

Queensland



Hay Point Harbour (Ratification of Agreements) Act 1987

HAY POINT HARBOUR (RATIFICATION OF AMENDED AGREEMENTS) REGULATION 2001

**Reprinted as in force on 11 January 2002
(regulation not amended up to this date)**

Reprint No. 1

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Information about this reprint

This regulation is reprinted as at 11 January 2002.

See endnotes for information about when provisions commenced.

Queensland



HAY POINT HARBOUR (RATIFICATION OF AMENDED AGREEMENTS) REGULATION 2001

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HAY POINT HARBOUR (RATIFICATION OF AMENDED AGREEMENTS) REGULATION 2001

[reprinted as in force on 11 January 2002]

1 Short title

This regulation may be cited as the *Hay Point Harbour (Ratification of Amended Agreements) Regulation 2001*.

2 Approval of amendment of Tug Harbour Account—CQCA Agreement

Approval is given to the amendment, set out in schedule 1, of the Tug Harbour Account—CQCA Agreement with the consent of all the parties to the agreement.

3 Approval of amendment of Tug Harbour Account—DBCT Agreement

Approval is given to the amendment, set out in schedule 2, of the Tug Harbour Account—DBCT Agreement with the consent of all the parties to the agreement.

4 Approval of amendment of Hay Point Tug Harbour Lease and Berthing Agreement

Approval is given to the amendment, set out in schedule 3, of the Hay Point Tug Harbour Lease and Berthing Agreement with the consent of all the parties to the agreement.

SCHEDULE 1

DEED OF VARIATION OF TUG HARBOUR ACCOUNT-CQCA AGREEMENT

section 2

THIS DEED is made on 2nd November 2001.

BETWEEN

PORTS CORPORATION OF QUEENSLAND (ABN 49 657 879) a body corporate established under the *Transport Infrastructure Act 1994*, *Government Owned Corporations Act 1993* and the *Government Owned Corporations (Ports) Regulation 1994*, and having its office at Level 24, 300 Queen Street, Brisbane, Queensland (“the Ports Corporation”)

AND

BHP COAL PTY LTD (ABN 83 010 595 721), (formerly named “Utah Development Company Ltd”), a company incorporated in Queensland, and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane, Queensland (“BHPC”);

MITSUBISHI DEVELOPMENT PTY LTD (ABN 17 009 779 873), a company incorporated in Queensland, and having its registered office at Level 32, AMP Place, 10 Eagle Street, Brisbane, Queensland (“Mitsubishi”);

UMAL CONSOLIDATED PTY LTD (ABN 29 000 767 386), a company incorporated in New South Wales, and having its principal office in Queensland at 123 Eagle Street, Riverside Centre, Brisbane, Queensland (“UCL”);

BHP QUEENSLAND COAL LIMITED (ABN 62 010 506 073), a company incorporated in Nevada, USA, and having its registered office in

SCHEDULE 1 (continued)

Australia at Level 13, Riverside Centre, 123 Eagle Street, Brisbane, Queensland (“BHPQ”);

QCT MANAGEMENT LIMITED (ABN 57 010 472 036), a company incorporated in Queensland, and having its registered office at 13th Floor, 123 Eagle Street, Brisbane, Queensland (“QCT Management”);

QCT INVESTMENT PTY LTD (ABN 45 010 487 831), a company incorporated in Queensland, and having its registered office at 13th Floor, 123 Eagle Street, Brisbane, Queensland (“QCT Investment”); and

QCT MINING PTY LTD (ABN 47 010 487 840), a company incorporated in Queensland, and having its registered office at 13th Floor, 123 Eagle Street, Brisbane, Queensland (“QCT Mining”),

(collectively with each of their successors and allowed assigns referred to as “the Companies”)

RECITALS

A. On 25 June 1985 the Harbours Corporation of Queensland entered into the Tug Harbour Account–CQCA Agreement with—

- (a) Utah Development Company Limited (now called BHP Coal Pty Ltd);
- (b) Mitsubishi;
- (c) Australian Mutual Provident Society;
- (d) UCL;
- (e) General Electric Minerals Inc;
- (f) Bowen Basin Minerals Inc;
- (g) UB Minerals Inc;

SCHEDULE 1 (continued)

- (h) QCT Investment;
- (i) QCT Mining;
- (j) Bell Coal Pty Ltd; and
- (k) Pancontinental Mining Limited;

for, amongst other things, the future raising of amounts to be paid to the Hay Point Tug Harbour Account for the provision of funds required to be reimbursed to DBCT-UDCL under the provisions of the Harbour Development Agreement. (“Hay Point Tug Harbour Account”, “DBCT-UDCL” and “Harbour Development Agreement” are defined in the Agreement.)

- B.** The Ports Corporation of Queensland is the successor to The Harbours Corporation of Queensland, and under the *Transport Infrastructure Act 1994* may exercise the powers of a port authority as to The Port of Hay Point in the State of Queensland.
- C.** BHPC, BHPQ, UCL, Mitsubishi, QCT Mining, QCT Investment and QCT Management are the successors or permitted assigns of Australian Mutual Provident Society, Bowen Basin Minerals Inc., UB Minerals Inc., Bell Coal Pty Ltd, Pancontinental Mining Ltd and GE Minerals Inc.
- D.** The Agreement was ratified, confirmed and validated to take effect according to its tenor by the *Hay Point Harbour (Ratification of Agreements) Act 1987*.
- E.** Clause 9.1 of the Agreement provides that if any provision or provisions of the Agreement become inequitable or impracticable due to changed circumstances not envisaged at the date of the Agreement, the parties may agree to vary the Agreement.
- F.** The provisions of the Agreement have become inequitable or impracticable due to changed circumstances not envisaged at the date of the Agreement, and because of this, the parties have agreed to vary the Agreement.

SCHEDULE 1 (continued)

- G.** Section 3 of the *Hay Point Harbour (Ratification of Agreements) Act 1987* provides that the Agreement may be varied with the consent of all parties and with the approval of the Governor in Council by Order in Council.
- H.** The parties wish to vary the Agreement in the terms set out in this Deed.

IT IS AGREED:

1. RECITALS

The parties acknowledge that the Ports Corporation has relied upon information contained in the Recitals in entering into this Deed, the Deed of Variation Tug Harbour Account–DBCT Agreement, the Deed of Variation of Hay Point Tug Harbour Lease and Berthing Agreement, and the Agreement for Lease and Sublease with Dalrymple Bay Coal Terminal Pty Ltd and BHP Coal Pty Ltd.

2. INTERPRETATION

“**Agreement**” means the Tug Harbour Account–CQCA Agreement referred to in Recital A.

3. VARIATION OF AGREEMENT

The Agreement is varied effective on the date that this Deed becomes effective pursuant to Clause 4 by—

- (a) in clause 3.2, omitting “Clause 3.1” and replacing it with “Clauses 3.1 and 16.2”;
- (b) omitting clauses 13 and 13.1; and
- (c) omitting clause 16.1 and replacing it with the following—

SCHEDULE 1 (continued)

“16.1 This agreement ends on—

- (a) the date Conditions Precedent 2.5(a) of the Agreement for Lease and Sublease between the Ports Corporation, DBCT and BHPC dated 31 May 2001 is satisfied; or
- (b) the date approval of the Governor in Council is obtained under clause 4 of the Deed of Variation of Tug Harbour Account–CQCA Agreement;

whichever occurs last.

16.2 When this agreement ends—

- (a) each party is released from all obligations and liabilities under this Agreement and in relation to the Tug Harbour Account;
- (b) no party will have any claim or action against any other party because of any previous or existing breach of this agreement;
- (c) the amount of \$8,121,393.74 will be paid from the Tug Harbour Account to BHPC on behalf of the CQCA companies. The CQCA companies jointly and severally warrant that BHPC is authorised to receive those funds on behalf of the CQCA companies. BHPC undertakes to distribute those funds to the CQCA companies in accordance with each company’s respective entitlement.

16.3 Payment by the Ports Corporation to BHPC of the amount payable under paragraph 16.2(c) is a complete discharge of the obligations of the Ports Corporation as successor to the Harbours Corporation under 16.2(c) and in full and final satisfaction of the CQCA companies’

SCHEDULE 1 (continued)

claims and entitlements under this Agreement and in relation to the Tug Harbour Account.

4. APPROVAL OF GOVERNOR IN COUNCIL

This Deed will take effect and become binding on the parties when this Deed and the Deed of Variation of Tug Harbour Agreement–DBCT Agreement and the Deed of Variation of Hay Point Tug Harbour Lease and Berthing Agreement are executed by all parties and the approval of the Governor in Council by Order or by Regulation in Council has been obtained in respect of each Deed.

5. WARRANTY

BHPC, BHPQ, UCL, Mitsubishi, QCT Mining, QCT Investment and QCT Management jointly and severally warrant that they are the successors or permitted assigns of the parties listed in Recital C in respect of those parties' interests, rights, entitlements and obligations under the Agreement and the Hay Point Tug Harbour Account and they indemnify the Ports Corporation if the warranty given in this clause is not correct and against any claim by those parties in relation to the Hay Point Tug Harbour Account.

6. COUNTERPARTS

6.1 This Deed may be executed in one or more counterparts, together with as many copies of the counterparts as the parties may require.

6.2 This Deed will be taken to be executed by all the parties when the Ports Corporation—

(a) has executed a counterpart; and

SCHEDULE 1 (continued)

- (b) has been notified in writing that the counterparts have been executed by the Companies, despite that no exchange of counterparts has then occurred.
- 6.3** The parties may exchange counterparts, as the parties may require.
- 6.4** Each of the Attorneys executing this Deed acknowledges that he or she has at the time of executing this Deed no notice of the revocation of the power of attorney under the authority of which he executes this Deed.

7. NOTICES

- 7.1** Notices under this Deed may be given by hand, mail or facsimile addressed to—

The Chief Executive Officer
Ports Corporation Queensland
Level 24
Hong Kong Bank Building
300 Queen Street
Brisbane Qld 4000

Facsimile Number: 07 3224 7234

- 7.2** A notice under this Deed will be taken to be received by the Ports Corporation—
- (a) when left at the address;
 - (b) two days after deposit in the mail with postage prepaid; or
 - (c) on an apparently successful transmission of the whole facsimile being noted by the sender's facsimile machine.

EXECUTED as a Deed as follows—

OF

Chief Executive Officer
(Position)

this 2nd day of November 2001

Graham Rawlings
(Name of Witness)

G Rawlings
(Signature of Witness)

B Fish
(Signature)

) S Berkelmans
) **Director**
) Name (printed): Santiago
) Berkelmans

J Buckle
Secretary
Name (printed): Jill Buckle

THE COMMON SEAL of) S Berkelmans
UMAL CONSOLIDATED PTY) **Director**
LTD (ABN 29 000 767 386) was) Name (printed): Santiago
affixed in accordance with its) Berkelmans
constitution)

THE COMMON SEAL of BHP) S Berkelmans
QUEENSLAND COAL) **Director**
LIMITED (ABN 62 010 506 073)) Name (printed): Santiago
was affixed in accordance with its) Berkelmans
constitution)

J Buckle
Secretary
Name (printed): Jill Buckle

SCHEDULE 1 (continued)

THE COMMON SEAL of) Kenjiro Itapani
MITSUBISHI) **Director**
DEVELOPMENT PTY LTD) Name (printed): Kenjiro Itapani
(ABN 17 009 779 873) was affixed)
in accordance with its constitution)

Robert Campese
Secretary
Name (printed): Robert
Campese

THE COMMON SEAL of QCT) Paul Lahiff
INVESTMENT PTY LTD (ABN) **Director**
45 010 487 831) was affixed in) Name (printed): Paul Lahiff
accordance with its constitution)

John Wall
Secretary Director
Name (printed): John Wall

SCHEDULE 1 (continued)

THE COMMON SEAL of QCT	)	Paul Lahiff
MINING PTY LTD (ABN 47	)	Director
010 487 840) was affixed in	)	Name (printed): Paul Lahiff
accordance with its constitution	)	

John Wall
Secretary Director
Name (printed): John Wall

THE COMMON SEAL of QCT	)	Soichi Tamaru
MANAGEMENT PTY LTD	)	Director
(ABN 57 010 472 036) was affixed	)	Name (printed): Soichi Tamaru
in accordance with its constitution	)	

Kazayoshi Kawakami
Secretary Director
Name (printed): Kazayoshi
Kawakami

SCHEDULE 2

DEED OF VARIATION OF TUG HARBOUR ACCOUNT-DBCT AGREEMENT

section 3

THIS DEED is made

BETWEEN

PORTS CORPORATION OF QUEENSLAND (ABN 49 657 447 879) a body corporate established under the *Transport Infrastructure Act 1994*, *Government Owned Corporations Act 1993* and the *Government Owned Corporations (Ports) Regulation 1994*, and having its office at Level 24, 300 Queen Street, Brisbane, Queensland (“the Ports Corporation”)

AND

DALRYMPLE BAY COAL TERMINAL PTY LTD (ACN 010 268 167), a company incorporated in Queensland, and having its registered office at Martin Armstrong Drive, Hay Point, Queensland (“DBCT”);

BHP MITSUI COAL PTY LTD (ABN 34 009 713 875), (formerly named Thiess Dampier Mitsui Coal Pty Ltd), a company incorporated in Queensland, and having its registered office at 13th Floor, 123 Eagle Street, Brisbane, Queensland (“BHP”);

MOUNT ISA MINES LIMITED (ACN 009 661 447), of Level 3, West Tower, 410 Ann Street, Brisbane, Queensland, as Manager of and agent for the Oaky Creek Joint Venture comprising Mount Isa Mines Limited (75% interest), Sumisho Coal Australia Pty Ltd (15% interest) and Itochu Coal Resources Australia Pty Ltd (10% interest);

CAPRICORN COAL MANAGEMENT PTY LTD (ACN 010 037 564), a company incorporated in Queensland, and having its registered office at Level 13, 133 Mary Street, Brisbane, Queensland;

SCHEDULE 2 (continued)

QUEENSLAND COAL PTY LTD (ABN 50 000 003 921), a company incorporated in New South Wales, and having its registered office at Level 19, AMP Place, 10 Eagle Street, Brisbane, Queensland;

LEICHHARDT COAL PTY LTD (ABN 12 083 181 597), a company incorporated in Queensland, and having its registered office at Level 19, AMP Place, 10 Eagle Street, Brisbane, Queensland;

EPDC (AUSTRALIA) PTY LTD (ABN 59 002 307 682), a company incorporated in New South Wales, and having its registered office at Level 25, 1 Eagle St, Brisbane, Queensland;

JCD AUSTRALIA PTY LTD (ABN 49 002 017 209), a company incorporated in New South Wales, and having its registered office at Level 23, 60 Margaret Street, Sydney, New South Wales;

RECITALS

A. On 25 June 1985 The Harbours Corporation of Queensland entered into the Tug Harbour Account–DBCT Agreement with—

- (a) DBCT;
- (b) Capricorn Coal Management Pty Ltd;
- (c) Thiess Dampier Mitsui Coal Pty Ltd (now called BHP Mitsui Coal Pty Ltd);
- (d) Mount Isa Mines Limited;
- (e) The Coal Cliff Collieries Pty Ltd;
- (f) Anaconda Australia Inc;
- (g) ACI Resources Limited;
- (h) Bundaberg Sugar Company Limited;
- (i) Millaquin Sugar Company Pty Limited;

SCHEDULE 2 (continued)

(j) Gibson & Howes Pty Limited;

(k) EDPC (Australia) Pty Ltd; and

(l) JCD Australia Pty Ltd;

for, amongst other things, them to contribute amounts to the Hay Point Tug Harbour Account commensurate with amounts paid to that account by other companies and for the provision of funds required to be reimbursed to DBCT-UDCL under the provisions of the Harbour Development Agreement. (“Users”, “Hay Point Tug Harbour Account”, “DBCT-UDCL” and “Harbour Development Agreement” are defined in the Agreement.)

- B.** The Ports Corporation of Queensland is the successor to the Harbours Corporation of Queensland, and under the *Transport Infrastructure Act 1994* may exercise the powers of a port authority as to the Port of Hay Point in the State of Queensland.
- C.** Queensland Coal Pty Ltd, Leichhardt Coal Pty Ltd, EPDC (Australia) Pty Ltd and JCD Australia Pty Ltd severally warrant that they are the successors or permitted assigns of Coal Cliff Collieries Pty Ltd, Anaconda Australia Inc., ACI Resources Ltd, Bundaberg Sugar Co. Ltd, Millaquin Sugar Co. Pty Ltd and Gibson & Howes Pty Ltd.
- D.** The Agreement was ratified, confirmed and validated to take effect according to its tenor by the *Hay Point Harbour (Ratification of Agreements) Act 1987*.
- E.** Clause 10 of the Agreement provides that if any provision or provisions of the Agreement become inequitable or impracticable due to changed circumstances not envisaged at the date of the Agreement, the parties to the Agreement may agree to vary the Agreement.
- F.** The provisions of the Agreement have become inequitable or impracticable due to changed circumstances not envisaged at the date of the Agreement, and because of this, the parties have agreed to vary the Agreement.

SCHEDULE 2 (continued)

- G.** Section 3 of the *Hay Point Harbour (Ratification of Agreements) Act 1987* provides that the Agreement may be varied with the consent of all parties and with the approval of the Governor in Council by order in council.
- H.** The parties wish to vary the Agreement in the terms set out in this Deed.

IT IS AGREED:

1. RECITALS

The parties acknowledge that the Ports Corporation has relied upon information contained in the recitals in entering into this Deed, the Deed of Variation Tug Harbour Account–CQCA Agreement, the Deed of Variation of Hay Point Tug Harbour Lease and Berthing Agreement, and the Agreement for Lease and Sublease with Dalrymple Bay Coal Terminal Pty Ltd and BHP Coal Pty Ltd.

2. INTERPRETATION

“Agreement” means the Tug Harbour Account–DBCT Agreement referred to in Recital A.

3. VARIATION OF AGREEMENT

The Agreement is varied effective on the date that this Deed becomes effective pursuant to Clause 3 by—

- (a) in clause 3.2, omitting “Clause 3.1” and replacing it with “Clauses 3.1 and 14.2”; and
- (b) omitting clause 14 and replacing it with the following—

“14.1 This agreement ends on—

- (a) the date Conditions Precedent 2.5(a) of the Agreement for Lease and Sublease between the Ports Corporation, DBCT and BHP Coal Pty Ltd

SCHEDULE 2 (continued)

ACN 010 595 721 dated 31 May 2001 is satisfied;
or

- (b) the date approval of the Governor in Council is obtained under clause 4 of the Deed of Variation of Tug Harbour Account–DBCT Agreement;

whichever occurs last.

14.2 When this agreement ends—

- (a) each party is released from all obligations and liabilities under this Agreement and in relation to the Tug Harbour Account;
- (b) no party will have any claim or action against any other party because of any previous or existing breach of this agreement;
- (c) the following amounts will be paid from the Tug Harbour Account to the following companies in full and final satisfaction of those companies' (or their predecessors') claims and entitlements under this Agreement and in relation to the Tug Harbour Account:

BHP Mitsui Coal Pty Ltd	\$331,068.17
Mount Isa Mines Ltd	\$251,472.51
Capricorn Coal Management Pty Ltd	\$275,724.31
Queensland Coal Pty Ltd	\$220,439.29
Leichhardt Coal Pty Ltd	\$121,082.63
EPDC (Australia) Pty Ltd	\$30,726.61
JCD Australia Pty Ltd	\$13,168.55

- 14.3** (a) Queensland Coal Pty Ltd, Leichhardt Coal Pty Ltd, EPDC (Australia) Pty Ltd and JCD Australia Pty Ltd authorise the Ports Corporation as successor to the Harbours Corporation to pay amounts owing to them from the Tug Harbour Account under this

SCHEDULE 2 (continued)

Agreement to Blair Athol Coal Pty Ltd (ABN 60 009 738 729).

- (b) An acknowledgment of payment by the Ports Corporation to Blair Athol Coal Pty Ltd of the amounts payable to or for Queensland Coal Pty Ltd, Leichhardt Coal Pty Ltd, EPDC (Australia) Pty Ltd and JCD Australia Pty Ltd under paragraph 14.2(c) shall be a complete discharge of the obligations of the Ports Corporation as successor to the Harbours Corporation to those parties under paragraph 14.2(c).

4. APPROVAL OF GOVERNOR IN COUNCIL

This Deed will take effect and become binding on the parties when this Deed and the Deed of Variation of Tug Harbour Agreement–CQCA Agreement and the Deed of Variation of Hay Point Tug Harbour Lease and Berthing Agreement are executed by all parties and the approval of the Governor in Council by Order in Council or by Regulation has been obtained in respect of each Deed.

5. COUNTERPARTS

5.1 This Deed may be executed in one or more counterparts, together with as many copies of the counterparts as the parties may require.

5.2 This Deed will be taken to be executed by all the parties when the Ports Corporation—

- (a) has executed a counterpart; and
- (b) has been notified in writing that the counterparts have been executed by all the Companies, despite that no exchange of counterparts has then occurred.

SCHEDULE 2 (continued)

- 5.3** The parties may exchange counterparts, as the parties may require.
- 5.4** Each of the Attorneys executing this Deed acknowledges that he or she has at the time of executing this Deed no notice of the revocation of the power of attorney under the authority of which he executes this Deed.

6. WARRANTY

Each of Queensland Coal Pty Ltd, Leichhardt Coal Pty Ltd, EPDC (Australia) Pty Ltd and JCD Australia Pty Ltd severally warrant that they are respectively the successors or permitted assignees in the interests set out below of the parties listed in Recital C, in respect of those parties' interests, rights, entitlements and obligations under the Agreement, and in the Hay Point Tug Harbour Account, and as such are authorised to sign this Deed. Each of Queensland Coal Pty Ltd, Leichhardt Coal Pty Ltd, EPDC (Australia) Pty Ltd and JCD Australia Pty Ltd severally indemnifies the Ports Corporation if the warranty in this clause is not correct.

Queensland Coal Pty Ltd – 57.195%
Leichhardt Coal Pty Ltd – 31.416%
EPDC (Australia) Pty Ltd – 7.9723%
JCD Australia Pty Ltd – 3.4167%

7. NOTICES

- 7.1** Notices under this Deed may be given by hand, mail or facsimile addressed to—

The Chief Executive Officer
Ports Corporation Queensland
Level 24
Hong Kong Bank Building

SCHEDULE 2 (continued)

300 Queen Street
Brisbane Qld 4000

Facsimile Number: 07 3224 7234

7.2 A notice under this Deed will be taken to be received by the Ports Corporation—

- (a) when left at the address;
- (b) two days after deposit in the mail with postage prepaid; or
- (c) on an apparently successful transmission of the whole facsimile being noted by the sender's facsimile machine.

SCHEDULE 2 (continued)

EXECUTED as a Deed as follows—

Signed for and on behalf of
**PORTS CORPORATION OF
QUEENSLAND**
(ABN 49 657 447 879)

by Bradley Fish
 (Name)

Chief Executive Officer
 (Position)

being duly authorised in this behalf

this 6th day of November 2001

in the presence of:

Graham Rawlings
(Name of Witness)

Graham Rawlings
(Signature of Witness)

Bradley Fish
(Signature)

SCHEDULE 2 (continued)

Signed for and on behalf of
**DALRYMPLE BAY COAL
TERMINAL PTY LTD**
(ACN 010 268 167)

by Brian Horwood
 (Name)

Chairman
(Position)

being duly authorised in this behalf

this 31st day of October 2001

in the presence of:

Greg Plunkett
(Name of Witness)

Greg Plunkett
(Signature of Witness)

Brian Horwood
(Signature)

SCHEDULE 2 (continued)

The **COMMON SEAL** of **BHP
MITSUI COAL PTY LTD**

(**ABN 34 009 713 875**) was affixed in
accordance with its Articles of
Association

this 15th day of October 2001

by Jill Buckle
 (Name)

a Director

and Santiago Berkelmans
 (Name)

a ~~Director~~/Secretary

J Buckle
(Director)

S Berkelmans
(Secretary)

SCHEDULE 2 (continued)

The **COMMON SEAL** of **MOUNT
ISA MINES LIMITED**

(**ACN 009 661 447**) was affixed in
accordance with its Articles of
Association

this 6th day of November 2001

by V P Gauci
 (Name)

a Director

and B P McDonald
 (Name)

a Director/~~Secretary~~

V P Gauci
(Director)

B P McDonald
(Director)

SCHEDULE 2 (continued)

Signed for and on behalf of
**CAPRICORN COAL
MANAGEMENT PTY LTD
(ACN 010 037 564)**

by Brian St John
 (Name)

 Director
 (Position)

being duly authorised in this behalf

this 19th day of October 2001

in the presence of:

 James Harman
 (Name of Witness)

 James Harman
 (Signature of Witness)

Brian St John
(Signature)

SCHEDULE 2 (continued)

Signed for and on behalf of
QUEENSLAND COAL PTY LTD
(ABN 50 000 003 921)

by Brian Horwood
 (Name)

 Managing Director
 (Position)

being duly authorised in this behalf

this 6th day of November 2001

in the presence of:

 Thomas L Biddulph
 (Name of Witness)

 Thomas L Biddulph
 (Signature of Witness)

Brian Horwood
(Signature)

SCHEDULE 2 (continued)

Signed for and on behalf of
LEICHHARDT COAL PTY LTD
(ABN 12 083 181 597)

by J.D.S. MacLeod
(Name)

Chairman
(Position)

being duly authorised in this behalf

this 6th day of November 2001

in the presence of:

George Belivanis
(Name of Witness)

George Belivanis
(Signature of Witness)

J.D.S. MacLeod
(Signature)

SCHEDULE 2 (continued)

Signed for and on behalf of
EPDC (AUSTRALIA) PTY LTD
(ABN 59 002 307 682)

by Mokoto Tanaka
(Name)

Managing Director
(Position)

being duly authorised in this behalf

this 6th day of November 2001

in the presence of:

Masahiro Uchiuzo
(Name of Witness)

Masahiro Uchiuzo
(Signature of Witness)

Mokoto Tanaka
(Signature)

SCHEDULE 2 (continued)

Signed for and on behalf of
JCD AUSTRALIA PTY LTD
(ABN 49 002 017 209)

by Takayuki Higashijima
(Name)

Managing Director
(Position)

being duly authorised in this behalf

this 6th day of November 2001

in the presence of:

Hiroyuki Takeda
(Name of Witness)

Hiroyuki Takeda
(Signature of Witness)

Takayuki Higashijima
(Signature)

SCHEDULE 3

DEED OF VARIATION OF HAY POINT TUG HARBOUR LEASE AND BERTHING AGREEMENT

section 4

THIS DEED is made

BETWEEN

PORTS CORPORATION OF QUEENSLAND (ABN 49 657 447 879) a body corporate established under the *Transport Infrastructure Act 1994*, *Government Owned Corporations Act 1993* and the *Government Owned Corporations (Ports) Regulation 1994*, and having its office at Level 24, 300 Queen Street, Brisbane, Queensland (“the Ports Corporation”)

AND

DALRYMPLE BAY COAL TERMINAL PTY LTD (ACN 010 268 167), a company incorporated in Queensland, and having its registered office at Martin Armstrong Drive, Hay Point, Queensland (“DBCT”); and

BHP COAL PTY LTD (ABN 83 010 595 721), (formerly named “Utah Development Company Ltd”), a company incorporated in Queensland, and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane, Queensland (“BHPC”);

RECITALS

- A.** On 25 June 1985 The Harbours Corporation of Queensland entered into the Hay Point Tug Harbour Lease and Berthing Agreement with DBCT and Utah Development Company Limited (“UDCL”) for the lease of certain wharf areas in Hay Point Harbour (“the Agreement”).
- B.** The Ports Corporation of Queensland is the successor to The Harbours Corporation of Queensland, and under the *Transport*

SCHEDULE 3 (continued)

Infrastructure Act 1994 may exercise the powers of a port authority as to The Port of Hay Point in the State of Queensland.

- C. The Agreement was ratified, confirmed and validated to take effect according to its tenor by the *Hay Point Harbour (Ratification of Agreements) Act 1987*.
- D. Section 3 of the *Hay Point Harbour (Ratification of Agreements) Act 1987* provides that the Agreement may be varied with the consent of all parties and with the approval of the Governor in Council by Order in Council.
- E. The parties wish to vary the Agreement in the terms set out in this Deed.

IT IS AGREED:

1. RECITALS

The parties acknowledge that the Ports Corporation has relied upon information contained in the Recitals in entering into this Deed, the Deed of Variation Tug Harbour Account–DBCT Agreement, the Deed of Variation Tug Harbour Account–CQCA Agreement, and the Agreement for Lease and Sublease with Dalrymple Bay Coal Terminal Pty Ltd and BHP Coal Pty Ltd.

2. VARIATION OF AGREEMENT

The Agreement is varied effective on the date that this Deed becomes effective pursuant to Clause 3 by—

- (a) in clause 2.1, omitting “expiring (except as otherwise provided in this Agreement) on the day sixteen (16) years from the date of commencement” and replacing it with “ending on:-
 - (i) *the date Condition Precedent 2.5(a) of the Agreement for Lease and Sublease between the Ports Corporation, DBCT and BHPC dated 31 May 2001 is satisfied; or*

SCHEDULE 3 (continued)

(ii) *the date approval of the Governor in Council is obtained under clause 3 of the Deed of Variation of Hay Point Tug Harbour Lease and Berthing Agreement, whichever occurs last; and*

(b) omitting clause 11.

3. APPROVAL OF GOVERNOR IN COUNCIL

This Deed will take effect and become binding on the parties when this Deed and the Deed of Variation of Tug Harbour Agreement–DBCT Agreement and the Deed of Variation of Tug Harbour Agreement–CQCA Agreement are executed by all parties and the approval of the Governor in Council by Order in Council or by Regulation has been obtained in respect of each Deed.

4. COUNTERPARTS

4.1 This Deed may be executed in one or more counterparts, together with as many copies of the counterparts as the parties may require.

4.2 This Deed will be taken to be executed by all the parties when the Ports Corporation—

(a) has executed a counterpart; and

(b) has been notified in writing that the counterparts have been executed by all the Companies, despite that no exchange of counterparts has then occurred.

4.3 The parties may exchange counterparts, as the parties may require.

4.4 Each of the Attorneys executing this Deed acknowledges that he or she has at the time of executing this Deed no notice of the revocation of the power of attorney under the authority of which he executes this Deed.

SCHEDULE 3 (continued)

5. WARRANTY

BHPC warrants that it is the successor or permitted assign of UDCL and indemnifies the Ports Corporation if the warranty given in this clause is not correct.

6. NOTICES

6.1 Notices under this Deed may be given by hand, mail or facsimile addressed to—

The Chief Executive Officer
Ports Corporation Queensland
Level 24
Hong Kong Bank Building
300 Queen Street
Brisbane Qld 4000

Facsimile Number: 07 3224 7234

6.2 A notice under this Deed will be taken to be received by the Ports Corporation—

- (a) when left at the address;
- (b) two days after deposit in the mail with postage prepaid; or
- (c) on an apparently successful transmission of the whole facsimile being noted by the sender's facsimile machine.

SCHEDULE 3 (continued)

EXECUTED as a Deed as follows—

Signed for and on behalf of
**PORTS CORPORATION OF
QUEENSLAND**
(ABN 49 657 447 879)

by Bradley Fish
 (Name)

 Chief Executive Officer
 (Position)

being duly authorised in this behalf

this 6th day of November 2001

in the presence of:

 Graham Rawlings
 (Name of Witness)

 Graham Rawlings
 (Signature of Witness)

Bradley Fish
(Signature)

SCHEDULE 3 (continued)

Signed for and on behalf of
**DALRYMPLE BAY COAL
TERMINAL PTY LTD**
(ACN 010 268 167)

by Brian Horwood
 (Name)

Chairman
(Position)

being duly authorised in this behalf

this 31st day of October 2001

in the presence of:

Greg Plunkett
(Name of Witness)

Greg Plunkett
(Signature of Witness)

Brian Horwood
(Signature)

The **COMMON SEAL** of **BHP COAL PTY LTD (ABN 83 010 595 721)** was

a Director/Secretary

J Buckle
(Secretary)

ENDNOTES

1 Index to 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 Amended Agreements) Regulation 2001 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 Amended Agreements) Regulation 2001 SL No. 247

made by the Governor in Council on 6 December 2001

notfd gaz 7 December 2001 pp 1270–1

commenced on date of notification

exp 1 September 2012 (see SIA s 54)

Note— An explanatory note was prepared