

Present the original Ministerial Consent, together with the items listed thereon and the original of this letter, to an office of this Department capable of document lodgement within three (3) months of this letter.

Please contact this office should you require any further assistance.

Yours sincerely,

Brett Nicholls
Delegate for the Minister administering the Land Act 1994