

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

SUBLEASE

FORM 7 Version 6
Page 1 of 0983



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21/05/2018 15:08

CS 501

1. Sublessor

Far North Queensland Ports Corporation Limited
ACN 131 836 014

Lodger (Name, address, E-mail & phone number)

Miller Harris Lawyers
PO Box 7655, Cairns QLD 4870
info@millerharris.com.au
Ph: 07 4036 9700
Ref: SPW:2141232

Lodger Code

715

2. Lot on Plan Description

LOT 11 ON CP BS268

Title Reference

40027991

3. Sublessee

Given names

Surname/Company name and number

(include tenancy if more than one)

Cape Flattery Silica Mines Pty Ltd
ACN 000 586 096

4. Interest being leased

State Leasehold – Term Lease PPL 0/215359

5. Description of premises being leased

The whole of the land

6. Term of Sublease

Commencement date/event: 02/01/2018
Expiry date: 01/01/2038
#Options: NIL

#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

7. Rental/Consideration

See attached Schedule

8. Grant/Execution

The Sublessor leases the Premises described in item 5 to the Sublessee for the Term stated in item 6 subject to the covenants and conditions contained in registered Mandatory Standard Terms Document no. 713040803 and the attached schedule.

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

.....
.....

Chairman

27/3/2018
Chief Executive Officer

Witnessing Officer (signature, full name & qualification)
(Witnessing officer must be in accordance with Appendix A of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date Far North Queensland Ports Corporation Limited
ACN 131 836 014
Sublessor's Signature

9. Acceptance

The Sublessee accepts the Sublease and acknowledges the amount payable or other considerations for the Sublease.

.....
.....

Director/Secretary

26/2/2018
Cape Flattery Silica Mines Pty Ltd
ACN 000 586 096

Witnessing Officer (signature, full name & qualification)
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date
Sublessee's Signature

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PART ONE

19. REFERENCE DATA

ITEM NO.	DATA	DETAILS
Item 1	PARTIES	
	Sublessor: Address for Notices: Telephone: Facsimile:	Far North Queensland Ports Corporation Limited ACN 131 836 014 Corner Grafton and Hartley Streets Cairns QLD 4870 07 4052 3888 07 4052 1493
Item 2	TERM	
	(a) Period: (b) Commencement Date: (c) Expiry Date:	20 years ² January 2018 31 December 2037 01 January 2038
Item 3	PORT	
	Name of Seaport:	Cape Flattery
Item 4	PREMISES	
	Description of premises:	The whole of the land described as Lot 11 on CP BS268 and all of the Sublessor's Property
Item 5	RENT	
	(a) Date Rent Commences: (b) Amount of Rent for Each Rent Year (exclusive of GST) during the term	² January 2018 \$1.00 if demanded by the Sublessor and falling due 14 days following demand having been made
Item 6	PERMITTED USE	
	Permitted Use:	Out-loading of silica sand in bulk and such other products as the Sublessee may wish to outload from time to time, and for no other purpose

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ITEM NO.	DATA	DETAILS
Item 7	INSURANCE Public Liability:	Fifty Million Dollars (\$50,000,000.00)
Item 8	SECURITY Security Deposit:	Six Million Dollars (\$6,000,000.00)
Item 9	GUARANTORS Name: Address:	Inapplicable for so long as Cape Flattery Silica Mines Pty Ltd ACN 000 586 096 is the Sublessee

PART TWO

20. ADDITIONAL DEFINITIONS AND INTERPRETATION

20.1 Definitions

In this Sublease the following terms have the following meanings unless the context otherwise requires:

“Additional Provisions” means the terms appearing in Appendix B to this schedule;

“Apparatus” means all mechanical ventilation, stop cocks, hydrants, fire hoses, alarm systems or other fire prevention and extinguishing equipment, water closets, lavatories, grease traps, water apparatus, wash basins, wash rooms, gas fittings, electrical fittings and apparatus contained in or about the Premises;

“Asset Maintenance and Management Plan” means a written plan relating to the maintenance and management of the Facility specifying the nature and timing of maintenance and management activities to be undertaken to properly address the maintenance and asset management requirements identified in the Condition Report which accompanies it under clause 28.4(a);

“Bank Guarantee” means an unconditional undertaking by a bank to pay on demand a specified amount, on such Terms as the Lessor may reasonably require;

“Capital Dredging” means dredging of the sea bed within:

- the vicinity of berth area and swing basin adjacent the Facility; and/or
- the area of the channel within the Seaport leading to and from the Facility,

to a depth greater than the declared depth determined in accordance with clause 28.15(c);

“Chief Executive Officer” means the Chief Executive Officer of the Sublessor and includes any person acting as the Chief Executive Officer and any person authorised by the Chief Executive Officer to act on their behalf;

“Claims” means any allegation, debt, cause of action, proceeding, suit or demand of any nature, however arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, under statute, in equity or otherwise;

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“Condition Report” means a written report prepared following and in respect of a full audit and inspection of the Facility addressing:

- structural and non-structural repair and condition;
- areas or items in need of immediate maintenance and repair;
- areas or items requiring maintenance or repair during the period of twelve months immediately following the date on which the audit and inspection that gave rise to the Condition Report is conducted;

all other inspections and associated maintenance and repair to be undertaken during the balance of the period up to the next Condition Reporting Date;

“Condition Reporting Date” means 30 June 2018;

“Consumer Price Index” means the All Groups Consumer Price Index published from time to time by the Australian Bureau of Statistics for the city of Brisbane or such other index as is officially substituted for it, if the Consumer Price Index is discontinued;

“Contamination Report” means a written report as to the existence of Contaminant upon or Environmental Harm caused to the Land or surrounding lands and waters which has emanated from the Land;

“Controlling Person” means, for a company, the person or group of persons who control the composition of the board of directors or more than fifty percent (50%) of the shares, with a right to vote at general meetings;

“Data and Communications Services” means all copper or optic fibre cabling, or other telephone or radio equipment or wireless local or wide area network facilities installed on the Seaport for the purposes of providing data or communications services to the buildings and other facilities on the Seaport, which are capable of being used for the provision of such services to the Sublessee, or any conduits, ducts or pits through which such services are run;

“Default Rate” means the rate which is two percent (2%) per annum above the highest overdraft rate charged, as at the due date for payment, by the Sublessor's principal bankers for commercial loans in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or such lesser sum as nominated by the Sublessor;

“Environment Act” means the *Environmental Protection Act 1994*;

“Environment Regulation” means the *Environmental Protection Regulation 1998*;

“Environmental Laws” means all laws relating to the Environment including, but not limited to, the Environment Act;

“Environmental Liability” means any of the following liabilities:

- (a) any compensation payable under Environmental Laws;
- (b) any fines or penalties payable under Environmental Laws;
- (c) all costs (including, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis) and expenses incurred in complying with any Environmental Laws; and

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(d) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages, costs and expenses, legal or consulting fees and interest payable under Environmental Laws;

“Environmental Management Plan” means a document prepared under clause 27 in a form approved by the Sublessor;

“Environmental Policy” means the Sublessor’s environmental policy applicable to the Seaport;

“Expiry Date” means the date of expiry of this Sublease specified in Item 2(c) of the Reference Data;

“Facility” means all port facilities and infrastructure constructed upon the Land and the Land demised to the Sublessee under the Related Lease for the purpose of outloading vessels with silica sand in bulk including but not limited to the wharfs, transfer towers, shore outloading conveyors, shiploader, dolphin, piles and related works to facilitate the outloading of product. The expression includes, but is not limited to, the Sublessor’s Property, the Sublessee’s Property and Improvements or Alterations;

“Final Condition Report” means the Condition Report that the Sublessee is obliged to give the Sublessor on the Condition Reporting Date that is one year immediately prior to the Expiry Date;

“Force Majeure Event” means damage caused by natural disaster beyond the control of the Sublessee including earthquake, storm, flood, fire or tsunami;

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“GST Date” means the date upon which this Sublease becomes subject to GST under the GST Law;

“GST Law” has the meaning given to that term in the GST Act or if the GST Act is not valid or has been repealed, means any Act of Parliament imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act of Parliament;

“GST Rate” means the rate of GST applying to the transaction in question under the GST Law at the time the Supply is made;

“Guarantor” means the person or persons named in Item 9 of the Reference Data and in the case of a corporation, its successors in title and assigns and in the case of a natural person, their heirs, executors, administrators and assigns;

“Harbour Dues” means charges levied or imposed by the Port Authority under the *Transport Infrastructure Act 1994* or other lawful means on goods:

- loaded, unloaded or transhipped to and/or from vessels utilising the Facility or the Seaport, or
- otherwise carried, imported or exported through the Seaport;

“Harbour Master” means a person appointed as such under the *Transport Operations (Marine Safety) Act 1994*;

“Head Lease” means the registered lease referred to in Item 4 of the Form 7 (and to avoid doubt, all references to Lease in the Mandatory Standard Terms Document are references to the Head Lease);

“Improvements” has the meaning given to that expression in the Mandatory Standard Terms Document;

“Improvements or Alterations” means any structures, improvements, alterations or additions situated upon the Land, irrespective of ownership by the Sublessor, the Sublessee or any third party;

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“**Land**” means the land described in item 2 of Form 7;

“**Maintenance Dredging**” means dredging of the sea bed within:

- the vicinity of the berth area and swing basin adjacent the Facility; and/or
- the area of the channel leading to and from the Facility,

to a depth no greater than the declared depth determined in accordance with clause 28.15(c);

“**Maintenance Inspection Systems**” means those systems put in place by the Sublessee to ensure the regular inspection and maintenance of its plant and equipment utilised in operating from the Premises and includes, without limitation, the scope of the Sublessee’s Maintenance Inspection Systems to provide assurance of the integrity of its operations;

“**Mandatory Standard Terms Document**” means registered instrument no. 713040803 (being the instrument referred to in clause 2.1(i) of the Mandatory Standard Terms Document);

“**Maritime Security Plan**” means the maritime security plan developed by the Sublessor as owner and operator of the Seaport from time to time under Port Security Law;

“**Mine Site**” means the land demised under or being the subject of mining leases comprising the Sublessee’s mine in the vicinity of the Seaport from which silica sand for processing and out-loading through the Facility is produced;

“**Month or Monthly**” means respectively, calendar month or calendar monthly;

“**On-Supply Agreement**” means any agreement between the Sublessor and the Sublessee regarding the supply of electricity from the Sublessor to the Sublessee;

“**Payee**” means the party receiving the payment, reimbursement or contribution;

“**Payer**” means the party making the payment, reimbursement or contribution;

“**Payment**” means:

- the amount of monetary consideration (exclusive of GST); or
- the GST Exclusive Market Value of any non-monetary consideration (including any act or forbearance) required to be paid or provided by the Payer to the Payee for any supply under, or for the purposes of this Sublease;

“**Permitted Use**” means the use specified in Item 6 of the Reference Data;

“**Port Authority**” means the “Port Authority” as that expression is defined by the *Transport Infrastructure Act 1994* for the Seaport (which, at the Commencement Date, is the Sublessor) and its successors and assigns;

“**Port Charges**” means Tonnage Rates, Harbour Dues and other lawful charges or imposts levied or imposed by the Port Authority under the *Transport Infrastructure Act 1994* or otherwise in respect of uses made of the Seaport;

“**Port Notice**” means a notice displayed or published by the Sublessor or the Port Authority under Section 282 of the *Transport Infrastructure Act 1994*;

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“Port Security Law” means the *Maritime Transport and Offshore Facilities Security Act 2003* and all regulations thereto (as either or both are amended, substituted or replaced from time to time during the Term);

“Premises” has the meaning given to that expression in the Mandatory Standard Terms Document;

“Reference Data” means the data set out in the table in Part One of this Sublease;

“Related Lease” means the lease dated or intended to bear the same date as this Sublease between the Sublessor (as Lessor) and the Sublessee (as Lessee) in respect of the land described as Lot 9 on CP BS223 and Lot 10 on CP BS224 (title references 50339423 and 50339424);

“Rent Day” means the Date of Commencement and the first day of each Rent Year throughout the Term;

“Rent Year” means each separate year of the Term, the first of such years commencing on the Commencement Date and each subsequent year commencing on the corresponding day of each succeeding year;

“Reserve Throughput Capacity” has the meaning given to that expression in the Additional Provisions;

“Rules” means the rules made by the Sublessor under clause 24.4, as notified to the Sublessee in writing from time to time, and otherwise including the Security Rules;

“Seaport” means the Seaport of Cape Flattery;

“Security” means a mortgage, charge or other encumbrance;

“Security Deposit” means the sum specified in Item 7 of the Reference Data;

“Security Interest” has the meaning given to it in the *Personal Property Securities Act 2009*;

“Security Rules” means those rules made by the Sublessor from time to time or issued by the Department of Infrastructure and Regional Development (Cth) (or its successor) or other statutory body regarding the preservation of security at the Seaport;

“Service Charges” means the charges payable by the Sublessee for the use of the Data and Communications Services under clause 28.9 hereof, as calculated in accordance with clause 22.2(a)i) hereof;

“Services” means all services or systems of any nature from time to time, provided, as the context requires, to the Premises or available for use, and includes the provision of electronic medium, electricity, lighting, gas, fuel, power, water, sewerage, drainage, plant rooms, fire services, sprinkler systems or devices, airconditioning and the fixtures, fittings, pipes, appliances, plant and equipment utilised for such services;

“Site Report” means a report prepared by a person with qualifications and experience relevant to the Site Report of appropriate professional standing and in a form approved by the Sublessor which describes whether and to what extent:

- (a) the Premises is Contaminated Land; and
- (b) has been or is being used for a Notifiable Activity;

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“Sublessee's Emergency Preparedness and Response Procedures” means the practices and procedures employed by the Sublessee in its operations from the Premises to respond to emergencies on the Premises or Seaport generally, including without limitation:

- (a) documented emergency preparedness and response plans and exercises to ensure adequacy of those plans; and
- (b) procedures for the reporting, recording and investigation of all near and actual losses together with procedures for the development of corrective and preventative actions;

“Sublessee's Employees or Contractors” means the Sublessee's employees, contractors, agents or invitees or other persons (with or without invitation) and any person claiming through or under the Sublessee;

“Sublessee's Maintenance Inspection Systems” means those systems put in place by the Sublessee to ensure the regular inspection and maintenance of its plant and equipment utilised in operating from the Premises and includes, without limitation, the scope of the Sublessee's maintenance inspection systems to provide assurance of the integrity of its operations;

“Sublessee's Operating Practices” means the practices and procedures employed by the Sublessee in conducting its business at the Premises and includes, without limitation:

- (a) the scope and application of the Sublessee's procedures for all operations at the Premises including mechanisms for the monitoring and review of its procedures; and
- (b) the requirement for a risk assessment of all activities to be conducted;

“Sublessee's Property” means all property on the Premises which is not the Sublessor's Property including chattels and other property not categorised as Improvements or Alterations;

“Sublessor's Property” means any fixtures or fittings or other property owned or made by the Sublessor, including those situated on the Land as at the Date of Commencement which are described in Appendix A;

“Tonnage Rates” means charges levied or imposed by the Port Authority under the *Transport Infrastructure Act 1994* or other lawful means on vessels utilising the Facility and/or the Seaport; and

“TIA Minister” means the TIA Minister for the time being administering the *Transport Infrastructure Act 1994*.

20.2 Imported Definitions

In this Sublease (so far as the context permits), the following expressions have the meaning respectively given to them in:

- (a) the Environment Act:
 - **“Administering Authority”**;
 - **“Contaminated Land”**;
 - **“Contamination”**;
 - **“Development Approval”**;

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- **“Environment”**;
- **“Environmental Authority”**;
- **“Environmental Evaluation”**;
- **“Environmental Harm”**;
- **“Environmental Management Program”**;
- **“Environmental Protection Order”**;
- **“Environmentally Relevant Activity”**;
- **“Integrated Environmental Management System”**; and
- **“Notifiable Activity”**.

(b) the GST Law:

- **“Creditable Acquisition”**;
- **“GST Exclusive Market Value”**;
- **“GST Free”**;
- **“GST”**;
- **“Input Tax Credit”**;
- **“Supply”**; and
- **“Tax Invoice”**.

20.3 Mandatory Standard Terms Document

The Sublessor and the Sublessee acknowledge and agree that:

- clauses 1 to 18 of this Sublease (inclusive) are contained in the Mandatory Standard Terms Document;
- words and phrases that are defined in the Mandatory Standard Terms Document have the corresponding meanings in this instrument; and
- to the extent of inconsistency or ambiguity between the Mandatory Standard Terms Document and this instrument, the Mandatory Standard Terms Document will prevail.

PART THREE

21. RECITALS

- The Sublessor (or its predecessor in title) leased the Land (demised under this Sublease) and the land demised under the Related Lease to the Sublessee under a lease dated 27 October 1988, the term of which expired on 31 December 2014 registered number 704786565 (“the Prior Lease”).

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- 21.2 The Prior Lease was granted to the Sublessee for the purpose of construction and subsequent use and operation of onshore and offshore harbour facilities by the Sublessee, as approved by the Sublessor and consisting of a wharf, transfer towers, shore out-loading conveyors, shiploader and related works ("the Works") to facilitate the out-loading of silica sand in bulk and such other products as the Sublessee out loaded from time to time.
- 21.3 In accordance with the terms of the Prior Lease, the Sublessee constructed the Works at its cost and used, operated and maintained the Works for the term of the Prior Lease. The Sublessor is the owner of the Works.
- 21.4 Following the expiration of the Prior Lease, the parties have agreed to enter into this Sublease and the Related Lease that will govern the Sublessee's use and occupation of the Land (demised under this Sublease) and the land demised under the Related Lease.

22. FINANCIAL OBLIGATIONS

22.1 Rent

The Sublessee must pay the Rent for each Rent Year by equal monthly instalments, in advance, on each Rent Day throughout the Term.

22.2 Services

General

- (a) The Sublessee must pay all charges for Services supplied to the Premises (including costs and charges relating to consumption or use of electricity, telecommunications, gas and water):
- i) if charged directly by the assessment authority, to the assessment authority by the due date for payment; or
 - ii) if the Service is supplied to the Premises by the Sublessor, to the Sublessor.
- (b) Where an On-Supply Agreement exists between the Sublessor and Sublessee regarding the supply of electricity to the Sublessee, it is an essential condition of this Sublease that the Sublessee complies with all of the terms and conditions of that On-Supply Agreement.
- (c) A certificate of the Sublessor shall be prima facie evidence (in the absence of fraud, bad faith, or manifest error) of the amount payable in respect of any such charges that are unmetered. Where the Service is provided and charged by the Sublessor, the Sublessor shall provide an appropriate Tax Invoice to the Sublessee for the charges payable.

Rates and Charges

- (d) The Sublessee must pay all rates, taxes (including land tax levied or assessed against or with reference to the Premises or any part of it), charges, impositions and levies assumed, charged or imposed under any Federal or State law or by any Federal, State or local authority which are, at any time during the Term assessed, charged, imposed or levied upon or in respect of the Premises, or the use or occupation of the Premises:
- i) if charged or assessed directly by the assessment authority, to the assessment authority by the due date for payment; or
 - ii) if charged or assessed against the Sublessor, to the Sublessor.

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To avoid doubt, if any rate, tax, charge, imposition and/or levy is assessed in respect of a parcel of land that is larger than but includes the Premises, the sum payable by the Sublessee under this clause will be calculated on a pro-rata basis and will reflect the area that the Premises bears to the overall area of the land in respect of which the assessment is levied.

- (e) To the extent that any rate, tax, charge, imposition and/or levy is charged or assessed against the Sublessor, the Sublessor shall provide copies of the relevant invoices to the Sublessee in a timely manner to enable the Sublessee to comply with its obligations under this clause.

Cleaning

- (f) The Sublessee must pay the cost of any cleaning or refuse service provided by the local or other authority for the Premises:
- i) if charged directly by the assessment authority, to the assessment authority by the due date for payment; or
 - ii) if charged or assessed against the Sublessor, to the Sublessor.

Fire Protection

- (g) The Sublessee must pay all levies or contributions and other amounts payable to any local or other authority for the provision of fire protection services for the Premises:
- i) if charged directly by the assessment authority, to the assessment authority by the due date for payment; or
 - ii) if charged or assessed against the Sublessor, to the Sublessor.

Data Services and Communications

- (h) The Sublessee shall pay the Service Charges to the Sublessor for the use of the Data and Communications Services pursuant to clause 28.9 of this Sublease.
- (i) The Service Charges payable by the Sublessee shall be calculated in accordance with the Sublessor's published list of charges as they apply from time to time.
- (j) The parties acknowledge that, as at the date of this Sublease, the Sublessee does not use any Data and Communication Services supplied by the Sublessor.

22.3 Costs, Charges and Expenses

The Sublessee must pay to the Sublessor when requested by the Sublessor:

- (a) all registration fees on this Sublease;
- (b) the cost of preparing any plan to this Sublease;
- (c) any amount charged by the mortgagee (if any) of the Sublessor for consenting to this Sublease;
- (d) the Sublessor's usual and proper costs and expenses (on a solicitor and own client basis):
 - i) to prepare, execute and register this Sublease;
 - ii) to obtain the TIA Minister's consent to this Sublease (if required by law);

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- iii) to consider or approve anything requiring the Sublessor's consent under this Sublease; and
- iv) costs incurred by the Sublessor because the Sublessee breaches this Sublease.
- (e) all costs and expenses for any works carried out to the Premises by the Sublessor at the request of the Sublessee; and
- (f) any extra or excess premiums paid by the Sublessor for insurances effected by the Sublessor which are payable because of the extra risks caused by the Sublessee's use of the Premises.

22.4 Essential Services

All costs and charges relating to the provision of essential services at the Premises, including fire prevention services or the provision and/or maintenance of fire prevention equipment, must be paid by the Sublessee to the party entitled to payment on or prior to the due date for payment. For the purpose of this clause:

- (a) the Sublessor will be "the party entitled to payment" where it seeks to be reimbursed by the Sublessee for any cost or expense it has incurred relating to the provision of essential services at the Premises (and the sum so payable to the Sublessor will be recoverable from the Sublessee as a debt or liquidated amount); and
- (b) "essential services" include medical and emergency health care services, fire-fighting services, electricity, water and telecommunication services and like services which, with reference to the location of the Premises, could reasonably be considered as essential.

22.5 Port Charges

- (a) The Sublessee acknowledges that the Port Authority will impose Port Charges.
- (b) The Sublessee acknowledges that:
 - i) Port Charges include (but are not limited to) Tonnage Rates and Harbour Dues; and
 - ii) the Port Authority may introduce new Port Charges and/or vary (including a variation by way of increase) Port Charges from time to time during the Term but only in accordance with the *Transport Infrastructure Act 1994*.
- (c) For so long as the Sublessor is the Port Authority for the Seaport:
 - i) it will assess (and re-assess) Port Charges from time to time during the Term under the *Transport Infrastructure Act 1994* without reference to the Sublessee or the terms of this Sublease;
 - ii) the Sublessee must not object to the Sublessor's assessment or reassessment of Port Charges under this clause (provided the Sublessor acts in accordance with the *Transport Infrastructure Act 1994*); and
 - iii) the assessment of Port Charges under the preceding paragraphs of this clause will be undertaken at least once annually throughout the Term and, following each reassessment of Port Charges the Sublessor will notify the Sublessee, no later than 31st December of each Rent Year of any variation in Port Charges to be applied for the following Rent Year;

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- iv) Port Charges shall be levied and payable in accordance with the *Transport Infrastructure Act 1994*, including Harbour Dues and Tonnage Rates;
 - v) the Sublessee acknowledges that it may be liable for Harbour Dues and Tonnage Rates under Section 280(d) and Section 281A (f) of the *Transport Infrastructure Act 1994* if the Sublessor is unable to recover such charges from any of the party set out in Section 280 and Section 281A of the *Transport Infrastructure Act 1994*;
 - vi) the Sublessor may require any or all of those liable for payment of Port Charges to provide to the Sublessor a notice detailing full particulars of their vessels utilising the Facility and/or the volume of goods loaded or unloaded on or from vessels utilising the Facility.
- (d) The notice referred to in clause 22.5(c)vi) will be in such form as the Port Authority directs from time to time and may, if required by the Sublessor or the Port Authority, take the form of a statutory declaration under the *Oaths Act 1867*, duly executed by the general manager (or, if acceptable to the Port Authority, by a person holding a like position) of the Sublessee.
- (e) Without detracting from clause 36.15:
- i) the granting of this Sublease;
 - ii) the terms of this Sublease; and
 - iii) the relationship between the parties as Sublessor and Sublessee,
- does not limit, restrict or otherwise impede the Sublessor for so long as it is the Port Authority, from levying, assessing, reassessing and recovering Port Charges from:
- iv) the Sublessee;
 - v) users of the Facility and the Seaport; and/or
 - vi) other persons,
- in accordance with the *Transport Infrastructure Act 1994*.
- (f) Unless otherwise directed by the Port Authority from time to time during the Term, all Port Charges and other costs, taxes, levies and charges payable under the preceding provisions of this clause must be paid to the party entitled to Payment no later than the last day of the month for which a notice under clause 22.5(c)vi) is required and in any event, on or prior to the due date for Payment.
- (g) The Sublessee may retain or replace agents from time to time for the purpose of making payment of Port Charges to the Port Authority without limiting or otherwise affecting the rights or remedies available to the Sublessor against any person, including the Sublessee.

22.6 Goods and Services Tax

- (a) This clause applies to any Payment which is required to be made under this Sublease, for which the Payee is not otherwise entitled to recover GST.
- (b) Subject to paragraph (d) of this sub-clause, any Payment to be made under this Sublease on or after the GST Date, other than for a GST Free Supply, will be increased by the GST Rate.

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- (c) Before or at the time a Payment is due, the Payee must deliver a Tax Invoice for Payment to the Payer.
- (d) Where a reimbursement for, or contribution to a Creditable Acquisition made by the Payee (including any reimbursement or contribution to outgoings, charges or expenses in respect of the Premises) is required to be paid under this Sublease, the amount of the reimbursement or contribution to be paid will be discounted by an amount equal to the Input Tax Credit which the Payee is entitled to claim for that Creditable Acquisition under the GST Law and that discounted amount shall then be increased by the GST Rate.

23. SECURITY DEPOSIT

23.1 Monetary security

Subject to clause 23.2, the Sublessee must pay the Security Deposit by way of Australian currency to the Sublessor at the time the Sublessee signs this Sublease by way of security for the performance by the Sublessee of its obligations under this Sublease and the Related Lease.

23.2 Bank guarantee

- (a) Alternatively, at the time the Sublessee signs this Sublease, the Sublessee may give the Sublessor a Bank Guarantee issued from a bank licensed under the *Banking Act 1959* for the amount of the Security Deposit, provided the Bank Guarantee is acceptable to the Sublessor in all respects.
- (b) The Sublessor will hold the Bank Guarantee by way of security for the performance by the Sublessee of its obligations under this Sublease and the Related Lease.
- (c) The Sublessee acknowledges that its obligations under this Sublease and the Related Lease do not end on the Expiry Date. The Bank Guarantee must not be expressed as expiring on any particular date or, if the Bank Guarantee is expressed as expiring on a particular date, that date must not be prior to the day reasonably nominated by the Sublessor as the day by which the Sublessee must comply with all of its obligations under this Sublease and the Related Lease, including those obligations which may arise after the last day of the Term under clauses 33 or 34.
- (d) The Sublessor must immediately return to the Sublessee any Bank Guarantee provided by the Sublessee to the Sublessor immediately on:
 - i) the provision by the Sublessee of a replacement Bank Guarantee that satisfies clause 23.2(a); or
 - ii) in accordance with clause 23.8.
- (e) If the Bank Guarantee is unacceptable to the Sublessor for any reason, the Sublessee must provide the Security Deposit as a sum of money as provided in clause 23.1.

23.3 Appropriation

The Sublessor may, without any requirement for prior notice to the Sublessee:

- (a) appropriate all or part of the Security Deposit paid under clause 23.1; or
- (b) call upon the Bank Guarantee,

(as the case may be) in payment of any sum:

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- (c) due by the Sublessee under this Sublease and/or the Related Lease which has not been paid on or before the due date for payment;
- (d) incurred by the Sublessor (whether before or after the Expiry Date) after giving reasonable notice to remedy the default in doing anything which the Sublessee should have done under this Sublease and/or the Related Lease, but which it has not done, or which the Sublessor reasonably considers the Sublessee has not done properly;
- (e) that, if paid to the party entitled to payment (including the Port Authority), will remedy or partially remedy a default by the Sublessee of any one or more of its obligations under this Sublease and/or the Related Lease (irrespective of that obligation being an essential term of this Sublease or not).

To avoid doubt, the Sublessor may proceed under this clause 23.3 to:

- (f) remedy or partially remedy; and/or
- (g) fully or partially pay and discharge any cost or expense incurred (or which will be incurred) to remedy or partially remedy,

any default or non-compliance by the Sublessee with its obligations under clause 22.5 (including paragraph (f) of that clause), clause 28 (including clause 28.4) and clause 34 (including clauses 34.3 and 34.4) of this Sublease.

Nothing in this clause derogates from clause 34.7 and to the extent of inconsistency or ambiguity between clause 34.7 and anything contained in this clause 23, clause 34.7 will prevail and will be applied to any dealing by the Sublessor with the Security Deposit.

23.4 Without prejudice to rights

Any step taken by the Sublessor under this clause will be without prejudice to any other right or remedy available to the Sublessor under this Sublease and/or the Related Lease or at law.

23.5 Reinstatement

Where, under clause 23.3, the Sublessor appropriates all or part of the Security Deposit or calls upon the Bank Guarantee, the Sublessee will forthwith reinstate the Security Deposit or replace the Bank Guarantee, as appropriate, without notice or demand therefore by the Sublessor.

23.6 Increase on Sublessor's demand

By written notice given to the Sublessee by the Sublessor ("the increase notice") not more regularly than once during every consecutive period of five years during the Term, the Sublessor may call for an increase in the Security Deposit in which case, the following provisions will apply:

- (a) The amount of the Security Deposit will be increased to a sum represented by "X" by applying the following formula:

$$X = \frac{A}{B} \times C$$

Where:

X = the amount of the increased Security Deposit;

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- A = the CPI figure for the quarter year ending immediately prior to the date of the increase notice;
- B = the CPI figure released for the quarter ending immediately prior to the later of the following:
- the Commencement Date; or
 - if applicable, the date on which the Security Deposit was last increased under this clause.
- C = the amount of the Security Deposit as at the date the increase notice is given by the Sublessor to the Sublessee under this clause.

For the purpose of the formula contained in this clause:

“CPI figure” means the Consumer Price Index figure for the city of Brisbane published by the Australian Bureau of Statistics or its successor (provided that if the publication of the CPI figure is discontinued at any time during the Term, a like figure or index may be applied by the Sublessor at its discretion); and

“quarter” means each quarter year for which a CPI figure is published by the Australian Bureau of Statistics or its successor.

- (b) Where the Security Deposit is a cash sum, the Sublessee must, within 30 days of the date of the increase notice, pay the difference between the sum calculated under clause 23.6(a) and the amount of the Security Deposit held by the Sublessor at the date of the increase notice (and the sum so paid will immediately form part of the Security Deposit and will be held by the Sublessor accordingly).
- (c) Where the Security Deposit takes the form of a Bank Guarantee, the Sublessee must either:
- i) provide a Bank Guarantee in a sum representing the difference between that calculated under clause 23.6(a) and the Security Deposit held by the Sublessor as at the date of the increase notice is given by the Sublessor to the Sublessee; or
 - ii) provide a replacement guarantee for a sum calculated in accordance with clause 23.6(a) (in which case, the Sublessor will return the Bank Guarantee it holds to the Sublessee in exchange for the replacement Bank Guarantee),

and in either case, the Bank Guarantee must be on and contain terms to the Sublessor's satisfaction, acting reasonably.

23.7 Successor in title

Where the Sublessee complies with its obligations under this clause by providing a Bank Guarantee, the Sublessee will, promptly (and in any case, within 30 days) on the Sublessor's demand procure a new bank guarantee in favour of a successor in title to the Land or the Premises if the Sublessor ceases to be the owner at any time during the term of this Sublease.

23.8 Expiration of term

Unless called upon beforehand, the Sublessor will return the Bank Guarantee, or what is left of the Security Deposit, when all actual or contingent liability of the Sublessee and the guarantors under this Sublease have been discharged.

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PART FOUR

24. USE OF PREMISES

24.1 Permitted use

- (a) Subject to clause 24.1(c), the Sublessee must only use the Premises including the Facility for the Permitted Use unless the consent in writing of the Sublessor is first had and obtained.
- (b) All costs of and incidental to the Sublessee's use of the Premises for the Permitted Use will be paid and discharged by the Sublessee promptly and in any event, no later than the due date for Payment.
- (c) Prior to the Commencement Date, the Sublessee must obtain and maintain throughout the Term at its own cost all necessary consents, licences and approvals required to use the Premises for the business carried on by the Sublessee from the Premises. The Sublessee must provide the Sublessor with copies of all such consents, licences and approvals upon demand by the Sublessor.
- (d) The Sublessee must conduct the Permitted Use upon the Land lawfully.
- (e) The Sublessor does not warrant that the Premises are suitable, fit or adequate to be used for the Permitted Use.
- (f) Subject to Appendix B, the Permitted Use is not exclusive to the Sublessee on lands owned or controlled by the Sublessor within the vicinity of the Seaport or upon any part of the Land on which the Premises is situated.

24.2 Compliance with Laws and Regulations

The Sublessee shall, at its own cost, observe and comply with:

- (a) all Commonwealth and State Acts of Parliament and the rules, regulations and planning schemes made thereunder;
- (b) all Local Laws applicable to the Seaport;
- (c) any security requirements of the Department of Infrastructure and Regional Development (Cth) (or its successor), or any other relevant authority, in relation to operations upon the Premises or the Seaport generally;
- (d) all proper Rules, directions and orders made by any competent authority in respect of the Premises or the Seaport generally; and
- (e) all lawful directions given from time to time by the Sublessor about:
 - i) the storage of petrol, oil or other material of an explosive, flammable or dangerous nature on the Premises;
 - ii) the provision, installation and maintenance of obstruction lights upon the Premises; and

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- iii) the provision, installation and maintenance of suppressors on the Sublessee's electrical equipment to prevent interference with radio, radar or television transmission and reception on the Land.

24.3 Security and Port Notices

- (a) The Sublessor and the Sublessee acknowledge and agree that:
 - i) the Seaport is (or may be) designated as a security regulated port or a maritime security zone pursuant to the Port Security Law;
 - ii) the Port Authority is (or may be) appointed as port operator in respect of the Seaport under Port Security Law;
 - iii) the Sublessee may be a maritime industry participant under Port Security Law in respect of the Land; and
 - iv) it is of paramount importance to the Sublessor that the Seaport is developed and operated safely and efficiently and in compliance with the Sublessor's and the Port Authority's responsibilities and obligations under Port Security Law.
- (b) The Sublessee undertakes and agrees to use the Premises to carry out obligations under this Sublease in a manner and to the extent necessary to comply with Port Security Law and all security directions (including but not limited to security direction and requirements of the Department of Infrastructure and Regional Development (Cth) or any other authority of competent jurisdiction concerning the conduct of the Permitted Use or the Premises), enforcement orders, the Maritime Security Plan, Port Notices and inspection requirements under it in respect of the Land which apply to the Sublessee or which apply to the Sublessor or the Port Authority and the Sublessor requires the Sublessee to comply with them.
- (c) The Sublessee agrees to develop, submit and seek approval for any security plan required by the Sublessee under Port Security Law and to implement at its own cost the requirements of the approved security plan.
- (d) The Sublessor disclaims and the Sublessee accepts all responsibility and liability for any loss, damage, cost or expense of any kind that the Sublessee may incur, directly or indirectly, due to the compliance by the Sublessee, the Sublessor or the Port Authority with any requirements of Port Security Law and/or this clause 24.3 including (without limitation):
 - i) delay costs in any aspect of the Permitted Use;
 - ii) the costs of installing and maintaining port security measures; and
 - iii) the costs of port security incidents including the unlawful interference with maritime transport or offshore facilities as defined by Port Security Law.
- (e) The Sublessee releases the Sublessor and the Port Authority from any liability of any kind referred to in clause 24.3(d) and it waives any claims, rights or actions the Sublessee may have against the Sublessor or the Port Authority in respect of such liabilities.
- (f) Compliance by the Sublessor or the Port Authority with any requirement of Port Security Law will not (in any circumstances) constitute a breach or an event of default under this Sublease by the Sublessor.
- (g) The Sublessee indemnifies or will indemnify the Sublessor and the Port Authority from and against all losses, damages, costs, expenses and liabilities of any kind suffered or incurred by

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the Sublessor or the Port Authority in respect of Claims, actions or proceedings made by or on behalf of a third party as a result of or in relation to any breach or non-observance by the Sublessee of this clause.

- (h) Nothing in this Sublease limits or detracts the right of the Sublessor and/or the Port Authority to display or publish a Port Notice.
- (i) The Sublessee must comply with any lawful Port Notice displayed or published by the Sublessor and/or the Port Authority from time to time during the Term and to the extent of any inconsistency between the terms of a Port Notice and this Sublease, the Port Notice will prevail.
- (j) The provisions of this clause will override and prevail over any other provisions of this Sublease to the extent of any inconsistency or ambiguity between those provisions and this clause.
- (k) The Sublessor and the Sublessee acknowledge and agree that in respect of all provisions of this clause by which the Sublessee promises to do or refrain from doing an act or acts for the benefit of the Port Authority:
 - i) the signing of this Sublease by the Sublessor is an acceptance on behalf of the Port Authority of the promises contained in such clauses; and
 - ii) the Sublessee must, if requested by the Sublessor, sign any further documents or do anything further required by the Sublessor to ensure that the promises contained in such provisions of this clause are enforceable by the Port Authority against the Sublessee.
- (l) Nothing in this clause imposes an obligation on the Sublessee to undertake any act, matter or thing if to do so would be contrary to the Sublessee's obligations at law (and to the extent of any inconsistency between this paragraph and any obligation of the Sublessee otherwise arising from anything else contained in this clause, this paragraph will prevail).

24.4 Rules

The Sublessor, in its capacity as Port Authority, may prescribe Rules relating to the operation, safety, use and occupation of the Seaport and vary them at any time. Rules promulgated under this clause prevail over this Sublease if there is any inconsistency between the Rules and a provision of this Sublease. The Sublessee must comply with a Rule from the time that notice of that Rule is given to the Sublessee. The Sublessee acknowledges that, before it executed this Sublease, it was given notice of the Rules then applicable on the Seaport. The Sublessee will not be in breach of this Sublease or the Related Lease as result of complying with the Rules, if the Rules are inconsistent with this Sublease or the Related Lease.

24.5 Development Consents

If the use which is intended to be made by the Sublessee of the Premises, or any activity carried out on the Premises under this Sublease, requires the consent, licence, permit, approval, or other authorisation of any development authority, statutory body or other third party, it is the responsibility of the Sublessee, at its own cost and expense, to obtain, or ensure that its contractors hold or obtain, that consent, licence, permit, approval or other authorisation. The failure of the Sublessee to obtain, or to ensure that its contractors hold or obtain, that consent, licence, permit, approval or other authorisation will not in any way affect the obligations of the Sublessee under this Sublease, but such failure, if it persists, will allow the Sublessor to determine this Sublease by notice in writing to the Sublessee.

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24.6 Nuisance

The Sublessee must not:

- (a) carry on, or permit in any part of the Premises, any annoying, noxious, offensive or illegal business, occupation or practice; or
- (b) do or permit any act or thing or use any plant or machinery which through noise, odours, vibrations or otherwise is or may grow to be an annoyance, nuisance, grievance or disturbance to the Sublessor or to the occupiers of neighbouring premises or occupiers or users of the Land,

unless the activity is permitted under the Permitted Use.

24.7 Workplace Health and Safety Legislation

- (a) The Sublessee agrees, at its cost, to ensure to the maximum extent permitted by law that the Sublessee, and any of its agents, employees, invitees or officers do not do or fail to do anything which may result in the Sublessor being in breach of any obligation imposed on the Sublessor in respect of the Premises or the Seaport under the *Work Health and Safety Act 2011*.
- (b) The Sublessee must prepare and adopt written policies and procedures in respect of safe and secure practices concerning its use and occupation of the Premises, including but not limited to:
 - i) Sublessee's Operating Practices;
 - ii) Sublessee's Maintenance Inspection Systems; and
 - iii) Sublessee's Emergency Preparedness and Response Procedures.

The Sublessee must, on the Sublessor's request therefore, produce copies of its policies and procedures (or such of them as may be the subject of the Sublessor's request) and, if reasonably required by the Sublessor, amend its policies and procedures (and adopt those amendments to ensure safe and secure practices concerning its use and occupation of the Premises) in the way the Sublessor may reasonably stipulate provided that any such stipulation is not inconsistent with the terms of this Sublease.

24.8 Access

The Sublessee must observe all Port Notices, lawful directions, Rules and regulations for the time being in force relating to the means of access to the Premises and the Land.

24.9 Compliance at all sites

The Sublessee acknowledges and agrees that its obligations under clauses 24.2, 24.3 (to the extent that clause is capable of application), 24.5 and 24.7 extend to the Sublessee's use and occupation of the Premises and the premises demised under the Related Lease.

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PART FIVE

25. THE PREMISES

25.1 Sublessee's Acknowledgement

The Sublessee acknowledges and declares that at the time the Sublessee signs this Sublease, the Premises (including the Facility) is fit in every respect for the purposes of the Permitted Use, the Sublessee's business and all requirements of the Sublessee in connection therewith.

25.2 Apparatus

The Sublessee must not use the Apparatus in the Premises for any purposes other than those for which they were constructed.

25.3 Interference with Apparatus or Services

Unless otherwise allowed in this Sublease or in the case of an emergency, the Sublessee must not interfere with any Apparatus or Services without first obtaining the written consent of the Sublessor.

25.4 Upgrade Works

- (a) Where the Sublessee requires Upgrade Works to properly carry on the Sublessee's business and to maintain annual throughput as at the Commencement Date the Upgrade Works shall be conducted by the Sublessee, and the Sublessee shall be responsible for the entire cost of the Upgrade Works.
- (b) Where the Sublessee requires Upgrade Works to the Premises to accommodate an increase in the annual tonnage of the product exported or changes in vessel size and/or configuration or the Sublessor's Property, the Upgrade Works will be the subject of a separate agreement between the parties to be negotiated following a written request by the Sublessee.

In this clause "Upgrade Works" means works to the Premises for the upgrade of services, infrastructure, plant and equipment or upgrades.

25.5 Overloading of Services

The Sublessee must not, without the written consent of the Sublessor, install any equipment on the Premises which overloads the Services to the Premises.

25.6 Fire Precautions

The Sublessee must at its own cost and expense:

- (a) take all reasonable precautions against the outbreak of fire upon the Premises;
- (b) comply with all lawful directions of the Sublessor relating to the prevention, outbreak, spread, and control of fire on the Premises or on the Land; and
- (c) install a fire alarm system on the Premises to the reasonable satisfaction of the Sublessor.

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25.7 Fire drills and Emergency Procedures

If asked to do so by the Sublessor the Sublessee must regularly practice and take part in specified procedures (the "drills") to be followed in the event of fire, emergency evacuation, protests, demonstrations and other disruptions and ensure that all persons under its control who are in the Premises also do so. The Sublessor will endeavour to minimise interference with the Sublessee's Business by the drills but the Sublessor is not liable to the Sublessee in any way for any loss or damage resulting from the drills.

25.8 Rodents and Vermin

The Sublessee must, at its own cost and expense, keep the Premises free and clear of rodents, Termites, cockroaches and other vermin.

25.9 Infectious Diseases

If an infectious disease happens upon the Premises, which requires notification under any statute, regulation, ordinance or local law, the Sublessee must at its own cost and expense:

- (a) give all the necessary notices and any other information which it may be required to give by law to the proper authority;
- (b) give a copy of the notification to the Sublessor; and
- (c) thoroughly fumigate and disinfect the Premises.

PART SIX

26. CONTAMINATION

26.1 Acknowledgment

The Sublessee acknowledges clause 9 of the Mandatory Standard Terms Document and agrees that the following provisions of this clause are in addition to (and not in derogation of) clause 9 of the Mandatory Standard Terms Document.

26.2 No Warranty

The Sublessor does not warrant that the Premises:

- (a) is not Contaminated Land; or
- (b) has not been used for a Notifiable Activity.

26.3 Prevention

The Sublessee must not cause, or permit the Sublessee's Employees or Contractors who may at any time be in or upon the Premises, to cause the Premises to become Contaminated Land.

26.4 Steps to be Taken

If the Sublessee becomes aware that the Premises is or is likely to become Contaminated Land, the Sublessee must:

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- (a) immediately notify the Sublessor in writing (in addition to any notification requirements under the Environment Act); and
- (b) where the Premises is Contaminated Land, take such remediation measures as the Sublessor may reasonably require (in addition to any remediation measures which the Sublessee may be required to take under the Environment Act) within a reasonable time of the Sublessor's request.

26.5 Environmentally Relevant Activity

Where any Environmentally Relevant Activity is carried out at or on the Premises, either by the Sublessee, or the Sublessee's Employees or Contractors, the Sublessee must ensure that the Sublessee, or the Sublessee's contractors, hold the relevant authority, approval, registration certificate or permit as required by the Environment Act to carry out that Environmentally Relevant Activity. This clause is not to be taken as the giving of consent to any activity on the Premises that otherwise requires the Sublessor's consent under this Sublease.

26.6 Notifiable Activity

The Sublessee must not carry out or permit the Sublessee's Employees or Contractors who may at any time be in or upon the Premises, to carry out a Notifiable Activity on the Premises unless the Notifiable Activity is permitted under the Permitted Use.

26.7 Further Steps to be Taken

If the Sublessee becomes aware that a Notifiable Activity has been, is being or is likely to be carried out on the Premises, the Sublessee must:

- (a) immediately notify the Sublessor in writing (in addition to any notification requirements under the Environment Act); and
- (b) where a Notifiable Activity has been or is being carried out, take such remediation measures which the Sublessee may be required to take under the Environment Act within a reasonable time of the Sublessor's request.

26.8 No Relief

Without detracting from clause 26.7, and recognising that the Sublessee was in prior occupation of the Premises under the Prior Lease, referred to in clause 21.1, the Sublessee is fully responsible for:

- (a) contamination of the Land or Environmental Harm caused to the Land as at the Commencement Date;
- (b) contamination to or Environmental Harm in respect of adjoining lands or waters where that contamination emanates from the Land as at the Commencement Date; and;
- (c) compliance with Environmental Laws relating to anything connected with paragraphs (a) or (b) of this clause.

The obligations of the Sublessee under this clause include but are not limited to the cost of remediation of contamination in accordance with the requirements of the Administering Authority and compliance with Environmental Laws.

26.9 No Further Relief

Without derogating from clause 26.7, the Sublessee is fully responsible for:

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- (a) contamination of the Land or Environmental Harm caused to the Land following the Commencement Date unless the Sublessee can establish to the reasonable satisfaction of the Sublessor that such contamination or Environmental Harm was caused or brought about through the acts or omissions of a third party not being the Sublessee's Employees or Contractors;
- (b) contamination to or Environmental Harm in respect of adjoining lands or waters where that contamination emanates from the Land as at the Commencement Date unless the Sublessee can establish to the reasonable satisfaction of the Sublessor that such contamination or Environmental Harm was caused or brought about through the acts or omissions of a third party not being the Sublessee's Employees or Contractors; and;
- (c) compliance with Environmental Laws relating to anything connected with paragraphs (a) or (b) of this clause.

The obligations of the Sublessee under this clause include but are not limited to the cost of remediation of contamination and compliance with Environmental Laws in accordance with the requirements of the Administering Authority.

26.10 Contamination Report

Unless otherwise agreed between the Sublessor and the Sublessee, the Sublessee must, not later than the Expiry Date, give to the Sublessor a Contamination Report prepared:

- (a) following an inspection and audit of the Land and adjoining land or waters conducted not more than six months prior to the Expiry Date; and
- (b) by a person who undertook the inspection and who, in the reasonable opinion of the Sublessor, holds the requisite qualifications to provide it.

26.11 Remediation Measures

If the Contamination Report given to the Sublessor under clause 26.10 discloses soil contamination, ground water contamination or contamination of any other kind, the Sublessee must cause such contamination to be remediated (unless it is excused from doing so under paragraphs (a) or (b) of clause 26.9) in accordance with Environmental Laws and in accordance with the requirements of the Administering Authority at its own cost and expense as soon as practicable following the time the Contamination Report is given to the Sublessor.

26.12 Indemnity

The Sublessee indemnifies and must hold the Sublessor indemnified from all Claims, loss or liability however arising out of or in any way connected with:

- (a) the contamination of the Land;
- (b) the contamination of adjoining lands or waters where that contamination emanates from the Land;
- (c) compliance with Environmental Laws relating to anything connected with paragraphs (a) or (b) of this clause,

unless the Sublessee has no responsibility therefore under paragraphs (a) or (b) of clause 26.9.

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26.13 Sublessee's Failure

If the Sublessee fails to take the remediation measures under clause 26.11 within a reasonable time of the Sublessor's request, the Sublessor may elect to take such remediation measures as the agent of the Sublessee and the total amount of all costs, charges, expenses, Payments or other expenditure incurred by the Sublessor will constitute a liquidated debt due and owing by the Sublessee to the Sublessor and will be paid by the Sublessee to the Sublessor, on demand by the Sublessor.

26.14 Provision of Information

The Sublessee must, at the request of the Sublessor, provide all relevant information to enable the Sublessor to respond to a notice or requirement given to the Sublessor by the Administering Authority.

26.15 Remediation Measures on Expiry

If the Sublessee has used the Premises for a Notifiable Activity then the Sublessee must prior to the date of expiration of the Lease take such remediation measures which the Sublessee may be required to take under the Environment Act within a reasonable time of the Sublessor's request.

PART SEVEN

27. ENVIRONMENTAL LAWS GENERALLY

27.1 Acknowledgment

The Sublessee acknowledges clause 9 of the Mandatory Standard Terms Document and agrees that the following provisions of this clause are in addition to (and not in derogation of) clause 9 of the Mandatory Standard Terms Document.

27.2 Compliance

The Sublessee must ensure the Sublessee's occupation and use of the Premises complies with the Environmental Laws to the extent that such laws are applicable to the Sublessee's use and occupation of the Premises.

27.3 Environment Management Plan

Without limiting clause 27.2, the Sublessee must, at its own cost, prepare an Environmental Management Plan for the Premises to be provided to the Sublessor no later than six months after the execution of this Sublease. The Environmental Management Plan must contain provisions which will enable the Sublessee to anticipate the impacts of its occupation and use of the Premises on the Environment, and should include all practicable and reasonable steps, measures and precautions that can be adopted so that:

- (a) all aspects of the Sublessee's occupation and use of the Premises including, without limitation:
 - i) all of the Sublessee's Operating Practices including any work or action taken by the Sublessee under clauses 28.15 and/or 28.16;
 - ii) the removal of the Facility following the date the Term ends pursuant to clause 34.3;
 - iii) the Sublessee's Maintenance Inspection Systems; and
 - iv) the Sublessee's Emergency Preparedness and Response Procedures;

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comply with the Environmental Laws;

- (b) environmental impacts are minimised in normal and exceptional situations (e.g. under both normal operating conditions and in the event of an emergency); and
- (c) there is no Contamination of the Premises or any adjacent land or waters except that which is expressly permitted by lawful authority.

27.4 Environmental Authorities

The Environmental Management Plan must contain copies of relevant Environmental Authorities and other relevant licences, approvals and permits granted under Environmental Laws.

27.5 Amendments

If the Sublessor requires any amendments to the Sublessee's Environmental Management Plan the Sublessee must, unless the Sublessor agrees otherwise:

- (a) make the amendments proposed by the Sublessor; and
- (b) resubmit the amended Environmental Management Plan to the Sublessor.

27.6 No endorsement

The Sublessor's receipt or review of the Environmental Management Plan, and the adherence by the Sublessee to the Sublessor's guidelines for the preparation of the Environmental Management Plan, under this clause 27, are not to be taken as an endorsement by the Sublessor of the content of the Environmental Management Plan as appropriate to counter the risk of Environmental Harm or Contamination occurring on the Premises or adjoining land or waters, nor that in complying with the Environmental Management Plan the Sublessee will be complying with the Environment Act. The Sublessee acknowledges that it must utilise its own knowledge and skill to prepare the Environmental Management Plan and must satisfy itself that the Environmental Management Plan properly addresses the risk of Environmental Harm or Contamination occurring on the Premises or adjoining land or waters and that in complying with the Environmental Management Plan, the Sublessee will be complying with the Environment Act.

27.7 Sublessee to Comply

The Sublessee must take all necessary steps to comply with, and be able to provide evidence of compliance with, the Environmental Management Plan.

27.8 Employees and Contractors

The Sublessee must ensure that:

- (a) all the Sublessee's Employees and Contractors have been informed of the terms of the Environmental Management Plan and are aware of their obligations under the Environmental Management Plan; and
- (b) all the Sublessee's Employees and Contractors comply with the Environmental Management Plan.

27.9 Annual Return

On or prior to 31 December 2018 and no later than on the last day of each succeeding calendar year during the Term, the Sublessee must, at its own cost, cause an annual return to be prepared detailing,

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and providing evidence of, the extent to which the Sublessee has complied with the Environmental Management Plan for the Premises and provide the annual return to the Sublessor.

27.10 Sublessor's Requirements

The Sublessee must ensure that there is no breach of any Environmental Laws in relation to the Premises.

27.11 Additions or Alterations

In the event that the Sublessee carries out any fit-out works or makes any additions or alterations to the Premises under this Sublease, the Sublessee must use all reasonable endeavours to ensure that those fit-out works, additions or alterations are conducted in accordance with, and using such materials as are consistent with, the Environmental Policy.

27.12 Consistency

The Sublessee must not carry out and shall not permit the Sublessee's Employees or Contractors to carry out any activity that:

- (a) is not consistent with the Environmental Policy; or
- (b) that fails to comply with the Environmental Policy.

27.13 Environmental Harm

The Sublessee must not carry out and shall not permit the Sublessee's Employees or Contractors to carry out any activity on the Premises that causes, or is likely to cause, Environmental Harm.

27.14 Notification and Remediation

If the Sublessee becomes aware that Environmental Harm is caused or threatened by an activity being carried out on the Premises, the Sublessee must forthwith:

- (a) immediately notify the Sublessor in writing (in addition to any notification requirements under the Environment Act); and
- (b) take such remediation measures as the Sublessor may reasonably require (in addition to any remediation measures which the Sublessee may be required to take under the Environment Act) within a reasonable time of the Sublessor's request.

27.15 Sublessee's Failure

If the Sublessee fails to take the remediation measures referred to in sub-clause 27.14 within a reasonable time of the Sublessor's request, the Sublessor may elect to take such remediation measures as the agent of the Sublessee and the total amount of all costs, charges, expenses, payments or other expenditure incurred by the Sublessor will constitute a liquidated debt due and owing by the Sublessee to the Sublessor and must be paid by the Sublessee to the Sublessor on demand by the Sublessor.

27.16 Provision of Documents

The Sublessee must provide the Sublessor with copies of the following documents (insofar as they relate to the Premises) within the times provided in this sub-clause:

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- (a) an Environmental Authority or Development Approval relating to an Environmentally Relevant Activity carried out on the Premises - within seven days of its issue by the Administering Authority (including any amendment of the Environmental Authority or Development Approval);
- (b) notice to conduct an Environmental Evaluation or Environmental Management Program - forthwith upon its issue by the Administering Authority;
- (c) an Environmental Evaluation - within seven days of its submission to the Administering Authority;
- (d) an approved Environmental Management Program - within seven days of its approval by the Administering Authority;
- (e) an Environmental Protection Order - forthwith upon its issue by the Administering Authority;
- (f) an approved Integrated Environmental Management System - within seven days of its approval by the Administering Authority; and
- (g) any other notice or direction issued by the Administering Authority under the Environment Act - forthwith upon its issue by the Administering Authority.

27.17 Comply with Environmental Laws

Throughout the Term, the Sublessee must comply in all respects with:

- (a) Environmental Laws applying to the Premises; and
- (b) any Environmental Management Plan prepared in accordance with this clause.

27.18 Complaints

The Sublessee must immediately notify the Sublessor in writing if a complaint is made or proceedings are instituted or a notice, order or other directive is issued against the Sublessee in connection with any issues relating to the Environment or any non-compliance with Environmental Laws in respect of the Premises or in connection with the Sublessee's occupation or use of the Premises or the Sublessee's activities carried out in the Premises.

27.19 Indemnity

Without limiting the generality of clause 32.6 of this Sublease, the Sublessee indemnifies the Sublessor against all Environmental Liabilities, whether arising before, during or after the Term, incurred by the Sublessor as a result of:

- (a) the Sublessee's occupation or use of the Premises or the Sublessee's activities carried on in the Premises; or
- (b) the Sublessee's failure to comply with clause 26 or this clause 27, either directly or indirectly.

27.20 Entry

Without limiting the generality of sub-clauses 28.11 or 32.3, the Sublessee will allow the Sublessor's authorised officer to enter upon and inspect the Premises to:

- (a) observe whether the Sublessee is complying with clause 26 or this clause 27; and
- (b) comply with any notice or requirement given to the Sublessor under Environmental Laws.

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27.21 Access

The Sublessee must allow, and will provide such access to the Sublessor as is necessary to allow, the Sublessor to undertake independent audits of the Sublessee's compliance with the Environmental Management Plan.

PART EIGHT

28. MAINTENANCE AND REPAIR

28.1 Sublessee's Obligation

Subject to clause 28.2, the Sublessee must keep and maintain the Facility in a state of good repair and condition:

- (a) at all times during the Term; and
- (b) at its own cost and expense.

28.2 Requisite Standard

The Sublessor and the Sublessee acknowledge and agree that the working life of the Facility will extend beyond the Expiry Date (having regard to the Permitted Use, the Sublessee's obligations under clause 28, standard industry practice and the location of the Facility) and the standard of maintenance and repair required under clause 28.1 must reflect the residual working life of the Facility from time to time during the Term. For the purpose of this clause, "working life of the Facility" means the operation and use of the Facility for the purpose of its construction in a way that:

- (a) complies with all laws prevailing from time to time during the Term concerning workplace health and safety; and
- (b) without derogating from clause 28.2(a), minimises, as far as practicable, with risk of injury to any person and damage to equipment, machinery and ocean-going vessels used at or making use of the Facility.

28.3 Not used

28.4 Reports

- (a) The Sublessee must give the Sublessor a:
 - i) Condition Report; and
 - ii) Asset Maintenance and Management Plan,no later than the Condition Reporting Date.
- (b) The Condition Report and Asset Maintenance and Management Plan will be prepared:
 - i) by a structural engineer or other person (or persons) who, in the reasonable opinion of the Sublessor, possesses the requisite skills and experience to compile them;
 - ii) following an inspection of the Facility by the person referred to in clause 28.4(b)i) conducted not more than 60 days prior to the Condition Reporting Date; and

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- iii) with reference to the inspection referred to in clause 28.4(b)ii).
- (c) All costs of and incidental to the preparation of the:
- i) Condition Report; and
 - ii) Asset Maintenance and Management Plan,
- including costs of and incidental to the inspection referred to in clause 28.4(b)ii), will be paid by the Sublessee on or prior to the due date for Payment.
- (d) If the Sublessor, acting reasonably, requests changes to the content of any Condition Report or Asset Maintenance and Management Plan, the Sublessor will inform the Sublessee of the reasons for its request for change and the Sublessee and the Sublessor must meet to discuss in good faith the requested changes, and use reasonable endeavours to agree whether to make the change and the timeframe in which the change will be made (if at all).
- (e) The Sublessee must observe and comply with each Asset Maintenance and Management Plan until amended or replaced by a subsequent Asset Maintenance and Management Plan (following a review and update of the Asset Maintenance and Management Plan under clause 28.4(f)).
- (f) In addition to any other obligations of the Sublessee under this clause, the Sublessee must review and update the Asset Maintenance and Management Plan by each date throughout the Term which coincides with each third yearly anniversary of the Condition Reporting Date.
- (g) Each review and update of the Asset Maintenance and Management Plan will be undertaken by a suitably qualified person following and inspection of the Facility:
- i) by a structural engineer or other person (or persons) who, in the reasonable opinion of the Sublessor, possesses the requisite skills and experience to compile them;
 - ii) following an inspection of the Facility by the person referred to in clause 28.4(g)i) conducted not more than 60 days prior to the date on which the Asset Maintenance and Management Plan falls due under clause 28.4(f); and
 - iii) with reference to the inspection referred to in clause 28.4(g)ii).
- (h) The Sublessee must:
- i) cause the person who undertakes an inspection under clause 28.4(g) to prepare a written report addressing all aspects of that inspection; and
 - ii) prepare a written review and, if necessary, upgrade of the Asset Maintenance and Management Plan in response to matters arising out of the report referred to in clause 28.4(h)i),
- and all costs of and incidental therewith will be paid by the Sublessee.
- (i) If a review and upgrade of an Asset Maintenance and Management Plan discloses non-compliance with the (then) most recent Asset Maintenance and Management Plan, the Sublessee must undertake such works and do all acts and things as may be necessary or desirable to achieve compliance with the most recent Asset Maintenance and Management Plan at the Sublessee's own cost within a reasonable period of time having regard to the nature of the non-compliance.

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- (j) The Sublessee must give the Sublessor a true and complete copy of each document referred to in paragraphs i) and ii) of clause 28.4(h) within 60 days of the date on which the inspection referred to in clause 28.4(g)ii) is undertaken.
- (k) The Sublessee must give the Sublessor a certification, prepared by a suitably qualified person, certifying compliance with the Asset Maintenance and Management Plan by each of the following dates:
 - i) the date which is 5 years immediately following the Condition Reporting Date; and
 - ii) each succeeding fifth year anniversary during the Term of the date referred to in clause 28.4(k)i).

28.5 Structural Maintenance and Repair

To avoid doubt, the Sublessee's obligations under this clause 28 (including clauses 28.1 and 28.4) extend to:

- (a) structural maintenance and repair of the Facility; and
- (b) repair and/or replacement of any capital or component part of the Facility which is in need of repair or replacement from time to time during the Term.

28.6 Sublessor Free of Obligation

- (a) The Sublessor will be under no obligation or have any responsibility to cause or procure:
 - i) an upgrade of the Facility or any part of it;
 - ii) the replacement or repair of the Facility or any part of it;
 - iii) the expenditure of money or incurring a liability in respect of the maintenance, repair or upgrading of the Facility,at any time during the Term. To avoid doubt, the reference to the Facility in this clause and elsewhere in this Sublease includes the Data and Communication Services.
- (b) For the purpose of this clause 28.6, it does not matter if:
 - i) any item of maintenance or repair is categorised as capital maintenance or repair or extends to the replacement or construction of any capital or component part of the Facility; or
 - ii) any upgrade, replacement or repair of the Facility or any part of it is required owing to a Force Majeure Event or other reason beyond the control of the Sublessee.

28.7 Sublessor's approval

If, in the terms of this clause 28, the Sublessee is or becomes obliged to conduct maintenance or repair to any part of the Facility that can reasonably be categorised as capital maintenance or repair or which otherwise extends to the replacement or construction of any capital or component part of the Facility, the works necessarily undertaken by the Sublessee in the performance of that obligation will be Improvements or Alterations and prior to commencing those works, the Sublessee must comply with clause 28.12.

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28.8 Further obligations

Without derogating from the preceding paragraphs of this clause:

- (a) the Sublessee must:
- i) maintain all fixtures and fittings (including without limitation evacuation lighting and fire extinguishers), plant, furnishings and equipment at the Premises or upon the Facility (including, without limitation, signs which are painted on or fixed to the outside of the Premises), in a clean condition and in good and Sublesseeable repair, fair wear and tear excepted;
 - ii) promptly rectify defects in and repair damage to the Seaport or the Facility caused by the Sublessee or the Sublessee's Employees and Agents;
 - iii) promptly repair damage caused by the Sublessee or the Sublessee's Employees and Agents when removed anything in or fixed to the Premises;
 - iv) maintain and protect all lighting equipment and illuminated signs in or affixed to the Premises; and
 - v) at regular intervals, having regard to the nature of the various items that follow, inspect and, where necessary, promptly repair (or replace items of the same or similar quality to those in place on the Commencement Date) heating, lighting, ventilation, air conditioning and other electrical equipment (including, without limitation, light globes and fluorescent tubes) installed on the Premises, which are:
 - A. damaged or faulty; or
 - B. reasonably suspected by the Sublessor to be damaged or faulty.

The Sublessee will enter into and maintain a comprehensive maintenance and repair contract in respect of such equipment installed in the Premises.

- (b) the Sublessee must undertake repairs of a structural nature to the extent that such repairs are necessary in order to comply with the Sublessee's obligations under this Sublease;
- (c) the Sublessee must carry out, or procure a contractor to carry out, all maintenance and repairs in a proper and workmanlike manner with materials of the same or similar quality as those used in the Premises on the Commencement Date or as those used in the construction of the Works.

28.9 Data and Communications Services

- (a) Except in respect of Data and Communications Equipment installed on the Premises under the Prior Lease, the Sublessee must not, without the Sublessor's prior written consent:
- i) install, or permit to be installed, on any part of the Premises, any radio, telecommunications, satellite, wireless, transmission or other communications equipment or facilities;
 - ii) use or permit any equipment in or on the Premises, or conduct any activity in or on the Premises, which causes or may cause any emissions of a radio, microwave or electromagnetic nature which interfere with the Data and Communications Services or otherwise radiate beyond the Premises;

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- iii) install, use, Interfere with, modify, or permit to be installed, any cable (whether optical or copper), conduit, pit, or other communications equipment of any kind within the Premises ("Data and Communications Equipment").

The Sublessor may grant or withhold its consent under this clause or grant it subject to conditions at the Sublessor's absolute discretion.

- (b) Subject to any relevant legislation, where:

- i) the Premises are connected to any Data and Communications Services; and
ii) licensed telecommunications service providers, or other parties authorised by law are able to use those Data and Communications Services to provide telecommunications or other similar Services as required by the Sublessee;

then the Sublessee's licensed telecommunications service provider may use the Data and Communications Services provided by the Sublessor, and the Sublessee acknowledges that the Sublessor may charge the Sublessee's telecommunications carrier or service provider a fee for the right to use those Data and Communications Services.

- (c) Where the Sublessee uses the Sublessor's Data and Communications Services as referred to in sub-paragraph (b) above, the Sublessee shall pay the Services Charges to the Sublessor for the use of the Data and Communications Services in accordance with clause 22.2(h) above;

- (d) Without detracting from clause 28.9(e) or the Sublessor's rights of entry upon and inspection of the Premises under this Sublease, the Sublessee shall allow the Sublessor, and its employees, agents or contractors, on the giving of reasonable written notice and subject to the Sublessee's reasonable safety and security requirements, full and free access onto the Premises at all times during the Term for the purposes of:

- i) inspecting, and if deemed necessary by the Sublessor, repairing or maintaining the Data and Communications Services on or within the Premises; and
ii) ensuring that any of the Sublessee's equipment or facilities being used or located on the Premises, is not interfering with the Sublessor's own communications facilities or other facilities at the Seaport.

- (e) The Sublessee acknowledges, agrees and declares that:

- i) prior to entering into this Sublease, the Sublessee has satisfied itself with all Data and Communication Services;
ii) any need to improve, upgrade, maintain or repair Data and Communication Services or any part of those Services (or the infrastructure by which those Services are provided) at any time during the Term will be at the sole cost and expense of the Sublessee (and the Sublessee indemnifies the Sublessor from liability for any such costs); and
iii) if the Sublessor should repair or maintain all or any part of the Data and Communication Services under clause 28.9(d), the costs to the Sublessor for having done so will be recoverable from the Sublessee as a debt or liquidated amount.

28.10 Responsibility for Employees, Contractors and Agents

The Sublessee is responsible for any damage caused to the Premises by the Sublessee's Employees or Contractors.

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28.11 Sublessor's Inspection

- (a) The Sublessor and its employees, contractors or agents may enter upon the Premises at all reasonable times to inspect the state of repair and condition of the Premises.
- (b) The Sublessor may give a written notice to the Sublessee requiring the Sublessee to carry out repair or cleaning of the Premises, which is the Sublessee's obligation under this Sublease, within a reasonable time.

28.12 Improvements or Alterations

- (a) Subject to clause 28.12(b), the Sublessee must not make any Improvements or Alterations to the Sublessor's Property, including the Apparatus, without the Sublessor's written approval which approval shall not be unreasonably withheld. Any approval granted by the Sublessor will be conditional upon the following procedures and conditions having been complied with, unless the Sublessor has waived compliance in writing:
 - i) the Sublessee must submit detailed drawings and other specifications of the proposed Improvements or Alterations to the Sublessor;
 - ii) the Sublessor may refer the drawings and specifications to an appropriate expert for approval, who in considering the approval of the proposed Improvements or Alterations, will have regard to the manner in and extent to which the Improvements or Alterations will affect the Premises including the Services or Apparatus;
 - iii) if the consent of any local or other authority is required to the Improvements or Alterations that consent must be obtained at the cost of the Sublessee before any work is commenced;
 - iv) any Improvements or Alterations must be carried out by contractors who have a current public liability policy for not less than FIFTY MILLION DOLLARS (\$50,000,000.00) and approved of in writing by the Sublessor acting reasonably;
 - v) the Improvements or Alterations must be carried out in a proper and workmanlike manner, and if required by the Sublessor, under the supervision of the Sublessor;
 - vi) within thirty (30) days from the completion of construction of the Improvements or Alterations the Sublessee must provide to the Sublessor "as constructed" drawings for the Sublessor's records; and
 - vii) without limiting the generality of clause 32.6, the Sublessee will indemnify and at all times hold indemnified the Sublessor from and against all Claims, demands, actions, suits, judgments, orders, decrees, damages, costs, losses (including any loss of Rent) and expenses, which the Sublessor may suffer or incur in connection with or arising from the construction or installation of the Improvements or Alterations.
- (b) Subject to clause 28.12(c), the Sublessee may, at its cost and without the Sublessor's prior consent, make Improvements and Alterations to the Sublessor's Property as it deems necessary for the purpose of improved safety or efficiency in the operation of the Facility, up to the value of \$300,000.00 for such works.
- (c) The Sublessee must:
 - i) before commencing works in connection with Improvements and Alterations carried out by authority of clause 28.12(b), comply with paragraphs iii) of clause 28.12(a) and

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- ensure that any contractor holds public liability insurance with cover of \$50 million per insurable event;
- ii) during the performance of works relating to Improvements or Alterations carried out by authority of clause 28.12(b), comply with paragraphs iv), v) and vii) of clause 28.12(a); and
 - iii) on having completed works in connection with Improvements and Alterations carried out by authority of clause 28.12(b), comply with paragraph vi) of clause 28.12(a).

28.13 Removal of Improvements or Alterations

The Sublessee must not remove any part of the Improvements or Alterations to the Premises without the prior written approval of the Sublessor.

28.14 Excavation

The Sublessee must (in consultation with the Sublessor) dispose of any earth, clay, gravel or sand excavated from the Premises during the course of making any Improvements or Alterations to the Premises in such place that is safe and does not cause any unreasonable obstruction to any party using the Premises.

28.15 Dredging

If any part of parts of the Seaport require dredging from time to time during the Term to facilitate uses made by the Sublessee of the Facility, the following provisions will apply:

- (a) In the case of Maintenance Dredging:
 - i) the Sublessee must make a written request to the Sublessor for Maintenance Dredging to a depth reasonably required to facilitate:
 - A. access by seagoing vessels to and from; and/or
 - B. loading and unloading of seagoing vessels at,the Facility provided that under no circumstance will a request made under this clause be for or relate to dredging to a depth that would otherwise constitute Capital Dredging;
 - ii) upon receipt of a written request under clause 28.15(a)i), the Sublessor will cause a marine survey to be undertaken by a qualified surveyor of the Sublessor's nomination in respect of that part (or those parts) of the Seaport where dredging is reasonably required to meet the Sublessee's request;
 - iii) If the survey undertaken under clause 28.15(a)ii) discloses:
 - A. there is no need for Maintenance Dredging to facilitate:
 - access by seagoing vessels to and from; and/or
 - loading and unloading of seagoing vessels at,the Facility, the Sublessor will be under no obligation to perform Maintenance Dredging and the Sublessee must pay to the Sublessor all costs incurred in connection with the procurement of the marine survey, immediately upon the Sublessor's demand for payment; or

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- B. there is a need for Maintenance Dredging, the Sublessor will attend to such Maintenance Dredging as is reasonably required to meet the Sublessee's request under clause 28.15(a)i). The cost of maintenance Dredging under this clause will be paid by the Sublessor and the Sublessor will cause such Maintenance Dredging to be performed as soon as it may be reasonably practicable for the Sublessor to do so.
- (b) In the case of Capital Dredging:
- i) The Sublessee must make a written request to the Sublessor for Capital Dredging to a depth reasonably required by the Sublessee to facilitate:
- A. access by seagoing vessels to and from; and/or
- B. loading and unloading of seagoing vessels at,
the Facility.
- ii) Upon receipt of a written request under clause 28.15(b)i), the Sublessor may elect to:
- A. undertake Capital Dredging, with or without conditions; or
- B. refuse to perform Capital Dredging,
in the Sublessor's sole and unfettered discretion.
- iii) If the Sublessor elects to conduct Capital Dredging subject to conditions, it will be under no obligation to cause Capital Dredging to be performed until those conditions have been satisfied;
- iv) If the Sublessor elects to perform Capital Dredging, all costs and expenses incurred by the Sublessor in doing so must be paid by the Sublessee and the Sublessee indemnifies and will hold the Sublessor indemnified from liability on account of such costs and expenses.
- (c) For clarity, the declared depth of the Seaport at the Date of Commencement and from time to time during the Term will be as determined by the Harbour Master.
- (d) The Sublessee must not undertake Capital Dredging or Maintenance Dredging within the Seaport without the prior written consent of the Sublessor, which consent may be granted, refused or granted on such conditions as the Sublessor in its discretion imposes.
- (e) The Sublessee acknowledges that from time to time during the Term, an authority of competent jurisdiction may impose limitations, restrictions or prohibitions in connection with dredging works or any part of dredging works that the Sublessee may propose to undertake or desire to be undertaken at the Seaport (collectively referred to as "dredging limitations"). The Sublessee must not raise any claim or objection in relation to the imposition of a dredging limitation even where the dredging limitation is imposed by the Sublessor in its capacity as the Port Authority for the Seaport (provided that the imposition of a dredging limitation, is a step taken by the Sublessor in the due and proper performance of its role as Port Authority).

28.16 Erosion

- (a) At all times during the Term, the Sublessee must, at its own cost and expense, undertake and perform all works and take such measures as may be necessary or desirable to:

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- i) protect the Land against erosion; or
 - ii) where complete protection of the Land is not possible or reasonably practical, mitigate against erosion of the Land brought about by tidal action, storm surge and other oceanic event.
- (b) Nothing in clause 28.16(a) derogates from the obligations of the Sublessee under clause 28.12.
- (c) The works and measures that the Sublessee must undertake under this clause will be to a standard as a reasonably prudent person would take to achieve protection or mitigation against erosion.
- (d) If, in the Sublessor's reasonable opinion, the Sublessee has failed to discharge or adequately discharge its obligations under this clause, the Sublessor may undertake such works and take all measures as it considers necessary or desirable to mitigate against or protect the Land from erosion and all costs incurred by the Sublessor in doing so which will be recoverable from the Sublessee as a debt or liquidated amount (and the Sublessee indemnifies and will hold the Sublessor indemnified from liability for all such costs).

PART NINE

29. TRANSFERS OR DEALINGS WITH THE SUBLEASE AND PREMISES

29.1 Mandatory Standard Terms

The Sublessee acknowledges clause 10 of the Mandatory Standard Terms Document and agrees that the following provisions of this clause are in addition to (and not in derogation of) the Sublessee's obligations under that Mandatory Standard Term.

29.2 Transfers

The Sublessee must not transfer this Sublease without the prior written consent of the Sublessor. The Sublessor's consent will not be unreasonably withheld if, before the Sublessee transfers the Sublease:

- (a) the Sublessee and proposed new Sublessee sign a Deed, in a form reasonably required by the Sublessor, under which:
 - i) the proposed new Sublessee agrees to be bound by the Sublease as if it were the Sublessee; and
 - ii) the proposed new Sublessee acknowledges that it must comply with the obligations of the Sublessee under the Sublease, whether or not the obligations relate to a period before the proposed transfer takes effect;
- (b) any default by the Sublessee under the Sublease has been remedied by the Sublessee or waived in writing by the Sublessor;
- (c) if required by the Sublessor by way of security for the performance by the proposed new Sublessee of its obligations under this Sublease, the proposed new Sublessee provides a Security Deposit in such amount as the Sublessor reasonably determines;

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- (d) the Sublessee provides to the Sublessor a stamped copy of the transfer of lease in a form reasonably acceptable to the Sublessor; and
- (e) the proposed new Sublessee pays the Sublessor's reasonable costs and expenses (including legal costs on a solicitor and own client basis) of and incidental to providing its consent and preparing the Deed referred to in paragraph (a).

29.3 Condition Precedent to Consent

Notwithstanding clause 29.2, the consent of the Sublessor under that clause will, if granted, be subject to a condition that at the time the Transferee of the Sublessee's interest in the Sublease acquires that interest, the Transferee also acquires from the Sublessee its right, title and interest in the Mine Site and undertakes to continue the mining operations and out-loading of the Product through the Facility. The condition set forth in this clause:

- (a) is a condition precedent to the granting of consent;
- (b) will not be satisfied unless and until the Sublessor is given such evidence as it reasonably requires concerning fulfilment of the condition; and
- (c) may be waived by the Sublessor in its discretion by written notice given to the Sublessee.

29.4 Changing Control

If the Sublessee is a company that is not listed on a recognised stock exchange then the Sublessee must obtain the Sublessor's prior written consent before there is a change in the Controlling Person of the Sublessee, unless there is no change to the ultimate holding company of the Sublessee or the change to the Controlling Person arises as a result of a transfer of a share which is listed on any relevant stock exchange. The Sublessor will consent to the change in the Controlling Person of the Sublessee if before the change in the Controlling Person:

- (a) the Sublessee gives to the Sublessor not less than one (1) month's notice in writing of the intention of the Sublessee to change the Controlling Person of the Sublessee;
- (b) any default by the Sublessee under the Sublease has been remedied or waived in writing by the Sublessor;
- (c) the proposed new Controlling Person would, under clause 29.2, be an acceptable transferee of this Sublease; and
- (d) The Sublessee pays the Sublessor's reasonable costs and expenses (including legal costs on a solicitor and own client basis) for the Sublessor's consent.

29.5 Sub-letting

The Sublessee must not underlet or permit another person to occupy or use the Premises, or in any manner part with possession of the Premises, without the prior written consent of the Sublessor. The Sublessor's consent will not be unreasonably withheld if, before the Sublessee underlets or parts with possession, the Sublessee:

- (a) provides to the Sublessor a copy of the proposed sublease or other document in a form reasonably acceptable to the Sublessor;
- (b) the Sublessee pays the Sublessor's reasonable costs and expenses (including legal costs on a solicitor and own client basis) for the Sublessor's consent; and

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- (c) any default by the Sublessee under the Sublease has been remedied by the Sublessee or waived in writing by the Sublessor.

29.6 Mortgaging or Charging

The Sublessee must not grant a Security over its interest in the Sublease or all or part of the Facility, without the prior written consent of the Sublessor. The Sublessor's consent will not be unreasonably withheld, if before the Security is granted:

- (a) the Sublessee gives to the Sublessor not less than one (1) month's notice in writing of the intention of the Sublessee to grant the Security;
- (b) the Sublessee provides to the Sublessor a copy of the proposed Security and any ancillary documentation (including a deed of right of entry or like document) in a form reasonably acceptable to the Sublessor;
- (c) any default by the Sublessee under the Sublease has been remedied by the Sublessee, or waived by the Sublessor;
- (d) the proposed mortgagee or chargee under the Security and the Sublessee enter into a Deed of Consent with the Sublessor in a form reasonably required by the Sublessor; and
- (e) the Sublessee pays the Sublessor's reasonable costs and expenses (including legal costs on a solicitor and own client basis) of and incidental to considering the Security, preparing the Deed referred to in paragraph (d) of this sub-clause and providing its consent.

29.7 Right of entry for mortgagee

If the Sublessor has provided consent under clause 29.6, then it will be deemed to have consented to a right of entry for the mortgagee to inspect the Premises.

29.8 Prohibition on Dealings

The Sublessee may not transfer, sublet or otherwise deal with its interests in this Sublease unless it also deals with its interest under the Related Lease in the same way and with the same entity.

PART TEN

30. DAMAGE OR DESTRUCTION OF PREMISES

30.1 Wholly or substantially unfit or inaccessible

- (a) If the Facility is wholly or partially damaged or destroyed through Force Majeure Event, the Sublessee must cause the Facility to be repaired, restored and/or reinstated at its own cost and expense unless the Sublessor agrees, at the Sublessee's request, that the Sublessee should be relieved of this obligation in which case, the Sublease will come to an end on the day nominated by the Sublessor and, as and from that day, clause 34.3 will apply with respect of that part or parts of the Facility that remain upon the Land. To avoid doubt, any works undertaken by the Sublessee to replace, repair and/or reinstate the Facility under this clause will be Improvements or Alterations to which clause 28.13 applies.
- (b) Nothing in clause 30.1(a) affects or otherwise derogates from the Sublessor's rights under the Sublease or at law in the event that the Facility is wholly or partially damaged or destroyed through Force Majeure Event and either of the following apply:

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- i) the damage or destruction occasioned by the Force Majeure Event would, in the reasonable opinion of the Sublessor, have been avoided or substantially avoided but through negligent or willful acts or omissions of the Sublessee and/or the Sublessee's Employees or Contractors; or
- ii) either party is denied all or part of the proceeds of any policy of insurance taken out in respect of the damage or destruction of the Facility occasioned by Force Majeure Event owing to the acts or omission of the Sublessee or the Sublessee's Employees or Contractors.

30.2 Timeline

Where the Sublessee is obliged under this provision to repair, restore and/or reinstate the Facility, it must do so as soon as reasonably practicable following the date upon which the damage or destruction occurred.

30.3 Lessor's right of termination

Notwithstanding any other provision of the Sublease, if in the Sublessor's sole and reasonable opinion the damage or destruction of the Facility is such that it is impractical or undesirable to restore the Facility or to make it fit for use and occupation of the Sublessee, the Sublessor may terminate the Sublease by giving not less than 30 days notice in writing to the Sublessee. Where the Sublease is terminated under this sub-paragraph, clause 34.3 will apply.

30.4 No compensation

- (a) No liability attaches to the Sublessor by reason of termination of the Sublease by the Sublessor under this clause and otherwise any termination is without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any provision of the Sublease.
- (b) This clause does not oblige the Sublessor to restore or reinstate the Premises.

30.5 Relief from performance

Except for the Sublessee's obligation under clause 30.1(a) to repair, restore or reinstate the Facility, the Sublessee will be relieved from performing its obligations under the Sublease during the occurrence of the Force Majeure Event and whilst the Sublessee is repairing, restoring or reinstating the Facility under clause 30.1(a).

PART ELEVEN

31. INSURANCE

31.1 Mandatory Standard Terms

The Sublessee acknowledges clause 13 of the Mandatory Standard Terms Document and agrees that the following provisions of this clause are in addition to (and not in derogation of) the Sublessee's obligations under that Mandatory Standard Term.

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31.2 Sublessee to Insure

The Sublessee must:

- (a) in connection with the Premises, maintain at all times during the Term with insurers and on terms approved by the Sublessor (which approval may not be unreasonably withheld) in the name of the Sublessee and noting the interest of the Sublessor and any other person nominated by the Sublessor:
 - i) insurance against loss or damage to or destruction of the Facility for its replacement and reinstatement value;
 - ii) insurance against damage or loss of the Sublessee's Property within (or upon) the Premises for its replacement and reinstatement value; and
 - iii) such other insurances which are required by law;
- (b) give the Sublessor evidence that it has complied with clause 31.2(a) at the commencement of each Rent Year and a copy of each insurance policy, if requested by the Sublessor, and at other times when asked to do so by the Sublessor; and
- (c) notify the Sublessor immediately if an insurance policy required by this clause 31.2 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the Premises or property in them.

31.3 Public Liability Insurance

As at the Commencement Date, the level of public liability insurance cover, for the purpose of clause 13.1(a) of the Mandatory Standard Terms Document is the sum specified in Item 7 of the Reference Data.

31.4 Increase on Public Liability Insurance Cover

The Sublessee acknowledges and agrees that the Sublessor may from time to time make demand for a higher level of insurance cover (independently of any requirement of the Minister) in respect of public liability insurance taken out by the Sublessee under clause 13 of the Mandatory Standard Terms Document and if the Sublessor should do so, the Sublessee must promptly comply with that demand and provide documentary evidence to the Sublessor's reasonable satisfaction of having done so.

31.5 Approved Insurer and Policy

Each policy of insurance referred to in clause 31.2(a) must be taken out and maintained with a reputable insurer and a copy of the certificate of currency relevant to those policies must be given to the Sublessor within ten business days of the commencement of each respective renewal period.

31.6 Workcover insurance

In addition to the other obligations of the Sublessee under clause 31.2, the Sublessee must, at all times during the Term, take out and maintain a policy of workcover insurance under the *Workers Compensation and Rehabilitation Act 2003* in respect of all of its "workers" (as this expression is defined in that statute).

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31.7 No Compromise

The Sublessee must not enforce, conduct, settle or compromise claims under any insurance policy required by this Sublease, even if that policy covers other property, if the Sublessor gives the Sublessee a notice that the Sublessor wishes to do these things.

31.8 Conduct Adversely Affecting Insurance

The Sublessee must not do anything which may affect rights under any insurance or which may increase any insurance premium payable in connection with the Premises or property in them.

31.9 Insurance Proceeds

Insurance proceeds derived from policies under clause 31.2 (even if in the Sublessee's name only in breach of that clause) which the insurer does not require to be used for replacement or reinstatement must be paid into a separate joint account in the names of the Sublessor, the Sublessee and, if required by the Sublessor, any other person. The money must be used to settle claims in connection with the event insured against or to replace or reinstate the insured item and then any surplus shared between the account holders having regard to the effect on them of that event or their respective interests in that item.

31.10 Non-payment of Insurance Proceeds

For clarity, if:

- (a) the Facility is damaged or destroyed; and
- (b) the insurer under a policy of insurance referred to in paragraphs (a)i) or (a)ii) of clause 31.2 (as the case may be) refuses, in respect of such damage or destruction, to pay insurance proceeds under that policy for any reason,

clause 30 will apply.

31.11 Inadequate Insurance Proceeds

If:

- (a) the Facility is damaged or destroyed; and
- (b) the insurer under the policy of insurance referred to in paragraphs (a)i) or (a)ii) of clause 31.2 (as the case may be) pays, in respect of such damage or destruction, insurance proceeds under that policy but the insurance proceeds are inadequate to fully repair or reinstate the Facility,

clause 30 will apply and if this Sublease comes to an end under that provision, the proceeds of insurance so paid by the insurer must be applied to facilitate the performance (or part performance if those proceeds are not enough to pay all costs of performance) by the Sublessee of its obligations under clause 34.3.

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PART TWELVE

32. SUBLESSOR'S RIGHTS AND OBLIGATIONS

32.1 Quiet Enjoyment

Subject to the Sublessor's rights under this Sublease, and for so long as the Sublessee complies with its obligations under this Sublease, the Sublessee may occupy the Premises during the Term, without any interruption by the Sublessor, or any person rightfully claiming through, under or in trust for the Sublessor.

32.2 Rates, Taxes and Outgoings

Unless this Sublease specifies otherwise, the Sublessor must promptly pay, when they fall due, all rates, taxes, charges, assessments and other outgoings assessed or charged in respect of the Premises.

32.3 Right of Entry

The Sublessor and any other authority and their employees, agents or contractors may enter the Premises to:

- (a) inspect the Premises;
- (b) carry out maintenance, repairs or building works to the Premises;
- (c) erect works for the supply of Services to the Premises or the provision of security arrangements within the Seaport; and
- (d) install CCTV cameras and any associated cabling and infrastructure on the Premises (including on any buildings erected on the Land by the Sublessee) for the purpose of improving security systems within the Seaport,

at any time after giving the Sublessee reasonable notice. If, in the reasonable opinion of the Sublessor, there is an emergency, the Sublessor may enter at any time without giving notice.

32.4 Navigation Aides

- (a) The Sublessor, the Commonwealth or the State, and their respective employees, contractors and agents may enter the Premises for the purpose of constructing, inspecting or maintaining navigation lights or marks on the Premises.
- (b) The Sublessee must:
 - i) not interfere with any navigation light or mark on the Premises; and
 - ii) keep the sight line of any navigation leads which cross the Premises clear of obstruction and must not relocate the leads without the prior written approval of the Sublessor.

32.5 Interruption of Services or Failure of Apparatus

Notwithstanding any implication or rule of law to the contrary, the Sublessor will not be liable to the Sublessee for any loss or damage suffered by the Sublessee due to the malfunction, failure to

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function or interruption of any Services to the Premises, the Data and Communications Services or the failure of any Apparatus in the Premises.

32.6 Indemnity

Each party (**Indemnifying Party**) indemnifies the other (**Indemnified Party**) and the Indemnified Party's employees, contractors and agents against Claims and all liability or loss to the Indemnified Party and the Indemnified Party's employees, contractors and agents and any damages, costs or expenses incurred by the Indemnified Party and the Indemnified Party's employees, contractors and agents arising from or in connection with:

- (a) damage, loss, injury or death to any person or property, caused or contributed to by the act, omission, negligence or default of the Indemnifying Party or of the Indemnifying Party's Employees or Contractors; or
- (b) damage, loss, injury or death to any person or property caused or contributed to by the breach of this Sublease by the Indemnifying Party.

The provisions of this clause are in addition to (and not in derogation of) the obligations of the Sublessee under clause 14 of the Mandatory Standard Terms Document.

32.7 Release

The Sublessee releases the Sublessor and its employees, contractors and agents from all Claims and any liability, loss, costs, damages or expenses arising from or incurred in connection with the Sublessor doing anything which the Sublessee should have done under this Sublease but has not done.

The provisions of this clause are in addition to (and not in derogation of) the obligations of the Sublessee under clause 14 of the Mandatory Standard Terms Document.

32.8 Sublessor's Liability

Despite any other provision in this Sublease, the Sublessor will not be deemed to be in default under this Sublease, unless the Sublessee has given a notice in writing to the Sublessor specifying the default, and the Sublessor has failed within a reasonable time of receipt of that notice to rectify the default.

PART THIRTEEN

33. DEFAULT OF SUBLESSEE

33.1 Sublessor's Right to Terminate

- (a) If the Sublessee:
 - i) does not pay Rent when it is due;
 - ii) does not comply with any provision of this Sublease;
 - iii) being a corporation:

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- A. any application or petition for the winding-up of the Sublessee is made or presented or an order is made or a resolution is passed for the winding-up of the Sublessee;
 - B. is placed into liquidation (voluntary or otherwise), enters into a scheme of arrangement or compromise with its creditors, is placed under official management or a receiver and/or manager, liquidator, provisional liquidator or administrator of any of its assets is appointed;
 - C. a person takes or attempts to take possession of any of the Sublessee's assets;
or
 - D. the Sublessee is struck off or de-registered or otherwise ceases to exist or have legal capacity;
- iv) makes an assignment for the benefit of its creditors; or
 - v) does any act whereby the estate or effects of the Sublessee may become liable to be taken in execution,

(each called a "non-compliance") and the Sublessee does not remedy the non-compliance within a reasonable time of being given a notice specifying the breach requiring the Sublessee to remedy the non-compliance, the Sublessor may terminate this Sublease. A notice given under section 124 of the *Property Law Act 1974*, is a notice for the purposes of this clause.

- (b) If the Sublessor is entitled to terminate this Sublease then it may do so by notice or re-entry.

33.2 Deemed default

If the Sublessee should make default under the Related Lease, the Sublessee will be deemed to have made default of the same character under this Sublease (meaning, for example, that if the Sublessee makes default of an essential Term under the Related Lease, the Sublessee will be deemed to have made default of an essential Term under this Sublease).

33.3 Damages

If the Sublessor terminates this Sublease under clause 33.1, then in addition to any amount recoverable against the Sublessee, apart from this clause, the Sublessor may recover from the Sublessee:

- (a) any Rent and other monies owing, but unpaid at the date of determination;
- (b) the amount by which the Rent and other monies payable under this Sublease between the date of determination and the date the Sublease was due to expire, exceeds the amount which the Sublessor receives or is likely to receive from any other Sublessee to whom the Premises are or may be relet during that period;
- (c) all other amounts necessary to compensate the Sublessor as a result directly or indirectly of the Sublessee's default and Sublessor's determination including the:
 - i) costs and expenses to maintain the Premises until the Expiry Date;
 - ii) costs to recover possession of the Premises (but only to the extent such cost would not have been incurred by the Sublessor if the Sublessee had vacated the Premises on the Expiry Date).

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33.4 Removal of Sublessee's Property

If the Sublessor re-enters the Premises under clause 33.1, the Sublessor may, in its absolute discretion, give written notice to the Sublessee directing it to remove the Facility or any part or parts thereof from the Land in which case, the following provisions will apply:

- (a) The Sublessee must remove the Facility, (or the part or parts thereof as required by the Sublessor) from the Land at its own cost and expense within such period as the Sublessor reasonably nominates (but in any case, not being longer than 12 months from the date on which the Sublessee receives notice from the Sublessor directing it to do so).
- (b) In addition, the Sublessee must, at its own cost and expense, make good to the reasonable satisfaction of the Sublessor any damage (including damage in the nature of Environmental Harm) caused or brought about to the Land or adjacent lands and waters as a consequence of the removal of the Facility.
- (c) In discharging its obligations under this clause and at all times pending the removal of the Facility, the Sublessee must hold and maintain with insurers and on Terms approved in accordance with clause 31 in the name of the Sublessee and noting the interest of the Sublessor (and any other person nominated by the Sublessor):
 - i) the insurances referred to in clause 31.2(a);
 - ii) a policy of contractors all risk insurance;
- (d) If the Sublessee has not fully discharged all of its obligations under this clause within the period stipulated in clause 34.3(a), the Sublessor may (without obligation) perform or cause to be performed all works that the Sublessor considers necessary or desirable to fully discharge the Sublessee's obligations under this clause and the costs incurred by the Sublessor in doing so will be recoverable by the Sublessor from the Sublessee as a debt or liquidated sum.
- (e) The Sublessee's right of entry upon the Land to perform its obligations under this clause after the Expiry Date (or the date on which this Sublease otherwise comes to an end) will be by way of contractual licence (governed by the terms of this clause) that does not confer upon the Sublessee a caveatable or other interest in the Land.

To avoid doubt, clause 34.4 has equal application to this clause if the Sublessee is obliged but fails to perform its obligations hereunder.

33.5 The Facility

To avoid doubt, clause 34 will apply notwithstanding the termination of this Sublease under this clause.

33.6 Essential Terms

- (a) If the Sublessee breaches an essential term of this Sublease and the Sublessor re-enters or takes possession of the Premises, the Sublessor may recover all money:
 - i) owing by the Sublessee under this Sublease up to the Expiry Date; and
 - ii) owing by the Sublessee under clause 34.
- (b) The essential terms of this Sublease are:
 - i) clause 22.2(b) – Rates and Charges;

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- ii) clause 22.3 – Costs, Charges and Expenses – Essential Services;
- iii) clause 22.5 – Port Charges;
- iv) clause 22.6 – Goods and Services Tax;
- v) clause 24.1(a) – Permitted Use;
- vi) clause 24.3 – Security and Port Notices;
- vii) clause 26 – Contamination;
- viii) clause 27 – Environmental Laws Generally;
- ix) clause 28.1 – Lessee’s Obligation
- x) clause 28.4 – Reports;
- xi) clause 28.5 – Structural Maintenance and Repair;
- xii) clause 31.2 – Sublessee to Insure;
- xiii) clause 34.3 – Obligation to Remove;
- xiv) clause 36.15 – Sublessor as Statutory Authority.

33.7 Sublessor May Rectify

- (a) Subject to clause 33.7(b), the Sublessor may do anything which the Sublessee should have done under this Sublease, but which it has not done, or which the Sublessor reasonably considers the Sublessee has not done properly (“outstanding obligation”) provided that before doing so, the Sublessor gives the Sublessee written notice to perform the outstanding obligation and, after 14 days following the date on which that notice is given, the outstanding obligation remains unperformed.
- (b) The Sublessor may dispense with the giving of written notice to the Sublessee under clause 33.5(a) in the case of emergency (determined by the Sublessor, acting reasonably).
- (c) If the Sublessor exercises its rights under the preceding paragraph, the Sublessor may claim the cost of doing so as a debt from the Sublessee.

33.8 Arbitration

- (a) If a dispute arises between the Sublessor and the Sublessee with respect to or arising out of this Sublease, including the rights or obligations of either party, the dispute will be referred to the arbitration of two arbitrators to be appointed as follows:
 - i) one to be appointed by the Sublessor and the other by the Sublessee;
 - ii) if the arbitrators cannot agree, the dispute will be referred to a third arbitrator agreed by the arbitrators, or failing agreement, appointed by the President for the time being of the Australian Property Institute on the application of either party;
 - iii) the Sublessor and the Sublessee will nominate their respective arbitrator within seven days of advice in writing from the other party of their nominated arbitrator and if

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they do not, then the first nominated arbitrator will proceed to hear and determine the dispute.

- (b) The decision of the arbitrators must be made within 28 days from the commencement of the reference.
- (c) The parties agree the arbitrators' determination will be final and binding on them and will be deemed to be made under the *Commercial Arbitration Act 2013*.

PART FOURTEEN

34. EXPIRY OR TERMINATION

34.1 Sublessee to vacate

The Sublessee must vacate the Premises on the earlier of:

- (a) the Expiry Date; or
- (b) the date of determination or termination of this Sublease.

34.2 The Facility

Unless clause 34.3 applies, the Sublessee must leave the Facility, (or those parts of them that are unaffected by clause 34.3) upon the Land in a state and condition required under clause 28 at the time the Sublessee vacates the Premises under clause 34.1.

34.3 Obligation to remove

At any time during the period starting three months before and ending three months after the date on which the Sublessee vacates the Premises under clause 34.1, the Sublessor may, in its absolute discretion, give written notice (called a "Removal Notice") to the Sublessee directing it to remove the Sublessee's Property or any part or parts thereof from the Land in which case, the following provisions will apply:

- (a) The Sublessee must remove the Sublessee's Property (or the part or parts thereof as directed by the Sublessor in the Removal Notice) from the Land at its own cost and expense within such period as the Sublessor reasonably nominates (but in any case, not being longer than 12 months from the date on which the Sublessee receives a Removal Notice under this clause).
- (b) In addition, the Sublessee must, at its own cost and expense, make good to the reasonable satisfaction of the Sublessor any damage (including damage in the nature of Environmental Harm) caused or brought about to:
 - i) the Sublessor's Property or other part of the Facility that remains after the Sublessee's Property has been removed under this clause; and/or
 - ii) the Land or adjacent lands and waters,

as a consequence of the removal of the Sublessee's Property.

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- (c) The Sublessee indemnifies and will hold the Sublessor indemnified from all Claims and losses or liability however arising out of or in any way connected with any act, omission, matter or thing undertaken by the Sublessee under this clause.
- (d) In discharging its obligations under this clause and at all times pending the removal of the Sublessee's Property in accordance with a Removal Notice, the Sublessee must hold and maintain with insurers and on terms approved in accordance with clause 31 in the name of the Sublessee and noting the interest of the Sublessor (and any other person nominated by the Sublessor):
 - i) the insurances referred to in clause 31.2(a);
 - ii) a policy of contractors all risk insurance;
- (e) if the Sublessee has not fully discharged all of its obligations under this clause within the period stipulated in clause 34.3(a), the Sublessor may (without obligation) perform or cause to be performed all works that the Sublessor considers necessary or desirable to fully discharge the Sublessee's obligations under this clause and the costs incurred by the Sublessor in doing so will be recoverable by the Sublessor from the Sublessee as a debt or liquidated sum.
- (f) The Sublessee's right of entry upon the Land to perform its obligations under this clause after the Expiry Date (or the date on which this Sublease otherwise comes to an end) will be by way of contractual licence (governed by the terms of this clause) that does not confer upon the Sublessee a caveatable or other interest in the Land.

34.4 Rights of Sublessor

- (a) If the Sublessee is obliged but fails to:
 - i) substantially commence the removal of the Sublessee's Property within 30 days of receipt of written notice from the Sublessor under clause 34.3; or
 - ii) complete the removal of the Sublessee's Property within the time limitations prescribed by clause 34.3,the Sublessor may do so and all costs and expenses arising out of or in any way connected with the removal of the Sublessee's Property ("make good costs") will, immediately upon the Sublessor's demand for payment, fall due for payment to the Sublessor by the Sublessee as a debt or liquidated amount.
- (b) Without derogating from clause 18.1(b) of the Mandatory Standard Terms Document (which applies independently of this clause), the Sublessee indemnifies and will hold the Sublessor harmless from liability for the payment of make good costs and all other costs and expenses however arising out of or in any way connected with the removal of the Sublessee's Property.
- (c) To better secure the Sublessee's obligations under the clause, the Sublessor may appropriate or call upon the Security Deposit in satisfaction or partial satisfaction of the Sublessee's obligations under this clause in accordance with clause 34.7.

34.5 Right to remove

- (a) Unless the Sublessee is in breach of this Sublease (at the date of expiration or termination of the Term), the Sublessee may remove the Sublessee's Property from the Premises during the period of 30 days immediately before the Expiry Date and must make good (at its cost) any damage caused by that removal (having regard to the terms of this Sublease and particularly,

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clause 34.3(b) which has application in respect of the removal of the Sublessee's Property under this clause).

- (b) The Sublessee must not remove the Sublessee's Property which is:
- i) affixed to or is part of the structure of the Facility; or
 - ii) affects the Services or Apparatus,

unless the Sublessor gives the Sublessee a notice requiring the Sublessee to remove that part of the Sublessee's Property.

- (c) If this Sublease has been validly terminated by the Sublessor, the Sublessee may not remove the Sublessee's Property unless the Sublessor requires the Sublessee to do so.

34.6 Removal of Lessor's Property

At any time during the period starting three months before and ending three months after the date on which the Sublessee vacates the Premises under clause 34.1, the Sublessor may, in its absolute discretion, give written notice to the Sublessee of the Sublessor's intention to remove the Sublessor's Property or any part or parts thereof from the Land in which case, the following provisions will apply:

- (a) The Sublessee must first remove the Sublessee's Property in accordance with clause 34.3 (irrespective of the Sublessor having given a Removal Notice to the Sublessee under that clause) and in respect of such removal of the Sublessee's Property, clause 34.3 will in all respects apply;
- (b) The Sublessor will commence works to remove the Sublessor's Property or cause such works to commence within six months of the date on which the Sublessor gives written notice to the Sublessee that it is satisfied that the Sublessee has discharged its obligations under clause 34.6(a);
- (c) Subject to clause 34.6(d), the Sublessee must:
 - i) pay to the Sublessor all costs and expenses of or incidental to the removal of the Sublessor's Property within 30 days of the Sublessor's request for payment, as a debt or liquidated amount; and
 - ii) indemnify and hold the Sublessor harmless from liability and all costs and expenses arising out of or in any way connected with the removal of the Sublessor's Property under this clause 34.6;
- (d) The liability of the Sublessee under clause 34.6(c) is capped at the amount of the Security Deposit.

34.7 Appropriation of Security Deposit

Without detracting from the Sublessee's obligations under this Sublease (including the Sublessee's obligations under this clause 34), the Sublessee acknowledges and agrees that the Sublessor may appropriate the Security Deposit to meet the financial obligations of the Sublessee under this Sublease and where the Sublessor should do so, all sums appropriated will be applied in the following order of priority:

- (a) firstly, in payment of all sums for which the Sublessee is responsible or liable to pay under clause 34.6(c);

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- (b) secondly, the balance of the Security Deposit then remaining (if any) will be applied in payment of all sums for which the Sublessee is responsible or liable to pay under clause 34.4;
- (c) thirdly, the balance of the Security Deposit then remaining (if any) will be applied in payment of all sums for which the Sublessee is responsible or liable to pay under clause 34.5;
- (d) fourthly, the balance of the Security Deposit then remaining (if any) will be applied in payment of all sums for which the Sublessee is responsible or liable to pay under any provision of this Sublease not specifically addressed in the preceding paragraphs of this clause 34.7; and
- (e) fifthly (and finally), the balance of the Security Deposit then remaining (if any) will be paid to the Sublessee (but only after all other financial obligations under or in connection with this Sublease have first been satisfied and paid).

34.8 Abandoned property

Any Lessee's Property which the Sublessor has not required the Sublessee to remove and which the Sublessee does not remove by the Expiry Date will be deemed to have been abandoned by the Sublessee and will become the property of the Sublessor.

34.9 Antecedent breaches

The termination of this Sublease will not prejudice or affect any rights or remedies of the Sublessor against the Sublessee on account of any antecedent breach by the Sublessee of its obligations under this Sublease.

PART FIFTEEN

35. PROPOSAL TO EXTEND OR RENEW TERM

35.1 Sublessee's notice

At least 18 months prior to the Expiry Date or such later date as the Sublessor in its absolute discretion may allow, the Sublessee must inform the Sublessor in writing if it desires to extend or renew the Term from the time the Term comes to an end.

35.2 Consequences of election

If the Sublessee:

- (a) gives a notice expressing its intention not to extend or renew the Term, clause 35.3 will apply; or
- (b) gives a notice to the Sublessor under clause 35.1 expressing its desire to extend or renew the Term, clause 35.4 will apply.

35.3 No extension or renewal

Where this clause applies by operation of clause 35.2(a), the Sublessor will give consideration to its requirements of the Sublessee under clause 34 and, as soon as it may be practicable for the Sublessor to do so (and in any case, no later than the Expiry Date), the Sublessor will inform the Sublessee of those requirements.

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35.4 Request to extend or renew

- (a) Where this clause applies by operation of clause 35.2(b), the Sublessor and the Sublessee will, within 30 days of the date the Sublessor receives notice from the Sublessee under clause 35.1, commence negotiations to extend or renew the Term from the day that immediately follows the Expiry Date. The Sublessor and the Sublessee must engage in negotiations under this clause in good faith but will be free to conduct those negotiations without regard to any term or condition of this Sublease or the Related Lease.
- (b) The parties acknowledge that any agreement to renew or extend the Term will be subject to all required approvals being obtained, including the approval of the Minister and, if applicable under the *Transport Infrastructure Act 1994*, the TIA Minister.

PART SIXTEEN

36. GENERAL

36.1 Additional Provisions

- (a) The additional provisions form part of this Sublease.
- (b) To the extent of inconsistency between the Additional Provisions and any other provisions of this Sublease, the Additional Provisions will prevail.

36.2 Power of Attorney

- (a) The following provisions of this clause, and the power granted under paragraph 36.2(b) are in addition to (and not in derogation of) clause 15 of the Mandatory Standard Terms Document.
- (b) In addition to the appointment of the Sublessor as attorney under clause 15.1 of the Mandatory Standard Terms Document, the Sublessee appoints each of the directors and Chief Executive Officer for the time being of the Sublessor, jointly and severally, as its attorney with the same powers and subject to the same limitations as are contained in clauses 15.1 and 15.2 of the Mandatory Standard Terms Document.
- (c) A statutory declaration by the attorney that the powers of re-entry contained in this Sublease has been exercised will be sufficient proof of that fact.

36.3 Notices

A notice or approval must be:

- (a) in writing; and
- (b) left at or posted to the address or sent to the facsimile number of the parties specified in Item 1 of the Reference Data, or such other address as the party notifies to the other in writing.

36.4 Deemed Service

A notice or approval is taken to be given:

- (a) if posted, on the third day after posting; and

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- (b) if sent by facsimile, on the next business day after it is sent, unless the sender is aware that transmission is impaired.

36.5 Time of Essence

Time is essential for all obligations of the Sublessee in this Sublease.

36.6 Entire Agreement

- (a) This Sublease contains the entire agreement as concluded between the parties despite any negotiations or discussions prior to the execution of this Sublease.
- (b) The Sublessee acknowledges that it has not been induced to enter into this Sublease by any representation, verbal or otherwise, made by or on behalf of the Sublessor which is not set out in this Sublease.

36.7 Cumulative Rights

The rights and remedies of the parties under this Sublease are in addition to the rights and remedies conferred on the party at law or in equity.

36.8 Property Law Act

- (a) To the extent there is any inconsistency between the terms and conditions of this Sublease, and those expressed or implied by the *Property Law Act 1974*, the terms of this Sublease will prevail.
- (b) The covenants, powers and provisions implied in leases by section 105 and 107 of the *Property Law Act 1974* do not apply to this Sublease.

36.9 Moratorium Negated

Unless application is mandatory by law, any law, proclamation, order, regulation or moratorium, present or future, shall not apply to this Sublease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Sublessor.

36.10 Waiver and Variation

- (a) A provision of or a right under this Sublease, may not be waived or varied except in writing signed by whoever it is to be bound.
- (b) The Sublessor's acceptance of Rent or other money payable under this Sublease (whether before or after termination of this Sublease) is not a waiver of a breach or an acceptance of the Sublessee's repudiation of this Sublease. Any attempt by the Sublessor to mitigate its loss is not a surrender by operation of law or waiver of the Sublessee's breach or an acceptance of the Sublessee's repudiation of this Sublease.

36.11 Sublessor's Conditions on Approvals

The Sublessor may give any approvals or consents under this Sublease conditionally or unconditionally or may withhold its consent or approval in its absolute discretion, unless this Sublease expressly says otherwise.

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36.12 Severability

If this Sublease or any part or provision of it is void, unenforceable or illegal, it is severed. The remainder of this Sublease will have full force and effect.

36.13 Governing Law

This Sublease is governed by the law of Queensland.

36.14 Third Party's Consent

The Sublessee agrees that if any person or authority (including any mortgagee) whose consent is required to the execution or registration of this Sublease, or any lease granted pursuant to any option contained in this Sublease, requires the Sublessee to execute and deliver any deed, covenant or other instrument in favour of such person or authority, as a condition of its consent, the Sublessee will forthwith, upon the request by the Sublessor, or such person or authority, execute and deliver the same.

36.15 Sublessor as Statutory Authority

- (a) Nothing in this Sublease fetters or otherwise affects the Sublessor in its capacity as a statutory authority.
- (b) The Sublessor will exercise its powers and discretions as a statutory authority independent of and without regard to this Sublease.
- (c) If the Sublessee should seek the consent or approval of the Sublessor in its capacity as statutory authority in relation to any act, omission, matter or thing at any time during the Term, the Sublessor will be free of any obligation imposed by this Sublease to act reasonably in its deliberations about the granting of consent or approval or the conditions on which consent or approval should be granted.
- (d) To avoid doubt, the Sublessor's role and duties as a statutory authority are divorce from and are not in any way affected by this Sublease.
- (e) In this clause 36.15, the reference to the Sublessor as a statutory authority includes the role of the Sublessor as:
 - i) Port Authority under the *Transport Infrastructure Act 1994*;
 - ii) Assessment Manager under the *Planning Act 2016*; and
 - iii) Port Operator under the *Maritime Transport and Offshore Facilities Security Act 2003*.

36.16 Conditional Lease

- (a) This Sublease is subject to and conditional upon the Sublessee entering into the Related Lease with the Sublessor at or immediately prior to the time of entering into this Sublease.
- (b) Clause 36.16(a) is a condition precedent to the granting of this Sublease.
- (c) Subject to clause 35.4, if the Related Lease is terminated for any reason, this Sublease will, despite any contrary provision herein contained, automatically cease and determine on the date that the Term of the Related Lease comes to an end.

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36.17 Indemnities

The Sublessee's indemnities in this Sublease will be reduced to the extent that the damage, loss, liability or claim was caused or contributed by a person or party other than the Sublessee or its agent or contractor.

36.18 Effect as a Deed

This Sublease has effect as a deed (irrespective of the registered status of this Sublease).

36.19 Miscellaneous

- (a) In this Sublease, references to:
- i) the singular includes the plural and vice versa;
 - ii) any gender includes all other genders;
 - iii) a person includes a body corporate or other entity and vice versa; and
 - iv) "Item" means the Item bearing the corresponding number in the Reference Data.
- (b) If the Sublessee consists of two or more persons then they are jointly and severally bound by this Sublease.
- (c) In this Sublease, headings are for ease of reference only and are not to be used in interpretation.

36.20 Interpretation

In this Sublease:

- (a) **Plurals:** Words importing the singular number include the plural and vice versa.
- (b) **Gender:** Words importing any particular gender include all genders.
- (c) **Obligations of Parties:** Each covenant and obligation (positive or negative) of a party will be construed as if each such covenant or obligation is a separate and independent covenant made by the party undertaking the obligation and continuing (unless the context otherwise requires) throughout the Term of this Sublease and for so long as it remains to be performed.
- (d) **Statutes and Regulations:** A reference to a statute, regulation, ordinance or local law includes a statute, regulation, ordinance or local law which amends or replaces those. An Act of Parliament includes any Act amending or replacing it and any Act passed in substitution or replacement of it.
- (e) **Bodies and Associations:** A reference to an authority, institute, association or body (statutory or otherwise) if it has ceased to exist or has been reconstituted, renamed or replaced, or the powers or functions have been transferred to another authority, institute, association or body, will be deemed to refer to the authority, institute, association or body, established or constituted in its place and/or as nearly as may be succeeding to its powers or functions.
- (f) **Severally Bound:** Each covenant, agreement or obligation expressed or implied in this Sublease by which two or more persons covenant, agree or are bound, will bind them jointly

SCHEDULE

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and each of them severally. Every provision expressed or implied in this Sublease, which applies to two or more persons, applies to those persons jointly and each of them severally.

- (g) **Premises:** In the absence of any provision to the contrary, references to the Premises, includes any part of the Premises.
- (h) **Headings:** Headings and sub-headings have been included for ease of reference only and will not form part of the context or limit or govern the construction of this Sublease.

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

SCHEDULE

FORM 20 Version 2
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APPENDIX A
SUBLESSOR'S PROPERTY

The following 14 pages are and contain
Appendix A to this Sublease.

APPENDIX A

Improvements, fixtures fittings or other property owned or made by the Lessor and situated on the Premises and/or the Related Lease Premises as at the Commencement Date and described below (and referenced in attached As Built Drawings CF-S-005 rev3, CF-S-022 rev3, CF-S-051 rev5, and 2001 Upgrade works as-built drawings 7681-(101 to 110)) are deemed to be Lessor's Property. All other on the Premises, including chattels and other property not categorised as Improvements or Alterations and exclusions identified below are deemed to be Lessee's Property

1. Trestle Jetty Structure (approx 220m) including:

- Handrails;
- Floor plating;
- Deck steel works;
- Head stocks, stiffeners and steel piles;
- Steel cross beams headstocks with diagonal bracing

2. Main Wharf Structure (approx 220m) including:

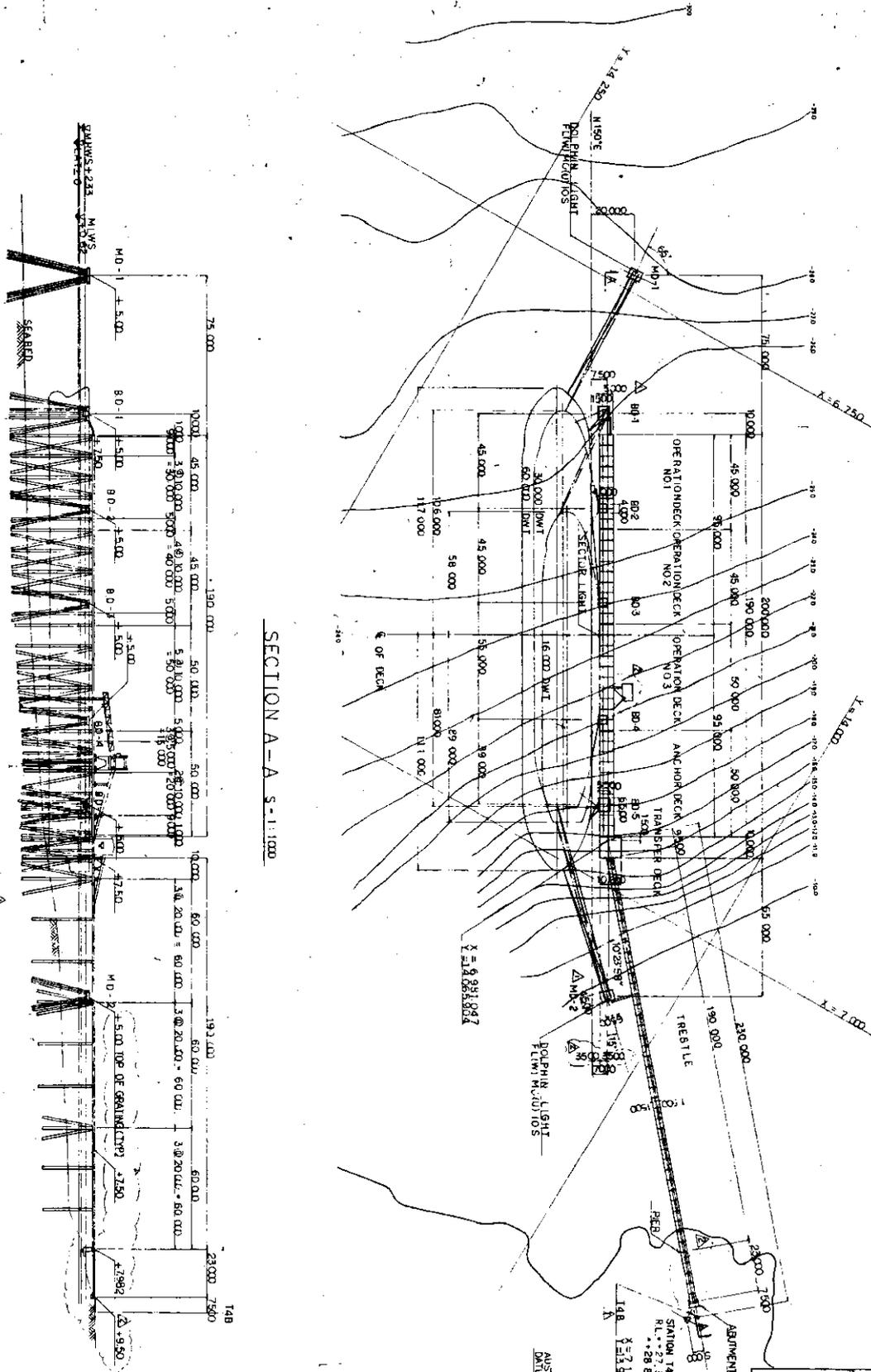
- 113 steel piles
- Steel cross beams headstocks with diagonal bracing
- Large longitudinal steel I-beam to mount rail for ship loader
- 5 berthing dolphins
- 3 Operation decks, 1 x anchor deck and a transfer deck
- Fender system
- Steel balustrade handrail
- Grated decking
- Transformer rectifier
- Access way to beacon pile off operation deck 3
- Gang ways, ladders and platforms to access berthing and mooring areas
- Mooring bollards and release hooks

3. Two (2) mooring Dolphins including:

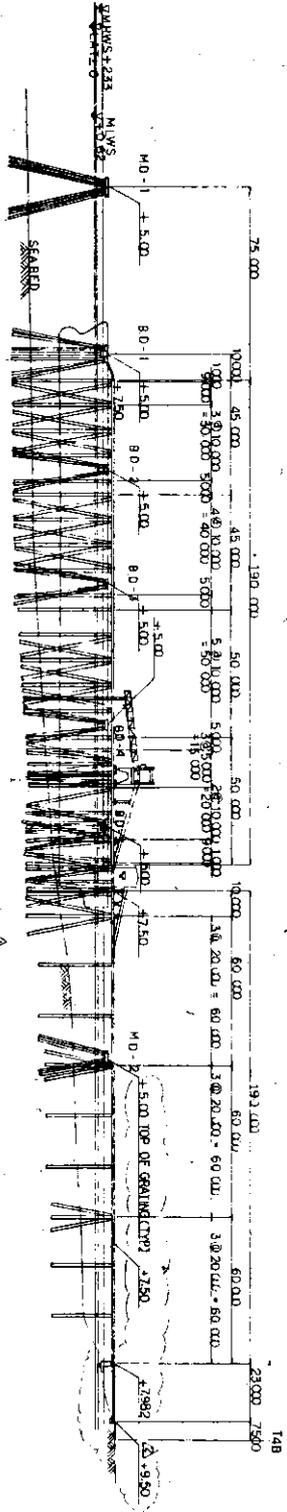
- fenders and fittings;
- gratings;
- fender support systems;
- headstocks and stiffeners and piles

Exclusions:

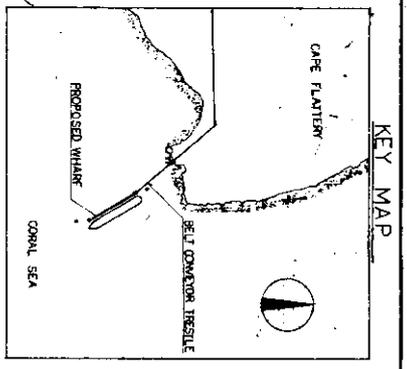
- Rail
- Ship loader
- Gondola to mooring dolphin
- All structures attached to wharf substructure not detailed above
- Water and electrical services excluding transformer rectifier noted above
- Dolphin lighting
- Conveyors and associated galleries to jetty and wharf
- Land based conveyor
- Land based transfer towers
- Land based concrete slabs and foundations not detailed above
- Ellicott House;
- Wharf fire pump, tank and shed



PLAN S-1:100



SECTION A-A S-1:100



KEY MAP

NOTE: 1. VALUES OF CONTOUR LINE ARE BASED ON THE LEVEL DATUM OF AUSTRALIAN HEIGHT DATUM.

2. LOCATION OF SECTION LIGHT IS SUBJECT TO CHANGE ACCORDING TO THE INSTRUCTION OF HARBOUR MASTER.

3. FOR GENERAL ARRANGEMENT OF LOADING DECK, SEE DWG. NO. CF-S-023.

AS BUILT	AS SHOWN
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100. 1:100	1:100

NOTES: 1. ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS.
 2. THE MATERIAL SHOWN IS TO BE SUPPLIED BY THE CONTRACTOR.
 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.
 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.

NO.	DESCRIPTION	DATE	BY	CHECKED
1	ISSUED FOR TENDER	11/11/00
2	AS BUILT

GENERAL LAYOUT

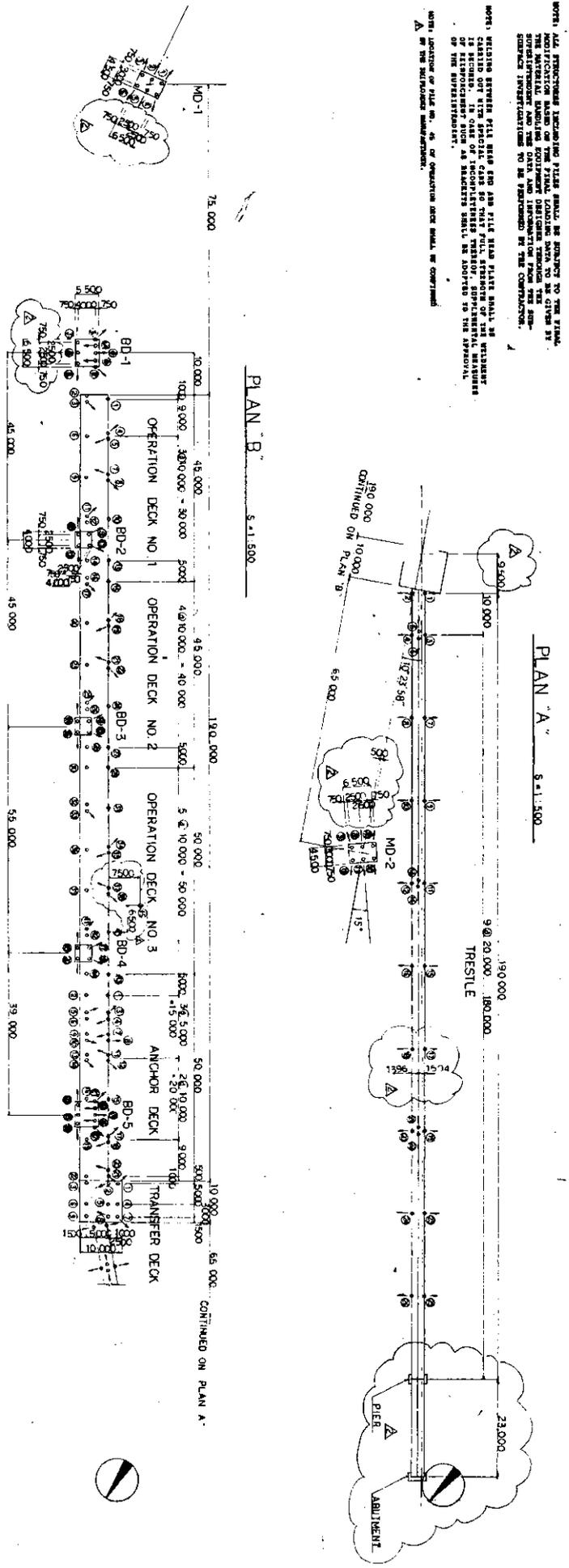
SILICA SAND LOADING FACILITIES AT CAPE FLATTERY, QUEENSLAND

OWNER: CAPE FLATTERY SILICA SANDS PTY. LIMITED

DWG. NO. CF-S-005

REV. 3

NOTE: ALL STRUCTURES INCLUDING PILES SHALL BE SUBJECT TO THE FINAL MODIFICATION BASED ON THE FINAL LOADINGS TO BE GIVEN BY THE STRUCTURAL ENGINEER AND THE DATA AND INFORMATION FROM THE SURFACE INVESTIGATIONS TO BE PROVIDED BY THE CONTRACTOR.
 NOTE: DESIGN OF THE SPECIAL CASE SO THAT FULL STRENGTH OF THE MEMBERS OF MEMBERSHIP SUCH AS SKEWERS SHALL BE ADOPTED IN THE APPROVAL OF THE APPROVED DRAWING.
 NOTE: LOCATION OF PILE NO. 45 OF OPERATION DECK SHALL BE CONTINUED ON THE REVISION DRAWING.



PILE NO	SECTION						
1	45°	15	45°	15	45°	15	45°
2	20°	16	45°	16	45°	16	45°
3	15°	17	45°	17	45°	17	45°
4	15°	18	45°	18	45°	18	45°
5	15°	19	45°	19	45°	19	45°
6	15°	20	45°	20	45°	20	45°
7	15°	21	45°	21	45°	21	45°
8	15°	22	45°	22	45°	22	45°
9	15°	23	45°	23	45°	23	45°
10	15°	24	45°	24	45°	24	45°
11	15°	25	45°	25	45°	25	45°
12	15°	26	45°	26	45°	26	45°
13	15°	27	45°	27	45°	27	45°
14	15°	28	45°	28	45°	28	45°
15	15°	29	45°	29	45°	29	45°
16	15°	30	45°	30	45°	30	45°

PILE NO	SECTION						
1	45°	15	45°	15	45°	15	45°
2	20°	16	45°	16	45°	16	45°
3	15°	17	45°	17	45°	17	45°
4	15°	18	45°	18	45°	18	45°
5	15°	19	45°	19	45°	19	45°
6	15°	20	45°	20	45°	20	45°
7	15°	21	45°	21	45°	21	45°
8	15°	22	45°	22	45°	22	45°
9	15°	23	45°	23	45°	23	45°
10	15°	24	45°	24	45°	24	45°
11	15°	25	45°	25	45°	25	45°
12	15°	26	45°	26	45°	26	45°
13	15°	27	45°	27	45°	27	45°
14	15°	28	45°	28	45°	28	45°
15	15°	29	45°	29	45°	29	45°
16	15°	30	45°	30	45°	30	45°

PILE NO	SECTION						
1	45°	15	45°	15	45°	15	45°
2	20°	16	45°	16	45°	16	45°
3	15°	17	45°	17	45°	17	45°
4	15°	18	45°	18	45°	18	45°
5	15°	19	45°	19	45°	19	45°
6	15°	20	45°	20	45°	20	45°
7	15°	21	45°	21	45°	21	45°
8	15°	22	45°	22	45°	22	45°
9	15°	23	45°	23	45°	23	45°
10	15°	24	45°	24	45°	24	45°
11	15°	25	45°	25	45°	25	45°
12	15°	26	45°	26	45°	26	45°
13	15°	27	45°	27	45°	27	45°
14	15°	28	45°	28	45°	28	45°
15	15°	29	45°	29	45°	29	45°
16	15°	30	45°	30	45°	30	45°

NOTE: 1) PILE BENTHON ELEVATION SHALL BE ADJUSTED BASED ON THE ACTUAL BENTHON ELEVATION AT THE PILE LOCATION.

AS BUILT

PILING SCHEDULE

SILICA SAND LOADING FACILITIES AT CAPE FLATTERY, QUEENSLAND

SCALE: 1:500

DWG NO: CE-S-022

REV: 3

A1

DESIGN DATA:

THE FOLLOWING PROVIDES A BRIEF SUMMARY OF KEY DESIGN DATA FOR THE MARINE STRUCTURES REFER TO THE DESIGN CRITERIA DOCUMENT FOR FURTHER DETAILS

1. TIDE LEVELS - REFER DRAWING 800-103
2. WIND SPEEDS (3 SECOND GUST) -
 - $V_{10} = 28m/s$
 - $V_{15} = 45m/s$
 - $V_{20} = 57m/s$
 - $V_{30} = 70m/s$
3. CYCLONIC WAVE CONDITIONS - $H_{max} = 7.00m$
 - $H_s = 4.00m$
 - $T = 9.0s$
 - $H_L = 0.50m$ (WAVE OF SHIP)
 - $T = 3.0s$
4. OPERATIONAL WAVE CONDITIONS - $H_{max} = 1.00m$
 - $H_s = 0.50m$ (WAVE OF SHIP)
 - $T = 3.0s$
5. CURRENTS
 - PEAK CURRENTS UP TO 2 KMOTS CONSISTENTLY RUNNING PARALLEL TO SEABED CONTOURS
6. BERTHING DOULPHIN CRITERIA
 - 80,000MM² HANDBOOK (PARAMAX CLASS)
 - 16,000MM² HANDBOOK
 - 0.25m/s
 - 10 DEGREES
 - MINIMUM BERTHING ENERGY - 70t m EXCLUDING ANGULAR COMPRESSION AND MANUFACTURING TOLERANCES
 - PROPOSED STERN BREASTLINE = 2 x 60t
 - ALL DOULPHINS MAINTAIN EXISTING CAPACITY
7. DECKING LIVE LOADS = SHIP

GENERAL NOTES:

1. THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH THE SPECIFICATION.
2. THE CONTRACTOR SHALL PREPARE WORKSHOP DRAWINGS IN ACCORDANCE WITH THE SPECIFICATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN OF ALL STRUCTURES EXAMINED AND RETURNED APPROVED BY THE SUPERINTENDENT.
3. WORKS COVERED UNDER THIS CONTRACT INVOLVE EXTENSION OR MODIFICATION OF EXISTING STRUCTURES, OR SET OUT RELATIVE TO EXISTING STRUCTURES. IT IS THEREFORE NECESSARY THAT ALL RELEVANT DIMENSIONS OF THE EXISTING WORKS BE VERIFIED ON SITE PRIOR TO PRODUCTION OF SHOP DRAWINGS AND COMMENCEMENT OF FABRICATION.
4. THE CONTRACTOR SHALL REMOVE ANY MATERIAL DROPPED ON THE SEABED IMMEDIATELY AFTER IT OCCURS. IT SHALL NOT BE LEFT UNTIL THE END OF THE CONTRACT. THE CONTRACTOR SHALL CERTIFY THE SEABED IS CLEAR OF MATERIALS DROPPED DURING THE CONTRACT AT THE END OF THE CONTRACT BEFORE A CERTIFICATE OF COMPLETION IS ISSUED.
5. DURING CONSTRUCTION THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ALL WORKS IN A STABLE CONDITION AND ENSURE THAT NO PART SHALL BE OVERSTRESSED UNDER CONSTRUCTION ACTIVITIES.
6. THE CONTRACTORS WORK AREA SHALL BE DEMARCADED FOR THE PURPOSE OF THE WORKER AND HEALTH AND SAFETY ACT) AS THE DISPOSED JETTY, WHARF AND DOULPHIN STRUCTURES, THE ONSHORE WORK AREA, AND OTHER AREAS AS USED BY THE CONTRACTOR FROM THE TO THE AS NECESSARY TO UNDERTAKE THE CONTRACT WORKS.
7. ALL LEVELS IN THIS DRAWING SET ARE TO PORT DATUM, WHICH IS LALT. IN THIS DRAWING SET THE TERM "R" IS USED TO DENOTE LEVELS TO PORT DATUM. THIS MAY NOT BE THE CASE FOR DRAWINGS BY OTHERS.
8. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS NOTED OTHERWISE.

PROTECTIVE TREATMENT:

1. REFER SPECIFICATION FOR DETAILS OF PROTECTIVE TREATMENT AND SURFACE PREPARATION
2. ANY DAMAGE TO PROTECTIVE COATINGS WHICH OCCURS DURING CONSTRUCTION SHALL BE REPAIRED STRICTLY IN ACCORDANCE WITH THE SPECIFICATION AND THE MANUFACTURER'S RECOMMENDATIONS AS SOON AS PRACTICAL AFTER THE DAMAGE HAS OCCURRED. DAMAGE TO THE PROTECTIVE COATING SHALL BE REPAIRED PROGRESSIVELY DURING THE COURSE OF CONSTRUCTION AND NOT LEFT UNTIL COMPLETION OF ACTIVITIES.

STEEL WORK NOTES:

1. ALL STEEL USED IN THE CONTRACT SHALL BE HOT ROLLED STRUCTURAL GRADE STEEL MANUFACTURED BY THE OPEN HEARTH BASIC OXIGEN (L1) OR ELECTRICAL CHARGE PROCESSES. THE USE OF STEEL MANUFACTURED BY THE BESSEMER OR THOMAS PROCESSES WILL NOT BE PERMITTED.
2. UNLESS NOTED OTHERWISE:
 - ALL STEEL SHALL BE GRADE 350 IN ACCORDANCE WITH AS3678 OR AS3679
 - ALL ROLLED AND WELDED FABRICATIONS SHALL BE GRADE 350 IN ACCORDANCE WITH AS3679
 - ALL FABRICATIONS SHALL BE TO THE REQUIREMENTS OF AS/NZS 1554 PART 1 (WELDING OF STEEL CONSTRUCTING WITH ASSI) 350 CONFORMING WITH ASSI) 350

STEEL WORK NOTES (CONTINUED):

3. UNDRERTHED STEEL SHALL NOT BE USED IN STRUCTURAL MEMBERS.
4. ALL STEEL SHALL BE FREE FROM EXCESSIVE RUST, PILING AND OTHER DEFECTS WHICH EITHER IMPAIR THE STRUCTURAL CAPACITY OF THE MEMBER OR ARE LIKELY TO IMPAIR THE QUALITY OF THE PROTECTIVE COATING SYSTEM.
5. ALL PLATES GUSSETS, MEMBERS ETC SHALL HAVE SHARP EDGES AND CORNERS ROUNDED AND GROUNDED SMOOTH TO A MINIMUM RADIUS OF 2mm.
6. ALL STEEL 32mm THICK AND OVER WHICH IS INTENDED TO BE USED IN THE WORK SHALL BE TESTED ULTRASONICALLY FROM BOTH SIDES FOR FLAWS, LAMINATIONS AND OTHER DEFECTS IN ACCORDANCE WITH AS/ISO CLASS 2. TEST CERTIFICATES FOR EACH PLATE TESTED SHALL BE SUBMITTED AND WRITTEN APPROVAL OBTAINED BEFORE FABRICATION WORK COMMENCES.
7. ALL PILE CAP PLATES AND GUSSETS SHALL BE 12mm THICK UNLESS NOTED OTHERWISE.
8. ALL SEAL AND END PLATES SHALL BE 10mm THICK UNLESS NOTED OTHERWISE.
9. ALL STAINS, LADERS, HANDRAILS, WELDER PLATES, WALKWAYS AND PLATFORMS SHALL BE CONSIDERED AS STRUCTURAL STEELWORK FOR THE PURPOSES OF THE SPECIFICATION, AND SHALL BE IN ACCORDANCE WITH ASSI). THE JOINTS AND CONNECTIONS OF ALL HANDRAILS SHALL BE FULLY SEAL WELDED, ENCLUSING THESE SECTIONS FROM THE CORROSIIVE MARINE ENVIRONMENT.
10. WHERE TEMPORARY RESECTION BOLTS ARE USED AND LATER REMOVED, HOLES SHALL BE FILL WELDED AND GROUNDED FLUSH.
11. ALL STAINLESS STEEL, INCLUDING BOLTS, NUTS AND WASHERS, SHALL BE MARINE GRADE 316 OR 316L WHERE WELDING IS SPECIFIED.

FABRICATION NOTES:

1. ALL MEMBERS SHALL BE FABRICATED TRUE TO SHAPE AND SIZE, WITHOUT DISTORTION AND WITH ALL NECESSARY PROVISIONS FOR HANDLING, FIELD SPINDLING, FIELD WELDING AND THE LIKE.
2. THE CONTRACTOR SHALL PROVIDE ALL CLEATS AND HOLES REQUIRED FOR FRAMES OF NON STRUCTURAL ELEMENTS TO STEELWORK WHERE SHOWN ON THE DRAWINGS OR NOT.
3. ALL CUTTING AND SERRATING SHALL BE HEATLY DONE AND ALL PORTIONS EXPOSED TO VIEW SHALL BE NEATLY FINISHED WITH ALL EDGES GROUNDED TO A SMOOTH RADIUS OF NOT LESS THAN 2mm.
4. ANY PLATE OR SECTION NUMBERED BY HAMMER MARKS, OR OTHERWISE MARKED OR IDENTIFIED SHALL BE REJECTED.
5. ITEMS OR PARTS FABRICATED FROM OTHER THAN GRADE 350 STEEL SHALL BE MARKED FOR IDENTIFICATION.
6. FIELD SPICES, WHERE SHOWN ON THE DRAWINGS BUT REQUIRED BY THE CONTRACTOR FOR FABRICATION HANDLING, TRANSPORTATION OR DETENTION REASONS, SHALL BE CLEARLY SHOWN ON THE SHOP DRAWINGS. THE LOCATION OF ALL SIGHTFIELD SPICES ARE SUBJECT TO APPROVAL. ADDITIONAL SPICES SHALL BE IDENTIFIED AS NECESSARY AND JUDGED ON SITE BY QUALIFIED COMPLETE PRACTITIONER BUT THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF ALL FIELD SPICES SHALL BE NON-DESTRUCTIVE TESTS. THE LOCATION OF ALL FIELD SPICES SHALL BE SHOWN ON THE AS-CONSTRUCTED DRAWINGS.
7. UNLESS NOTED OTHERWISE ON THE DRAWINGS, STANDARD CONNECTION DETAILS SHALL CONFORM WITH AS/STANDARD STRUCTURAL CONNECTIONS.

WELDING NOTES:

1. UNLESS NOTED OTHERWISE, ALL WELDING SHALL BE:
 - IN CONFORMANCE WITH THE SPECIFICATION
 - QUALIFIED AND SP CATEGORY
 - CONTINUOUS FLOW FILLET WELDS ON BOTH SIDES
 - PERFORMED USING EXXX ELECTRODES FOR STEEL, GRADES 350, 300 AND 350
2. ELECTRODES SHALL CONFORM WITH REQUIREMENTS OF AS/ISO 1 OR APPROVED EQUIVALENT STANDARD
3. UNLESS OTHERWISE SHOWN, ALL BUTT WELDS SHALL BE QUALIFIED COMPLETE PENETRATION BUTT WELDS AND WHERE POSSIBLE, SHALL BE DOUBLE V-BUTT WELDS, OR DOUBLE U-BUTT WELDS.
4. WHERE AND DEPTH OF PREPARATION IS SPECIFIED, INCOMPLETE PENETRATION BUTT WELDS REQUIRE A FULL DEPTH PREPARATION.
5. SURFACE PREPARATION FOR ALL BUTT WELDS SHALL BE SHOWN ON THE SHOP DRAWINGS.
6. ALL BUTT WELDS OF TUBULAR AND BOXED MEMBERS SHALL BE BACKED BY SUITABLE FILL STEEL BACKING RINGS OR PLATES, UNLESS APPROVED OTHERWISE.

WELDING NOTES (CONTINUED):

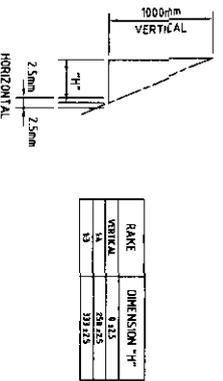
7. OVER-REINFORCEMENT OF BUTT WELDS AND PROTRUDED RIBS SHALL BE AVOIDED. CRACKS OR BLENCHES OFF TO PRODUCE A SMOOTH PROFILE. OR GROUNDED FLUSH AS SPECIFIED ON THE DRAWINGS.
8. ARE STRESS CRACKS THE AREA OF PERMANENT WELDS SHALL BE AVOIDED ON ANY MATERIAL. CRACKS OR BLENCHES RESULTING FROM ARE STRESS SHALL BE GROUNDED TO A SMOOTH PROFILE AND CHECKED TO ENSURE SOUNDNESS.
9. ADDITIONAL WELD METAL TO COMPENSATE FOR DEFICIENCY IN SIZE SHALL BE DEPOSITED USING AN ELECTRODE PREFERRED Y SMALLER THAN THAT USED FOR MAKING THE ORIGINAL WELD AND PREFERRED Y NOT MORE THAN 6mm IN DIAMETER. THE SURFACES SHALL BE CLEANED THOROUGHLY BEFORE WELDING.
10. THE FINISHED SURFACE AND PROFILE OF ALL WELDING SHALL BE SMOOTH AND FREE FROM SHARP EDGES OR CRACKS THAT WOULD BE DETRIMENTAL TO THE PERFORMANCE OF THE STRUCTURE OR TO THE PROTECTIVE COATING. ALL SLAG AND WELD SPATTERS SHALL BE THOROUGHLY REMOVED AND THE WELD SURFACE SHALL BE REPAIRED, REPAIRED AND GROUNDED AS DIRECTED UNTIL A SATISFACTORY SURFACE FINISH HAS BEEN ACHIEVED.
11. NON-DESTRUCTIVE TESTING SHALL BE CARRIED OUT IN ACCORDANCE WITH:
 - ULTRASONIC TESTING AS 2707
 - RADIOGRAPHIC EXAMINATION AS 2771
12. TOLERANCE FOR ALIGNMENT OF SPICES SHALL BE +0% OF THE THICKNESS OF THE THINNER PART JOINED

PILING NOTES:

1. PLAN LOCATION OF THE PILE IS THE INTERCEPT OF PILE C/L AND C/L INTERCEPT LEVEL AS DEFINED ON THE DRAWINGS.
2. ALL LEVELS TO PORT DATUM.
3. ALL PILES SHALL BE DRIVEN OPEN ENDED AND LEFT AS UNWELDED HOLLOW TUBES UNLESS OTHERWISE DIRECTED.
4. PROVISIONAL LENGTH IS MEASURED FROM THE PROVISIONAL TIDE LEVEL TO THE CUT-OFF LEVEL ALONG THE RAKE OF THE PILE WITH A VARIABLE CUT-OFF ALLOWANCE OF APPROXIMATELY 2% METRES INCLUDED.
5. PILE SHOE LENGTH IS INCLUDED IN THE CALCULATION OF PROVISIONAL LENGTH.
6. PROVISIONAL DRIVEN LENGTH IS MEASURED FROM THE PROVISIONAL TIDE LEVEL TO THE APPROXIMATE BED LEVEL ALONG THE RAKE OF THE PILE AND ROUNDED UP TO THE NEAREST 0.1 METRE.
7. PROVISIONAL COATED LENGTH IS MEASURED FROM TWO METRES BELOW LAT TO THE CUT-OFF LEVEL ALONG THE RAKE OF THE PILE (CUT-OFF ALLOWANCE NOT INCLUDED, AND ROUNDED UP TO THE NEAREST 0.1 METRE).
8. PILE POSITION TOLERANCES BEFORE AND AFTER DRIVING ARE:

TOLERANCE IN DIRECTION OF LONGITUDINAL AXIS OF HEADSTOCK	
POSITION AT PITCHING (mm)	±25mm
RAKE AT PITCHING (mm)	±50
POSITION AFTER PULL-OVER (mm)	±50
RAKE AFTER DRIVING (mm)	±25mm
9. HEADSTOCKS ARE INSTALLED IN THEIR PLAN POSITION AND NOT NECESSARILY ON C/L OF PILE. THIS SHALL BE THE SITUATION THE PILES IS OUT OF POSITION BUT WITHIN TOLERANCE. WHERE A PILE IS DRIVEN OUTSIDE OF TOLERANCE, A PLAN OF REMEDIAL MEASURES SHALL BE SUBMITTED.
10. ALL SITE SPICES SHALL BE QUALIFIED COMPLETE PENETRATION BUTT WELDS.
11. TOLERANCE OF CUT OFF LEVEL -0, +20

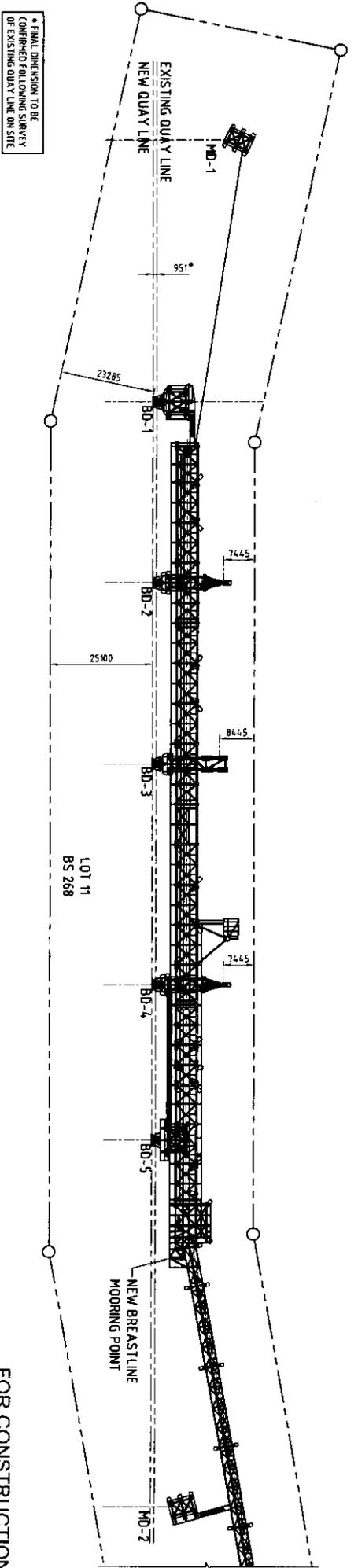
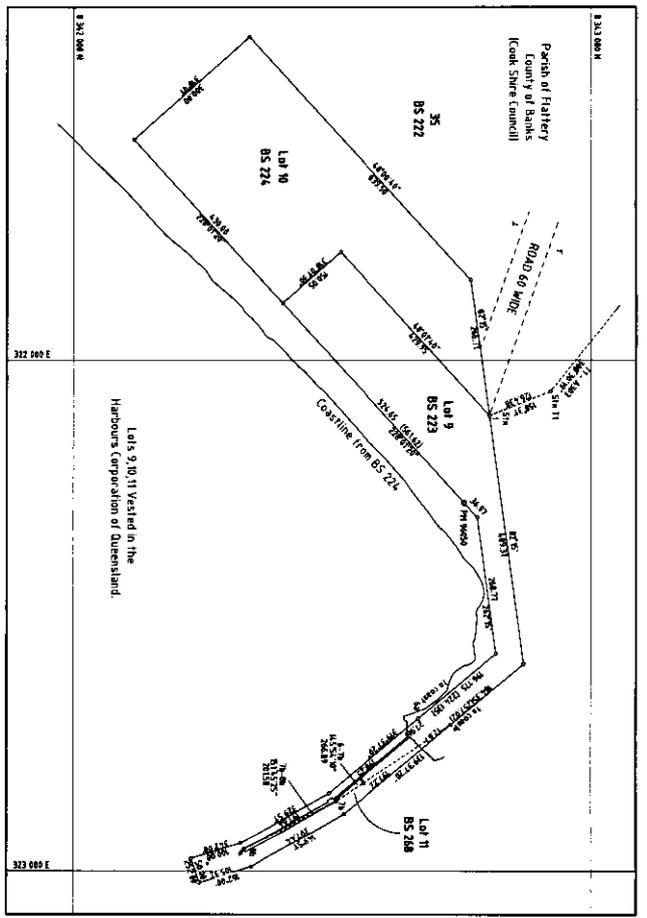
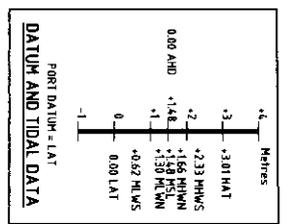
PILE LOCATION	TOLERANCE NORMAL TO LONGITUDINAL AXIS OF HEADSTOCK			
	POSITION AT PITCHING (mm)	RAKE AT PITCHING (mm)	POSITION AFTER PULL-OVER (mm)	RAKE AFTER DRIVING (mm)
ALL PILES	±25	±50	±50	±25mm



PILE RAKE TOLERANCE DIAGRAM FOR CONSTRUCTION

ISSUED FOR CONSTRUCTION					
Revision Details	By	Ver	App		
CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOULPHIN UPGRADE			PROJECT		
			DATE		
FOR CONSTRUCTION			DATE		
7681-102			SCALE		
7681-102			DATE		

A1



* FINAL DIMENSION TO BE
CONFIRMED FOLLOWING SURVEY
OF EXISTING QUAY LINE ON SITE

FOR CONSTRUCTION

SCALE 1:500

SCALE 1:5000

Rev	Date	Issued For Construction	Revision Details	By	Vic	App
01	19/04/20	ISSUED FOR CONSTRUCTION	Revision Details			

Contract Manager

PORTS CORPORATION QUEENSLAND

CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOLPHIN UPGRADE

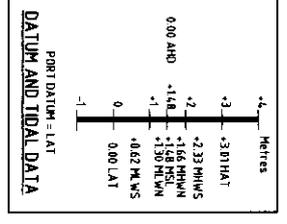
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1:500	SR	SR	SR	
1:5000	SR	SR	SR	

CADASTRAL ARRANGEMENT

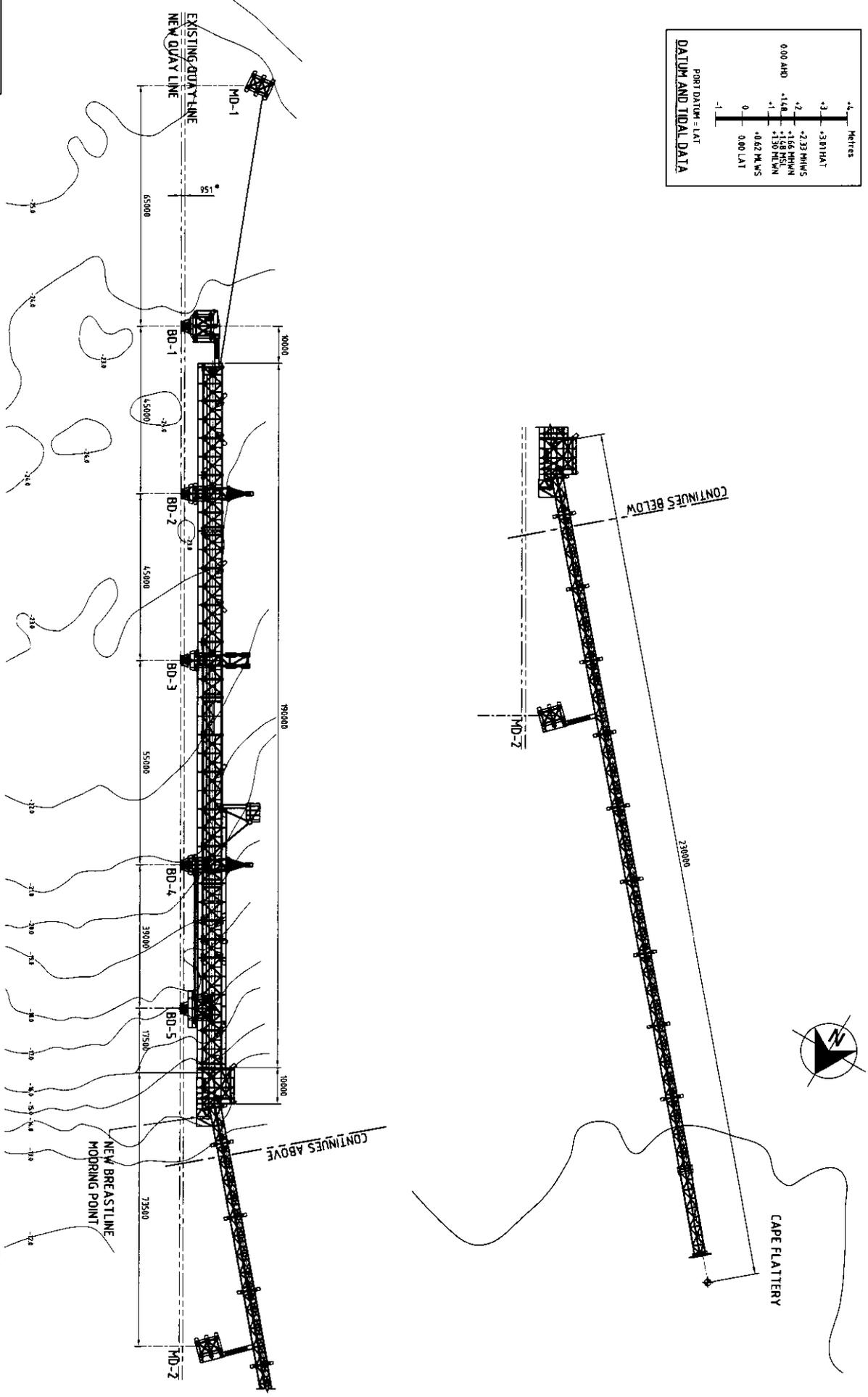
Scale: 1:500, 1:5000 AT A1

Drawing No: 7681-103

A1



* FINAL DIMENSION TO BE CONFIRMED FOLLOWING SURVEY OF EXISTING QUAY LINE ON SITE



FOR CONSTRUCTION
 SCALE 1:500

Revised	Date	Revision Details	By	Ver.	App.
A	19/06/21	ISSUED FOR CONSTRUCTION			

Cornell Wagner
 Coastal Survey Pty Ltd
 17/180 St. Johns Rd, St. Johns, QLD 4215
 07 5522 1111
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 07 5522 1111

PORTS CORPORATION QUEENSLAND

CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOCK PILING UPGRADE

Drawn	Checked	Approved	Date
JLF	Speed	Speed	Date
SJD	Speed	Speed	Date
DNR	Speed	Speed	Date
GN1	Speed	Speed	Date

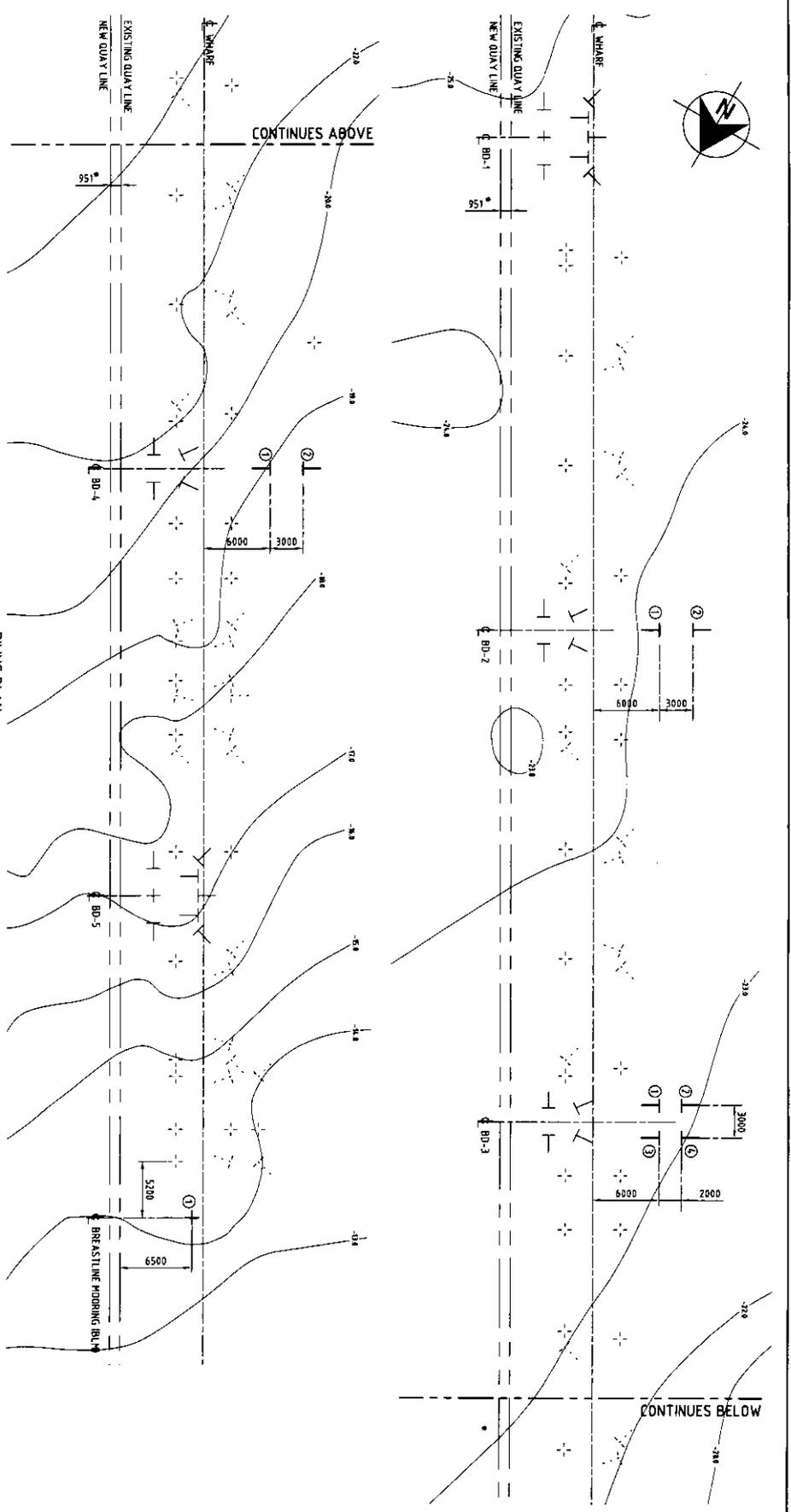
Drawing Title: GENERAL ARRANGEMENT

Scale: 1:500 AT A1

CD Project No: 768103CP

Drawing No: 7681-104

A1



PILE NO.	B02		B03		B04		BLH
	1	2	1	2	1	2	
PILE SIZE	800 DIAL 5 W						
STEEL GRADE	Gr 50						
PILE RAKE	14	14	14	14	14	14	14
CUT-OFF LEVEL (R.L.)	4.300	4.300	4.300	4.300	4.300	4.300	7.242
INTERPIL LEVEL (R.L.)	4.400	4.400	4.400	4.400	4.400	4.400	5.762
PROVISIONAL TOE LEVEL (R.L.)	-24.000	-24.000	-27.000	-27.000	-27.000	-27.000	-14.200
PROVISIONAL LENGTH (m)	31.500	31.500	35.000	35.000	35.000	35.000	27.500
DEPT LEVEL (APPROX. R.L.)	-23.000	-23.000	-25.000	-25.000	-25.000	-25.000	-14.200
MINIMUM DRYEN LENGTH (m)	3.000	3.000	4.000	4.000	4.000	4.000	4.000
PROVISIONAL COATED LENGTH (m)	1.500	1.500	1.500	1.500	1.500	1.500	4.000
WORKING TENSION (kN)	550	230	500	250	500	230	844
WORKING COMPRESSION (kN)	400	870	250	540	400	870	220
TENSION ANCHOR REQUIRED	YES	NO	YES	NO	YES	NO	YES

PILING SCHEDULE

- NOTES:**
1. FOR PILING NOTES REFER DRG 7681-002
- LEGEND**
- EXISTING WHARF RAKING PILE
 - EXISTING WHARF VERTICAL PILE
 - EXISTING DOLPHIN RAKING PILE
 - EXISTING DOLPHIN VERTICAL PILE
 - EXISTING DOLPHIN VERTICAL PILE
 - EXISTING DOLPHIN RAKING PILE
 - EXISTING DOLPHIN VERTICAL PILE
 - NEW DOLPHIN RAKING PILE
 - NEW VERTICAL PILE

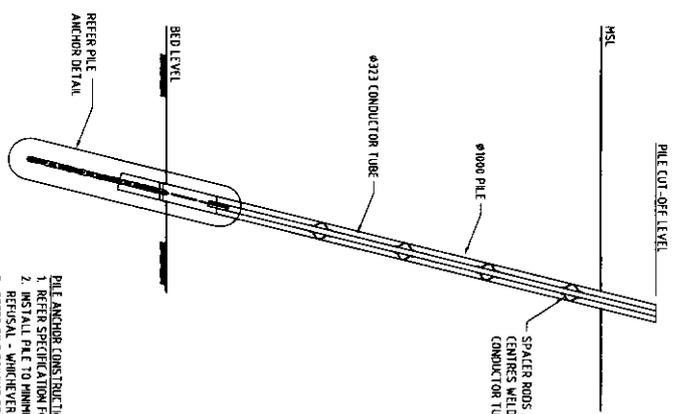
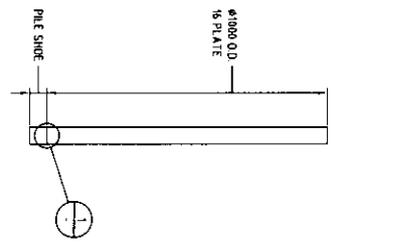
FOR CONSTRUCTION

SCALE 1:200

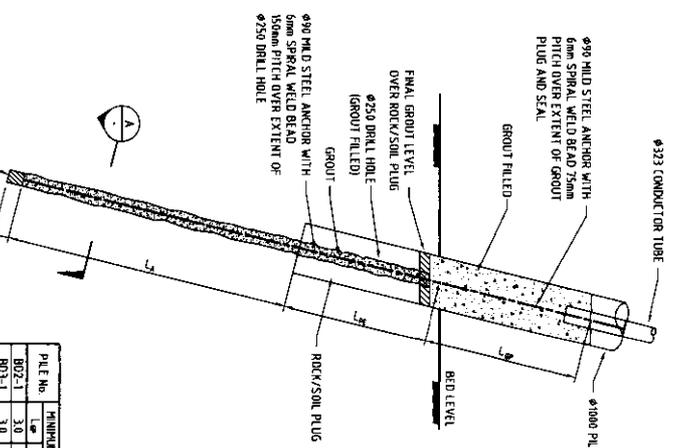
* FINAL DIMENSION TO BE CORNERED FOLLOWING SURVEY OF EXISTING QUAY LINE ON SITE

Rev	Description	By	Ver	App
A	ISSUED FOR CONSTRUCTION	AP		
Date	Project Details			
CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOLPHIN UPGRADE				
Drawing Title		Drawing No.		
PILING PLAN AND SCHEDULE		7681-105		
Scale		Sheet		
1:200 AT A1		7681-105CP		
Drawing No.		Rev.		
7681-105		A		

A1

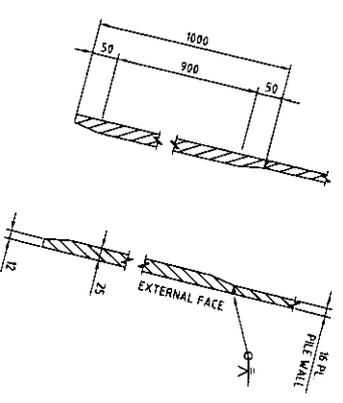
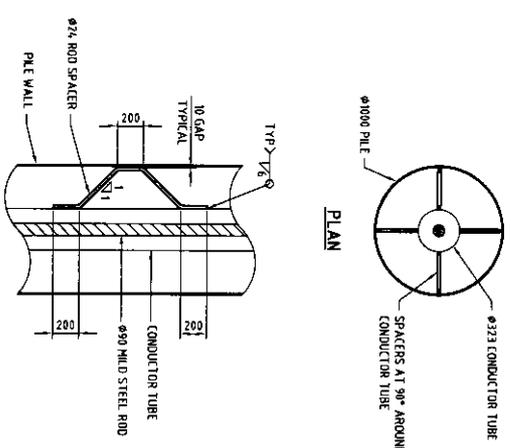


- PILE ANCHOR CONSTRUCTION SEQUENCE:**
- REFER SPECIFICATION FOR PILE DETAILS.
 - INSTALL PILE TO MINIMUM EMBEDMENT LENGTH (L_{MIN}) OR REFUSAL - WHICHEVER IS GREATER.
 - REFER PILE DRAWING DETAILS TO THE SUPERINTENDENT TO DETERMINE WHETHER AN ANCHOR IS REQUIRED.
 - PLUCK OUT PILE TO FIRM FOUNDATION.
 - INSTALL CONDUCTOR TUBE.
 - DRILL 60mm HOLE THROUGH GROUT SEAL AND ROCK/SOIL PLUG TO THE REQUIRED DEPTH. USE CASING TO PREVENT SOIL/WEATHERED ROCK COLLAPSING IN HOLE IF REQUIRED.
 - CLEAN OUT HOLE AND INSTALL ANCHOR.
 - GROUT ANCHOR TO SPECIFIED LEVEL.

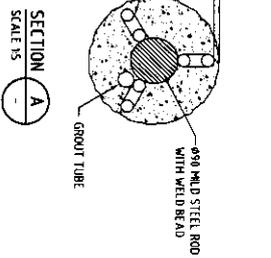


PILE No.	L _{MIN}	L _{MAX}	L _A
BO2-1	3.0	3.0	6.0
BO3-1	3.0	4.0	5.0
BO3-3	3.0	4.0	6.0
BO4-1	3.0	4.0	6.0
BM	3.0	4.0	5.0

L_{MIN} = LENGTH OF GROUT PLUG.
L_{MAX} = LENGTH OF PILE EMBEDMENT (MINIMUM).
L_A = LENGTH OF ANCHOR (BEYOND PILE TOP).

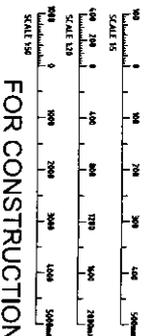


PILE SHOE DETAIL N.T.S.



SECTION A SCALE 1:5

- NOTES:**
- ALL PILES ARE TO BE DRIVEN TO REFUSAL. REFER SPECIFICATION FOR DETAILS.
 - IF THE MINIMUM PILE EMBEDMENT LENGTH (L_{MIN}) IS NOT ACHIEVABLE, THE CONTRACTOR IS TO OBTAIN INSTRUCTION FROM THE SUPERINTENDENT ON CHANGES TO PILE ANCHOR DETAILS.
 - GROUT IS TO BE HIGH STRENGTH NON-SHRINKAGE WITH MINIMUM IN-SITU STRENGTH OF 40MPa (REFER TO SPECIFICATION).
 - 60mm MILD STEEL ANCHOR ROD SHALL BE GRouted WITH APPROVED FULL TENSION CAPACITY MECHANICAL SPACERS.
 - ALTERNATIVE PILE ANCHOR DETAILS SHALL BE SUBJECT TO APPROVAL BY THE SUPERINTENDENT.



FOR CONSTRUCTION

Rev.	Date	By	Ver.	App.
A	17/04/01	JP		

1. PILE SHOE DETAIL
2. PILE ANCHOR DETAIL

Connell Wagner
Civil Engineering Pty Ltd
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www.connellwagner.com.au

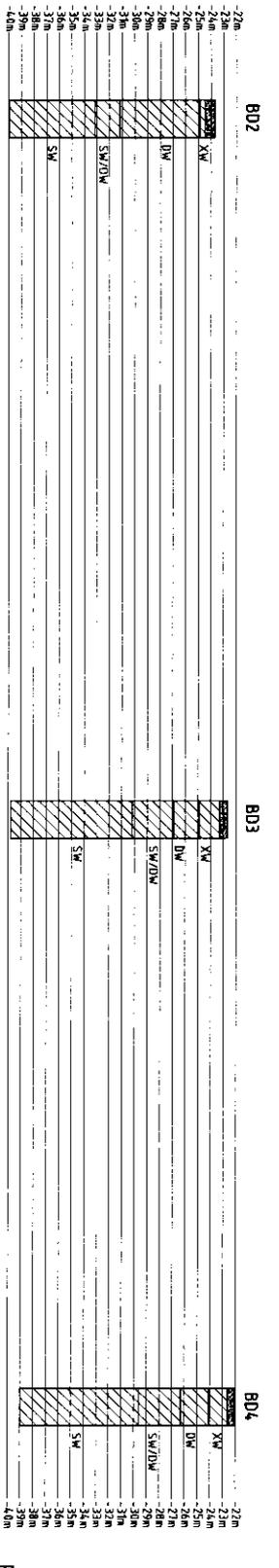
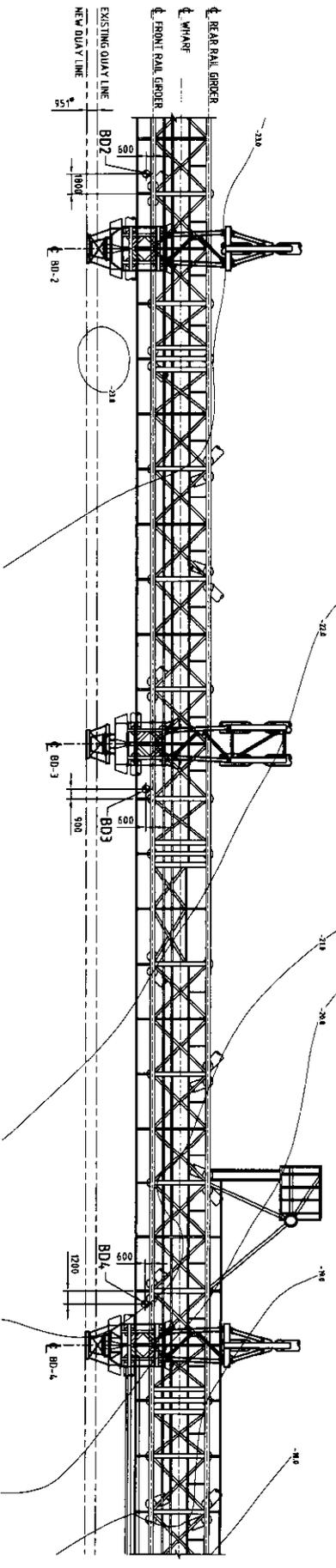
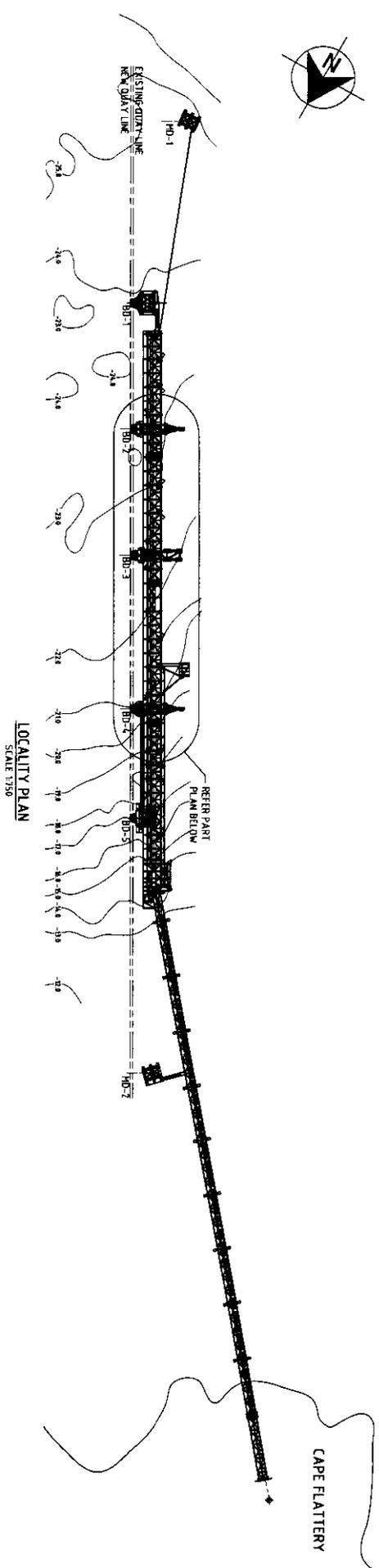
PORTS CORPORATION QUEENSLAND

Cape Flattery Silica Export Facility Berthing Dolphin Upgrade

Drawn	Checked	Scale	Date
JP	JP	AS SHOWN AT A1	

7681-106

A1



NOTES:
 1. FOR FULL DETAILS OF BOREHOLE DATA REFER 'GEOCHEMICAL INVESTIGATION REPORT, CAPE FLATTERY WHARF' (CONNELL WAGNER, 2000)

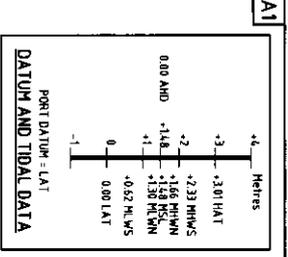
LEGEND

- LOOSE SAND
- SILT
- EXTREMELY WEATHERED
- DISTINCTLY WEATHERED
- SLIGHTLY WEATHERED

FOR CONSTRUCTION

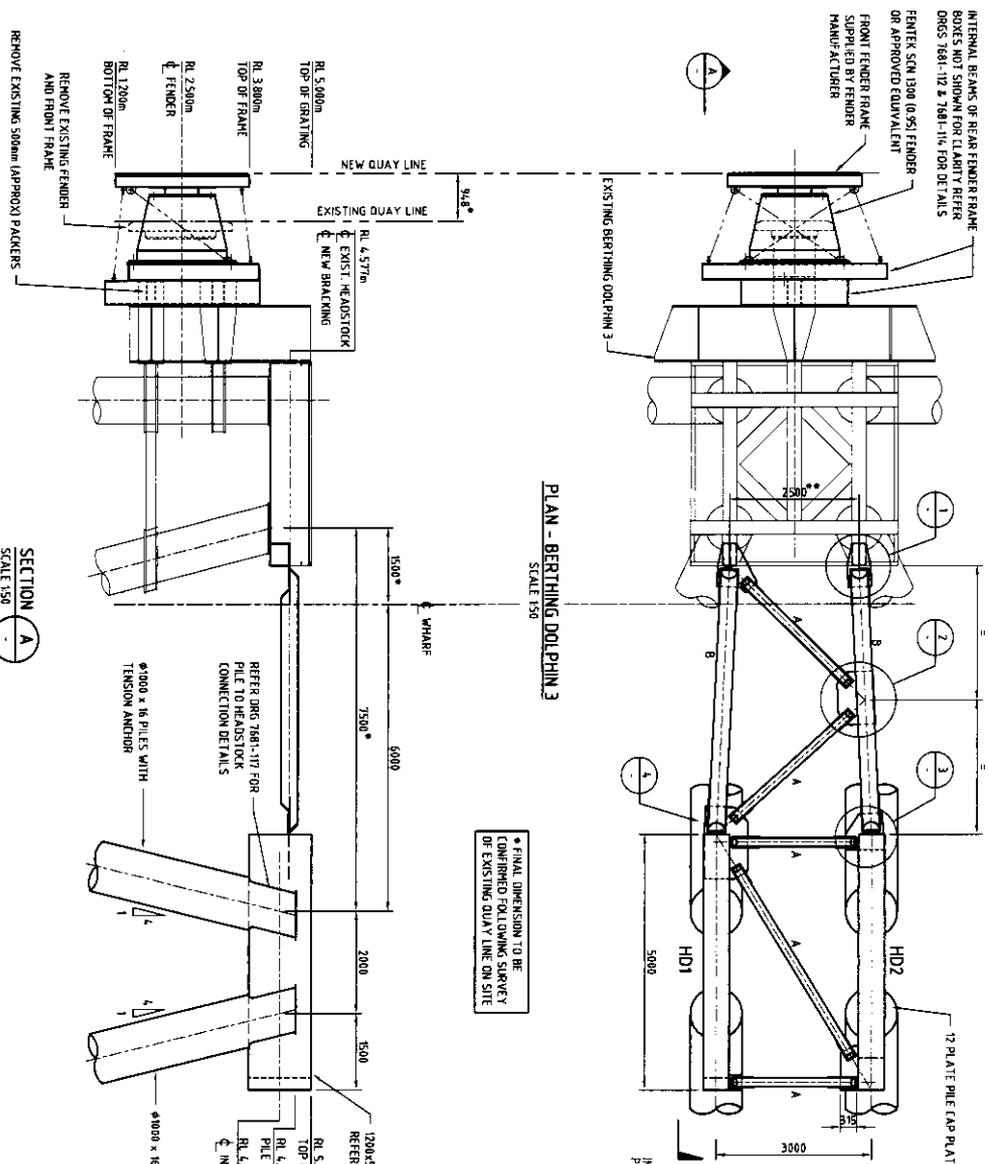
SCALE 1:200

A	7986.0	ISSUED FOR CONSTRUCTION	By	Ver	App
Rev	Date	Revision Details			
PORTS CORPORATION QUEENSLAND					
CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOLPHIN UPGRADE					
Drawn		Checked		Date	
JLF	Super	Super	Super	Day	Day
Author	Super	Super	Super	Day	Day
DRK	Super	Super	Super	Day	Day
DRH	Super	Super	Super	Day	Day
GEO TECHNICAL INVESTIGATION BORE HOLE LOCATIONS AND SUBSURFACE PROFILE					
Drawing Title		Project No.		Scale	
		768103CP		AS SHOWN AT A1	
Drawing No.		7681-107		Rev	
				A	



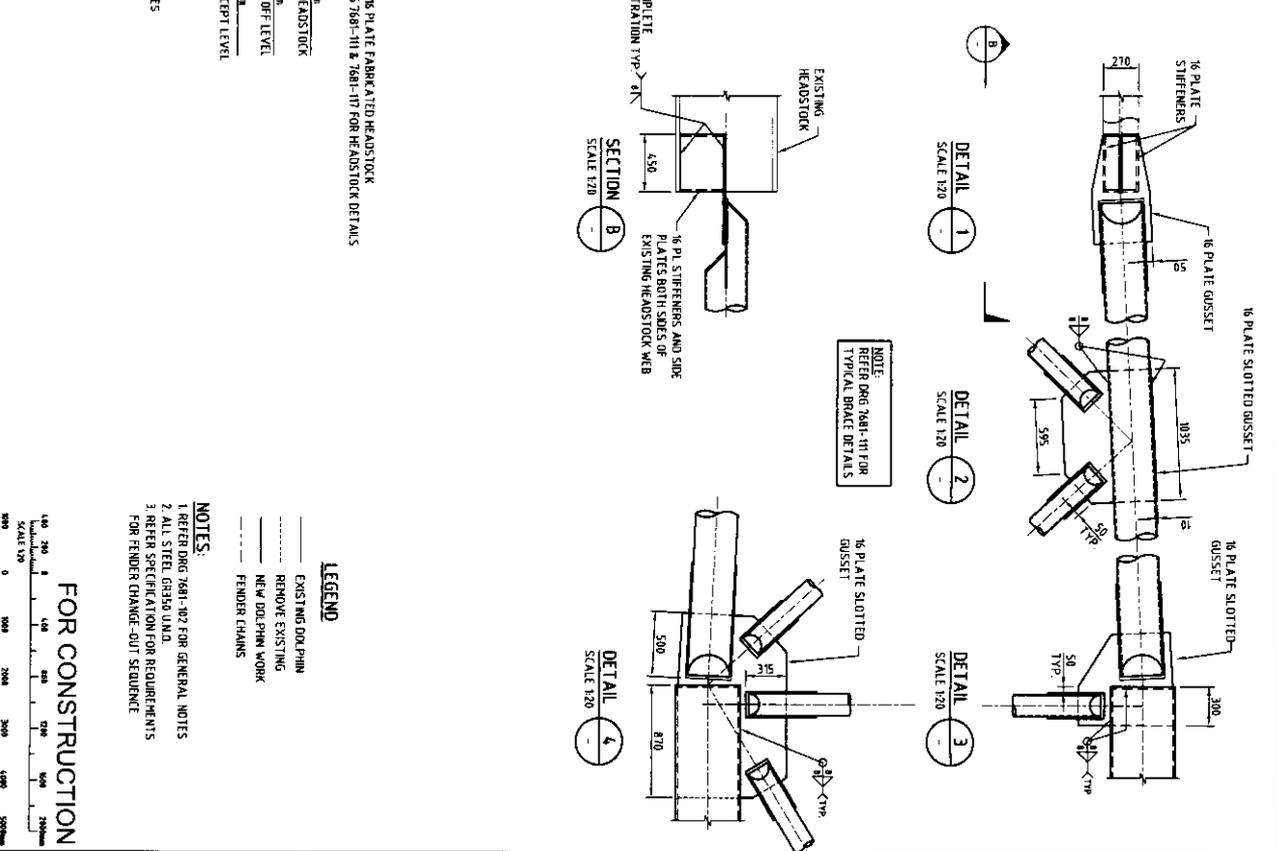
BRACE	SIZE
A	Ø168.3 x 71 CHS
B	Ø223.9 x 12.7 CHS

** REFERENCE DIMENSION ONLY
ACTUAL DIMENSION TO BE
CONFIRMED BY SURVEY PRIOR TO
COMMENCEMENT OF SHIP DRAWINGS



* FINAL DIMENSION TO BE
CONFIRMED FOLLOWING SURVEY
OF EXISTING QUAY LINE ON SITE

SECTION A
SCALE 1:50

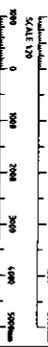


LEGEND

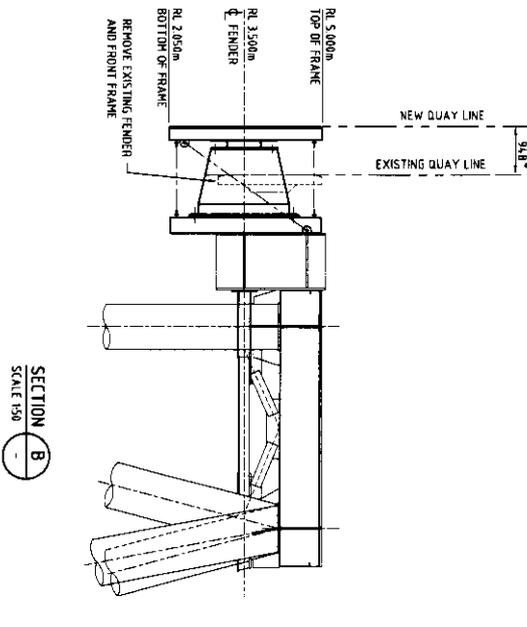
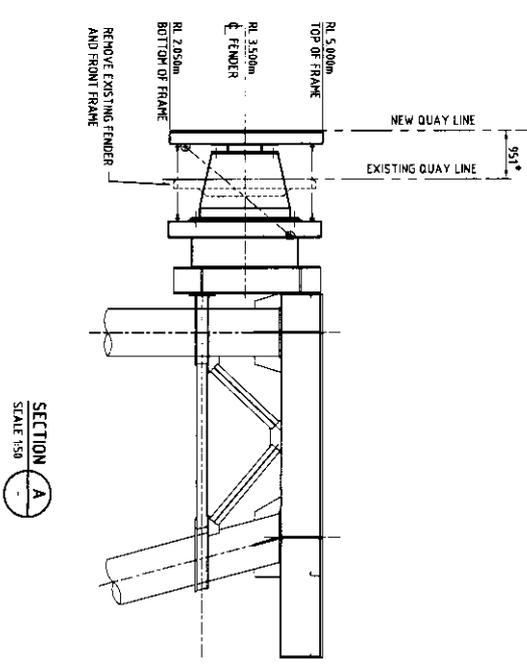
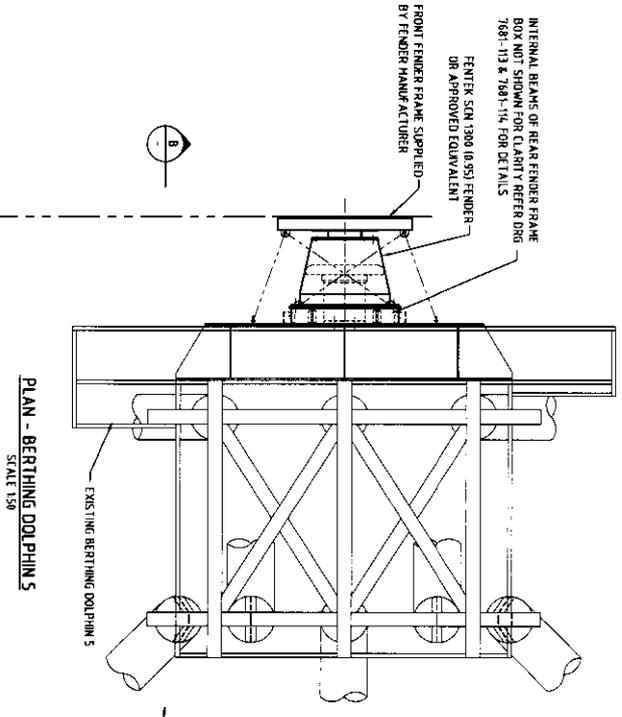
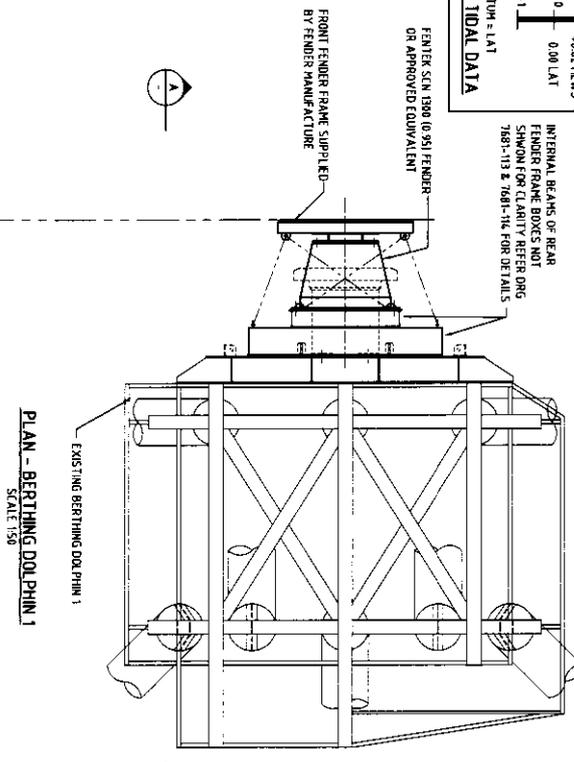
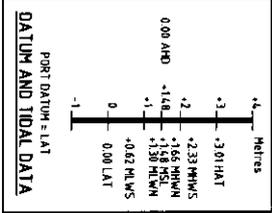
- EXISTING DOLPHIN
- REMOVE EXISTING
- NEW DOLPHIN WORK
- FENDER CHAINS

- NOTES:
- REFER DNG 7681-107 FOR GENERAL NOTES
 - ALL STEEL G350 U.N.D.
 - REFER SPECIFICATION FOR REQUIREMENTS FOR FENDER CHANGE-OUT SEQUENCE

FOR CONSTRUCTION



<p>Connell Wagner</p> <p>1700 St. Johns Road, St. Johns, NSW 1570 157 St. Johns Road, St. Johns, NSW 1570 157 St. Johns Road, St. Johns, NSW 1570</p>	<p>Ports Corporation Queensland</p>	<p>CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOLPHIN UPGRADE</p>	<p>BERTHING DOLPHIN 3 GENERAL ARRANGEMENT</p>
<p>Drawn: JMS Checked: JMS Title: BERTHING DOLPHIN 3 Date: 10/11/2010</p>	<p>Drawn: JMS Checked: JMS Title: BERTHING DOLPHIN 3 Date: 10/11/2010</p>	<p>Drawn: JMS Checked: JMS Title: BERTHING DOLPHIN 3 Date: 10/11/2010</p>	<p>Drawn: JMS Checked: JMS Title: BERTHING DOLPHIN 3 Date: 10/11/2010</p>
<p>Scale: 1:50 Drawing No: 7681-108 Rev: A</p>	<p>Scale: 1:50 Drawing No: 7681-108 Rev: A</p>	<p>Scale: 1:50 Drawing No: 7681-108 Rev: A</p>	<p>Scale: 1:50 Drawing No: 7681-108 Rev: A</p>



* FINAL DIMENSION TO BE CORNERED FOLLOWING SURVEY OF EXISTING QUAY LINE ON SITE

LEGEND

- EXISTING DOLPHIN
- REMOVE EXISTING
- NEW DOLPHIN WORK
- FENDER CHAINS

NOTES

- REFER DRG 7681-02 FOR GENERAL NOTES
- REFER SPECIFICATION FOR REQUIREMENTS FOR FENDER CHANGE-OUT SEQUENCE

FOR CONSTRUCTION

Rev	Date	By	Ver	App	Drawn	Checked	Scale	Project No.
A	18/04/11	ESAO	DR	CONSTRUCTION	7681103CP	AS SHOWN AT A1	7681-110	7681103CP

Client	Project	Drawn	Checked	Scale	Date
PORTS CORPORATION QUEENSLAND	CAPE FLATTERY SILICA EXPORT FACILITY BERTHING DOLPHIN UPGRADE	7681103CP	AS SHOWN AT A1	7681-110	18/04/11

Author	Checked	Date	Approved	Date
ESAO	AS SHOWN AT A1	18/04/11	AS SHOWN AT A1	18/04/11

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APPENDIX B

ADDITIONAL PROVISIONS

A. Dictionary

A.1. In these Additional Provisions, unless contrary intention appears:

- A.1.1. **Access Rights** means full and unimpeded rights of access to, egress from and across the Premises (including the Facility) for the purpose of performing the Extension Works or matters preliminary or incidental thereto;
- A.1.2. **Authorised Representative** means:
- A.1.2.1. in the case of the Sublessor, the chief executive officer (or his delegate) of the Sublessor from time to time; and
- A.1.2.2. in the case of the Sublessee, a director, chief executive officer (or delegate of the chief executive officer) of the Sublessee from time to time;
- A.1.3. **Extension Works** means all works undertaken in the construction of improvements and incidental matters relating to the extension of the Wharf pursuant to Additional Provision C;
- A.1.4. **Facility User** means a third party to whom rights of access to and use of the Facility are granted, either as a Full Facility User or a Part Facility User;
- A.1.5. **Full Facility User** means a Facility User who, through agreement with the Sublessee and subject to Additional Provision B.6, is granted a right to access and make use of the Facility (including the Sublessee's Property);
- A.1.6. **Sublessor's Appointees** means the Sublessor's employees and representatives together with all agents, consultants and contractors as appointed by the Sublessor from time to time;
- A.1.7. **Essential User Terms** means:
- A.1.7.1. an obligation to make use of the Facility with due care and skill;
- A.1.7.2. an obligation on the part of the Facility User to pay reasonable commercial consideration to the Sublessee including a proportionate contribution to the cost of repair and maintenance of the Facility;
- A.1.7.3. an obligation on the part of the Facility User to concede priority rights for use of the Facility (including the Sublessor's Property) to the Sublessee;
- A.1.7.4. an obligation on the part of a Part Facility User to make good (at its cost) any damage caused to the Facility through its acts or omissions or the acts or omissions of its servants, agents and/or contractors;
- A.1.7.5. an obligation on the Part Facility User to indemnify and release the Sublessor and the Sublessee from liability and all claims however arising out of or in any way connected with its use of the Facility as a Part Facility User in terms similar to those contained in clauses 14.6 and 14.7 of this Sublease;

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- A.1.7.6. an obligation on the part of the Part Facility User to take out and maintain a policy of public liability insurance in the nature of that referred to in clause 13.1(a)(i) of this Sublease;
- A.1.7.7. a prohibition against assignment or other dealing with the interest of the Part Facility User under the Part Facility User Agreement in the absence of the prior written consent of the Sublessor and the Sublessee;
- A.1.7.8. an obligation not to do or fail to do anything which, if done or not done by the Sublessee, would constitute a default by the Sublessee under this Sublease;
- A.1.7.9. an obligation on the part of the Sublessee granting the Part Facility User a non-exclusive, personal licence for access over and across the Premises, as provided in Additional Provision B.4.3;
- A.1.8. **Part Facility User** means a Facility User who, through Part Facility User Agreement, is granted a right to make use of the Sublessor's Property;
- A.1.9. **Part Facility User Agreement** means an agreement in the nature of a non-exclusive contractual licence between the Sublessee and a Part Facility User to make use of the Sublessor's Property on a:
- A.1.9.1. one-off; or
- A.1.9.2. recurrent,
- basis to facilitate loading and/or unloading of approved product through the Facility;
- A.1.10. **Prospective User** means any third party who enquires about or who seeks to make use of the Facility during the Term, whether as a Full Facility User or a Part Facility User;
- A.1.11. **Ocean Area** means that part of the Premises that extends beyond the Wharf as nominated and required by the Sublessor for the purpose of extending the Wharf;
- A.1.12. **Reserve Throughput Capacity** means the reserved weight of product per annum carried through the Facility to ocean going vessels during the Term and is, in the case of the Sublessee, a tonnage as reasonably nominated by the Sublessee as its potential throughput of product from the Facility in any given Rent Year (and unless otherwise notified, the Sublessee's Reserve Throughput Capacity is three million tonnes per annum); and
- A.1.13. **Wharf** means the wharf structure, being the Sublessor's Property that is part of the Facility as at the Commencement Date, being the structure to which an ocean going (or other) vessels may be moored for loading, unloading or any other purpose.
- A.2. Words and phrases defined elsewhere in this Sublease have the corresponding meaning in these Additional Provisions, so far as the context permits.

B. Prospective User

- B.1. Subject to these Additional Provisions, the Sublessee will have the exclusive use of the Facility during the Term.
- B.2. From time to time during the Term, the Sublessor may accept an approach from a Prospective User seeking the right to make use of all or part of the Facility, in which event:

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- B.2.1. if the Prospective User intends to be a Full Facility User, Additional Provision B.3 will apply; and
- B.2.2. if the Prospective User intends to be a Part Facility User, Additional Provision B.4 will apply.
- B.3. If a Prospective User intends to be a Full Facility User:
- B.3.1. the Sublessor may refer the Prospective User to the Sublessee.
- B.3.2. the Sublessee, through its Authorised Representative and within a reasonable time following receipt of a referral from the Sublessor, may (at the Sublessee's sole election) meet with the Authorised Representative of the Prospective User to discuss the Prospective User's proposal to make use of the Facility, including:
- B.3.2.1. the nature and extent of the use that the Prospective User proposes to make of the Facility;
- B.3.2.2. the period during which the Prospective User desires to make use of the Facility;
- B.3.2.3. the basis on which the Prospective User proposes that it be permitted to make use of the Facility, including the consideration payable, the terms and conditions and risk sharing arrangements; and
- B.3.2.4. such other matters or issues, including the likely impact of the use of the Facility by the Prospective User on:
- the uses made of the Facility by the Sublessee under this Sublease;
 - the Sublessee's projected Reserve Throughput Capacity through the Facility; and
 - the business that the Sublessee conducts from the Land,
- together with anything else that the Sublessee reasonably considers relevant to the proposal that the Prospective User make use of the Facility.
- B.3.3. The Sublessee must, if it decides to meet the Prospective User, endeavour to:
- B.3.3.1. cause the meeting referred to in Additional Provision B.3.2 to be convened as soon as reasonably practicable following the time the Prospective User is referred to the Sublessee by the Sublessor (having regard to any necessary approvals, internal or otherwise, required to be obtained by the Sublessee) to discuss the matters referred to in that Additional Provision and any other matters relevant to the Prospective User's proposal to make use of the Facility;
- B.3.3.2. keep the Sublessor fully informed of the progress and outcomes of those discussions; and
- B.3.3.3. bring about the conclusion of discussions and/or negotiations for use of the Facility by a Prospective User as soon as may be practicable following the initial meeting between Authorised Representatives under Additional Provision B.3.2, whether the conclusion of negotiations be brought about by a concluded agreement for the use of the Facility by the Prospective User or not.

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B.3.4. The Sublessee must conduct all dealings and negotiations with a Prospective User:

B.3.4.1. professionally, courteously and in a diligent manner; and

B.3.4.2. in good faith.

B.4. If the Prospective User intends to be a Part Facility User:

B.4.1. the Sublessor may negotiate with the Prospective User concerning its use of the Sublessor's Property as a Part Facility User and if the Sublessor chooses to do so and those negotiations lead to a Part Facility User Agreement, the Sublessor will inform the Sublessee of the terms of the Part Facility User Agreement;

B.4.2. a Part Facility User Agreement must:

B.4.2.1. contain Essential User Terms;

B.4.2.2. be a personal and non-exclusive contractual licence that creates no interest or estate in the Land on the part of the Part Facility User;

B.4.3. the Sublessee acknowledges that the Essential User Terms contain an obligation on the part of the Sublessee to grant the Part Facility User a non-exclusive, personal licence ("the licence") of access through the Premises to and from the Sublessor's Property provided that the terms of the licence are reasonably acceptable to the Sublessee and the Sublessee's ability to achieve its Reserve Throughput Capacity will not be affected. The rights of the Part Facility User under the licence:

B.4.3.1. will be subject to the Sublessee's rights of priority as provided in the Essential User Terms referred to in Additional Provision A.1.7.3; and

B.4.3.2. will permit the Part Facility User (with or without equipment and machinery) to have access to and from the Sublessor's Property via roads, pathways and other areas set aside upon the Premises for that purpose at such times during the Term as the Part Facility User reasonably requires;

Subject to Additional Provision B.4.3.1, the Sublessee must not do or fail to do anything that may prohibit or impede the non-exclusive rights of access conferred by the licence upon the Part Facility User;

B.4.4. if, despite the Essential User Terms, to the extent the Facility is damaged or destroyed through the negligent or wilful acts or omissions of a Part Facility User, the Sublessee will be relieved of its obligations under clauses 10.1 and 10.5 of this Sublease to the extent that such damage or destruction limits or prevents the Sublessee from meeting such obligations. Any compensation or other money paid to either the Sublessor or the Sublessee by the Part Facility User (or its insurer) in accordance with the Part Facility User Agreement must be applied by the recipient to repair or reinstate that part of the Facility which is damaged or destroyed through the negligent or wilful acts or omissions of the Part Facility User;

B.4.5. the Sublessee must give the Sublessor written notice that:

B.4.5.1. it consents; or

B.4.5.2. it does not consent,

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to a Part Facility User Agreement within 30 days of being informed of the terms of that agreement under Additional Provision B.4.1;

- B.4.6. the Sublessee must not decline or withhold consent under Additional Provision B.4.6 unless the Part Facility Agreement and uses made of the Facility by a Part Facility User under it would offend against Additional Provision B.7;
- B.4.7. if the Sublessee should decline consent to a Part Facility User Agreement, it must:
- B.4.7.1. act reasonably; and
- B.4.7.2. give the Sublessor at the time of declining consent, written notice specifying all grounds on which the Sublessee relies for declining consent.
- B.5. The Sublessee irrevocably appoints the Sublessor and/or its Chief Executive Officer as its attorney for the limited purpose of signing, on behalf of the Sublessee, a Part Facility User Agreement provided that before the power hereby granted becomes exercisable, the Sublessee has granted consent to the relevant Part Facility User Agreement under Additional Provision B.4.5.1.
- B.6. Where Additional Provision B.3 applies and notwithstanding anything else contained in this Additional Provision B the Sublessee will be under no obligation to allow a Prospective User who intends to be a Full Facility User, to make use of the Facility.
- B.7. Where Additional Provision B.4 applies and notwithstanding anything else contained in this Additional Provision B the Sublessee will consent to a Prospective User who intends to be a Part Facility User, to make use of the Sublessor's Property unless:
- B.7.1. the Sublessee, acting reasonably, considers that the probable consequence of doing so would be to materially prejudice, disrupt or interfere with the use that the Sublessee makes of the Facility under this Sublease or the business it conducts from the Land; and/or
- B.7.2. the Sublessee will be prohibited from achieving its Reserve Throughput Capacity; and/or
- B.7.3. a Part Facility User Agreement containing Essential User Terms is first entered into by the Prospective User who intends to be a Part Facility User.
- B.8. To avoid doubt, nothing in Additional Provision B.3 relieves the Sublessee of its obligations under clause 11 and, specifically, the Sublessee must not permit a Full Facility User to make use of the Facility without having first obtained the consent of the Sublessor in accordance with that provision.
- B.9. If a dispute arises between the Sublessor and the Sublessee under this Additional Provision B the dispute will be dealt with under clause 15.8 of this Sublease.

C. Wharf Extension

- C.1. The Sublessor may, at its election, extend the Wharf at any time during the Term in which case, the following provisions of this Additional Provision C will apply.
- C.2. The Sublessor will give the Sublessee written notice of its intention to undertake Extension Works at least six months prior to those works commencing.
- C.3. The Sublessee must grant the Sublessor and the Sublessor's Appointees Access Rights for the purpose of conducting inspections and assessments and to conduct the Extension Works.

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- C.4. When acting in accordance with an Access Right, the Sublessor must endeavour to cause as little inconvenience or disturbance as is practicable to the Sublessee and in doing so must not disrupt the Sublessee's shipping schedule (as notified to the Sublessor from time to time, if requested by the Sublessor for the purposes of this Additional Provision C.4) or prevent the Sublessee from achieving its Reserve Throughput Capacity.
- C.5. The Sublessee must co-operate with the Sublessor in connection with the Extension Works and, at the Sublessor's cost, will sign all documents and papers and do such acts and things as the Sublessor reasonably requires to facilitate the performance of the Extension Works provided:
- C.5.1. the Sublessee will not be responsible for the payment of any cost or expense in the performance of the Extension Works; and
- C.5.2. the Sublessee will not be obliged to render co-operation or assistance if to do so would unduly or unnecessarily interfere with the business of the Sublessee conducted from the Premises or its use of the Facility.
- C.6. No compensation is payable to the Sublessee in consideration of any dealings with the Sublease or the Premises that may reasonably be required under Additional Provision C.5.
- C.7. So far as the circumstances permit, the terms of this Sublease will be unaffected by any dealings with the Sublease or the Premises that may reasonably be required under Additional Provision C.5 and will continue to bind the Sublessor and the Sublessee following the time the dealing takes effect.
- C.8. All costs and expenses arising out of or in any way connected with the Extension Works and the dealing with this Sublease under Additional Provision C.5 will be paid by the Sublessor.
- C.9. The Sublessor will indemnify the Sublessee from loss or liability sustained by the Sublessee as a consequence of any negligent or wilful act or omission of the Sublessor that is undertaken or performed (or not undertaken or performed) directly in relation to the Extension Works.
- C.10. The Sublessee acknowledges and agrees that:
- C.10.1. the improvements brought about through performance of the Extension Works will be affixed to and will effectively extend the Wharf;
- C.10.2. the Premises demised to the Sublessee under this Sublease will not relate to or include that part of the Wharf that is created through the performance of the Extension Works ("the Extended Area");
- C.10.3. the Sublessor may allow third parties to make use of the Extended Area, whether under Sublease granted in respect of that area or on any other basis; and
- C.10.4. subject to Additional Provisions B.3 and B.4, a third party making use of the Extended Area may be a Part Facility User or a Full Facility User.
- C.11. If required by the Sublessor, the Sublessee must allow the Sublessor to connect Services to the Extended Area and to do so, the Sublessee will permit the Sublessor to run any necessary Services, conduits and other infrastructure through the Premises (provided that nothing in this Additional Provision will allow the Sublessor to unnecessarily interfere with the Sublessee's Property).
- C.12. Except to the extent permitted under Additional Provisions C8 and C9, the Sublessee must not raise any claim or objection to anything contained in this Additional Provision C.

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D. New Wharf

- D.1. The Sublessee acknowledges that the Sublessor may, at its election at any time during the Term, construct a wharf, jetty or like structure ("New Wharf") outside of the Premises but within the Seaport at its own cost and expense.
- D.2. If required by the Sublessor to facilitate access to and from:
- D.2.1. that part of the Seaport over which the New Wharf will be constructed, for the purpose of construction; and
- D.2.2. the New Wharf for the purpose of use following its construction, by the Sublessor and/or third party users,
- the Sublessee must grant the Sublessor (and the Sublessor's Appointees) and third party users of the New Wharf a non-exclusive personal licence of access through the Premises in terms consistent with the licence referred to in Additional Provision B.4.3, provided that the terms of the licence are agreed to by the Sublessee acting reasonably and the Sublessee's ability to achieve its Reserve Throughput Capacity will not be affected.
- D.3. The Sublessor indemnifies the Sublessee from loss or liability arising in any way in connection with the Sublessor's right of access under Additional Provision additional provision D.2.
- D.4. If the Sublessee has granted the licence under Additional Provision D.2 and if required by the Sublessor, the Sublessee must allow the Sublessor to connect Services to the New Wharf and to do so, the Sublessee will permit the Sublessor to run any necessary Services, conduits and other infrastructure through the Premises (provided that nothing in this Additional Provision will allow the Sublessor to unnecessarily interfere with the Sublessee's Property or disrupt the Sublessee's shipping schedule (as notified to the Sublessor from time to time, if requested by the Sublessor for the purposes of this Additional Provision D.4).
- D.5. Except to the extent permitted under Additional Provision D3, the Sublessee must not raise any claim or objection to the Sublessor constructing the New Wharf or to the Sublessor allowing others to make use of it on such terms as the Sublessor may nominate.

E. Security Deposit

- E.1. The Sublessor and the Sublessee acknowledge and agree that:
- E.1.1. only one Security Deposit is payable under the Related Lease and this Sublease;
- E.1.2. the amount of the Security Deposit is as stated in Item 8 of the Reference Data;
- E.1.3. the Security Deposit will be held by the Sublessor as security for the performance by the Sublessee of its obligations under this Sublease (clause 23.1) and the Related Lease (clause 5.1).
- E.2. Subject to the terms of the Related Lease, the Lessor thereunder may appropriate or call on the Security Deposit and if that should happen and the Sublessee, as Lessee under the Related Lease, should fail to reinstate the Security Deposit in accordance with clause 5.5 of the Related Lease, the Sublessee will be deemed to have made default of an essential term under this Sublease.

F. Related Lease

The Sublessor and the Sublessee acknowledge and agree that:

830F83

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- F.1. the Additional Provisions contained in this Appendix B are incorporated in the Related Lease (save for necessary alterations to accommodate that Lease);
- F.2. some of these Additional Provisions have application to:
 - F.2.1. this Sublease but not the Related Lease; or
 - F.2.2. the Related Lease but not this Sublease;
- F.3. the granting and subsistence of this Sublease is conditional upon the granting and subsistence of the Related Lease and both Leases form part of a single transaction; and
- F.4. this appendix will be interpreted and construed accordingly.

1. Lot on Plan Description	Title Reference
LOT 11 ON BS268	40027991

2. Instrument/document being consented to

Instrument/document type *Sublease under section 332 of the Land Act 1994*

Dated *27/03/2018*

Names of parties **Far North Queensland Ports Corporation Limited ACN 131 836 014 (Sublessor)**
And
Cape Flattery Silica Mines Pty Ltd ACN 000 586 096 (Sublessee)

3. Instrument/document under which consent required

Instrument/document type **PPL 0/215359**.....

Dealing No. **Not Applicable**

Name of consenting party **The Minister Administering the Land Act 1994**

4. Execution by consenting party

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

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

NO WITNESS REQUIRED signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1

of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Mortgagee's Australian Credit Licence (if any)

14/3/2018
Execution Date



Consenting Party's Signature

Department of Natural Resources and Mines
Cameron John Scott Land Officer
A duly authorised delegate of the Minister under
the current Land Act (Ministerial) Delegation.

THIS CONSENT IS TO BE LODGED WITH THE ITEMS LISTED BELOW

1. Form 7 - Sublease
2. Payment of the prescribed lodgement and registration fees

Note 1: This consent is given under Section 332 of the *Land Act 1994* and is valid for a period of six months from the date of execution shown above.

This approval is given for the term of the sub lease being whole of Lot 11 on BS268; commencement date being no earlier than 02-01-2018 to expire on 01-01-2038.

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website