

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

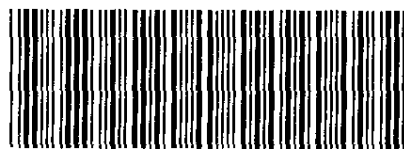
LEASE/SUB LEASE

Form 7 Version 5
Page 1 of 17

WDP 710564959

35

Duty Imprint



710143402

710564959

\$111.30

\$111.30

09/05/2007 09:48

BE 500

1. Lessor		Lodger (Name, address & phone number)		Lodger Code
Ports Corporation of Queensland		Blake Dawson Waldron DX 226 BRISBANE Tel: (07) 3259 7000 Ref: 07 1391 9406		103
2. Lot on Plan Description	County	Parish	Title Reference	
Lot 132 SP136318	Carlisle	Hector	50344292	
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				
Fee Simple				
5. Description of premises being leased				
Lease C on SP185554				
6. Term of lease		7. Rental/Consideration		
Commencement date: 20 September 2006		See clause 4		
*Expiry date: 13 September 2101				
**Options on page nil				
*not required for leases in a retirement village **insert nil if no option				

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.

* delete inapplicable words

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Witnessing Officer

Execution Date

Lessor's Signature

signature 26/07/06

full name

qualification

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Common Seal
Director/Secretary
Ports Corporation of Queensland

9. Acceptance

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

Witnessing Officer

Execution Date

Lessee's Signature

signature 31/8/06

full name

qualification

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Director
Director/Secretary
DBCT Holdings Pty Ltd ACN 096 395 783

Title Reference 50344292

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, unless a contrary intention appears:

"Access Road Land" means the land described in Item 5 of the Form 7.

"Access Road Primary Sub-Lease" means the sub-lease of the Access Road Land by the Lessee to the Primary Lessee dated on or about the date of this Lease.

"Access Road Secondary Sub-Sub-Lease" means the sub-sub-lease of the Access Road Land by the Primary Lessee to the Secondary Lessee dated on or about the date of this Lease.

"Asset Register" means the asset register of PCQ in relation to DBCT at the date of this Lease, initialised 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).

"CPI" means the "All Groups" Consumer Price Index published by the Australian Bureau of Statistics for the City of Brisbane (or any reasonably comparable index which the parties agree, or if the parties fail to agree, the expert appointed under clause 25.3 of the Port Services Agreement determines should replace it) for the calendar quarter last published before the relevant date.

"CPI_{Base}" means the CPI for the Quarter ending 31 March 2006.

"CPI_n" means the relevant CPI current for the most recent Quarter at the time that a calculation is made under this Lease.

"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 the Primary Leases.

"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;

Title Reference 50344292

- (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
- (k) ecosystems with any combinations of the above.

"Escalated at CPI" in relation to an amount means that amount adjusted on each anniversary of the Commencement Date by reference to a factor the numerator of which is CPI_n and the denominator is CPI_{Base} .

"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).

"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,

Title Reference 50344292

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.

"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.

"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 the Lessee.

"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 14 September 2001.

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

"Primary Leases" has the meaning given in the Port Services Agreement.

"Primary Lessee" means BBI (DBCT) Investor Services Pty Ltd ACN 052 156 082 as trustee of the BBI (DBCT) Trust.

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

"Quarter" means a period of three consecutive months ending on 31 March, 30 June, 30 September or 31 December.

Title Reference 50344292

"Rehabilitate" means to:

- (a) remove the Structures including fixtures, fittings, plant and equipment from the Access Road Land and dispose of them in accordance with applicable laws; and
 - (b) remediate the Access Road Land 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.

"Secondary Lessee" means BBI (DBCT) 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 Access Road Land, whether constructed before or after the grant of this Lease, but excluding the Plant.

"Term" means a term commencing on the Commencement Date referred to in Item 6 of the Form 7 and expiring 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;
 - (iv) a clause is a reference to a clause in this Lease;
 - (v) 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
 - (vi) 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.

Title Reference 50344292

- (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.
- (n) A reference to an index includes a reference to:
 - (i) any replacement of that index;
 - (ii) where that index ceases to be published, an equivalent index as agreed by the parties; or
 - (iii) if the parties cannot agree on an equivalent index, an index as determined by an independent expert.

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
- (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.

Title Reference 50344292

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 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;
- (c) the purpose of facilitating the safe operation of the Port and the safety of users of the Port;
- (d) the purpose of providing navigation aids in the Port and for Port users;
- (e) the purpose of pilots, customs and quarantine services;
- (f) the purpose of enabling the Port Authority or State or any Government Agencies to exercise their statutory rights and discharge their Statutory obligations; and
- (g) 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) 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

Title Reference 50344292

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
- (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:

Title Reference 50344292

- (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 the Lessee 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 for the Term is \$5,000 per annum (exclusive of GST), payable annually in advance and Escalated at CPI and payable proportionately for any applicable part year ("**Rent**").

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.
- (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 Access Road Land (irrespective of its ownership) or in relation to the administration, control, insurance, management, ownership, repair and maintenance of and provision of services for the Access Road Land 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 Access Road Land or services to the Access Road Land;
 - (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, and 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.

Title Reference 50344292

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 Access Road Land (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.

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

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.

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 Access Road Primary Sub-Lease and Access Road Secondary Sub-Sub-Lease

To remove any doubt, PCQ consents to the Access Road Primary Sub-Lease and Access Road Secondary 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

Title Reference 50344292

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.*

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

The sub-lessee may continue to occupy the Premises under any holding-over provision in the sub-lease without the prior written consent of PCQ but not for any period beyond the expiry of the Term of the Lease.

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 any or all of 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.

Title Reference 50344292

- (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
- (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:

Title Reference 50344292

- (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, 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 Access Road Land 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 Access Road Land to the Lessee or to any other third party for 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 Access Road Land 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 against any Loss or Claim incurred or sustained by PCQ, or for which PCQ 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

Title Reference 50344292

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

- (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.

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).

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;

Title Reference 50344292

- (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

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

Title Reference 50344292

- (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 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 Lease), 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;

Title Reference 50344292

- (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.

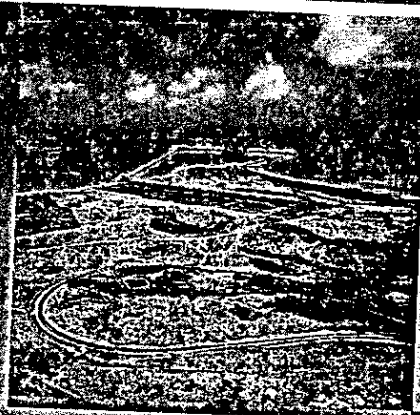
14.6 GST on Claims

- (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).

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.

PORT OF HAY POINT LAND USE STRATEGY



July 2003

Contents

1.0 INTRODUCTION	1
1.1 The Port of Hay Point	1
1.2 Strategic Port Land	1
1.3 About the Land Use Strategy	1
1.4 Key Issues	2
1.5 Strategy Approach	3
1.6 Integrated Planning Act 1997	3
2.0 ROLE OF THE LAND USE STRATEGY	4
2.1 Land Use Plan Map	4
2.2 Performance Criteria for All Development	9
2.3 Consultation with Council	10
2.4 Corporate Actions	10
3.0 FUTURE PORT EXPANSION	10
<i>SCHEDULE 1 - PORT OF HAY POINT LAND USE PLAN</i>	<i>11</i>
<i>MAP 1 - PORT OF HAY POINT LAND USE STRATEGY</i>	<i>12</i>
<i>MAP 2 - PORT OF HAY POINT LAND USE STRATEGY</i>	<i>13</i>

1.0 INTRODUCTION

1.1 The Port of Hay Point

Situated 13 kilometres east of Sarina on the central Queensland coast, the Port of Hay Point is one of the largest coal export ports in the world. It comprises two separate terminals, Dalrymple Bay Coal Terminal (DBCT) and Hay Point Services Coal Terminal, which together serve the mines of Central Queensland.

1.2 Strategic Port Land

Section 169 of the *Transport Infrastructure Act 1994* requires the Corporation to prepare a Land Use Plan specifying:

- its Strategic Port Land;
- land it wishes to become Strategic Port Land; and
- current and proposed uses of the land.

Strategic Port Land is not subject to the local government planning scheme.

For the purposes of the *Transport Infrastructure Act*, Schedule 1 to this Strategy is the Land Use Plan for the Port of Hay Point, and lists the Corporation's Strategic Port Land.

1.3 About the Land Use Strategy

The Corporation, as the port authority responsible for the Port of Hay Point, recognises the importance of planning for the future of the Port to:

- accommodate the growth of port services and facilities to maximise its contribution to the economic development of the region; and
- manage the impacts of port expansion on the environment and adjacent residential areas, and its relationship with recreational port users.

The Hay Point Land Use Strategy (the Strategy) is intended to provide a coherent framework for the future planning and development of the Port which reflects the existing and future importance of the Port to future regional economic development.

It should be noted that although the marine facilities of Hay Point Services (HPS) are on Strategic Port Land and are covered by this plan, the HPS facilities on land are not on Strategic Port Land and are not covered by this Plan.

The Strategy is intended to be used in conjunction with the Port of Hay Point's Environmental Management Plan (EMP). This document is published separately so that it can be reviewed and updated independently.

The EMP addresses specific environmental considerations and is an integral component of the Corporation's strategy for future development at the Port.

Both this Strategy and the EMP will be used by the Corporation in its roles as development facilitator and development manager and will form part of the laws and policies used by the Corporation in its role as Assessment Manager under the *Integrated Planning Act 1997* (IPA).

This Strategy is not intended to, and does not, affect any Native Title interests that may exist in relation to particular land which is the subject of this Strategy. In giving effect to this Strategy, the Corporation will have regard to relevant legislation and procedures relating to Native Title issues.

The Strategy will be reviewed every three to six years to ensure it remains updated in continually changing environment.

To coordinate with the Sarina Shire Planning process, the Strategy shall be reviewed in its entirety for its effectiveness in achieving its desired outcomes within six years or at the same time as any major revision of the Sarina Shire Plan. At that time, a new strategy will be prepared. The Corporation will consult with relevant stakeholders, including government agencies and the Sarina Shire Council, when preparing the new strategy.

1.4 Key Issues

The Strategy has been prepared to promote flexibility in port planning and provides options for future development of the Port in accordance with the Corporation's economic and environmental responsibilities. The key issues considered in the preparation of the Strategy include:

- continued development of coal exports;
- the difficulty in reliably predicting future land take up of port land for existing and new trades; and
- the need to ensure that incompatible land uses do not encroach on the Port.

For land above high-water mark within the Port that is not Strategic Port Land, the Corporation will seek to ensure that the Sarina Shire Council Planning Scheme is consistent with the Corporation's Land Use Strategy.

This will ensure the best outcomes for the Port, as well as the wider community, by ensuring that development does not adversely affect the adjacent residential areas.

With respect to the areas below the high water mark, it should be noted that Port waters are in the Great Barrier Reef World Heritage Area and partly within the Great Barrier Reef Marine Park.

1.5 Strategy Approach

The Strategy adopts a performance based approach (as promoted by the *Integrated Planning Act 1997*) to managing future development of the Port.

This performance based approach involves considering the suitability of the use of the site by its impacts, rather than the traditional approach of allocating land into zones and stipulating the particular uses which can be established on a site.

Therefore, the Strategy:

- sets out development intentions for specific areas identified in the plan;
- provides performance criteria against which the economic and environmental performance of a proposed development will be assessed; and
- provides indicative uses for specific areas which are considered likely to be able to meet these performance criteria.

The Corporation will assess the consistency of any proposal on Strategic Port Land against the intent for the area and its ability to adequately meet these relevant performance criteria.

1.6 Integrated Planning Act 1997

As noted above, the Corporation will apply the Strategy in the assessment of development applications made in accordance with the IDAS (Integrated Development Assessment System) process under the *Integrated Planning Act 1997*.

As a general guide, IPA requires an application for development on Strategic Port Land where:

- It is a material change of use inconsistent with the Land Use Plan. In this case, referral would be required to the Minister for Transport as a concurrence agency. Public consultation may be required, as determined appropriate by the Minister for Transport.
- It is a material change of use of premises for an environmentally relevant activity (other than a mining activity).
- For an activity which has an environmental authority or development approval for an ERA, the development would involve works resulting in an increase of 10% or more in release of contaminant into the environment.
- The development involves clearing of vegetation (in certain circumstances).

This is a non-exhaustive list intended as a guide only, and requirements will change with changes in the law. For further information, refer to the *Integrated Planning Act 1997* and particularly Schedule 2 of the *Integrated Planning Regulations* (as amended).

2.0 ROLE OF THE LAND USE STRATEGY

The Land Use Strategy is made up of these written provisions relating to the purpose and future development intention for the Land Use Areas, the Port of Hay Point Land Use Plan (included in Schedule 1) and the Hay Point Land Use Plan Map (Figure 1).

2.1 Land Use Plan Map

The attached Figure 1, "The Port of Hay Point Land Use Plan Map", provides a graphic representation of the overall framework for current and future development of the Port area, identifying current Strategic Port Lands and their intended use.

Land Use Areas

The principal components identified within the Port area are referred to as 'Land Use Areas' ("Areas"). They are:

- Port Handling Activities Area
- Port Related and Support Industry Area
- Harbour and Access Area
- Environmental Buffer Area
- General Buffer Area

For each of these Areas this section sets out:

- an Intent – a statement of the desired land use outcomes for the area;
- Performance Criteria - impact related requirements to be met by development. In addition to the performance criteria for specific Areas, general performance criteria applicable to all development on strategic port land are set out in Section 2.2.
- Indicative Uses - an indication of forms of land use development preferred to establish within the Area. This list is not intended to be exhaustive, and other uses may be appropriate where it can be shown that they satisfy the relevant performance criteria.

PORT HANDLING ACTIVITIES AREAS

Port Handling Activities Areas - designates wharf side areas directly associated with the loading, unloading and transport of commodities and/or the transfer of goods or providing key support activities.

Intent

This Area includes the majority of existing Port of Hay Point activities including existing and future cargo handling facilities. It is intended to cater for future extension of these core port activities.

It is intended that these Areas be reserved for port handling activities which encourage increased utilisation of waterfront areas. Future development should be directly related to the necessity to be located immediately adjacent to the waterfront and should meet the operational characteristics set out in the performance criteria for these Areas.

It is generally intended that these Areas will not be available for industrial activities which do not have these characteristics.

Any operations in these Areas that do not require direct waterfront access should be encouraged to relocate to the Port Related and Support Industry Area.

Performance Criteria

Development within these Areas is to comply with the following performance criteria:

- Development should significantly improve or contribute to port efficiency by:
 - not replicating existing facilities, or
 - by shortening the supply chain or providing logistical benefits.
- Development should not compromise the long term efficiency of the port.
- Development must meet the performance criteria set out in section 2.2.

Indicative Uses

Indicative uses for these Areas include:

- wharfage and docking facilities
- coal loading facility;
- sand/mineral loading facility;
- cold storage facility;
- fertiliser import loading facility.
- quarry
- port infrastructure for commercial and non-commercial services including coast guard/customs/AQIS/shipping agents; and
- commercial shipping support facilities including towage/refuelling/service/repair; and
- any temporary activities associated with port use or construction activities involved in port development.

PORT RELATED AND SUPPORT INDUSTRY AREAS

Port Related and Support Industry Areas - designates the area allocated for industries which shorten the supply chain and therefore require a location close to the wharf but do not need to be located with wharf frontage.

It also includes areas which are considered appropriate as "back up" land for port related activities (eg. storage, warehouse/distribution) and for general industrial uses which support or require a location close to, but not on, the waterfront.

Intent

This Area includes land located behind the Port Handling Activities Area that is suitable for land uses directly aligned to the port but which do not need direct waterfront access.

This Area also includes land that is suitable for a wide range of industrial and commercial industry based land uses that would serve both the port and township.

Some of the land included in this Area is close to residential areas along Hay Point Harbour Road and therefore any development proposed in this Area should have adequate regard to the location of the existing residential areas and mitigate against any adverse impacts on these areas.

Performance Criteria

Development within the Area is to comply with the following performance criteria:

- Development should demonstrate that its impacts on amenity of residential areas can be managed within acceptable standards;
- Development must commence and be completed within the timeframe specified in the approval.
- Development must meet the performance criteria set out in section 2.2.

Indicative Uses

Indicative uses for this Area include:

- warehouse/cargo distribution activities;
- cold storage facilities;
- port related light industry;
- necessary support industries which service the port; and
- other development including a range of general and low impact industries that are required to be close to the waterfront but do not require direct water access.
- Any temporary activities associated with port use or construction activities involved in port development.

Light industry can be defined as industries who's ERA's are generally approved by the Local Authority as distinct from the Environmental Protection Agency.

HARBOUR AND ACCESS AREA

These Areas are below high water mark (see Map 2) and currently provide access to port infrastructure. They are distinct from Port Handling Activities or Port Related and Support

Industry Areas as they do not usually accommodate large port related activities and usually include structures or infrastructure such as dredge channels, swing basins and navigational aids or equipment.

The Ports Corporation will be seeking to obtain tenure over this area of land below the high water mark to enable it to assess development applications for this land and protect its investment in the port. The assets in the port are of significant value and the Corporation needs to ensure that future developments on the land below the high water mark will not negatively impact on the existing and future operations of the port. The Ports Corporation has a similar tenure over the harbour at the Port of Weipa.

In seeking tenure over this area the Ports Corporation is not intending to exclude the area for recreational purposes such as fishing provided safety and navigation is not compromised.

Intent

This Area is intended to protect land, facilities or structures located below high water mark that provide access to infrastructure or assist in the efficient operation of the Port.

Performance Criteria

Development within this Area is to comply with the following performance criteria:

- Development should demonstrate that it is, or provides access to, infrastructure or facilities that contribute to the efficient operation of the Port.
- Development must meet the performance criteria set out in section 2.2.

Indicative Uses

- Navigational equipment or aids;
- Dredge channels;
- Swing basins;
- Wharfage/docking facilities;
- Tug facilities
- Recreational and leisure facilities ie fishing and sailing (except near shipping or structures).

ENVIRONMENTAL BUFFER AREAS

These Areas designate land with ecological significance located within or near the port. These Areas are to be protected and managed in a way that conserves their existing values; and also perform a role in buffering port activities from other uses. The significance of these Areas are further described in the Port of Hay Point Environmental Management Plan.

Intent

This Area recognises the significance of the current buffer zone surrounding the Port. Retention of this buffer in an undeveloped state is essential to the future viability of the port and any potential infrastructure development in order to minimise impacts of commercial port operations on adjacent land uses.

The Environmental Buffer Areas are areas of high environmental significance which have been identified through individual site investigations and are to be managed and protected from incompatible development.

Development should not adversely impact on the environmental resources and values within these areas, namely, the extensive mangrove and other woodland areas.

Performance Criteria

- Development shall be located and carried out in a manner which does not adversely impact on the Environmental Buffer Areas identified.
- The environmental integrity and significant natural beauty of these Areas are maintained.
- Development must meet the performance criteria set out in section 2.2.

Indicative Uses

- Buffer
- Environmental Areas

GENERAL BUFFER AREAS

General Buffer Area - designates areas where any port or port related industrial development will be required to have regard to the township areas. These areas may represent a physical buffer to protect the township from incompatible activities.

Intent

This Area is intended to provide an adequate buffer zone surrounding the port operations to minimise the impacts of port operations and development on adjacent Areas (such as residential) and prevent encroachment of incompatible land uses.

It may also be used to segregate commercial, industrial or recreational uses within the Port precinct.

Development within this precinct may also act as a buffer or transition between heavier Port Handling or Port Related and Support Industry uses and other adjoining land uses.

General buffer areas are not areas of high environmental significance and low impact development is not excluded from this area.

Performance Criteria

Development within the Area is to comply with the following performance criteria:

- Development should demonstrate that its impacts on the amenity of the township or adjoining land uses are within acceptable standards.
- Development must meet the performance criteria set out in section 2.2.

Indicative Uses

- Appropriate commercial or recreational activities (such as administration buildings, public wharf, etc)
- Warehousing
- Revegetated areas

It is recognised that the existing caravan park at Half Tide will be permitted to continue operations within the General Buffer Area, however any new caravan park or extension to the existing park is not proposed for this area.

2.2 Performance Criteria for All Development

The performance criteria are:

- areas adjoining the waterfront are to be utilised for activities which require direct port access;
- public access to the waterfront will be encouraged in areas which are not strategic to the future land use associated with port operations, where consistent with industrial and operational safety;
- development will be undertaken in a manner consistent with the Corporation's Environmental Management Plan for the port;
- development shall be located and carried out in a manner which does not adversely impact on the Environmental Buffer Areas identified on the Land Use Plan Map;
- areas identified as having high environmental significance through individual site investigations are to be managed and protected from incompatible development;
- development occurring adjacent to residential areas will incorporate measures to mitigate potential adverse impacts;
- development shall comply as a minimum with water quality, air quality and noise emission standards administered through the *Environmental Protection Act*. The Corporation may request higher standards based on the outcomes of an Environmental Impact Statement;
- development is to be provided with an appropriate level of engineering infrastructure servicing (including water supply, waste disposal, transport access, telecommunications and power);
- development is to be located such that an acceptable level of flood immunity is achieved and designed to cater for the effects of storm/tide surges, and
- development must commence and be completed within the timeframe specified in the approval.

2.3 Consultation with Council

The Corporation has held discussions with the Sarina Shire Council in relation to this Strategy, and the Strategy has the broad support of the Council.

2.4 Corporate Actions

The following identifies actions to be initiated by the Corporation to support the achievement of the overall land use intent of this Plan:

- liaise with the Sarina Shire Council in the planning and development of the Port of Hay Point to collaboratively pursue the intent of the land use strategy for non strategic port land;
- support the WHAM 2010 Plan and State and Federal government departments in achieving the strategies for the catchment area of the port;
- consult with relevant government departments such as Main Roads, QR, etc before finalising this Strategy;
- negotiate with government agencies regarding future land use options; and
- discuss the strategy with local landowners of areas identified for future port development.

3.0 FUTURE PORT EXPANSION

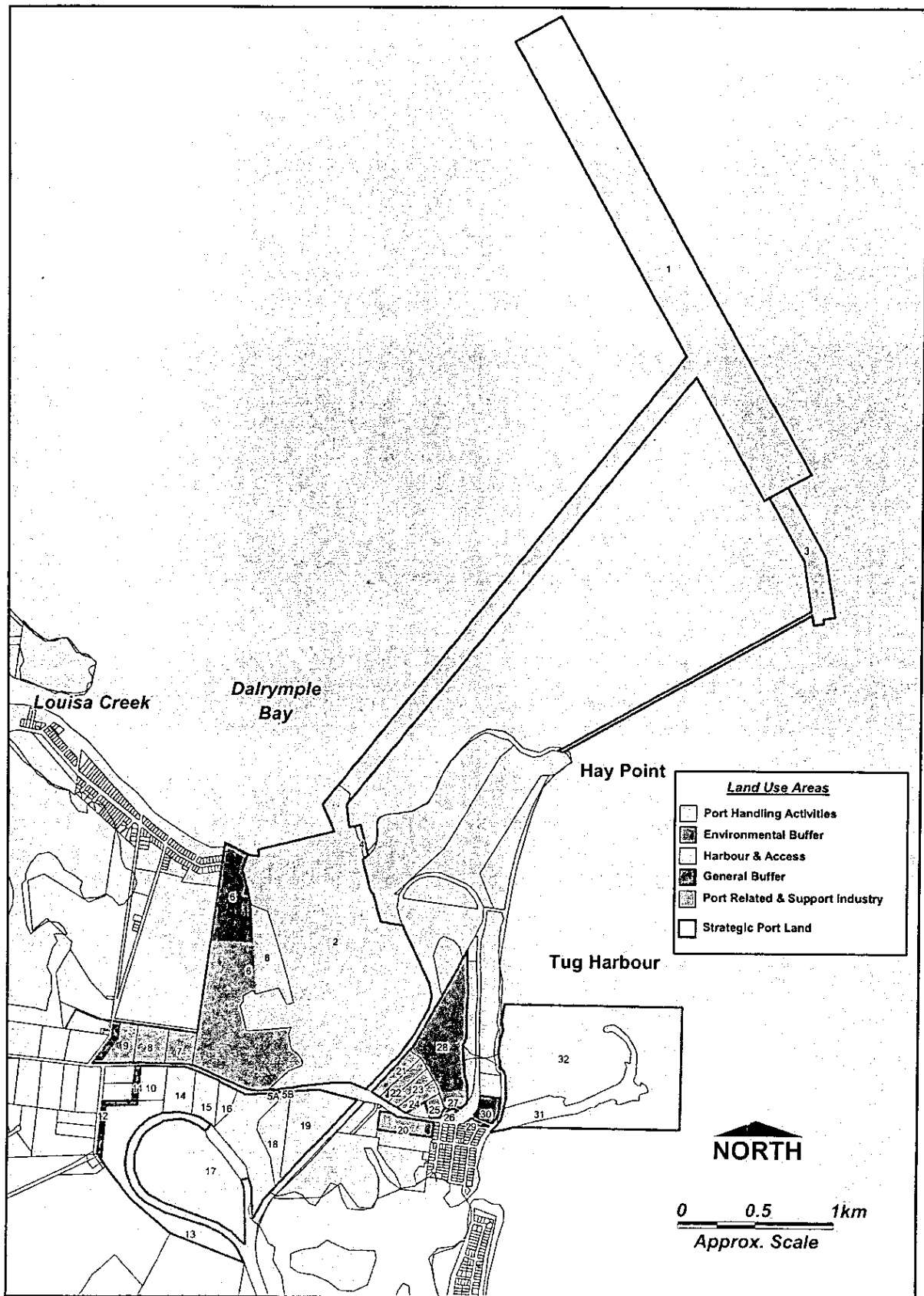
The Ports corporation owns a large area of land at Dudgeon Point. The land is currently buffer or used for grazing and sugar cane production.

Over the next twelve months the Corporation will be investigating the future development of this land. As the Corporation develops its plan for Dudgeon Point it will consult with relevant stakeholders. The land owned by the Corporation at Dudgeon Point is not strategic port land and therefore has been excluded from this strategy.

Schedule 1- Port of Hay Point Land Use Plan

Reference	Lot Number	Plan Number	Present Use	Future Use
1	126	SP123776	Port Handling Activities	Port Handling Activities
2	131	SP136318	Port Handling Activities	Port Handling Activities
3	94	C14524	Port Handling Activities	Port Handling Activities
4	130	SP105841	Port Handling Activities	Port Handling Activities
5A	42	SP136319	Port Handling Activities	Port Handling Activities
5B	41	SP136319	Port Handling Activities	Port Handling Activities
6	Part of 132	SP136318	Port Related & Support	Port Related & Support
6	Part of 132	SP136318	Port Handling Activities	Port Handling Activities
6	Part of 132	SP136318	General Buffer	General Buffer
7	11	RP733237	Port Related & Support	Port Related & Support
8	10	RP733237	Port Related & Support	Port Related & Support
9A	Part of 9	RP733237	Port Related & Support	Port Related & Support
9B	Part of 9	RP733237	General Buffer	General Buffer
10	Part of 25	RP733239	Port Handling Activities	Port Handling Activities
11	Part of 25	RP733239	General Buffer	General Buffer
12	Part of 24	RP882366	General Buffer	General Buffer
13	Part of 24	RP882366	Port Handling Activities	Port Handling Activities
14	26	RP882366	Port Handling Activities	Port Handling Activities
15	27	RP882366	Port Handling Activities	Port Handling Activities
16	134	SP136320	Port Handling Activities	Port Handling Activities
17	133	SP136320	Port Handling Activities	Port Handling Activities
18	135	SP136320	Port Handling Activities	Port Handling Activities
19	31	RP733239	Port Handling Activities	Port Handling Activities
20A	Part of 1	RP736155	Port Related & Support	Port Related & Support
20B	Part of 1	RP736155	General Buffer	General Buffer
21	1	RP728282	Port Related & Support	Port Related & Support
22	2	RP728282	Port Related & Support	Port Related & Support
23	3	RP728282	Port Related & Support	Port Related & Support
24	4	RP728282	Port Related & Support	Port Related & Support
25	8	RP748343	Port Related & Support	Port Related & Support
26	5	RP748343	Port Related & Support	Port Related & Support
27	Part of 6	RP748343	Port Related & Support	Port Related & Support
28	Part of 6	RP748343	Environmental Buffer	Environmental Buffer
29	4	SP132651	Port Handling Activities	Port Handling Activities
30	3	RP748343	General Buffer	General Buffer
31	144	SP121683	Port Handling Activities	Port Handling Activities
32	143	SP121683	Harbour & Access	Harbour & Access
Proposed Lot A			Harbour & Access	Harbour & Access

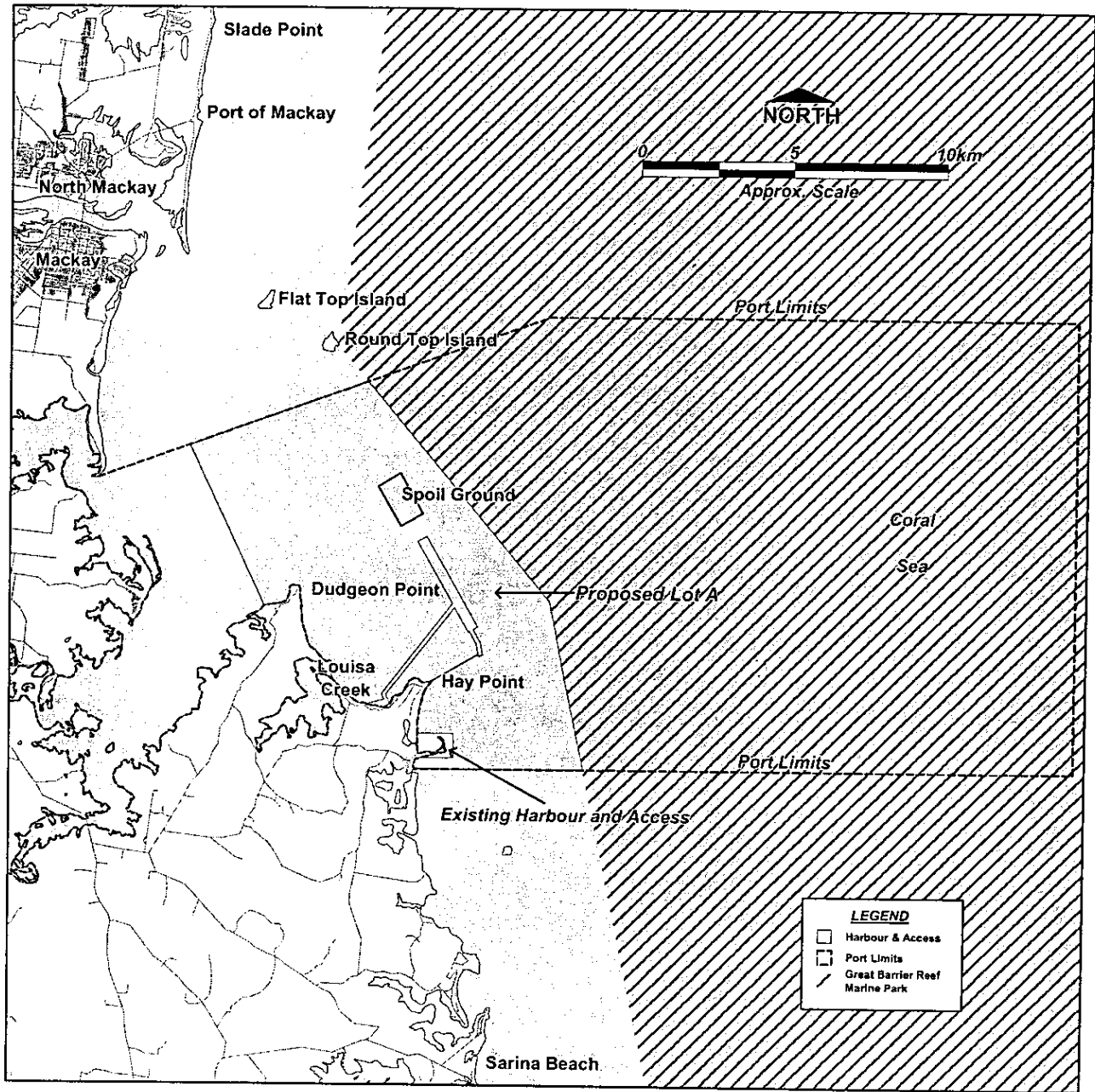
Map 1- Port of Hay Point Land Use Strategy



M:\Mapbase\Hay Point\Topo Data 10_10_01\Land Use.WOR

Land Use Strategy - Map 1

Map 2 - Port of Hay Point Land Use Strategy



Land Use Strategy Map 2

BLAKE DAWSON WALDRON

L A W Y E R S

Level 36
Riverside Centre
123 Eagle Street
Brisbane QLD 4000

www.bdw.com

Tel +61 7 3259 7000
Fax +61 7 3259 7111

DX 226 Brisbane

PO Box 7074
Riverside Centre
Brisbane QLD 4001
Australia

BY HAND

Department of Natural Resources, Mines and Water
Level 7, AXA Building
144 Edward St
BRISBANE QLD 4000

Partner
Damian Salsbury
Telephone (07) 3259 7041

Contact
Rose Simpson
Telephone (07) 3259 7096

Our reference
ROS DPS 07 1391 9406

8 May 2007

Dear Sirs

Requisition dealing number 710143402

We refer to the your requisition dated 26 March 2007 and **enclose** a copy of the Port of Hay Point land use plan.

1. WITHDRAWAL OF DEALING

In order to answer your requisition, we request that Dealing Number 710143402 be withdrawn and re-entered to follow the lodgement of Survey Plan 710364144.

2. CONSENT OF THE LOCAL AUTHORITY

We have also been asked to provide the consent of the relevant Local Authority as the lease has been granted over part of land and for a term of more than 10 years.

It is our view that the consent of the relevant local authority is not required for the following reasons.

- (a) The lease has been granted over property which falls within the Port of Hay Point and is classified as strategic port land under section 286 of the *Transport Infrastructure Act 1994*. The land use plan attached includes a schedule (Schedule 1) which specifies the lot and plan numbers of the strategic port land and includes the lot which is specified within this

BRISBANE
SYDNEY
MELBOURNE
PERTH
CANBERRA
PORT MORESBY
JAKARTA
SHANGHAI

lease. (That lot has been highlighted in Schedule 1, page 11 of the attached land use plan).

- (b) Schedule 9 of the *Integrated Planning Act 1997* states that, reconfiguring a lot which comprises strategic port land as defined by the *Transport Infrastructure Act 1994*, is considered to be development exempt from assessment against a planning scheme.

Accordingly, we ask that you remove this item from your requisition notice.

Please call Rose Simpson on (07)3259 7096 if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Blake Dawson Waldron', with a long horizontal flourish extending to the right.