

Queensland



HAY POINT HARBOUR (RATIFICATION OF AGREEMENTS) ACT 1987

**Reprinted as in force on 3 May 1996
(Act not amended up to this date)**

Reprint No. 1 *

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the Office of the Queensland Parliamentary Counsel
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* Minor differences in style between this reprint and another reprint with the same number are due to the conversion to another software program. The content has not changed.

Information about this reprint

This Act is reprinted as at 3 May 1996.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit the enacting words (s 42A).

See endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including table of changed citations and remade laws.**

Queensland



HAY POINT HARBOUR (RATIFICATION OF AGREEMENTS) ACT 1987

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HAY POINT HARBOUR (RATIFICATION OF AGREEMENTS) ACT 1987

[reprinted as in force on 3 May 1996]

An Act to ratify and confirm certain agreements made by the Harbours Corporation of Queensland with respect to the Harbour of Hay Point and for related purposes

1 Short title

This Act may be cited as the *Hay Point Harbour (Ratification of Agreements) Act 1987*.

2 Ratification of agreements

It is hereby declared that each of them—

- (a) the agreement dated 25 June 1985 between the Harbours Corporation of Queensland and Utah Development Company Limited both on its own behalf and on behalf of certain other companies, (the **“Tug Harbour Account—CQCA Agreement”**); and
- (b) the deed of novation dated 15 July 1986 between the Harbours Corporation of Queensland, and Utah Development Company Limited, Mitsubishi Development Pty. Ltd., Australian Mutual Provident Society, Umal Consolidated Limited, Pancontinental Mining Limited, Bell Coal Pty. Ltd., Utah Queensland Coal Limited, UB Minerals, Inc., Bowen Basin Minerals Proprietary Limited, QCT Investment Pty. Ltd. and QCT Mining Pty. Ltd., that novated and amended the Tug Harbour Account—CQCA Agreement, (the **“Deed of Novation—Tug Harbour Account—CQCA Agreement”**); and
- (c) the agreement dated 25 June 1985 between the Harbours Corporation of Queensland, and Dalrymple Bay Coal Terminal

*Hay Point Harbour (Ratification of Agreements) Act
1987*

Pty Ltd, both on its own behalf and also on behalf of certain other companies, (the **“Tug Harbour Account—DBCT Agreement”**); and

- (d) the agreement dated 25 June 1985 between the Harbours Corporation of Queensland, Dalrymple Bay Coal Terminal Pty Ltd and Utah Development Company Limited, (the **“Hay Point Tug Harbour Lease and Berthing Agreement”**); and
- (e) the agreement dated 25 June 1985 between the Harbours Corporation of Queensland, Dalrymple Bay Coal Terminal Pty Ltd and Utah Development Company Limited, (the **“Harbour Development Agreement”**);

copies of which are set out in schedules 1, 2, 3, 4 and 5 respectively, are—

- (f) hereby ratified and confirmed to take effect according to their tenor, notwithstanding that the agreements or any 1 or more of them are inconsistent in any respect with, or are not authorised under or pursuant to, the provisions of the *Harbours Act 1955*, the *Central Queensland Coal Associates Agreement Act 1968* or any other Act or law;
- (g) deemed to have been valid and to have taken effect in each case from the date of their execution.

3 Governor in Council may approve novations and amendments

(1) The Governor in Council may by order in council, give approval to—

- (a) any novation agreement or novation agreements executed;
- (b) any amendment or amendments made;

in respect of any 1 or more of the agreements specified in schedules 1, 2, 3, 4 and 5, (the **“specified agreements”**), with the consent of all of the parties to the specified agreement or agreements concerned.

(2) Where the Governor in Council has approved a novation agreement or amendment pursuant to subsection (1), the specified agreement to which that novation agreement or amendment refers, as so novated or amended, shall thereupon be—

- (a) ratified and confirmed to take effect according to its tenor, notwithstanding that the agreement or amendment is inconsistent

*Hay Point Harbour (Ratification of Agreements) Act
1987*

in any respect with, or is not authorised under or pursuant to the provisions of the *Transport Infrastructure Act 1994*, the *Central Queensland Coal Associates Agreement Act 1968* or any other Act or law;

- (b) deemed to have been valid and to have taken effect in each case from the date of the execution of the novation agreement or, as the case may be, amendment.

(3) A reference to a novation agreement or amendment in subsection (1) includes a reference to any such agreement or amendment executed or made before the commencement of this Act.

SCHEDULE 1

section 2

TUG HARBOUR ACCOUNT—CQCA AGREEMENT

THIS AGREEMENT is made the Twenty-fifth day of June, 1985 BETWEEN THE HARBOURS CORPORATION OF QUEENSLAND, a corporation under the provisions of the “*Harbours Act 1955-1982*” of the State of Queensland (“Harbours Corporation”) of the first part

AND UTAH DEVELOPMENT COMPANY LIMITED (“UDCL”) a company incorporated in Louisiana, United States of America, and having its registered office in Queensland at 167 Eagle Street, Brisbane;

mitsubishi development Pty. Ltd., a company incorporated in Queensland and having its registered office at 127 Creek Street, Brisbane;

Australian Mutual Provident Society, a corporation incorporated in the State of New South Wales, and having its registered office in Queensland at AMP Place, 10 Eagle Street, Brisbane;

UMAL CONSOLIDATED LIMITED, a company incorporated in the State of New South Wales and recognised in Queensland and having its principal office at 167 Eagle Street, Brisbane;

GENERAL ELECTRIC MINERALS INC., a company incorporated in Nevada, United States of America and having its registered office in Queensland at 18th Floor, 260 Queen Street, Brisbane;

BOWEN BASIN MINERALS INC., a company incorporated in Nevada, United States of America and having its registered office in Queensland at 18th Floor, 260 Queen Street, Brisbane;

UB MINERALS INC., a company incorporated in Nevada, United States of America;

QCT INVESTMENT Pty. Ltd., a company incorporated in the State of Queensland and having its registered office at 5th Floor, 410 Queen Street, Brisbane;

QCT MINING Pty. Ltd., a company incorporated in Queensland and having its registered office at 5th Floor, 410 Queen Street, Brisbane;

SCHEDULE 1 (continued)

BELL COAL PTY. LTD., a company incorporated in Queensland and having its registered office at 1816 Ipswich Road, Rocklea, Brisbane; and

PANCONTINENTAL MINING LIMITED, a company incorporated in the State of Queensland and having its registered office at AMP Place, 10 Eagle Street, Brisbane

(all of which companies and their successors and permitted assigns herein being referred to as the “CQCA companies”) of the second part

WHEREAS:

- A. Harbours Corporation is the Harbour Board for the Hay Point Harbour and, in accordance with the provisions of the *Harbours Act 1955-1982* may exercise the powers of a harbour board in respect of Hay Point Harbour in the State of Queensland;
- B. The CQCA companies are entitled to ship coal through a terminal at Hay Point within the harbour of Hay Point pursuant to the provisions of the *Central Queensland Coal Associates Agreement Act 1968-1984*.
- C. Dalrymple Bay Coal Terminal Pty. Ltd., a company duly incorporated in the State of Queensland and having its principal office at Hay Point Road, Hay Point in the said State (“DBCT”) manages the Dalrymple Bay Coal Terminal within the harbour of Hay Point for and on behalf of Harbours Corporation;
- D. Capricorn Coal Management Pty. Ltd., Thiess Dampier Mitsui Coal Pty. Ltd., Oaky Creek Coal Pty. Limited, The Coal Cliff Collieries Pty. Limited, Anaconda Australia Inc., ACI Resources Limited, Bundaberg Sugar Company Limited, Millaquin Sugar Company Pty. Limited, Gibson & Howes Pty. Limited, EDPC (Australia) Pty. Ltd. and J.C.D. Australia Pty. Ltd. (the “DBCT users”) are entitled to use the facilities of the Dalrymple Bay Coal Terminal for the shipping of coal therefrom.
- E. Harbours Corporation within its accounting records in respect of the Harbour Assets Replacement and Improvement Fund, maintains an account (the “Hay Point Tug Harbour Account”) to which has been credited (*inter alia*):—
 - (a) a component of seven cents per tonne being part of the harbour dues levied against the CQCA Companies in

SCHEDULE 1 (continued)

- respect of coal shipped through the terminal at Hay Point between 1 September 1975 and 30 September 1984 inclusive and being part of the harbour dues levied against the DBCT users in respect of coal shipped through the Dalrymple Bay Coal Terminal from 5 October 1983 to 30 September 1984 inclusive;
- (b) a wharfage due of seven cents per tonne levied against the DBCT users in respect of coal shipped by them through the Dalrymple Bay Coal Terminal since 1 October 1984;
 - (c) compound interest on amounts credited to the said account from time to time at a rate calculated by Harbours Corporation as its short term investment rate, applied to the average annual balance standing to the credit of the said account.
- F. Harbours Corporation has entered or intends contemporaneously herewith to enter into an agreement (the “Harbour Development Agreement”) with DBCT and UDCL acting as joint venturers (“DBCT-UDCL”) for the engineering and construction by DBCT-UDCL of a tug harbour and associated Works at Half Tide within the Hay Point Harbour (the “Tug Harbour”) with reimbursement therefor being paid by Harbours Corporation to DBCT-UDCL from the Tug Harbour Account;
- G. It is intended that a benefit from the construction of the Tug Harbour will be derived by the DBCT users, CQCA companies and any other companies shipping coal through either of the terminals referred to in this agreement;
- H. Harbours Corporation requires the DBCT users to continue paying wharfage dues to the Tug Harbour Account on all coal shipped by them through the Dalrymple Bay Coal Terminal with the intention that the CQCA companies will not have to pay any further moneys into the Tug Harbour Account and so that the total wharfage dues paid by the DBCT users into the Tug Harbour Account becomes commensurate with the total amount of moneys which have already been paid into the Tug Harbour Account by the CQCA companies;
- I. Harbours Corporation and DBCT have entered or intend contemporaneously herewith to enter into an agreement (the “Tug Harbour Account—DBCT Agreement”) which together with the

SCHEDULE 1 (continued)

Harbour Development Agreement and this agreement are intended to make provision, amongst other things, for the future raising of amounts to be paid to the Tug Harbour Account for the provision of funds that will be required to be reimbursed to DBCT-UDCL under the provisions of the Harbour Development Agreement; and

- J. The parties to this agreement have agreed to enter into these presents to record with more particularity the arrangements between them.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:—

1. INTERPRETATION

- 1.1** The expressions defined in the Recitals to this agreement shall have the meanings therein respectively assigned to them.
- 1.2** In the interpretation of this agreement, the singular shall include the plural and the plural the singular, reference to any gender shall include every gender, references to a statute shall be constructed as including all statutory provisions consolidating, amending or replacing the statute referred to, and all regulations, rules, by-laws, proclamations, orders and other authorities pursuant thereto, references to persons shall include bodies corporate, governments and government authorities, references to writing include printing, typing and other means of reproduction of words in a visible form, references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms but only to the extent to which such amendments or changes are expressly or impliedly permitted by the terms of this agreement, references to clauses shall unless otherwise indicated refer to clauses of this agreement and headings used herein are for the purpose of reference only and shall not be used in the interpretation thereof.
- 1.3** References in this agreement to moneys held in or available from the Tug Harbour Account shall be deemed to include moneys from time to time invested from the Tug Harbour Account and all interest accrued thereon.

SCHEDULE 1 (continued)

2. PAYMENTS TO AND FROM THE TUG HARBOUR ACCOUNT

- 2.1** Harbours Corporation and the CQCA companies hereby agree that the aggregate amount contributed by the CQCA companies to the Tug Harbour Account as at 30 September 1984, including all interest accrued thereon, is FIFTEEN MILLION THREE HUNDRED AND FORTY SIX THOUSAND EIGHT HUNDRED AND EIGHTY ONE DOLLARS (\$15,346,881).
- 2.2** Harbours Corporation agrees to cause to be imposed on the DBCT users and any other users of the Dalrymple Bay Coal Terminal from the first day of October, 1984 pursuant to the by-laws of the harbour of Hay Point, a wharfage due not exceeding seven cents per tonne on all coal shipped by them through the Dalrymple Bay Coal Terminal and Harbours Corporation agrees that, subject to the provisions of Clause 6 of the Tug Harbour Account—DBCT Agreement, Harbours Corporation shall use its best endeavours to ensure that the wharfage due referred to in this sub-clause shall continue to be levied until the total amount of wharfage dues paid by the DBCT users and any other users of the Dalrymple Bay Coal Terminal shall reach, in aggregate, FIFTEEN MILLION THREE HUNDRED AND FORTY SIX THOUSAND EIGHT HUNDRED AND EIGHTY ONE DOLLARS (\$15,346,881) in September 1984 values as indicated by the price index of materials in building other than house building—Brisbane, as published in Table 1 of the Australian Bureau of Statistics Cat. No. 6407 (September 1984 value 157.1).
- 2.3** Harbours Corporation agrees to cause the whole of the wharfage dues payable pursuant to the provisions of Clause 2.2 of this agreement together with any amount payable by DBCT pursuant to the provisions of Clause 4.1 of the Tug Harbour Account—DBCT Agreement to be paid forthwith without deduction to the Tug Harbour Account.
- 2.4** Harbours Corporation agrees that it will ensure that the CQCA companies shall not be required to pay any wharfage dues or to make any further contribution towards the Tug Harbour Account after 30 September 1984.
- 2.5** Harbours Corporation agrees to maintain separate records of amounts credited to the Tug Harbour Account by the CQCA companies and the DBCT users respectively together with records of all credits and

SCHEDULE 1 (continued)

debits to the Tug Harbour Account (whether by way of interest or otherwise) and to supply copies of such records to UDCL on request therefor.

3. INVESTMENT OF AND EXPENDITURE FROM TUG HARBOUR ACCOUNT

3.1 Harbours Corporation shall not deplete or otherwise pay moneys now or hereafter credited to the Tug Harbour Account except in accordance with the provisions of this agreement and the Harbour Development Agreement and the Tug Harbour Account—DBCT Agreement provided that the Harbours Corporation shall invest surplus moneys in the Tug Harbour Account from time to time at commercial rates of interest and shall credit any interest accruing or which it deems to accrue thereon to the said account.

3.2 Except as provided in Clause 3.1, Harbours Corporation shall apply the funds held from time to time in the Tug Harbour Account only for the purposes hereinafter provided and such funds shall be applied from the Tug Harbour Account in accordance with the following priorities:—

- (a) in reimbursement or providing for reimbursement to DBCT-UDCL for all costs, charges, expenses and liabilities (including contingent liabilities) incurred or likely to be incurred by DBCT-UDCL in or in connection with the performance of the Harbour Development Agreement as provided for in Clause 3 of that Agreement;
- (b) to pay any premium referred to in Clause 6 of this agreement;
- (c) to refund to DBCT any amount paid by DBCT pursuant to the provisions of Clause 4 of the Tug Harbour Account—DBCT Agreement;
- (d) to rectify storm damage to the Tug Harbour;
- (e) to maintain the Tug Harbour;
- (f) to further develop and improve the Tug Harbour.

SCHEDULE 1 (continued)

3.3 In the event that either DBCT or UDCL issue a written notice electing not to proceed with the Harbour Development Agreement (as provided in clause 2.5 of that agreement), then clauses 3.1, 3.2, 4 and 6 of this agreement shall cease to be of any effect as from the date of such written notice.

4. SHORTFALL IN TUG HARBOUR ACCOUNT FOR CONSTRUCTION PURPOSES

4.1 In the event that, notwithstanding that due consultation and procedures to limit the scope of works in accordance with the Harbour Development Agreement have been undertaken by the parties to that agreement, Recoverable Costs incurred by DBCT-UDCL in accordance with the Harbour Development Agreement shall exceed the amount available in the Tug Harbour Account to reimburse DBCT-UDCL therefor and to pay the premium referred to in Clause 6, Harbours Corporation shall use its best endeavours in order to supplement funds in the Hay Point Tug Harbour Account to raise loan funds to the extent of the balance (if any) of capacity of Harbours Corporation's annual borrowing capacity as determined by the Department of the Premier of Queensland, after other capital demands which Harbours Corporation considers to have higher priority have been satisfied. Any such loan funds shall be paid to the Hay Point Tug Harbour Account. In the event that funds available in the Tug Harbour Account are still insufficient to fully reimburse DBCT-UDCL in accordance with the Harbour Development Agreement and to pay the premium referred to in Clause 6, then DBCT shall pay to Harbours Corporation to be credited to the Hay Point Tug Harbour Account such amounts as shall be required to enable Harbours Corporation to meet the whole of the Recoverable Costs of DBCT-UDCL in accordance with the Harbour Development Agreement and to pay the premium referred to in Clause 6.

4.2 In the event that DBCT shall pay any moneys to Harbours Corporation in accordance with the provisions of Clause 4.1 of the Tug Harbour Account—DBCT Agreement, the provisions concerning the refund of such amount paid by DBCT and interest thereon shall be as contained in Clause 4.2 of the Tug Harbour Account—DBCT Agreement.

SCHEDULE 1 (continued)

5. BUDGETS

- 5.1** Not later than 1 September each year Harbours Corporation will make available to DBCT and to UDCL a statement of the receipts to and payments from the Tug Harbour Account during the financial year ending on the preceding 30 June together with a budget forecast prepared by Harbours Corporation in good faith relating to the Tug Harbour Account for the financial year commencing on the preceding 1 July.

6. INSURANCE

- 6.1** If on the date of issue of the Final Certificate in accordance with Clause 13.5 of the Harbour Development Agreement the balance of the Tug Harbour Account is less than two million dollars (\$2,000,000), then Harbours Corporation shall effect a policy of insurance against damage to the Tug Harbour such that the proceeds of such insurance together with the balance in the Tug Harbour Account from time to time would be approximately two million five hundred thousand dollars (\$2,500,000), and Harbours Corporation shall be entitled to debit the Tug Harbour Account with any premiums from time to time payable in relation to such policy of insurance. Any moneys received from or as a result of such insurance shall be paid by Harbours Corporation to the Tug Harbour Account. Such policy shall be cancelled by Harbours Corporation when the balance in the Tug Harbour Account thereafter first reaches two million five hundred thousand dollars (\$2,500,000). If DBCT requests Harbours Corporation to effect a policy pursuant to this clause with a deduction for any claim in an amount not exceeding ONE MILLION DOLLARS (\$1,000,000), Harbours Corporation shall agree to such request but only on the condition that DBCT shall thereafter meet the cost of such deductibles in the event of damage being suffered by the Tug Harbour.

7. CONSULTATION WITH CQCA COMPANIES

- 7.1** Harbours Corporation undertakes to consult with the CQCA companies with respect to any proposal to apply funds from the Tug

SCHEDULE 1 (continued)

Harbour Account to further develop and improve the Tug Harbour beyond the scope of the Harbour Development Agreement.

8. NO TUG CHARGES

8.1 Harbours Corporation shall ensure that no harbour, wharfage, berthing, towage or other dues or any other fees, charges, imposts or taxes are imposed on the CQCA companies or any person or in relation to any events or circumstances, concerning any tug or line boat operated for or on behalf of the CQCA companies or otherwise in connection with the Hay Point terminal. Provided that this clause shall not be interpreted to apply to any lease rental chargeable against any tug operating company in respect of land or premises the property of the Harbours Corporation, occupied by the said Tug Operating Companies and provided further that nothing in this clause shall be interpreted so as to restrict the right of the Harbours Corporation to impose harbour dues in any other respect.

9. VARIATIONS

9.1 If during the term of this agreement Harbours Corporation or the CQCA companies consider that any provision or provisions of this agreement have become inequitable or impracticable due to changed circumstances not envisaged at the date of this agreement, then the parties will, at the request of either of them, confer in good faith with a view to agreeing upon such a variation of this agreement as may be appropriate.

10. NOTICES

10.1 Any notice, request or other correspondence under or in connection with this agreement shall be delivered to the respective addresses of the parties set out below or at any address otherwise notified to the other parties by the relevant party, or transmitted by telex or by registered mail to such address. Any such notice, request or correspondence will be deemed to be received in the case of delivery, on the first business day after delivery, in the case of service by registered mail, seven days after posting and in the case of telex, on

SCHEDULE 1 (continued)

the first business day after the receipt of the recipient's answerback code at the conclusion of transmission:

Name: Harbours Corporation of Queensland

Address: Corner of Turbot & Edward Streets, Brisbane

Telex: AA40760 Attention Assistant Director, Harbours Management

Name: The CQCA Companies, C/- Utah Development Company Limited.

Address: 167 Eagle Street, Brisbane, Queensland

Telex: AA40598 Attention Manager, Operations Services.

11. GOVERNING LAW

11.1 This agreement shall be governed by and interpreted in accordance with the law of the State of Queensland and the parties hereby irrevocably submit themselves to courts of competent jurisdiction of the State of Queensland.

12. APPROVAL

12.1 This agreement is subject to and conditional upon the approval of the Governor-in-Council, which Harbours Corporation undertakes to use its best endeavours to obtain.

13. ALTERATION TO THE TUG HARBOUR ACCOUNT—DBCT AGREEMENT

13.1 Harbours Corporation agrees that it will not agree to any alteration to the Tug Harbour Account—DBCT Agreement without the written agreement of the CQCA companies and that Harbours Corporation will take all necessary steps to ensure compliance by DBCT and the Harbours Corporation of all of the provisions of that agreement and this clause shall remain in full force and effect and shall not merge on the termination of the DBCT—UDCL Joint Venture or on completion of the Tug Harbour.

SCHEDULE 1 (continued)

14. CONTEMPORANEOUS DOCUMENTATION

14.1 This agreement is subject to the contemporaneous execution of the Harbour Development Agreement and the Tug Harbour Account—DBCT Agreement by all parties to those agreements.

15. CAPACITY OF UDCL

15.1 UDCL is the Manager of the Joint Venture under the terms of which the CQCA companies conduct their coal operations. UDCL is the donee of a power of attorney from the CQCA companies (other than UDCL) as donor, and UDCL executes this agreement both on its own behalf and also on behalf of the CQCA companies (other than UDCL) pursuant to its powers as donee of the power of attorney.

16. TERMINATION

16.1 This agreement shall be deemed to terminate at the date that the wharfage dues paid by the DBCT users as contemplated by subclause 2.2 of this agreement totals the equivalent value of \$15,346,881.

IN WITNESS WHEREOF this agreement has been executed on the day and year first hereinbefore written.

THE SEAL of the HARBOURS)
CORPORATION OF QUEENS-)
LAND was hereunto affixed in)
accordance with the provisions of) JOHN P. GOLEBY
the *Harbours Act 1955-1982* in the)
presence of the duly authorised)
officers signing opposite and also)
in the presence of:)

E. J. HARTEN, Witness

THE COMMON SEAL of UTAH)
DEVELOPMENT COMPANY) G. S. McDONALD, Senior Vice

SCHEDULE 1 (continued)

LIMITED was hereto affixed) President and Director,
pursuant to a resolution of the) T. RICHARDSON, Assistant
Board of Directors in the presence) Secretary
of:)

M. FLOWER, J.P., Witness

SCHEDULE 2

section 2

DEED OF NOVATION

TUG HARBOUR ACCOUNT—CQCA AGREEMENT

THIS DEED is made the fifteenth day of July 1986

BETWEEN

THE HARBOURS CORPORATION OF QUEENSLAND, a corporation under the provisions of the "*Harbours Act 1955-1982*" as amended of the State of Queensland (hereinafter referred to as "Harbours Corporation") of the one part

AND

UTAH DEVELOPMENT COMPANY LIMITED, a company incorporated in the State of Queensland, Australia (hereinafter referred to as "UDCL");

MITSUBISHI DEVELOPMENT PTY. LTD., a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Mitsubishi");

AUSTRALIAN MUTUAL PROVIDENT SOCIETY, a corporation incorporated in the State of New South Wales, Australia (hereinafter referred to as "AMP Society");

UMAL CONSOLIDATED LIMITED, a company incorporated in the State of New South Wales, Australia (hereinafter referred to as "UCL");

PANCONTINENTAL MINING LIMITED, a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Pancontinental");

BELL COAL PTY. LTD., a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Bell");

UTAH QUEENSLAND COAL LIMITED, a company incorporated in the State a Nevada, United States of America (hereinafter referred to as "UQCL");

SCHEDULE 2 (continued)

UB MINERALS, INC., a company incorporated in the State of Nevada, United States of America (hereinafter referred to as “UB Minerals”);

BOWEN BASIN MINERALS PROPRIETARY LIMITED, a company incorporated in the State of Louisiana, United States of America (hereinafter referred to as “Bowen Basin Minerals”);

QCT INVESTMENT PTY. LTD., a company incorporated in the State of Queensland, Australia (hereinafter referred to as “QCT Investments”);

AND

QCT MINING PTY. LTD., a company incorporated in the State of Queensland, Australia (hereinafter referred to as “QCT MINING”) of the other part (hereinafter with their and each of their successors and permitted assigns referred to as “the Companies”)

WHEREAS:—

- A. Until 25th March, 1986 Utah Development Company (hereinafter referred to as “UDC”), Mitsubishi, AMP Society, UCL, Pancontinental, Bell, General Electric Minerals, Inc. (hereinafter referred to as “GEM”), UB Minerals, Bowen Basin Minerals, Inc., QCT Investment and QCT Mining were parties to an agreement dated 28th January, 1969 between the State of Queensland, UDC and Mitsubishi and authorized by the *Central Queensland Coal Associates Agreement Act 1968* of the State of Queensland (such agreement, as amended from time to time, being hereinafter referred to as “the CQCA Agreement”).
- B. Harbours Corporation is the Harbour Board for the Hay Point Harbour and, in accordance with the provisions of the *Harbours Act 1955-1982* may exercise the powers of a harbour board in respect of Hay Point Harbour in the State of Queensland.
- C. Harbours Corporation of the one part and UDCL, Mitsubishi, AMP Society, UCL, GEM, Bowen Basin Minerals, Inc., UB Minerals, QCT Investment, QCT Mining, Bell and Pancontinental of the other part are parties to an Agreement dated 25th June, 1985 entitled “Tug Harbour Account—CQCA Agreement” (hereinafter referred to as “the Infrastructure Agreement”) providing for the funding and administration of the Tug Harbour Account maintained by Harbours Corporation.

SCHEDULE 2 (continued)

- D. By way of universal succession GEM, UDC and Bowen Basin Minerals, Inc. respectively have merged into UQCL, UDCL, and Bowen Basin Minerals, with the consequence that the three latter mentioned companies respectively have all the assets and liabilities of the three former mentioned companies respectively.
- E. Until 25th March, 1986 the interests held by the Companies in the operations carried on pursuant to the CQCA Agreement were as follows:—
- | | |
|----------------------------|--------|
| UDCL | 31.00% |
| UCL | 4.00% |
| Mitsubishi | 12.00% |
| AMP Society | 7.75% |
| Pancontinental | 3.00% |
| Bell | 5.00% |
| UQCL | 8.50% |
| UB Minerals | 5.00% |
| Bowen Basin Minerals | 2.00% |
| QCT Investment | 12.00% |
| QCT Mining | 9.75% |
- F. By an agreement between the State of Queensland and the Companies dated 25th March, 1986 and authorised by the *Central Queensland Coal Associates Agreement Amendment Act 1986* the Companies are now parties to the CQCA Agreement.
- G. By a Sale Agreement dated 25th March, 1986 (hereinafter referred to as “the Sale Agreement”) UCL conditionally agreed to transfer a 3.25% interest in the benefits and obligations under the CQCA Agreement and certain other property as at 11 pm Australian Eastern Standard time on Sunday, 23rd March, 1986 (hereinafter referred to as “The Cut-off Point”) to QCT Mining so that the interests held by the Companies in the operations carried on pursuant to the CQCA Agreement would, upon the making of those transfers, be as follows:—

SCHEDULE 2 (continued)

UDCL	31.00%
UCL	0.75%
Mitsubishi	12.00%
AMP Society	7.75%
Pancontinental	3.00%
Bell	5.00%
UQCL	8.50%
UB Minerals	5.00%
Bowen Basin Minerals	2.00%
QCT Investment	12.00%
QCT Mining	13.00%

- H. Completion of the Sale Agreement was effected on 25th March, 1986.
- I. By the Sale Agreement UCL also agreed to assign a 3.25% interest in the rights, benefits, duties, obligations and liabilities of the Companies under the Infrastructure Agreement to QCT Mining and Harbours Corporation has agreed to accept that assignment on the terms and conditions set out in this Deed.

NOW THIS DEED WITNESSES and it is hereby agreed and declared by and between the parties as follows:—

1. DEFINITIONS AND INTERPRETATION

- 1.1** In this Deed, unless the context otherwise requires, the expression “*Private Parties*” shall mean parties to the Infrastructure Agreement at any time other than Harbours Corporation.
- 1.2** In the interpretation of this Deed unless the context otherwise requires the singular includes the plural and vice versa. A reference to a recital or clause is a reference to a Recital or Clause of this Deed.
- 2.** The Companies agree with Harbours Corporation that on and from the Cut-off Point the Companies will be bound by the Infrastructure Agreement as Private Parties, having several liability thereunder in proportion to their respective percentage interests set out in Recital G.

SCHEDULE 2 (continued)

3. Harbours Corporation agrees with the Companies that on and from the Cut-off Point the Companies will have the rights conferred upon the Private Parties by the Infrastructure Agreement in proportion to their respective percentage interests set out in Recital G.
4. The parties to this Deed agree that on and from the Cut-off Point UCL will be released and discharged from all those duties, obligations and liabilities it has under the Infrastructure Agreement to the extent of the 3.25% interest in the Infrastructure Agreement assigned by it to QCT Mining but not otherwise.
5. The parties to this Deed ratify and confirm the provisions of the Infrastructure Agreement as novated and amended herein.
6. This Deed may be executed in separate counterparts by the parties hereto. Upon delivery to UDCL of counterparts executed by all the parties, all the parties hereto will become bound by the provisions of this Deed.
7. This Deed shall be governed and construed by and in accordance with the laws of the State of Queensland and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of competent jurisdiction of that State to hear and determine any disputes arising hereunder.
8. QCT Mining agrees to bear any stamp duty payable on this Deed or on any counterpart.
9. No party hereto shall by virtue of the execution of this Deed or by any of its terms be construed as having been constituted a partner, agent or representative of another party for any purpose whatsoever. The duties, obligations and liabilities of the Private Parties shall in every case be several in the percentages set out in Recital G, and not joint nor joint and several.
10. This Deed is subject to and conditional upon the approval of the Governor-in-Council by Order-in-Council, which Harbours Corporation undertakes to use its best endeavours to obtain.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first hereinbefore written.

SCHEDULE 2 (continued)

THE Seal of THE HARBOURS)
 CORPORATION OF QUEENS-)
 LAND was hereunto affixed in)
 accordance with the provisions of) MARTIN TENNI
 the *Harbours Act 1955-1982* in the)
 presence of the duly authorised)
 officers signing opposite and also)
 in the presence of:)

J. LEECH, Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 UTAH DEVELOPMENT)
 COMPANY LIMITED by its duly) J. F. WRUCK
 appointed Attorney JOHN)
 FREDERICK WRUCK in the)
 presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 MITSUBISHI DEVELOPMENT)
 PTY. LTD. by its duly appointed) J. F. WRUCK
 Attorney JOHN FREDERICK)
 WRUCK in the presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 AUSTRALIAN MUTUAL)
 PROVIDENT SOCIETY by its) J. F. WRUCK
 duly appointed Attorney JOHN)
 FREDERICK WRUCK in the)
 presence of:)

SCHEDULE 2 (continued)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 UMAL CONSOLIDATED)
 LIMITED by its duly appointed) J. F. WRUCK
 Attorney JOHN FREDERICK)
 WRUCK in the presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 PANCONTINENTAL MINING)
 LIMITED by its duly appointed) J. F. WRUCK
 Attorney JOHN FREDERICK)
 WRUCK in the presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 BELL COAL PTY. LTD. by its) J. F. WRUCK
 duly appointed Attorney JOHN)
 FREDERICK WRUCK in the)
 presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 UTAH QUEENSLAND COAL)
 LIMITED by its duly appointed) J. F. WRUCK
 Attorney JOHN FREDERICK)
 WRUCK in the presence of:)

M. FLOWER, J.P., Witness

SCHEDULE 2 (continued)

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 UB MINERALS, INC. by its duly)
 appointed Attorney JOHN) J. F. WRUCK
 FREDERICK WRUCK in the)
 presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 BOWEN BASIN MINERALS) J. F. WRUCK
 PROPRIETARY LIMITED by its)
 duly appointed Attorney JOHN)
 FREDERICK WRUCK in the)
 presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 QCT INVESTMENT PTY. LTD.)
 by its duly appointed Attorney) J. F. WRUCK
 JOHN FREDERICK WRUCK in)
 the presence of:)

M. FLOWER, J.P., Witness

SIGNED SEALED AND)
 DELIVERED for and on behalf of)
 QCT MINING PTY. LTD. by its) J. F. WRUCK
 duly appointed Attorney JOHN)
 FREDERICK WRUCK in the)
 presence of:)

M. FLOWER, J.P., Witness

SCHEDULE 3

section 2

BETWEEN:

THE HARBOURS CORPORATION OF QUEENSLAND

“Harbours Corporation”

AND:

DALRYMPLE BAY COAL TERMINAL PTY. LTD.

“DBCT”

AND:

CAPRICORN COAL MANAGEMENT PTY. LTD.

THIESS DAMPIER MITSUI COAL PTY. LTD.

MOUNT ISA MINES PTY. LIMITED and

THE COAL CLIFF COLLIERIES PTY. LIMITED,

ANACONDA AUSTRALIA INC., ACI RESOURCES LIMITED,

BUNDABERG SUGAR COMPANY LIMITED, MILLAQUIN

SUGAR COMPANY PTY. LIMITED,

GIBSON & HOWES PTY. LIMITED, EDPC (AUSTRALIA) PTY. LTD.

and J.C.D. AUSTRALIA PTY. LTD.

“Users”

TUG HARBOUR ACCOUNT—DBCT AGREEMENT

FEEZ RUTHNING & CO.,

Solicitors & Notaries,

Westpac Building,

260 Queen Street,

BRISBANE. Q. 4000

Telephone: 226-4888

Reference: JNG (3546k)

SCHEDULE 3 (continued)

TUG HARBOUR ACCOUNT—DBCT AGREEMENT

THIS AGREEMENT is made the Twenty-fifth day of June, 1985

BETWEEN

THE HARBOURS CORPORATION OF QUEENSLAND, a corporation under the provisions of the “*Harbours Act 1955-1982*” of the State of Queensland (hereinafter called “Harbours Corporation”) of the First Part

AND

DALRYMPLE BAY COAL TERMINAL PTY. LTD., a company duly incorporated in the State of Queensland and having its principal office at Hay Point Road, Hay Point in the said State (hereinafter called “DBCT”) of the Second Part

AND

CAPRICORN COAL MANAGEMENT PTY. LTD., a company duly incorporated in the State of Queensland and having its principal office at 19th Floor, 444 Queen Street, Brisbane in the said State, THIESS DAMPIER MITSUI COAL PTY. LTD., a company duly incorporated in the State of Queensland and having its principal office at T & G Building, Corner of Queen and Albert Streets, Brisbane in the said State, MOUNT ISA MINES LIMITED, a company duly incorporated in the State of Queensland and having its principal office at 160 Ann Street, Brisbane in the said State, and

THE COAL CLIFF COLLIERIES PTY. LIMITED, ANACONDA AUSTRALIA INC., ACI RESOURCES LIMITED, BUNDABERG SUGAR COMPANY LIMITED, MILLAQUIN SUGAR COMPANY PTY. LIMITED, GIBSON & HOWES PTY. LIMITED, EDPC (AUSTRALIA) PTY. LTD. AND J.C.D. AUSTRALIA PTY. LTD., all companies duly incorporated and having a place of business in the State of Queensland at c/- Pacific Coal Pty. Limited, 17th Floor, AMP Place, 10 Eagle Street, Brisbane

(hereinafter called the “Users”) of the Third Part, and who enter into this Agreement severally by their agent DBCT

WHEREAS:—

SCHEDULE 3 (continued)

- A. Harbours Corporation is the Harbour Board for the Hay Point Harbour and in accordance with the provisions of the *Harbours Act 1955-1982* may exercise the powers of a harbour board in respect of Hay Point Harbour in the State of Queensland.
- B. DBCT manages the Dalrymple Bay Coal Terminal (hereinafter called the “Terminal”) within the Harbour of Hay Point for and on behalf of Harbours Corporation.
- C. The Users are entitled to use of the facilities of the Terminal for the shipping of coal therefrom.
- D. Harbours Corporation within its accounting records in respect of the Harbour Assets Replacement and Improvement Fund maintains an account with the name “Hay Point Tug Harbour Account” (hereinafter referred to as “Hay Point Tug Harbour Account”) to which has been credited (*inter alia*):
 - (a) A component of seven (7) cents per tonne being part of harbour dues levied against companies which have shipped coal through the Hay Point Coal Terminal within Hay Point Harbour pursuant to the *Central Queensland Coal Associates Agreement Act 1968* (hereinafter called “CQCA Companies”) in respect of coal shipped through Hay Point Harbour between 1st September, 1975 and 30th September, 1984 inclusive and being harbour dues levied against the Users in respect of coal shipped through Hay Point Harbour from 5th October, 1983 to 30th September 1984 inclusive;
 - (b) A wharfage due of seven (7) cents per tonne levied against the Users in respect of coal shipped by them through the Terminal since 1st October, 1984;
 - (c) Compound interest on amounts credited to the said account from time to time at a rate calculated by Harbours Corporation as its short term investment rate, applied to the average annual balance standing to the credit of the said account;
- E. Harbours Corporation has entered or intends contemporaneously herewith to enter into an agreement with DBCT and Utah Development Company Limited acting as joint venturers (hereinafter called “DBCT-UDCL”) concerning the construction by DBCT-UDCL

SCHEDULE 3 (continued)

of a tug harbour and all associated works (hereinafter called the “Tug Harbour”) at Half Tide within Hay Point Harbour, with reimbursement therefor being paid by Harbours Corporation to DBCT-UDCL from the Hay Point Tug Harbour Account.

- F. It is intended that (*inter alia*) DBCT, Utah Development Company Limited the Users and the CQCA Companies will derive a benefit from the construction of the Tug Harbour.
- G. Harbours Corporation requires (*inter alia*) the Users to contribute certain amounts to the Hay Point Tug Harbour Account, with the intention that the contributions thereto by the CQCA Companies and by the Users and other users of the Terminal will be commensurate as hereinafter provided.
- H. The parties have entered into these presents to record with more particularity the arrangements between them.

NOW THIS AGREEMENT WITNESSES as follows:—

1. DEFINITIONS AND INTERPRETATION

- 1.1 The expressions defined in the introduction and recitals to this Agreement shall have the meanings therein respectively assigned to them, and the following terms shall have the meanings hereinafter respectively assigned to them:

“**Agreement**” means this agreement as the same may be amended from time to time.

“**Harbour Development Agreement**” means an agreement entered or intended to be contemporaneously herewith entered into by Harbours Corporation with DBCT-UDCL relating to the design and construction of the Tug Harbour.

“**New Users**” shall mean persons other than the Users shipping coal through the Terminal on a regular basis.

- 1.2 In interpretation of this Agreement, the singular shall include the plural and the plural singular, reference to any gender shall include every gender, references to a statute shall be constructed as including all statutory provisions consolidating, amending or replacing the statute referred to and all regulations, rules, by-laws, proclamations,

SCHEDULE 3 (continued)

orders and other authorities pursuant thereto, references to persons shall include bodies corporate governments and government authorities, references to writing include printing typing and other means of reproducing words in a visible form, references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms but only to the extent to which such amendments or changes are expressly or impliedly permitted by the terms of this Agreement, references to clauses shall unless otherwise indicated refer to clauses of this Agreement, and headings used herein are for the purpose of reference only and shall not be used in the interpretation hereof.

1.3 References in this Agreement to moneys held in or available from the Hay Point Tug Harbour Account shall be deemed to include moneys from time to time invested from the Hay Point Tug Harbour Account and all interest accrued thereon.

2. WHARFAGE DUES TO BE IMPOSED AND PAID TO HAY POINT TUG HARBOUR ACCOUNT

2.1 The parties hereby agree that the aggregate amount contributed by the CQCA Companies to the Hay Point Tug Harbour Account as at 30th September, 1984, including all interest accrued thereon is FIFTEEN MILLION THREE HUNDRED AND FORTY-SIX THOUSAND EIGHT HUNDRED AND EIGHTY-ONE DOLLARS (\$15,346,881.00).

2.2 Harbours Corporation agrees that it is its intention not to require any further contributions by the CQCA Companies to the Hay Point Tug Harbour Account after 30th September, 1984.

2.3 Harbours Corporation agrees that by way of the by-laws of the Harbour of Hay Point it will cause to be imposed on all coal shipped through the Terminal by the respective Users and New Users from time to time from the first day of October, 1984 a wharfage due not exceeding seven (7) cents per tonne.

2.4 Harbours Corporation shall cause the whole of the said wharfage dues levied upon Users and New Users to be paid forthwith without deduction to the Hay Point Tug Harbour Account.

SCHEDULE 3 (continued)

- 2.5** Notwithstanding any other provision in this Agreement to the contrary, Harbours Corporation shall forthwith cause the said wharfage dues to be discontinued by reason of the by-laws of the Port of Hay Point or otherwise when the total wharfage dues paid by Users and New Users shall reach, in aggregate, FIFTEEN MILLION THREE HUNDRED AND FORTY-SIX THOUSAND EIGHT HUNDRED AND EIGHTY-ONE DOLLARS (\$15,346,881.00) PROVIDED THAT, for the purposes of this clause, 2.5 and clause 4.3 (but only for such purposes) in calculating the aggregate of wharfage dues paid, wharfage dues paid in each three month period after 30th September, 1984 shall be deemed to be reduced by the relevant percentage in the reduction of the value of a dollar after 30th September, 1984 calculated in accordance with an inflation factor as measured by the price index of materials in building other than house building—Brisbane, as published in Table 1 of the Australian Bureau of Statistics Catalogue No. 6407.
- 2.6** In addition to the wharfage dues to be imposed on New Users as provided in Clause 2.3, Harbours Corporation will also cause to be imposed on each New User within seven (7) days of the date of the first shipment by that New User from the Terminal a lump sum wharfage due in accordance with the following formula:

$$\begin{array}{l} \text{Lump} \\ \text{Sum} \\ \text{Payment} \end{array} = \frac{\text{New User's Annual Committed Tonnage}}{14.55 \text{ million}} \times \begin{array}{l} \text{Current} \\ \text{Value of the} \\ \text{aggregate of} \\ \text{wharfage dues} \\ \text{paid to date of} \\ \text{first shipment} \\ \text{of such New} \\ \text{User} \end{array}$$

and Harbours Corporation shall cause such sum to be forthwith paid to the Hay Point Tug Harbour Account upon receipt.

For the purposes of this Clause, 2.6 (but only for such purposes), the current value of the aggregate of wharfage dues paid shall be calculated in accordance with the following formula:

$$\begin{array}{l} \text{Current Value of the} \\ \text{Aggregate of Wharfage} \\ \text{Dues Paid} \end{array} = \begin{array}{l} \text{Aggregate of Wharfage dues} \\ \text{Paid, as calculated in} \\ \text{accordance with Clause 2.5} \end{array} \times \frac{\text{Price Index}}{157.1}$$

SCHEDULE 3 (continued)

For the purposes of this Clause 2.6, the Price Index to be used in calculating the Current Value of the Aggregate Wharfage Dues Paid, shall be the price index of materials used in building other than house building—Brisbane, as published in Table 1 of the Australian Bureau of Statistics Catalogue No. 6407, for the last day of the three month period ending March 31, June 30, September 30, or December 31 (whichever is the closest), immediately preceding the payment of the lump sum pursuant to this clause, such price index at September 1984 being 157.1.

**3. INVESTMENT OF AND EXPENDITURE FROM HAY POINT
TUG HARBOUR ACCOUNT**

- 3.1** Harbours Corporation shall not deplete or otherwise pay moneys now or hereafter credited to the Hay Point Tug Harbour Account except in accordance with the provisions of this Agreement and the Harbour Development Agreement PROVIDED THAT Harbours Corporation shall invest surplus moneys in the Hay Point Tug Harbour Account from time to time at commercial rates of interest, and shall credit any interest accruing or which it deems to accrue thereon to the said account.
- 3.2** Except as provided in Clause 3.1, Harbours Corporation shall apply the funds held from time to time in the Hay Point Tug Harbour Account only for the purposes hereinafter provided and funds shall be applied from the Hay Point Tug Harbour Account in accordance with the following priorities:
- (a) In reimbursement or providing for reimbursement to DBCT-UDCL for all costs, charges, expenses and liabilities (including contingent liabilities) incurred or likely to be incurred by DBCT-UDCL or Harbours Corporation in or in connection with the performance of the Harbour Development Agreement as provided for in Clause 3 of that agreement;
 - (b) To pay any premium referred to in Clause 7;
 - (c) To recoup to DBCT the amount of any payment by DBCT into the Tug Harbour Account;
 - (d) To rectify storm damage to the Tug Harbour;

SCHEDULE 3 (continued)

- (e) To maintain the Tug Harbour;
- (f) To further develop and improve the Tug Harbour.

4. SHORTFALL IN HAY POINT TUG HARBOUR ACCOUNT FOR CONSTRUCTION PURPOSES

- 4.1** In the event that, notwithstanding that due consultation and procedures to limit the scope of Works in accordance with the Harbour Development Agreement have been undertaken by the parties to that agreement, Recoverable Costs incurred by DBCT-UDCL in accordance with the Harbour Development Agreement shall exceed the amount available in the Hay Point Tug Harbour Account to reimburse DBCT-UDCL therefor and to pay the premium referred to in Clause 7, Harbours Corporation shall use its best endeavours in order to supplement funds in the Hay Point Tug Harbour Account to raise loan funds to the extent of the balance (if any) of capacity of Harbours Corporation's annual borrowing capacity as determined by the Department of the Premier of Queensland, after other capital demands which Harbours Corporation considers to have higher priority have been satisfied. Any such loan funds shall be paid to the Hay Point Tug Harbour Account. In the event that funds available in the Tug Harbour account are still insufficient to fully reimburse DBCT-UDCL in accordance with the Harbour Development Agreement and to pay the premium referred to in Clause 7, then DBCT shall pay to Harbours Corporation to be credited to the Hay Point Tug Harbour Account shall amounts as shall be required to enable Harbours Corporation to meet the whole of the Recoverable Costs of DBCT-UDCL in accordance with the Harbour Development Agreement and to pay the premium referred to in Clause 7.
- 4.2** In the event that DBCT shall pay any amount to Harbours Corporation in accordance with clause 4.1, such amount shall be refunded by Harbours Corporation to DBCT together with interest calculated in the manner hereinafter provided by quarterly instalments on the last days of March, June, September and December in each year after such amount shall have been paid until the same shall have been refunded in full. Each instalment shall be paid from the Hay Point Tug Harbour Account and shall be equal to

SCHEDULE 3 (continued)

the wharfage dues referred to in Clause 2.3 paid during the three months preceding the date of payment (and in the event of the first instalment, the wharfage dues paid from the date of such amount having been paid by DBCT to the date of the first instalment). Each instalment shall be apportioned firstly to interest accrued on the balance of the amount paid by DBCT and remaining unrefunded during the three months preceding the date of payment (and in the case of the first instalment, since the date of payment by DBCT) calculated at a rate equal to the Australian Merchant Banker's Bill rate for ninety days prime commercial bills for the first day of such three month period (as the same is published in the Australian Financial Review), and then in reduction of the payment by DBCT remaining unrefunded. Harbours Corporation hereby charges in favour of DBCT all receipts of harbour dues paid by Users and New Users with the repayment of any payment to Harbours Corporation by DBCT in accordance with clause 4.1 of this Agreement.

- 4.3** Notwithstanding anything to the contrary in this Clause 4, DBCT shall not be required to pay any amount to Harbours Corporation which, together with any other amount already paid pursuant to Clause 4.1 and the total wharfage dues then paid by Users and New Users in accordance with Clause 2.3 would exceed the total wharfage dues to be paid by Users and New Users calculated in accordance with Clause 2.5.
- 4.4** References in this Clause 4, to DBCT refer to DBCT in its own right only, and shall in no event be construed to refer to the Users or DBCT as agent of the Users.

5. BUDGETS

Not later than 1st September in each year Harbour Corporation will make available to DBCT and the Users a statement of the receipts to and payments from the Hay Point Tug Harbour Account during the financial year ending on the preceding 30th June together with a budget forecast prepared by Harbour Corporation in good faith relating to the Hay Point Tug Harbour Account for the financial year commencing on the preceding 1st July.

SCHEDULE 3 (continued)

6. REDUCTION OF WHARFAGE DUES

6.1 For the purposes of this Clause 6, all dollar amounts referred herein shall be taken to be expressed as at 30th September, 1984, and accordingly all references to dollar amounts shall be deemed to be increased thereafter from time to time in accordance with an inflation rate as measured by the price index of materials in building other than house building—Brisbane, as published in Table 1 of the Australian Bureau of Statistics Catalogue No. 6407.

6.2 At any time subsequent to the issue of the Final Certificate pursuant to Clause 13.5 of the Harbour Development Agreement, if any budget forecast provided pursuant to in Clause 5 of this Agreement indicates that the Hay Point Tug Harbour Account shall at any time during a relevant year have a surplus balance exceeding two million five hundred thousand dollars (\$2,500,000) (including interest paid and/or accruing thereto), Harbours Corporation shall cause the wharfage dues levied against Users and New Users in respect of coal shipped through the Terminal by reason of the by laws of the Port of Hay Point to be reduced to a lesser or nominal amount from a date and for a period reasonably considered by Harbours Corporation as appropriate for the maintenance of the balance in the Hay Point Tub Harbour Account at approximately two million five hundred thousand dollars (\$2,500,000.00). If during such period the surplus balance shall fall below two million dollars (\$2,000,000), Harbours Corporation shall cause wharfage dues to be increased to a rate not exceeding seven (7) cents per tonne of coal shipped through the Terminal until such time as the surplus balance maintains a level of approximately two million five hundred thousand dollars (\$2,500,000.00), taking into account projected expenditure in the ensuing twelve month period.

7. INSURANCE

If on the date of issue of the Final Certificate in accordance with Clause 13.5 of the Harbour Development Agreement the balance of the Hay Point Tug Harbour Account is less than two million dollars (\$2,000,000), then Harbours Corporation shall effect a policy of insurance against damage to the Tug Harbour such that the proceeds of such insurance together with the balance in the Hay Point Tug

SCHEDULE 3 (continued)

Harbour Account from time to time would be approximately two million five hundred thousand dollars (\$2,500,000), and Harbours Corporation shall be entitled to debit the Hay Point Tug Harbour Account with any premiums from time to time payable in relation to such policy of insurance. Any moneys received from or as a result of such insurance shall be paid by Harbours Corporation to the Hay Point Tug Harbour Account. Such policy shall be cancelled by Harbours Corporation when the balance in the Hay Point Tug Harbour Account thereafter first reaches two million five hundred thousand dollars (\$2,500,000). DBCT may require Harbours Corporation to effect a policy pursuant to this clause with a deductible for any claim in an amount not exceeding ONE MILLION DOLLARS (\$1,000,000) but if such requirement is made, DBCT shall thereafter meet the cost of such deductibles on demand by Harbours Corporation, in the event of damage being suffered by the Tug Harbour.

8. CONSULTATION WITH DBCT & USERS

Harbours Corporation undertakes to consult with DBCT and the Users with respect to any proposal to apply funds from the Hay Point Tug Harbour Account to further develop and improve the Tug Harbour beyond the scope of the Harbour Development Agreement.

9. NO DBCT TUG CHARGES

Harbours Corporation shall ensure that no harbour, wharfage, berthing, towage or other dues or any other fees, charges, imposts or taxes are imposed on DBCT or any person or in relation to any events or circumstances, concerning any tug or line boat operated for or on behalf of DBCT or otherwise in connection with the Terminal, provided that this clause shall not be interpreted to apply to any lease rental chargeable against any tug operating company in respect of land or buildings the property of Harbours Corporation occupied by the said tug operating company PROVIDED FURTHER THAT nothing in this clause shall be interpreted so as to restrict the right of Harbours Corporation to impose harbour dues in any other respect.

SCHEDULE 3 (continued)

10. VARIATIONS

If during the term of this Agreement Harbours Corporation, any of the Users or DBCT consider that any provision or provisions of this Agreement have become inequitable or impracticable due to be charged circumstances not envisaged at the date of this Agreement, then the parties will, at the request of either of them, confer in good faith with a view to agreeing upon such variation of this Agreement as may be appropriate.

11. NOTICES

Any notice request or other correspondence under or in connection with this Agreement shall be delivered to the respective addresses of the parties set out below or at any address otherwise notified to the other parties by the relevant party, or transmitted by telex or by registered mail to such address. Any such notice, request or correspondence will be deemed to be received in the case of delivery, on the first business day after delivery, in the case of service by registered mail, seven days after posting and in the case of telex, on the first business day after the receipt of the recipient's answerback code at the conclusion of transmission:

Name: Harbours Corporation of Queensland
Address: Corner of Turbot & Edward Streets, Brisbane
Telex: AA40760 Attention Assistant Director, Harbours
Management

Name: Dalrymple Bay Coal Terminal Pty. Ltd.
Address: Hay Point Road, Hay Point, Queensland
Telex: AA46374 Attention Captain Holden

Name: Capricorn Coal Management Pty. Ltd.
Address: 19th Floor, 444 Queen Street, Brisbane
Telex: AA42593 Attention Mr. Green

Name: Thiess Dampier Mitsui Coal Pty. Ltd.
Address: T & G Building, Corner of Queen and Albert Streets,
Brisbane
Telex: AA46417 Attention Mr. Toomey

SCHEDULE 3 (continued)

Name: Mount Isa Mines Limited
Address: 160 Ann Street, Brisbane
Telex: AA40160 Attention Mr. Charlton

Name: The Coal Cliff Collieries Pty. Limited, Anaconda
Australia Inc. ACI Resources Limited, Bundaberg
Sugar Company Limited, Millaquin Sugar Company
Pty. Limited, Gibson & Howes Pty. Limited, EDPC
(Australia) Pty. Ltd. and J.C.D. Australia Pty. Ltd.
Address: C/- Pacific Coal Pty. Limited, 17th Floor, AMP Place,
10 Eagle Street, Brisbane
Telex: AA40813 Attention Mr. Roberts

12. GOVERNING LAW

This agreement shall be governed by and interpreted in accordance with the law of the State of Queensland and the parties hereby irrevocably submit themselves to courts of competent jurisdiction of the State of Queensland.

13. APPROVAL

This agreement is subject to and conditional upon the approval of the Governor in Council, which Harbours Corporation undertakes to use its best endeavours to obtain.

14. TERMINATION

In the event that either DBCT or UDCL issues a written notice electing not to proceed in accordance with Clause 2.6 of the Harbour Development Agreement, Clauses 2, 3, 4, 6 and 7 of this Agreement shall cease to be of effect as from the date of such notice.

15. RATIFICATION

It is acknowledged that DBCT enters into this Agreement both on its own behalf and as a several agent for each of the Users. The agency on behalf of each User is subject to ratification by that User and in the event that any User shall not ratify such agency, DBCT shall be

SCHEDULE 3 (continued)

deemed not to have entered into this Agreement on behalf of the User not ratifying such agency. Notification of ratification of the agency of DBCT for the purposes of this Agreement shall not be required to be given to any other party to this Agreement.

IN WITNESS WHEREOF this Agreement has been executed on the day and year hereinbefore written.

THE SEAL of the HARBOURS)
 CORPORATION OF QUEENS-)
 LAND was hereunto affixed in)
 accordance with the provisions of) JOHN P. GOLEBY.
 the *Harbours Act 1955-1982* in the)
 presence of the duly authorised)
 officers signing opposite and also)
 in the presence of:)

E. J. HARTEN, Witness

THE COMMON SEAL of)
 DALRYMPLE BAY COAL)
 TERMINAL PTY. LTD. was)
 hereunto affixed in accordance with) LEON A. DAVIES, Director
 the articles of association of the) D. E. GREEN, Director.
 company in the presence of the)
 Directors signing opposite also in)
 the presence of:)

JILL HUGHES, Witness

SCHEDULE 4

section 2

BETWEEN:

THE HARBOURS CORPORATION OF QUEENSLAND

“Harbours Corporation”

AND:

DALRYMPLE BAY COAL TERMINAL PTY. LTD.

“DBCT”

AND:

UTAH DEVELOPMENT COMPANY LIMITED

“UDCL”

HAY POINT TUG HARBOUR LEASE AND BERTHING
AGREEMENT

FEEZ RUTHNING & CO.,
Solicitors & Notaries,
Westpac Building,
260 Queen Street,
BRISBANE. Q. 4000
Telephone: 226-4888
Reference: JNG (7547k)

SCHEDULE 4 (continued)

**HAY POINT TUG HARBOUR LEASE AND BERTHING
AGREEMENT**

THIS AGREEMENT is made the Twenty-fifth day of June, 1985

BETWEEN

THE HARBOURS CORPORATION OF QUEENSLAND, a corporation under the provisions of the "*Harbours Act 1955-1982*" of the State of Queensland (hereinafter called "Harbours Corporation") of the First Part

AND

DALRYMPLE BAY COAL TERMINAL PTY. LTD., a company incorporated in the State of Queensland and having its principal office at Hay Point Road, Hay Point in the said State (hereinafter called "DBCT") of the Second Part

AND

UTAH DEVELOPMENT COMPANY LIMITED, a company incorporated in Louisiana, United States of America and having its registered office in Queensland at 167 Eagle Street, Brisbane (hereinafter called "UDCL") of the Other Part

WHEREAS:

- A. Harbours Corporation is the Harbour Board for Hay Point Harbour constituted under the *Harbours Act 1955-1982*, and may exercise the powers and functions of a harbour board in respect of Hay Point Harbour.
- B. DBCT manages the Dalrymple Bay Coal Terminal within Hay Point Harbour for and on behalf of Harbours Corporation and in fulfilling such management accepts responsibility for ensuring that tugs and line-handling launches are available to service vessels calling or berthing at the said Terminal.
- C. UDCL is the manager of the Central Queensland Coal Associates Joint Venture which owns coal loading facilities at Hay Point requiring tugs and line-handling launches to be available to service vessels calling or berthing at the said coal loading facilities.

SCHEDULE 4 (continued)

- D. Harbours Corporation, DBCT and UDCL desire construction of a tug harbour at Half Tide within the limits of Hay Point Harbour to facilitate the berthing from time to time of tugs and line-handling launches servicing the Dalrymple Bay Coal Terminal and the coal loading facilities at Hay Point.
- E. DBCT and UDCL have entered into a joint venture to assist Harbours Corporation to construct the said tug harbour, and Harbours Corporation together with DBCT and UDCL are contemporaneously herewith entering into a Harbour Development Agreement in relation to superintendence of the engineering and construction of the said tug harbour.
- F. It is a condition of DBCT and UDCL entering into the said Harbour Development Agreement that this agreement be entered into by the parties contemporaneously therewith.
- G. Harbours Corporation as the Harbours Board of Hay Point Harbour may pursuant to the *Harbours Act 1955-1982* make by-laws prescribing (*inter alia*) harbour dues upon vessels berthing, mooring or anchoring in the said harbour or at any wharf or jetty the property of Harbours Corporation and may pursuant to Section 136A of the *Harbours Act 1955-1982* with the approval of the Governor-in-Council by Order-in-Council enter into agreement with a person providing for payment to be made to Harbours Corporation in satisfaction of any or all harbour dues of various kinds which, except for such agreement, would be payable to Harbours Corporation pursuant to the provisions of the said Act.
- H. Harbours Corporation may pursuant to Section 65 of the *Harbours Act 1955-1982* lease or permit occupation of (*inter-alia*) wharves.

NOW THIS AGREEMENT WITNESSES as follows:—

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:—

“**Act**” means (subject to Clause 1.2) the “*Harbours Act 1955-1982*”.

“**Agreement**” means this Agreement as the same may be varied in writing from time to time.

SCHEDULE 4 (continued)

“Date of Commencement” means the earliest of the following dates:—

- (i) the date upon which Harbours Corporation informs DBCT and UDCL in writing of its acceptance of the Works as ready for commissioning in accordance with the Harbour Development Agreement;
- (ii) the date upon which the works are deemed to be ready for commissioning pursuant to the provisions of Clause 13 of the Harbour Development Agreement; or
- (iii) the date upon which the Tug Harbour Works are certified by an engineer nominated by Harbours Corporation to be completed so far as to be fit for the reception of vessels;

or any other date agreed by Harbours Corporation, DBCT and UDCL for the purposes hereof.

“Harbour” means the Harbour of Hay Point.

“Harbour Development Agreement” means an agreement entered into contemporaneously herewith by Harbours Corporation with DBCT and UDCL relating to the design and construction of the Tug Harbour.

“Tug Harbour” means the intended Tug Harbour at Half Tide hereinbefore referred to and all associated works.

“Wharf Areas” means all wharves, quays, piers, jetties and like platforms adjacent to and leading from berthing basins and other berthing facilities within the Tug Harbour as outlined in red in the attached plan and all facilities thereon and all berths and other facilities relating to the mooring of vessels thereat.

1.2 In this interpretation of this Agreement, the singular shall include the plural and the plural singular, reference to any gender shall include every gender, references to a statute shall be constructed as including all statutory provisions consolidating amending or replacing the statute referred and all regulations rules by-laws proclamations orders and other authorities pursuant thereto, references to persons shall include bodies corporate, government and government authorities,

SCHEDULE 4 (continued)

references to writing include printing, typing and other means of reproducing words in a visible form, references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms but only to the extent to which such amendments or changes are expressly or impliedly permitted by the terms of this Agreement, references to clauses shall unless otherwise indicated refer to clauses of this Agreement, and headings use herein are for the purposes of reference only and shall not be used in the interpretation hereof.

- 1.3** In the event that the lease granted in this Agreement shall be deemed to become a lease to either DBCT or UDCL as a result of an event referred to in Clause 2.3, all rights and obligations thereafter expressed to arise on the part of DBCT and UDCL by virtue of the provisions of this Agreement shall be deemed to be rights and obligations only of the company continuing as lessee.

2. LEASE

- 2.1** For the consideration aforesaid Harbours Corporation hereby leases to DBCT and UDCL the whole of the Wharf Areas (to the intent that DBCT and UDCL shall for the term of such lease be entitled to berthing facilities for six (6) tugs and six (6) line-handling launches within the Tug Harbour) to be held by DBCT and UDCL for a term commencing on the Date of Commencement and expiring (except as otherwise provided in this Agreement) on the day sixteen (16) years from the date of commencement.
- 2.2** The rental payable by DBCT and UDCL for the lease granted hereunder shall be the sum of One dollar (\$1.00) per annum payable, if demanded in writing by Harbours Corporation, on or before the Date of Commencement and thereafter on or before the 1st day of January in each succeeding year.
- 2.3** In the event that for any reason either:—
- (a) DBCT shall cease to manage the Dalrymple Bay Coal Terminal; or
 - (b) UDCL shall cease to be the manager of the Central Queensland Coal Associates Joint Venture,

SCHEDULE 4 (continued)

then the lease granted hereunder shall thereafter be deemed to be a lease over the whole of the Wharf Areas or any part or parts of the Wharf Area as Harbours Corporation may nominate for the purposes of this Clause 2.3 and as shall be sufficient to facilitate the berthing of three (3) tug boats and three (3) line-handling launches, and such lease shall be deemed to be in favour in either DBCT or UDCL (as the case may be) being the party which continues to manage as aforesaid. In the event that both of the events aforesaid shall have occurred, the lease granted hereunder shall thereupon be deemed to be terminated. Nothing in this Clause 2.3 or in Clause 1.3 shall affect any right, obligation or liability of DBCT and/or UDCL (as the case may be) arising at a time when such company was a lessee by virtue of by* this Agreement.

- 2.4** Nothing in this Agreement shall be construed as constituting a lease of any building constructed on the Wharf Areas, and any such buildings are hereby expressly excluded from the lease hereunder.
- 2.5** Harbours Corporation shall at all times allow DBCT and UDCL and the servants, agents and other persons operating tug boats and line-handling launches by, for, on behalf of or with the authority of DBCT or UDCL full ingress and egress to and from the Tug Harbour and the Wharf Areas.

3. COMPLIANCE WITH ACTS, REGULATIONS, ETC.

- 3.1** DBCT and UDCL shall at the expense of DBCT and UDCL comply with the provisions of all statutes, ordinances, by-laws, regulations and rules for the time being in force affecting the Wharf Areas or any part or parts thereof AND shall forthwith and from time to time if and when required so to do comply with and satisfy all requirements of any Local Health Authority or any other Authority including the Council of the Shire of Sarina with respect to the Wharf Areas or any part or parts thereof or any improvements thereon.
- 3.2** DBCT and UDCL shall comply with the provisions of the Act, the *Queensland Marine Act 1958-1979*, the *Pollution of Waters by Oil*

* *Sic.*

SCHEDULE 4 (continued)

Act 1973, and the Clean Waters Act 1971-82 in relation to the Wharf Areas and the use thereof.

4. ENTRY ON TO WHARF AREAS

- 4.1** DBCT and UDCL shall at all reasonable times permit Harbours Corporation, its officers, servants, agents, employees with workmen and others to enter upon the Wharf Areas or any part or parts thereof for the purpose of viewing the state of repair thereof and repairing the same or for the purpose of ascertaining whether DBCT and UDCL are duly observing performing and fulfilling all and every the covenants terms and conditions on the part of DBCT and UDCL whether positive or negative herein contained or implied on the part of DBCT and UDCL to be performed observed and fulfilled.
- 4.2** DBCT and UDCL shall at all reasonable times permit Harbours Corporation and other relevant authorities having jurisdiction in that regard and their officers, servants, agents, employees with workmen and others to enter upon the Wharf Areas or any part or parts thereof to erect, re-erect, alter, remove, service and maintain whenever required upon the Wharf Areas electricity supply, mains, drainage mains and pipe work and any other services which are reasonably necessary for the purpose of servicing and aiding and for the efficient maintenance and operation of tugs and line-handling launches.
- 4.3** DBCT and UDCL shall at all times permit Harbours Corporation, the Commonwealth and Queensland Governments and their officers, servants, agents, employees with workmen and others free and unrestricted access to from and across the Wharf Areas for the purpose of erecting navigation lights or marks on the Wharf Areas or on any structure thereon and for the purpose of inspecting, maintaining, repairing, altering or removing any navigation light or mark AND DBCT and UDCL shall not in any way interfere with any navigation mark or light erected (whether erected before or after the Date of Commencement) lawfully on the Wharf Areas or any structure thereon.
- 4.4** DBCT and UDCL shall to the satisfaction of Harbours Corporation keep the sight line of any navigation leads which crosses the Wharf Areas clear of obstructions provided however with the prior approval

SCHEDULE 4 (continued)

of Harbours Corporation DBCT and UDCL may make alternative arrangements for relocating the said leads.

5. INDEMNITY

DBCT and UDCL shall respectively for themselves, their successors, permitted assigns, receivers and liquidators from time to time and at all times hereafter during the said term indemnify and keep indemnified and save harmless Harbours Corporation from and against all actions, suits, claims, demands, costs, losses, damages and expenses which may be brought against or made upon Harbours Corporation or which Harbours Corporation may pay, sustain or be put to by reason of any loss of life or injury or damage to any person or property including any property of Harbours Corporation or DBCT or UDCL caused by or arising in any manner whatsoever from fire, explosion, leakage or otherwise howsoever in connection with the use of the Wharf Areas by a tug or line-handling launch operated by, for, on behalf of or with the authority of DBCT or UDCL (as the case may be), except such loss of life or injury or damage to persons or property as may be occasioned by the act or default of Harbours Corporation's servants or agents PROVIDED HOWEVER that Harbours Corporation shall not without giving to DBCT and UDCL (as the case may be) at least thirty days notice in writing of its intention so to do incur any expense of litigation (save and except for the purpose of complying with the exigencies of any process requiring action to be taken by Harbours Corporation within the said period of thirty days) nor make any offer, promise, payment, compromise, settlement or admission of liability in respect of any such actions, claims and demands.

6. HARBOURS CORPORATION NOT LIABLE FOR PERSONAL INJURY

Harbours Corporation shall not be called upon nor be required to pay to DBCT and UDCL nor to any other person, firm, corporation or company any sum or sums of money whether in the form of compensation or otherwise howsoever for or in respect of injury to any person (whether non-fatal or fatal) occurring upon the Wharf Areas or arising from any occurrence upon or in relation to the Wharf

SCHEDULE 4 (continued)

Areas or in respect of the destruction of or damage to the Wharf Areas or to any property upon the Wharf Areas whether the property of DBCT or UDCL or of any other person, firm, corporation or company whatsoever not, as the case may be, caused or brought about by the neglect or default of Harbours Corporation or any officers, servants, employees or authorised agents of Harbours Corporation.

7. TRANSFER OR ASSIGNMENT OF LEASE

Neither DBCT nor UDCL shall transfer or assign its rights under this Agreement or sublet, underlet or part with possession of the Wharf Areas or any part or parts thereof without the approval in writing of the Minister in accordance with Section 65 of the Act PROVIDED THAT Harbours Corporation agrees and hereby covenants that the Minister has agreed to persons from time to time operating tugs and line-handling launches for, on behalf of or with the authority of DBCT or UDCL exercising the rights and privileges of berthing at the Wharf Areas and ingress and egress thereto and therefrom and to and from the Tug Harbour as afforded to DBCT and UDCL hereunder.

8. LEASE COSTS

All costs of and incidental to the preparation, completion, stamping and registration of these presents as well as any other costs, charges or expenses in any way incurred by Harbours Corporation in connection with these presents howsoever arising shall be borne by DBCT and UDCL.

9. DBCT AND UDCL—HOLDING OF WHARF AREAS

DBCT and UDCL duly paying the rent hereby reserved and observing and fulfilling the several covenants and conditions herein contained or implied and on the part of DBCT and UDCL to be observed, performed and fulfilled shall peacefully hold and enjoy the Wharf Areas during the said term without any interruption by Harbours Corporation or any person rightfully claiming under or in trust for Harbours Corporation.

SCHEDULE 4 (continued)

10. MAINTENANCE OF WHARF AREAS

The parties hereby expressly agree that Harbours Corporation shall maintain the Wharf Areas.

11. RENEWAL OF LEASE

Harbours Corporation agrees upon the expiry of the term of the lease granted hereunder to renew the lease granted under this Agreement for a further term of sixteen years upon the terms and conditions herein appearing (including this clause for renewal), but in no case so that the original term and all succeeding terms granted by Harbours Corporation to DBCT and UDCL pursuant to this clause and similar clauses shall exceed in aggregate seventy-five (75) years.

12. NO TUG CHARGES

Harbours Corporation shall not impose or cause or allow to be imposed any harbour, wharfage, berthing, towage or other dues or any other fees, charges, imposts or taxes whatsoever on DBCT, UDCL or any other person or in respect of any events or circumstances in relation to any tug or line-handling launch operated by, for, on behalf of or with the authority of DBCT or UDCL in relation to the Dalrymple Bay Coal Terminal or the coal loading facilities at Hay Point.

13. NOTICES

13.1 All notices, notifications, approvals, consents, agreements, authorisations, and the like (hereinafter called “the communications”) under this Agreement shall be in writing.

13.2 The communications, without prejudice to any other proper mode of service or giving, shall be properly given—

(a) to Harbours Corporation:

(i) if posted by prepaid post by the fastest means (other than express rate) to—

SCHEDULE 4 (continued)

“The Director,
Department of Harbours & Marine,
G.P.O. Box 2195,
BRISBANE. QLD. 4001.”

(ii) if delivered to—

“The Director,
Department of Harbours & Marine,
Level 6,
Cnr Edward and Turbot Streets,
BRISBANE. QLD. 4000.”

or

(iii) if telexed to—

“AA40760
Attention: The Director, Department of Harbours &
Marine*

or to such other address as Harbours Corporation may
from time to time notify the other parties;

(b) to DBCT:

(i) if posted by prepaid post by the fastest means (other
than express rate) to—

“The Managing Director
Dalrymple Bay Coal Terminal Pty Ltd
Hay Point Road
HAY POINT QLD 4740”

(ii) if delivered to—

“The Managing Director
Dalrymple Bay Coal Terminal Pty Ltd
Hay Point Road
HAY POINT QLD 4740”

or

(iii) if telexed to—

* *Sic*

SCHEDULE 4 (continued)

“AA46374

Attention: Captain Holden

or to such other address as DBCT may from time to time notify the other parties.

(c) to UDCL:

(i) if posted by prepaid post by the fastest means (other than express rate) to—

“The General Manager
Utah Development Company Limited
167 Eagle Street
BRISBANE QLD 4000”

(ii) if delivered to—

“General Manager
Utah Development Company Limited
167 Eagle Street
BRISBANE QLD 4000”

or

(iii) if telexed to—

“AA50598
Attention: Mr B. L. Shepherd”

or to such other address as UDCL may from time to time notify the other parties.

13.3 The communications if posted as aforesaid shall be deemed to have been received by Harbours Corporation or by DBCT or UDCL (as the case may be) in the ordinary course of post. In the case of telex, the same shall be deemed to have been received upon receipt of the answer-back code of the recipient at the end of the telex.

14. RELATIONSHIP OF PARTIES

14.1 The obligations and liabilities under this Agreement of DBCT and UDCL respectively at all times whilst the same shall both be lessees pursuant to this Agreement shall be several and in the following proportions:—

SCHEDULE 4 (continued)

Dalrymple Bay Coal Terminal Pty Ltd	50.00%
Utah Development Company Limited	<u>50.00%</u>
	<u>100.00%</u>

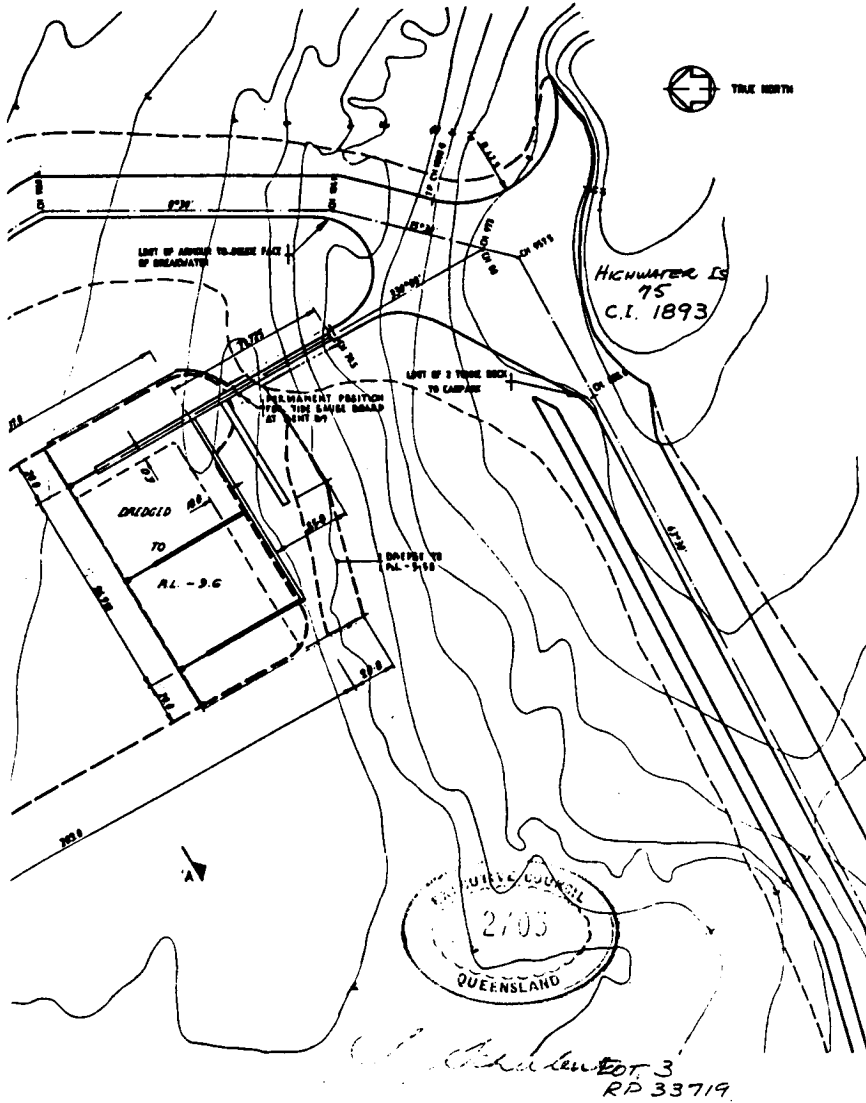
14.2 Utah Development Company Limited has entered into this Agreement in its capacity as Manager of the companies carrying on business at Hay Point under the authority of the *Central Queensland Coal Associates Agreement Act 1968-1984*.

15. SUBJECT TO APPROVAL OF GOVERNOR-IN-COUNCIL

This Agreement is subject to and conditional upon the approval of the Governor-in-Council by Order-in-Council, which approval Harbours Corporation shall use its best endeavours to obtain.

Hay Point Harbour (Ratification of Agreements) Act
1987

SCHEDULE 4 (continued)



BLAIN BREMNER & WILLIAMS PTY. LTD.
 CONSULTING ENGINEERS
 CIVIL, STRUCTURAL, MARINE, WATER QUALITY
 & TERRACE DESIGN, ENGINEERING
 MATERIALS HANDLING & TOWN PLANNING

SIGNED *[Signature]* DATE 5 1 81

**DREDGING
 - SETOUT AND DETAILS**

CHIEF OF SHEET
 DRAWING NUMBER
5514-17
 A □ □ □ □ □

SCHEDULE 4 (continued)

IN WITNESS WHEREOF this agreement was executed on the day and year hereinbefore written.

THE COMMON SEAL of)
 DALRYMPLE BAY COAL) LEON A. DAVIES, Director.
 TERMINAL PTY. LTD. was)
 hereunto affixed in accordance with)
 the Articles of Association of the)
 Company in the presence of the)
 Directors signing opposite and also) D. E. GREEN, Director.
 in the presence of:)

JILL HUGHES, Witness

THE COMMON SEAL of UTAH)
 DEVELOPMENT COMPANY) G. S. McDONALD, President
 LIMITED was hereunto affixed in)and Director.
 accordance with the Articles of)
 Association of the Company in the)
 presence of the President and)
 Director and Assistant Secretary) T. RICHARDSON, Assistant
 signing opposite and also in the) Secretary.
 presence of:)

M. FLOWER, J.P., Witness

THE COMMON SEAL of the)
 HARBOURS CORPORATION)
 OF QUEENSLAND was hereunto)
 affixed in accordance with the)
 provisions of the Harbours Act) JOHN P. GOLEBY.
 1955-1982 in the presence of the)
 Officers signing opposite and also)
 in the presence of:)

E. J. HARTEN, Witness

SCHEDULE 5

section 2

BETWEEN:

THE HARBOURS CORPORATION OF QUEENSLAND

“Harbours Corporation”

AND:

DALRYMPLE BAY COAL TERMINAL PTY LTD and
UTAH DEVELOPMENT COMPANY LIMITED

“DBCT-UDCL”

HARBOUR DEVELOPMENT AGREEMENT

FEEZ RUTHNING & CO.,
Solicitors & Notaries,
Westpac Building,
260 Queen Street,
BRISBANE. Q. 4000
Telephone: 226-4888
Reference: JNG (7943K)

SCHEDULE 5 (continued)

HARBOUR DEVELOPMENT AGREEMENT

THIS AGREEMENT is made the Twenty-fifth day of June, 1985.

BETWEEN:

THE HARBOURS CORPORATION OF QUEENSLAND, a corporation under the provisions of the *Harbours Act 1955-1982* of the State of Queensland (hereinafter called "Harbours Corporation") of the one part

AND

DALRYMPLE BAY COAL TERMINAL PTY LTD, a company duly incorporated in the State of Queensland and having its principal office at Hay Point Road, Hay Point in the said State (hereinafter called "DBCT") and UTAH DEVELOPMENT COMPANY LIMITED, a company duly incorporation in Louisiana in the United States of America and registered as a foreign company in Queensland and having its principal office in Queensland at 167 Eagle Street, Brisbane (hereinafter called "UDCL"), (which parties enter into this Agreement pursuant to an unincorporated joint venture and are hereinafter together called "DBCT-UDCL") of the other part

WHEREAS:

- A. Harbours Corporation is the Harbour Board for Hay Point Harbour, and may exercise the powers and functions of a harbour board in respect of Hay Point Harbour constituted under the *Harbours Acts 1955-1982*, and desires to construct a tug harbour at Half Tide within the limits of Hay Point Harbour.
- B. DBCT, the manager of Dalrymple Bay Coal Terminal at Hay Point and UDCL, the manager of the Central Queensland Coal Associates joint venture which owns coal loading facilities at Hay Point have entered or intend to enter into a joint venture to assist Harbours Corporation to construct the said tug harbour.
- C. Harbours Corporation considers that DBCT-UDCL is competent to superintend the engineering and construction of the said tug harbour and desires to enter into a reimbursable cost contract with DBCT-UDCL upon the terms and conditions hereinafter contained.

SCHEDULE 5 (continued)

NOW in pursuance of the powers granted to Harbours Corporation under the *Harbours Act 1955-1982* and all other powers thereunto enabling, and in consideration of the covenants and agreements on the part of each of the parties hereto as hereinafter contained THE PARTIES AGREE AS FOLLOWS:—

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:—

“**Agreement**” means this agreement as the same may be varied in writing from time to time.

“**Approved Construction Programme**” bears the meaning given to that expression in Clause 9.5.

“**Hay Point**” means Hay Point Harbour and all on-shore lands adjacent thereto and held howsoever under the control of Harbours Corporation.

“**Hay Point Tug Harbour Account**” means an account with that name maintained within the accounting records of Harbours Corporation’s Harbour Assets Replacement and Improvement Fund with a credit balance as at the 30th day of June, 1984 of \$15,613,413.

“**Plans and Specifications**” means the drawings referred to in Clause 2.3 together with plans and specifications relating to the Tug Harbour which are approved by Harbours Corporation including any amendments or modifications either required thereto by Harbours Corporation or approved pursuant to Clause 2.7 and, if applicable, assented to by the Governor-in-Council, pursuant to Clause 6.6.

“**Recoverable Costs**” means all those costs and expenses referred to in Clause 3.2.

“**Tug Harbour**” means the Tug Harbour at Half Tide hereinbefore referred to and all associated works.

“**Tug Harbour Account—DBCT Agreement**” means an agreement entered or intended to be contemporaneously

SCHEDULE 5 (continued)

herewith entered into between DBCT and Harbours Corporation relating (*inter alia*) to funding from time to time of and expenditure from time to time from the Hay Point Tug Harbour Account.

“Tug Harbour Account—CQCA Agreement” means an agreement entered or intended to be contemporaneously herewith entered into between UDCL and Harbours Corporation relating (*inter alia*) to funding from time to time of and expenditure from time to time from the Hay Point Tug Harbour Account.

“Works” means everything which by this Agreement is to be constructed or performed by DBCT-UDCL in or in connection with the construction of the Tug Harbour and contemplated (*inter alia*) in the scope of Works set out in Clause 2.2.

1.2 In interpretation of this Agreement, the singular shall include the plural and the plural singular, reference to any gender shall include every gender, references to a statute shall be constructed as including all statutory provisions consolidating, amending or replacing the statute referred to and all regulations, rules, by-laws, proclamations, orders and other authorities pursuant thereto, references to persons shall include bodies corporate governments and government authorities, references to writing include printing, typing and other means of reproducing words in a visible form, references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms but only to the extent to which such amendments or changes are expressly or impliedly permitted by the terms of this Agreement, references to clauses shall unless otherwise indicated refer to clauses of this Agreement, and headings used herein are for the purposes of reference only and shall not be used in the interpretation hereof.

2. AGREEMENT TO CONSTRUCT TUG HARBOUR AND SCOPE OF WORKS

2.1 In consideration of the agreements on the part of Harbours Corporation set forth in this Agreement and subject to approvals by

SCHEDULE 5 (continued)

Harbours Corporation and the Governor-in-Council as set forth in this Agreement, DBCT-UDCL will engineer and construct the Tug Harbour at Half Tide within Hay Point Harbour and construct and perform the Works in conformity in all respects with the provisions of this Agreement and will perform, fulfil, comply with, submit to, and observe all and singular the provisions conditions stipulations and requirements and all matters and things expressed in this Agreement which are to be performed, fulfilled, complied with, submitted to or observed hereunder by or on the part of DBCT-UDCL.

2.2 Without limiting the generality of the foregoing, the scope of the Works shall include:—

- (a) development of a quarry at Mt Griffiths, approximately 2.8 kilometres from the constructions site and elsewhere as may be considered necessary;
- (b) construction of a haul road from the said Mt Griffiths quarry to the construction site, including three single span bridges to be constructed using precast concrete deck units;
- (c) construction of a causeway connecting the mainland with the High Water Islet at Half Tide;
- (d) construction of a rubble mound breakwater to form the Tug Harbour, of approximately 325,000 cubic metres of rock;
- (e) dredging of an entrance channel and mooring basin for six tugs and ancillary equipment;
- (f) construction of an access jetty and access walkways to berthing facilities for six tugs, including fendering and mooring bollards;
- (g) construction of a floating pontoon and connecting walkways to berthing facilities for four line boats and one pilot launch;
- (h) construction of a suitable building to accommodate service and tug personnel;
- (i) construction and provisions of fuelling facilities;
- (j) construction of a protection barrier safeguarding the administration and control room buildings at the Dalrymple Bay Coal Terminal from fly-rock;

SCHEDULE 5 (continued)

(k) rectification of any damage to or defects in the Works evident during construction or commissioning up to the date of issue of the Final Certificate pursuant to Clause 13.5.

2.3 Some items described in Clause 2.2(a) to (k) inclusive are further described in the following drawings prepared by Blain Bremmer & Williams Pty. Ltd., which are hereby incorporated by reference.

<i>Drawing #</i>	<i>Description</i>
5514-1	General Arrangement
5514-14	Layout of Breakwater and Tug Harbour
5514-18	Tug Berths—General Arrangement

2.4 Without derogating from the provisions of Clause 2.7, DBCT-UDCL shall not vary the scope of the Works or do anything whereby the cost thereof is likely to be increased beyond the cost shown in estimates submitted by DBCT-UDCL to Harbours Corporation under the provisions of Clause 11 of this Agreement, nor shall they make any substantial alterations to designs, plans and specifications previously approved by Harbours Corporation without in all cases the prior approval of Harbours Corporation and if required by the *Harbours Act 1955-1982* also of the Governor-in-Council.

2.5 DBCT-UDCL agree to monitor the progress of the Works and to use their best endeavours to attempt to ensure that, whenever it is practical so to do, the construction and performance of the Works will be carried out in a manner and time frame such that the amounts of moneys that it is anticipated shall remain to be reimbursed to DBCT-UDCL under Clause 3.2 at any time will not exceed the amounts of money anticipated to be available at the relevant time from the Hay Point Tug Harbour Account without resort to any payment by DBCT to Harbours Corporation pursuant to the Tug Harbour Account—DBCT Agreement.

2.6 If, upon receipt of tenders for the Works, either DBCT or UDCL considers that the cost of the Works may exceed the funds likely to be available from the Hay Point Tug Harbour Account to meet such costs (without resort to any payment by DBCT pursuant to the Tug Harbour Account—DBCT Agreement) then that party may by notice in

SCHEDULE 5 (continued)

writing to the other parties elect not to proceed with this Agreement, and thereafter, with the exception of Clause 17 of this Agreement which shall remain of full force and effect and subject to payment by Harbours Corporation of all Recoverable Costs incurred prior to the date of such notice by DBCT and /or UDCL, this Agreement shall be deemed to be terminated and the parties shall have no further rights against or liabilities to each other hereunder.

- 2.7** If DBCT-UDCL upon receipt of tenders (if applicable) or at any time consider that the cost of the Works yet to be completed will or may reasonably be expected to exceed the amount available from the Hay Point Tug Harbour Account to meet such costs, then DBCT-UDCL may notify Harbour Corporations accordingly and recommend a manner in which the scope of the Works should be varied to ensure so far as is practicable that anticipated Recoverable Costs shall not exceed the amount expected to be available from the Hay Point Tug Harbour Account without resort to any payment by DBCT in accordance with the provisions of the Tug Harbour Account—DBCT Agreement. Harbours Corporation shall not unreasonably refuse to approve a variation recommended accordingly. Upon Harbours Corporation's approving any recommendation of DBCT-UDCL as aforesaid, the scope of the Works shall (subject to any necessary consent of the Governor-in-Council pursuant to Clause 6.6, which the parties undertake to endeavour to procure) thereupon be varied accordingly. Harbours Corporation shall in no event require DBCT-UDCL to expend moneys or to incur liabilities pursuant hereto which in aggregate exceed the total amount available from the Hay Point Tug Harbour Account (including payments by DBCT pursuant to the Tug Harbour Account—DBCT Agreement) to meet the same.
- 2.8** All services performed and matters and things done and expenditure incurred prior to the date of this Agreement by DBCT-UDCL in connection with the Works and in conformity with the provisions and intent of this Agreement shall be deemed to have been performed, done and incurred under this Agreement.

3. RECOVERABLE COSTS

- 3.1** In consideration of the agreements on the part of DBCT-UDCL in this Agreement set forth, Harbours Corporation will make payments to

SCHEDULE 5 (continued)

DBCT-UDCL in accordance with the provisions of this Agreement and will perform, fulfil, comply with, submit to and observe all and singular the provisions conditions stipulations and requirements and all matters and things expressed or shown in or reasonably to be inferred from the Agreement and which are to be performed, fulfilled, complied with, submitted to or observed by or on the part of Harbours Corporation.

3.2 Harbours Corporation shall reimburse DBCT-UDCL from the Hay Point Tug Harbour Account for all costs charges expenses and liabilities incurred by DBCT-UDCL in or in connection with the performance of this Agreement including but not limited to:

- (i) The actual costs and expenses incurred by DBCT-UDCL in respect of outside consultants engaged during or prior to the commencement of this Agreement, provided that Harbours Corporation has approved the engagement of such consultants (which consent shall not unreasonably be withheld).
- (ii) The cost of all equipment, materials and supplies used or consumed in the performance of the Works or which are to be incorporated in the Works, including the cost of expediting, transportation, freight, storage and handling thereof less recoveries from disposal of equipment and materials.
- (iii) Costs of reproduction of plans, specifications, reports and other data.
- (iv) Postage, telegraph, telephone, office supplies and other miscellaneous costs and expenses incurred in connection with the Works.
- (v) The cost of acquisition of construction equipment and tools, whether purchased, leased or hired, including all costs related thereto such as transportation and storage, operation and maintenance of such equipment and tools.
- (vi) All amounts paid or payable to contractors, sub-contractors or others pursuant to or in connection with contracts, sub-contracts relating to the Works and all other costs, expenses and liabilities associated with or incurred in

SCHEDULE 5 (continued)

connection with or as a result of contracts, sub-contracts or the activities of the contractors, sub-contractors and other outside services and facilities associated with the Works.

- (vii) All taxes, assessments, levies, imposts, duties, excises and licenses, except taxes levied directly on or measured by net income of the parties comprising the DBCT-UDCL Joint Venture.
- (viii) The cost of premiums and other costs of maintaining insurance effected by DBCT-UDCL pursuant to this Agreement or otherwise in connection with the performance of the Works.
- (ix) Insurance deductibles incurred by DBCT-UDCL in connection with the performance of the Works.
- (x) Any and all other costs, expenses and liabilities incidental to and reasonably necessary for the performance of the Works or the obligations under this Agreement on the part of DBCT-UDCL including the cost of preparing, calling and considering tenders (if applicable) and the cost of the Project Director and any personnel assisting him in superintending the Works.
- (xi) Any travel, accommodation and associated expenses of the Project Director and DBCT-UDCL or the Project Director's personnel or agents in relation to superintending the Works.
- (xii) All costs and expenses of establishing, manning and operating a DBCT-UDCL site office.
- (xiii) All other costs expenses and liabilities arising howsoever in connection with or as a result of the Works.

3.3 If despite a variation or variations in the scope of the Works in accordance with Clause 2.7 or for any other reason the cost of the Works and other the Reimbursable Costs exceeds the amount of funds available from Hay Point Tug Harbour Account and such other sources as may be available to Harbours Corporation in accordance with the Tug Harbour Account—DBCT Agreement, and DBCT-UDCL elect to proceed with the Works then the shortfall will be lent by DBCT to Harbours Corporation in accordance with the terms of Tug Harbour Account—DBCT Agreement.

SCHEDULE 5 (continued)

3.4 Harbours Corporation shall not deplete or otherwise pay moneys now or hereafter credited to the Hay Point Tug Harbour Account except in accordance with the provisions of this Agreement, the Tug Harbour Account—CQCA Agreement and the Tug Harbour Account—DBCT Agreement PROVIDED THAT Harbours Corporation shall invest surplus moneys in the Hay Point Tug Harbour Account from time to time at commercial rates of interest, and shall credit any interest accruing or which it deems to accrue thereon to the said account AND PROVIDED FURTHER THAT Harbours Corporation shall be entitled to reimburse from the Tug Harbour Account all reasonable expenses incurred by it incidental to this Agreement.

4. APPOINTMENT OF REPRESENTATIVES

4.1 DBCT-UDCL and Harbours Corporation shall forthwith upon execution of this Agreement each appoint for the purposes of this Agreement a senior representative, to be known as “Project Director” and “Senior Harbours Corporation Representative” respectively, and the parties hereto shall thereupon give to the other written notice of such appointment.

4.2 The Senior Harbours Corporation Representative shall be the person for the time being appointed to the position of Assistant Director, Harbours Management, and shall have responsibility for the administration and co-ordination of this Agreement on behalf of Harbours Corporation.

4.3 The Project Director shall have responsibility for the administration and co-ordination of this Agreement on behalf of DBCT-UDCL in accordance with the terms of the joint venture hereinbefore recited.

4.4 Subject to the provisions hereof, the Senior Harbours Corporation Representative and the Project Director shall act on behalf of Harbours Corporation and DBCT-UDCL respectively in all matters pertaining to this Agreement and the respective rights and duties of Harbours Corporation and DBCT-UDCL hereunder, and shall be the prime contacts in any liaison between Harbours Corporation and DBCT-UDCL.

SCHEDULE 5 (continued)

5. PERMITS ETC. TO BE FURNISHED BY THE HARBOURS CORPORATION

- 5.1** Unless the parties shall otherwise agree, Harbours Corporation shall procure as may be necessary for DBCT-UDCL to perform the Works and to meet the Approved Construction Programme, all concessions, approvals, permits, licences, road openings, leases, easements and rights of way which may be required in connection with and necessary for access to, construction of, quarrying pursuant to, transport in relation to, completion of and commissioning of the Works, including any and all licences and permits for water crossings, railway, highway and public utility crossings and quarrying from Mt Griffiths.
- 5.2** Harbours Corporation shall assist DBCT-UDCL to effect a re-alignment of the Hay Point Road to facilitate a road directly from the quarry aforesaid to Half Tide.

6. DESIGN AND ENGINEERING

- 6.1** DBCT-UDCL, either themselves or through the services of consultants and others selected by them and approved by Harbours Corporation, shall prepare and submit to Harbours Corporation all designs, general engineering plans, layout and general arrangement drawings, quantity estimates, and general specifications for the Works and also detailed construction plans and drawings and specifications to the extent required for the planning, execution and completion of the Works.
- 6.2** On receipt of the same, Harbours Corporation shall without delay examine the said designs, plans, drawings, estimates and specifications (all herein called “plans and specifications”) submitted to it and (subject to the provisions of Clause 2.7, if applicable) in respect of each shall either:—
- (a) reject such plan or specifications if it considers the same unsatisfactory; or
 - (b) approve such plan or specifications; or

SCHEDULE 5 (continued)

- (c) approve such plan or specifications subject to such amendments and modifications as it, after consultation with DBCT-UDCL, may consider advisable.
- 6.3** Harbours Corporation shall not reject any plans or specifications without first consulting with DBCT-UDCL and informing DBCT-UDCL of the reason for the intended rejection. Plans and specifications so rejected shall be prepared again by the DBCT-UDCL and shall be re-submitted to Harbours Corporation for approval.
- 6.4** DBCT-UDCL shall amend and modify any plans and specifications in the manner directed by Harbours Corporation and shall re-submit them with those amendments and modifications to Harbours Corporation for approval.
- 6.5** DBCT-UDCL shall not implement or procure the implementation of any plans and specifications unless those plans and specifications have first been approved by Harbours Corporation.
- 6.6** Without limiting the generality of the foregoing, DBCT-UDCL shall prepare or cause to be prepared the plans required by subsection (3) of Section 86 of *“The Harbours Acts 1955-1982”* and shall submit them to Harbours Corporation for approval. On those plans, amended or modified as required by Harbours Corporation, being approved by Harbours Corporation, they shall be lodged in duplicate by Harbours Corporation with The Marine Board of Queensland, and Harbours Corporation shall use its best endeavours to have the plans so deposited approved by the Governor in Council at no cost to DBCT-UDCL. The plans so approved by the Governor-in-Council shall not be materially altered or extended without the further approval of the Governor in Council and the Works shall be carried out substantially in accordance with those plans with such alterations and extensions approved as aforesaid.

7. DOCUMENTATION

DBCT-UDCL, in consultation with Harbours Corporation, shall prepare contract and any appropriate tender documents relating to the contracting or subcontracting of the Works, including conditions of tendering (if applicable) and conditions of contract, and if requested

SCHEDULE 5 (continued)

by Harbours Corporation, shall incorporate therein all matters and things reasonably required by Harbours Corporation in order to conform with such of Harbours Corporation's usual procedures as Harbours Corporation considers necessary or expedient.

8. PURCHASING

8.1 Subject to the following provisions of this clause DBCT-UDCL shall purchase or arrange for the purchase or supply of such plant, machinery, equipment, goods and services for incorporation in the Works or use in connection with the Works as contractors or sub-contractors have not agreed to supply.

8.2 DBCT-UDCL from time to time shall prepare and submit to Harbours Corporation for approval (which approval shall not be unreasonably withheld) lists of items of plant, machinery, equipment, goods and services (other than those referred to in Clause 8.3), the estimated cost of and suitable suppliers for each item. Harbours Corporation shall thereafter without delay notify DBCT-UDCL:—

- (a) of which items it approves the purchase or supply;
- (b) of the items for which it desires tenders to be called;
- (c) any suggested suppliers of whom it disapproves; and
- (d) other suppliers (if any) whom it considers may be suitable and of whom it approves.

DBCT-UDCL shall not purchase any item or order any services not approved by Harbours Corporation and shall not purchase an item or order services from a supplier of whom Harbours Corporation has notified its disapproval in relation to that item.

8.3 Day to day supplies and goods or services of a minor nature (viz not exceeding \$20,000 in any instance) may be supplied or purchased by DBCT-UDCL without consultation with or approval of Harbours Corporation.

9. CONTRACTING

9.1 DBCT-UDCL shall enter into such contracts and subcontract as it shall consider appropriate to effect the Works, and, if Harbours

SCHEDULE 5 (continued)

Corporation so requires, tenders shall be called on a competitive basis for the construction and performance of the Works and for those items in respect of which Harbours Corporation notifies DBCT-UDCL tenders shall be called pursuant to Clause 8.2 of this Agreement.

- 9.2** Tenders, if so required, shall be called and contracts entered into by DBCT-UDCL in the name of DBCT-UDCL as principal. The method and procedure for calling tenders (if applicable) and the conditions of tendering and contract shall be generally in accordance with those normally used by Harbours Corporation from time to time, unless otherwise agreed between the parties hereto.
- 9.3** DBCT-UDCL shall examine all tenders submitted, shall report thereon to Harbours Corporation and shall recommend to whom contracts and sub-contracts should be awarded.
- 9.4** If Harbours Corporation approves the recommendation of DBCT-UDCL as to the acceptance of a tender, then DBCT-UDCL shall accept such tender and perform any further acts or sign such documents as may be necessary to enter into a contract pursuant to the acceptance of such tender.
- 9.5** The program of construction resulting from the acceptance of tenders and letting of contracts (as the same may be varied from time to time) is herein called the “Approved Construction Programme”.

10. SURVEYS

- 10.1** DBCT-UDCL shall perform or ensure the performance whether pursuant to contracts made with contractors or otherwise of all necessary surveying, including the establishment of grade elevations, bench marks, locations, and other survey controls required for the laying out and construction and performance of the Works.

11. SCHEDULES, ESTIMATES AND REPORTS

DBCT-UDCL shall prepare and submit to Harbours Corporation:—

- (a) forthwith upon execution of this Agreement an estimate of the cost of the Works and of each category of the Works, and from time to time as circumstances warrant or as Harbours

SCHEDULE 5 (continued)

Corporation may require, revised estimates of the cost of any category of Works;

- (b) forthwith upon execution of this Agreement a construction schedule showing proposed commencement and completion dates of the construction of each category of the Works;
- (c) estimates of monthly cash requirements and revised estimates thereof at such times, for such periods and in such detail as may reasonably be required by Harbours Corporation;
- (d) not later than the fifteenth day of each month after the commencement of construction or performance of the Works a report on the progress of the Works;
- (e) on completion (except for work to be performed by others under provisions relating to maintenance and guarantee after practical completion) of the Works a certificate that the Works have been so completed; and
- (f) after final completion of the Works a complete description thereof and report thereon.

12. SUPERVISION AND INSPECTION

Subject to approval and direction by Harbours Corporation as provided for in this Agreement, DBCT-UDCL shall either directly or by any other approved arrangement:—

- (a) plan and supervise a program for the construction and performance of the Works;
- (b) supervise and administer the construction and performance of the Works and regularly inspect work in progress;
- (c) supervise and control the handling, receiving, warehousing and despatching of goods and materials as may be requisite;
- (d) examine and approve (or approve subject to amendments) or reject as DBCT-UDCL may deem appropriate contractors' and sub-contractors' construction details and drawings and drawings submitted by suppliers of plant, machinery and equipment;

SCHEDULE 5 (continued)

- (e) from time to time carry out such tests of parts of the Works as may be required in accordance with good engineering practice;
- (f) co-ordinate the activities of contractors, sub-contractors and suppliers at the places where the Works are being constructed and performed;
- (g) examine and check accounts, certificates, reports, complaints and communications by contractors, sub-contractors and suppliers;
- (h) perform all field engineering and general field and job site services reasonably required in connection with the supervision and management of the construction and performance of the Works.

13. COMPLETION AND COMMISSIONING

13.1 When the Works have been completed in accordance with the Plans and Specifications (except for minor omissions or variations), DBCT-UDCL shall so advise Harbours Corporation.

Harbours Corporation shall within one month of such notification, either notify DBCT-UDCL in writing of its acceptance of the Works ready for commissioning as of the date in DBCT-UDCL's notice, or submit to DBCT-UDCL a detailed list of remedial work which Harbours Corporation deems necessary before the Works conform with the Plans and Specifications and are deemed to be ready for commissioning.

13.2 If Harbours Corporation fails to give either of the notices within one month, the Works shall be deemed to be ready for commissioning as of the date in DBCT-UDCL's notice. If Harbours Corporation submits such list of remedial work being within the Works, DBCT-UDCL shall promptly direct contractors, sub-contractors and suppliers to perform such work and the procedure outlined above shall be repeated until Harbours Corporation accepts the Works as ready for commissioning or fails to notify remedial work PROVIDED THAT Harbours Corporation shall not be entitled in any subsequent notice to require the performance of any works other than those which shall have been already required in the immediately preceding notice,

SCHEDULE 5 (continued)

but which shall not have been performed pursuant to that previous notice.

13.3 As from the date of Harbours Corporation's acceptance of the Works as ready for commissioning, Harbours Corporation shall, subject to the obligations of any contractor or sub-contractor in relation to the same, perform all maintenance of the Works, furnishing such personnel, materials and tools as may be required for such purpose. Until Harbours Corporation's acceptance, no part of the Works shall be used except for testing, or other construction purposes.

13.4 After the works are ready for commissioning, DBCT-UDCL personnel shall commission the Works.

13.5 At the expiration of six months after the date upon which:—

- (i) Harbours Corporation informs DBCT-UDCL in writing of its acceptance of the Works ready for commissioning; or
- (ii) the Works are deemed to be ready for commissioning,

(whichever is the earlier) Harbours Corporation shall issue to DBCT-UDCL a Final Certificate. The Final Certificate shall constitute conclusive evidence for all purposes and in any proceedings whatsoever between Harbours Corporation and DBCT-UDCL, that DBCT-UDCL have satisfactorily executed or complied with each and every one of the obligations assumed by DBCT-UDCL under this Agreement.

14. DISPUTES

14.1 DBCT-UDCL shall report immediately to Harbours Corporation any major disputes or disagreements with contractors, sub-contractors or suppliers giving brief details of the substance thereof.

14.2 DBCT-UDCL shall conduct all negotiations with contractors, sub-contractors or suppliers with a view to settling disputes or disagreements and shall keep Harbours Corporation reasonably informed of the progress of negotiations and shall notify Harbours Corporation of the proposed terms of settlement of each dispute or disagreement.

SCHEDULE 5 (continued)

15. ACCOUNTING AND REPORTING

- 15.1** Prior to commencement of the construction of works, DBCT-UDCL and Harbours Corporation shall create suitable accounting procedures and systems and codes of accounts in connection with the accounting matters specified in this clause 15.
- 15.2** DBCT-UDCL shall perform such accounting services as may be requisite to administer and control contracts with contractors, sub-contractors and suppliers. DBCT-UDCL shall also keep detailed accounts of the cost of its services and the services of the Project Director and his staff under this Agreement and of all payments made by it which are Recoverable Costs.
- 15.3** DBCT-UDCL shall keep appropriate records and accounts in respect of the performance of the Works. DBCT-UDCL shall allow Harbours Corporation access at all reasonable times to the said accounts and records.
- 15.4** DBCT-UDCL may submit statements to Harbours Corporation not more frequently than monthly. Each such statement shall contain:—
- (a) an itemised statement of all Recoverable Costs incurred by DBCT-UDCL since the previous statement (or in the case of the first statement, a statement of all Recoverable Costs incurred prior to the date of such statement);
 - (b) if applicable, a statement of the amount of any payments paid by Harbours Corporation to DBCT-UDCL on account of anticipated Recoverable Costs pursuant to the immediately preceding statement;
 - (c) if applicable, any credits for amounts paid by Harbours Corporation to DBCT-UDCL pursuant to statements prior to the immediately preceding statement and unexpended, summarised according to the systems and codes agreed to pursuant to Clause 15.1;
 - (d) an itemised statement of the Recoverable Costs estimated by DBCT-UDCL as likely to be incurred by them in the period of one (1) month commencing on the date of the statement;

SCHEDULE 5 (continued)

- (e) a request for payment of the aggregate of the amounts specified in (a) and (d) less the aggregate of the amounts specified in (b) and (c).

15.5 Harbours Corporation shall pay to DBCT-UDCL the amount requested in each statement pursuant to Clause 15.4(e) within seven (7) days after receipt of the statement referred to in Clause 15.4. If payment is not made within such time, the unpaid balance shall bear interest until payment at a rate equal to the Australian Merchant Bankers' Bill Rate for 90 day prime commercial bills for the last day of the month preceding the month in which the payment fell due, as the same is published in the Australian Financial Review, and such interest shall be receivable by DBCT-UDCL on their own account severally and in equal shares and shall be deemed not to constitute amounts paid or advanced by Harbours Corporation to meet Recoverable Costs.

15.6 DBCT-UDCL shall cause an annual audit of the accounts kept by it pursuant to this Agreement to be made by a qualified auditor. In addition, an audit of such accounts shall be made if this Agreement is terminated for any reason. The cost of performing such audit will be a Recoverable Cost.

15.7 On completion of the Works DBCT-UDCL in consultation with Harbours Corporation shall prepare and provide to Harbours Corporation a statement showing the cost of the Works.

15.8 On completion of the Works DBCT-UDCL shall provide Harbours Corporation with an assets register in a form and containing the information required by Harbours Corporation in respect of the Works.

16. INSURANCE

16.1 From the date of commencement of this Agreement (or as soon thereafter as reasonably practicable) and continuing until the issue of the Final Certificate in accordance with Clause 13.5, DBCT-UDCL shall maintain insurance policies (*inter alia*) as follows:—

- (a) Workers' Compensation insurance for its employees in accordance with the statutory requirements of the State of Queensland, together with employers' liability insurance

SCHEDULE 5 (continued)

providing cover in an unlimited sum in respect of employer's common law liability;

- (b) Comprehensive general liability insurance in respect of bodily injury and property damage liability, including automobile (owned, non-owned or hired) and contractual liabilities. Such insurance shall be in a combined single limit of FIVE MILLION DOLLARS (\$5,000,000) for any one occurrence.
- (c) Statutory third party motor vehicle insurance in accordance with the requirements of the State of Queensland covering motor vehicles utilised by DBCT-UDCL in connection with the completion of the work.
- (d) Professional indemnity insurance;
- (e) "All physical loss" builder's risk insurance protecting the respective interests of DBCT-UDCL and Harbours Corporation and all contractors and sub-contractors and covering such parties in respect of physical loss or damage to the Works, temporary works and construction, or plant, materials, machinery and equipment, or supplies that are to be incorporated in the Works during fabrication away from the site, whilst in transit to the site, during storage on site; during erection and testing, and until issue of the Final Certificate in accordance with Clause 13.5. This insurance shall be maintained to cover the replacement value of the insured property referred to above.

16.2 The insurance required to be maintained by DBCT-UDCL pursuant to Clause 16.1 hereof shall be maintained with insurers acceptable to Harbours Corporation and the terms of coverage shall be evidenced by certificates furnished to Harbours Corporation. Such certificates shall provide that 30 days written notice shall be given to DBCT-UDCL and Harbours Corporation prior to cancellation of any policy.

17. LIABILITY AND INDEMNIFICATION

17.1 Harbours Corporation shall indemnify and hold DBCT-UDCL harmless from all actions suits claims costs charges expenses

SCHEDULE 5 (continued)

demands and other liabilities whatsoever which DBCT-UDCL may suffer, made by any person in respect of or in connection with any personal injury or death and/or damage to property and/or consequential loss and/or pecuniary loss and all other losses, damages and liabilities whatsoever to which DBCT-UDCL may become liable arising out of or in any way connected with the implementation of this Agreement except to the extent that such actions suits claims costs charges expenses demands and other liabilities arise out of any negligence on the part of DBCT-UDCL or any of its employees.

17.2 Harbours Corporation hereby indemnifies and shall keep indemnified DBCT-UDCL and its servants and agents in respect of any thing performed, done or left undone by DBCT-UDCL or its servants or agents in good faith and without negligence, from and against all actions suits liabilities or other proceedings which may be brought by Harbours Corporation against DBCT-UDCL or either of them for damages loss or liability suffered by Harbours Corporation (including, without limitation, liability for loss of use or profits or general business interruption) as a result of or in connection with the Works.

18. NOTICES

18.1 All notices, notifications, reports, statements, certificates, approvals, appointments, consents, agreements, authorisations, and the like (hereinafter called “the communications”) under this Agreement shall be in writing.

18.2 The communications, without prejudice to any other proper mode of service or giving, shall be properly given:—

(a) to Harbours Corporation:

(i) if posted by prepaid post by the fastest means (other than express rate) to—

“The Director,
Department of Harbours & Marine,
G.P.O. Box 2195,
BRISBANE. QLD. 4001.”

(ii) if delivered to—

SCHEDULE 5 (continued)

“The Director,
Department of Harbours & Marine,
Level 6,
Cnr Edward and Turbot Streets,
BRISBANE. QLD. 4000.”

or

(iii) if telexed to—

“AA40706
Attention: The Director, Department of Harbours &
Marine

or to such other address as Harbours Corporation may
from time to time notify to DBCT-UDCL;

(b) to DBCT-UDCL:

(i) if posted by prepaid post by the fastest means (other
than express rate) to—

“Project Director,
DBCT-UDCL Joint Venture,
C/- Thiess Dampier Mitsui Coal Pty Ltd,
T&G Building,
Cnr Queen and Albert Streets,
BRISBANE. QLD. 4000.”

(ii) if delivered to—

“Project Director,
DBCT-UDCL Joint Venture,
C/- Thiess Dampier Mitsui Coal Pty Ltd,
Level 22,
T&G Building,
Cnr Queen and Albert Streets,
BRISBANE. QLD. 4000.”

or

(iii) if telexed to—

“AA 40706
Attention: Mr J. Toomey

SCHEDULE 5 (continued)

or to such other address as DBCT-UDCL may from time to time notify Harbours Corporation.

18.3 The communications if posted as aforesaid shall be deemed to have been received by Harbours Corporation or by DBCT-UDCL (as the case may be) in the ordinary course of post. In the case of telex, the same shall be deemed to have been received upon receipt of the Answer-back code of the recipient at the end of the telex.

19. RELATIONSHIP OF PARTIES

19.1 The rights obligations and liabilities under this Agreement of the parties comprising the DBCT-UDCL Joint Venture shall be several and in the following proportions:—

Dalrymple Bay Coal Terminal Pty Ltd	50.00%
Utah Development Company Limited	50.00%
	100.00%

19.2 Utah Development Company Limited has entered into this Agreement in its capacity as Manager of the companies carrying on business at Hay Point under the authority of the *Central Queensland Coal Associates Agreement Act 1968-1984*.

20. SUBJECT TO EXECUTION OF OTHER AGREEMENTS

20.1 This Agreement is subject to and conditional upon the contemporaneous execution of the Tug Harbour Account-DBCT Agreement, the Tug Harbour Account-CQCA Agreement and the Tug Harbour Lease and Berthing Agreement between the parties hereto, by all parties to those respective agreements.

IN WITNESS WHEREOF this Agreement was executed on the day and year hereinbefore written.

THE COMMON SEAL of)
DALRYMPLE BAY COAL)
TERMINAL PTY. LTD. was)
hereunto affixed in accordance with) LEON A. DAVIES, Director
the Articles of Association of the) D. E. GREEN, Director.
Company in the presence of the)

SCHEDULE 5 (continued)

Directors signing opposite and also)
in the presence of:)

JILL HUGHES, Witness

THE COMMON SEAL of)
UTAH DEVELOPMENT)
COMPANY LIMITED was)
hereunto affixed inaccordance) L. S. McDONALD, President
with the Articles of Association) and Director.
of the Company in the presence) T. RICHARDSON, Assistant
of the President and Director) Secretary.
and Assistant Secretary signing)
opposite and also in the)
presence of:)

M. FLOWER, J.P., Witness

THE COMMON SEAL OF THE)
HARBOURS CORPORATION)
OF QUEENSLAND was hereunto)
affixed in accordance with the)
provisions of the *Harbours Act*) JOHN P. GOLEBY.
1955-1982 in the presence of the)
Officers signing opposite and also)
in the presence of:)

E. J. HARTEN, Witness

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Hay Point Harbour (Ratification of Agreements) Act 1987 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 List of legislation

Hay Point Harbour (Ratification of Agreements) Act 1987 No. 9

date of assent 15 April 1987

commenced on date of assent

5 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS

under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Harbours Act 1955	Transport Infrastructure Act 1994	Transport Infrastructure Act 1994 s 255