

# New Hope Corporation Limited



Submission on Queensland Rail's 2015 Draft  
Access Undertaking

Submission on QCA's Draft Decision

Volume 3  
Access Undertaking

December 2015

## **Introduction**

This Volume 3 comprises NHC's submissions on the body of QR's 2015 DAU, in response to the QCA's Draft Decision.

It should be read in the context of being part of NHC's four volume submission. Consequently this Volume does not seek to duplicate submissions made in each of those volumes.

NHC agrees with the QCA's ultimate conclusion in the Draft Decision that it is not appropriate to approve QR's 2015 DAU, having had regard to each of the matters referred to in section 138(2) of the QCA Act.

This volume sets out NHC's views on each of the decisions comprised in the Draft Decision (other than Part 7 which solely relates to the Standard Access Agreement), including in particular submissions regarding the amendments which would be required to the body of the access undertaking in order for NHC to consider it appropriate for the QCA to approve the 2015 DAU.

## **Executive Summary**

NHC agrees with the Draft Decision that it is not appropriate to approve QR's 2015 DAU having regard to each of the matters set out in section 138(2) QCA Act.

NHC generally supports the amendments proposed in the Draft Decision and commends the QCA for a well-reasoned decision that as a whole presents a much more appropriate attempt at balancing the factors the QCA is to have regard to than the 2015 DAU as originally proposed by QR.

However, as outlined in NHC's submissions, NHC considers further refinements are required to complete that balancing appropriately. NHC's key concerns regarding the elements of the Draft Decision relating to the body of the 2015 DAU (excluding reference tariffs and the Standard Access Agreement) are:

- (a) the unduly narrow definition of 'Access';
- (b) the investment framework and the extension and user funding regimes;
- (c) the approach to train planning and the requirements for changing train plans; and
- (d) transparency of costs reporting.

## **Structure of this volume**

NHC has aligned the headings and numbering (first and second level) throughout this volume with the structure of the QCA's Draft Decision.

Appendix A is a mark-up of selected clauses in the 2015 DAU against the version of those clauses that were proposed in the QCA's Draft Decision. NHC have only included in the Appendix those clauses which NHC has proposed material drafting amendments for.

Each section of this submission contains:

- (a) a summary table showing, for each decision within the Draft Decision, whether NHC supports the decision, supports the decision subject to further improvement or has significant concerns with the QCA's proposed decision (and provides details of any relevant clauses of the 2015 DAU for which revised drafting is proposed); and

- (b) a more detailed discussion of the principles in relation to each draft decision, including reasons for NHC's support for or concerns with such decisions and suggestions for further material changes.

NHC notes that a small number of changes are proposed in the mark-up in Appendix A, which are not discussed in detail in the body of this submission. NHC has sought to limit this to changes which NHC consider are self-explanatory and should not be contentious.

## 1 Application and scope (Part 1)

Draft decision section	Draft decision numbers	Issue	NHC response	Further drafting proposed in Appendix A?
1.1	1.1-1.3	Scope of undertaking	Support QCA draft decisions but propose further improvements	Yes – see cl 7.1, “Access” definition and proposed cl 1.6
1.2	1.4-1.6	Line diagrams	Support QCA draft decisions	No
1.3	1.7-1.9	Non-discriminatory treatment	Support QCA draft decisions	No
1.4	1.10-1.12	Ring-fencing	Support QCA draft decisions	No
1.5	1.13-1.15	Term of the DAU	Support QCA draft decisions but propose further improvements	Yes – see proposed cl 1.7

### 1.1 Scope

#### Draft Decision 1.1-1.3

NHC supports this Draft Decision, which proposes amending the 2015 DAU so that the access undertaking would apply to all rail transport infrastructure for which QR (or its related party) is the railway manager. Aligning the coverage of the access undertaking with the scope of the declared service (as defined in section 250(1)(b) of the QCA Act) provides Access Seekers with certainty regarding the terms on which access to all of the declared service may be obtained.

In the absence of the amendment proposed by the QCA, access seekers' only choice, for infrastructure within the scope of the declaration but outside the scope of the access undertaking, would be seeking access under the provisions of the QCA Act. The benefits of seeking access under the more detailed access undertaking regime (including greater certainty regarding the negotiation process and access pricing), would be lost. That is contrary to the interests of Access Seekers and the public interest.

This is also likely to become a more significant issue in the future given that one of the consequential impacts of QR's foreshadowed unwillingness to fund future customer specific rail spurs and loops is the increased prospect of QR being the railway manager for privately owned infrastructure connected to QR's mainline network.

Further comment: Definition of Access (no draft decision)

NHC remains concerned that the proposed definition of Access, which is limited to 'the non-exclusive right to use a specified part of the Network for the purpose of operating Train Services', could be interpreted unduly narrowly, such that it excludes certain services which go beyond mainline running but are essential to the operation of Train Services in the normal course. If that interpretation was to be applied:

- (a) the access undertaking would fail to achieve its principal object of allowing access to all of the declared service; and
- (b) QR could seek to levy additional charges for services other than simple access for through-running, despite the cost of these services having been fully reflected in the QCA approved reference tariffs.

Accordingly, NHC proposes an expanded definition of Access which expressly includes the ancillary related services which are critical to being able to utilise the declared service. NHC do not consider that the expanded list will have any adverse effect on QR's legitimate business interests, as the cost of all of the listed services is reflected in reference tariffs for the West Moreton network (and presumably in negotiated tariffs for other parts of QR's network).

NHC had previously proposed (Section 5.2 of Volume 3 of NHC's June 2015 submission) that the definition of Access from the 2008 AU be restored. The QCA's Draft Decision does not appear to address this suggestion. NHC has now proposed an alternative definition of 'Access' in clause 7.1 (see Appendix A), which expressly encompasses other ancillary services such as:

- (a) train queuing, staging, dwelling or marshalling to the extent reasonably required for mainline running;
- (b) shunting to the extent reasonably required for mainline running;
- (c) use of the network while loading and unloading of a train is conducted;
- (d) access to walkways adjacent to the network and crew changeover points connected to the Network; and
- (e) entry upon land owned or leased by QR or to which QR has authority to authorise access, to the extent it is incidental and essential to use of the Network.

NHC would also consider the 2008 AU definition to be acceptable if for any reason the QCA considers that is more appropriate.

Further comment: Connecting private infrastructure (no draft decision)

NHC has previously expressed concern that the DAU contains no provisions regarding the connection of private infrastructure to the QR network.

NHC considers that connection of private infrastructure is a clear part of providing access to the declared service, particularly in the current circumstances where QR is clearly foreshadowing an unwillingness to fund customer specific rail spurs and loops. However

without specific provisions dealing with this issue, QR may be able to abuse its monopoly position in relation to the terms it provides for connections, or significant delays may result while the terms are disputed.

It is not clear to NHC from the Draft Decision what the QCA's position on this issue is, as it appears this was intended to be covered in Section 7.5 (see the reference on page 104) and it appears from page 128 that the lack of a connection agreement was considered an issue that needed to be resolved.

NHC continues to support the access undertaking, at a minimum, containing a reasonable set of principles which should apply to such negotiations, with the existing connection provisions of Aurizon Network's current access undertaking providing a useful example (having regard to how those principles were ultimately developed into a standard connection agreement). The amendments suggested in Appendix A adopt that approach.

NHC also supports the QCA having the power to require provision of a Standard Connection Agreement during the term of the undertaking, should the need arise.

## **1.2 Line Diagrams**

### Draft Decision 1.4-1.6

NHC supports this Draft Decision, which would ensure that Access Seekers and Access Holders are made aware of proposed amendments to line diagrams, and provide for a process for resolution of disputes regarding the accuracy of line diagrams. Accurate line diagrams, and the transparency they provide regarding the coverage of access regulation are important for promoting above-rail competition and when undertaking studies for expansions, including potential user-funded expansions.

## **1.3 Non-discriminatory treatment**

### Draft Decision 1.7-1.9:

NHC supports this Draft Decision and the proposed amendments to Clause 1.3 of the 2015 DAU. The amendments clarify how QR will be prevented from engaging in conduct for the purposes of preventing or hindering access or unfairly differentiating between Access Seekers or Access Holders, and are consistent with the obligations applicable to QR under the QCA Act.

## **1.4 Ring-fencing arrangements**

### Draft Decision 1.10-1.12

NHC supports the QCA's proposed clause 6.5, which will give the QCA the power to require that appropriate amendments be made to the access undertaking to address ring fencing issues in the event that QR enters into competition with any third party Rail Transport Operator through a Related Party. NHC is comfortable that a fully-fledged ring-fencing regime is not warranted at this stage given the limited extent of QR's vertical integration (which is currently confined to passenger rail services).

## **1.5 Term of the 2015 DAU**

### Draft Decision 1.13-1.14

As stated elsewhere in this submission (see in particular Volume 2), NHC considers regulatory certainty highly important, and consequently NHC is generally willing to support

the proposed longer term of the 2015 DAU expiring on 30 June 2020 accepted by this Draft Decision.

However, given the material changes that are to be made in the 2015 DAU, NHC considers that a review mechanism needs to be included in order to appropriately protect Access Seekers and Access Holders. NHC's concerns are based on the following considerations:

- (a) many of the provisions of the final approved access undertaking will be new and untested;
- (b) as a low volume network involving mixed traffic types, there is a greater risk (compared to the high volume dedicated coal network of Aurizon Network) of changes occurring which require revision of the access undertaking during its term, partly because changes of a given magnitude (for example, in dollars or tonnes) are more material in a low volume system. This could include changes in traffic mix, changes in capex requirements, and changes in train configurations;
- (c) The asymmetrical nature of the amendment process that applies to the access undertaking (due to the QCA Act permitting QR to submit a voluntary draft amending access undertaking at any time) means that the risks of a longer term access undertaking lie predominantly with Access Holders and Access Seekers. The QCA has very limited ability (subject to the terms of the access undertaking itself), and the Access Holders and Access Seekers have no ability, to 'reopen' the undertaking; and
- (d) Users' concerns about unanticipated consequences have now been substantially heightened due to QR's behaviour in relation to the adjustment amounts, where it has sought to game the current regulatory process to avoid paying for adjustments that the current access undertaking (and QR's own previous public correspondence and positions) clearly envisaged would be made.

The regulatory certainty provided to Access Holders and Access Seekers is qualified by QR's ability to voluntarily propose amendments. To provide greater balance, NHC submits that an approach similar to the current clause 1.4(a) of the DBCT Access Undertaking is adopted. That is, NHC suggests that a provision be inserted to allow the QCA to require amendments to rectify significant inequity or unfairness arising to Access Seekers, Access Holders or QR, where that inequity or unfairness was not intended or foreseen. NHC does not consider that this clause has the effect of undermining regulatory certainty in the case of DBCT, nor that it would have that effect on QR, given the relatively high threshold set by 'significant inequity or unfairness'. The proposed clause is included as a new clause 1.7 in Appendix A.

## 2 Negotiation process

Draft decision section	Draft decision numbers	Item	NHC response	Further drafting proposed in Appendix A?
2.1	2.1-2.3	Information required by QR	Support QCA draft decisions but propose further improvements	Yes – see cl 4, 5.1-5.3 and 7-8 of Schedule B

2.1	2.4-2.6	Information provided by QR	Support QCA draft decisions but propose further improvements	Yes – see cl 2.7.2
2.2	2.7-2.9	Timeframes	Support QCA draft decisions but propose further improvements	Yes – proposed cl 2.5.4
2.3	2.10-2.12	Refusal to provide access and cost recovery	Support QCA draft decisions but propose further improvements	Yes – see cl 2.8.1
2.4	2.13-2.15	Competing access requests – competitive tendering	Support QCA draft decisions but propose further improvements	No
2.4	2.16-2.18	Competing access requests – mutually exclusive paths	Support QCA draft decisions but propose further improvements	Yes – see cl 2.9.2(i)-(k)
2.5	2.19-2.21	Renewal rights	Support QCA draft decisions but propose further improvements	Yes – see cl 2.7.2 and 7.1, "Renewal" definition

## 2.1 Information exchange

### Draft decision 2.1-2.3

NHC generally supports the QCA's proposed amendments to Part 2 and Schedule B, which seek to ensure that information required from Access Seekers is reasonable, taking into account the information likely to be available to the relevant Access Seeker at the access application stage.

However, NHC considers that the following additional amendments are required to fully achieve the QCA's intent (including of allowing an End User Access Seeker to directly apply for access rights):

- (a) for consistency with the QCA's proposed amendment to 5.3 of Schedule B, an End User Access Seeker should not be required to provide the information listed in 5.1(g),(h), (i) and (j), and 5.2(d) of Schedule B, as this information is not likely to be available to an End User Access Seeker until an above rail haulage operator is contracted. We suggest that these items could be moved to clause 5.3, so that they do not apply to End User Access Seekers (but are retained for Operator Access Seekers).
- (b) in regard to renewals and transfers, the requirement to notify of changes to various information under clauses 7 and 8 of Schedule B should be qualified in the case of End User Access Seekers, such that the End User Access Seeker is only required to provide the information which an End User Access Seeker must provide under clauses 5.2 to 5.3 (amended as noted above), in the case of coal and freight related access rights. An End User Access Seeker may not have access to the existing Access Agreement or the operational or rolling stock details within that agreement, and therefore cannot provide details of changes to that information; and

- (c) the requirement to nominate whether the form of Access Agreement sought will be the SAA or a different form (Schedule B, clause 4) should be clarified. At this early stage of the application process, NHC suggests that it ought to be sufficient to notify QR whether the Access Agreement sought will be 'principally based on' the form of the SAA or alternatively, to describe the proposed alternative form. NHC's concern is that the existing drafting could place the access seeker in a position of having to document every proposed amendment to the SAA at a very early stage in the access application and negotiation process.

Draft decision 2.4-2.6:

NHC supports the QCA's proposed amendments regarding the provision of information by QR. However, it is not clear why the requirement to provide information in accordance with section 101 of the QCA Act (in clause 2.7.2) is qualified by reference to:

- (a) whether the information is reasonably able to be provided by QR (as given that this is a requirement of the QCA Act and the type of basic information involved, QR should be required to have this type of information available); and
- (b) whether the information can be reasonably obtained from a source other than QR (as given this is a disclosure requirement imposed on QR under the QCA Act, it seems odd that the ability for a third party to provide that information, which could clearly be restricted, or only available on conditions or at a cost to the Access Seeker, should somehow dilute QR's legislative disclosure obligations).

Accordingly, NHC submits those qualifications should be deleted.

## **2.2 Timeframes**

Draft Decision 2.7-2.9:

NHC supports the QCA's proposed amendments. Providing for extensions of timeframes based on reasonable grounds, with agreement not to be unreasonably withheld, provides QR and Access Seekers with a reciprocal ability to extend timeframes when this is necessary, while ensuring that delays not based on reasonable grounds cannot occur without the agreement of both parties.

However, to address the risk that an Access Seeker and QR may agree a number of extensions to the detriment of Access Seekers who are lower in the queue, we suggest that the 2015 DAU be amended to include a clause which is similar to clause 4.6(e) of the 2008 undertaking (see the proposed clause 2.5.4 in Appendix A). This allows an Access Seeker which is lower in the queue to seek a review of whether the time taken by the other Access Seeker is unreasonable or excessive.

## **2.3 Refusal to provide access and cost recovery**

Draft Decision 2.10-2.12

NHC supports these Draft Decisions, subject to the following comments.

In relation to refusals to proceed with Duplicate Requests, NHC submits that:

- (a) if QR is going to give notice that it intends to cease negotiations because of the existence of Duplicate Requests it should be required to identify the key facts or circumstances that have led to that conclusion being reached; and
- (b) it should be possible for an Access Seeker to be able to progress both Access Applications initially identified by Queensland Rail as Duplicate Requests, if it provides information which demonstrates to QR's reasonable satisfaction that



the requests are not, in fact, Duplicate Requests.  
NHC has submitted revised drafting for clause 2.8.1 in Appendix A which reflects these issues.

In relation to QR's proposed right to cost recovery for failed access negotiations, NHC continues to consider that it is unwarranted (given access negotiations are part of QR's core business) and highly likely to result in 'double-dipping' and over-recovery if QR is given such a right to recover, given those costs will also be reflected in the calculation of the reference tariffs (or for non-reference tariff pricing, the agreed pricing). It also creates economic incentives for QR to prolong and frustrate negotiations, which seems highly counter-productive to introduce into a negotiate-arbitrate regime. NHC notes that the QCA has invited QR to submit an alternative proposal for cost recovery. If the QCA is minded to consider any alternative proposal put forward by QR in that regard, NHC submits that (in respect of the West Moreton network) it could be implemented by the reference tariffs being reduced by the estimated costs QR will be able to recover, so that QR's estimated revenue would remain the same. The QCA would then need to assess the forecast prudent cost to QR of failed negotiations over the regulatory period in order to be able to determine appropriate reference tariffs.

If, despite the above, the QCA is minded to permit QR to recover negotiation costs from an Access Seeker, NHC considers that should only occur where the Access Seeker has failed to negotiate in good faith (and any such provision would then need to apply reciprocally where QR has failed to negotiate in good faith).

## **2.4 Competing Access Requests**

### Draft Decision 2.13-2.15 (Competitive tendering):

NHC supports the Draft Decision regarding competitive tendering. It is important, to facilitate competition in the above rail haulage market, for end users of rail transportation services to be able to run a competitive tendering process, and know that negotiations will be able to be progressed by competing rail haulage operators with QR. This is not a significant burden given the existence of the Standard Access Agreement and the likely limited points of negotiation beyond those approved standard terms.

### Draft Decision 2.16-2.18 (Mutually Exclusive Access Applications)

NHC supports the Draft Decision regarding Mutually Exclusive Access Applications. The 2015 DAU, without the amendments proposed in the draft decision, provided QR with inappropriate levels of discretion, particularly by virtue of clause 2.9.2(h)(iv) (numbered as 2.9.2(i)(v) in the QCA version) which allowed re-ordering of the queue solely on the basis of what was more favourable to QR's 'legitimate business interests'.

NHC has previously submitted that:

- (a) competing 'ready and able' access applications which would pay reference tariffs should be prioritised based on date of application, unless one access application is materially differentiated in terms of risk to QR; and
- (b) differences in NPV contributions, or subjective assessments of how favourable an access application is to QR's legitimate business interests, should not be relevant as between competing coal haulage access applications on the West Moreton system which would both pay a reference tariff. Reference tariffs are designed to provide an appropriate rate of return that, among other things, reflects the infrastructure providers legitimate business interests, such that there is no justification for separate re-prioritising of access rights for reference train services on the basis of somehow being more favourable to QR's legitimate business interests.

The QCA’s proposed amendment to 2.9.2(i)(iv) seeks to ensure that, for Mutually Exclusive Access Applications for coal carrying train services in the West Moreton system, re-ordering based on QR’s legitimate business interests can occur only on the basis of promoting an application with a term of at least 10 years ahead of an application for a term of less than 10 years. NHC supports this concept, subject to clarifying that this test (regarding the term) is the *only* basis on which 2.9.2(i)(iv) can be applied in regard to West Moreton coal carrying services. That is, where both applications are for a term of 10 years or more, 2.9.2(h)(iv) will not apply. NHC has proposed drafting amendments to clause 2.9.2 in Appendix A to clarify this position.

## 2.5 Access Renewal Rights

### Draft Decision 2.19-2.21

NHC supports this element of the Draft Decision, which provides greater certainty that access rights may be renewed based on the terms of the Standard Access Agreement (at the time of renewal) and which provides transitional provisions to deal with the expiry of the former undertaking.

However, NHC suggests that:

- (a) the proposed clause 2.7.2(e), which requires that a renewal be negotiated in accordance with clause 2.7.2, should be clarified so that QR cannot advise that insufficient capacity exists. That is, clause 2.7.2(a)(vii), 2.7.2(b) and 2.4.2(b) should not apply. This is consistent with the proposed clause 7.3(j) of the marked-up undertaking in the QCA’s draft decision on the Aurizon Network 2015 DAU;
- (b) the right to renew access rights should include a right to renew a portion of the existing access rights. This is critically important as a requirement that the full access rights be renewed could force a mine which does not require exactly the existing level of access to over-contract, or to forfeit the renewal right and join a queue. This is consistent with the proposed clause 7.3(c)(i) of the marked-up undertaking in the QCA’s Draft Decision on the Aurizon Network 2015 DAU which provides that “a Renewing Access Seeker may elect to renew only part of its existing Access Rights”; and
- (c) a process under which QR notifies the access holder of the need to renew would be beneficial and would not represent a significant administrative burden to QR.

## 3 Pricing Principles

Draft decision section	Draft decision numbers	Item	NHC response	Further drafting proposed by NHC?
3.1	3.1-4.3	Hierarchy of pricing principles	Support QCA draft decisions but proposed further improvements	Yes – see clause 3.1.2
3.2	3.5-3.8	Revenue adequacy	Support QCA draft decisions	No
3.3	3.9-3.12	Limits on price differentiation – non-	Support QCA draft decisions but proposed further	Yes – see cl 3.5 and

		reference-train services	improvements	clause 5 of Schedule D
3.4	3.13-3.16	Pricing and revenue limits	Support QCA draft decisions	No
3.5	3.17-3.20	Take or pay	No comment as this decision relates to take or pay for non-reference services, which are not applicable to NHC. Take or pay applicable to West Moreton network services is discussed in Volume 2 of the NHC submission.	No
3.6	3.21-3.24	Asset valuation methodology	Support QCA draft decisions	No
3.7	3.25-3.27	Pricing at renewal for non-reference-train services	No comment as not applicable to NHC	No
3.8	3.28-3.30	Rate of return	Accept QCA draft decision regarding WACC methodology on the understanding the indicative WACC will be recalculated based on applying that methodology to future WACC parameters	No

### 3.1 Hierarchy of pricing principles

#### Draft Decision 3.1-3.4

NHC supports these Draft Decisions, which seek to establish an appropriate hierarchy of pricing principles (clause 3.4 of the DAU).

The draft decision to restore the hierarchy of principles to that which applied under QR's previous undertaking (and which currently applies to Aurizon Network and is proposed to apply under Aurizon Network's next undertaking) is important, as, without this change, QR would be entitled to do the following whenever this supported revenue adequacy:

- (a) differentiate charges on any basis (or without a basis), including to discriminate in favour of its downstream operations or for the purposes of preventing or hindering access (clause 3.3);
- (b) create cross-subsidies and exceed ceiling revenue limits for combinations of train services (clause 3.2); and
- (c) not comply with the network utilisation principles (clause 3.1.2).

Allowing revenue adequacy to justify unfair price discrimination, hindering access and/or cross-subsidisation would not be in the interests of access seekers, is clearly contrary to the public interest and would substantially distort competition in relevant markets.

In addition, the wording regarding pricing where there is insufficient capacity being available to satisfy demand (clause 3.1.2) also needs to be altered so that it only applies where that is demonstrably likely not merely a 'potential' result, so that the maximum

charge is not applied in circumstances which are not appropriate.

### **3.2 Revenue adequacy**

#### Draft Decision 3.5-3.8

NHC supports the QCA's proposed amendments to clauses 3.1.1 and 3.2.4(c). It is appropriate for the revenue adequacy principle to be expressed as a cap (not a floor) on pricing – as would be achieved by including the 'at least enough to' wording which was proposed by QR. NHC is concerned that the wording suggested by QR indicates that QR would be entitled to earn a return above that commensurate with the risks involved.

The proposed adjustments ensure that the revenue adequacy statement and the ceiling revenue limit are not in conflict with other draft decisions which the QCA has made after considering and balancing the statutory requirements, including the decision on the regulatory asset base. QR's proposal, under which QR would be entitled to earn a return on "the value of assets" based universally on a DORC methodology:

- (a) would allow for a return on assets that are obsolete (and can only be supported by an operator's bespoke rolling stock which has a greater risk of being stranded) unutilised or result from imprudent investments;
- (b) is in conflict with elements of QR's own proposal. For example, QR proposes to value recent (~2008+) and future capital expenditure at a depreciated actual cost, not at a DORC value; and
- (c) is in conflict with elements of the draft decision. The QCA has made a number of draft decisions which prevent QR from earning windfall gains, and we support the revised revenue adequacy statement which provides for consistency with these decisions.

### **3.3 Limits on price differentiation – non-reference train services**

#### Draft Decision 3.9-3.12

NHC supports the Draft Decision. It is likely that, in order to achieve higher throughput and above rail efficiencies during the term of this access undertaking, NHC or other producers in the West Moreton network may seek to run train services which vary from the current train service description for a Reference Train Service (for example, by exceeding 41 wagons). When this occurs, it is important that QR only varies the access charge to reasonably reflect differences in cost or risk (the revised clause 3.3(c)(i)).

It is also important that the QCA retains the power to require the development of new Reference Train Services and Reference Tariffs, equivalent to clause 6.4.2 of QR's current 2008 access undertaking. NHC made this suggestion in its June 2015 submission. However the QCA appears not to have addressed the point or indicated that it was considered.

Much of the 2015 DAU is drafted based on an assumption that all coal services in the West Moreton system will be Reference Train Services. If West Moreton coal services with different characteristics (such as more than 41 wagons) do not become a new Reference Train Services, then such services will not be included in:

- (a) the contracted Reference Train Services for the purposes of the Endorsed Variation Event; and
- (b) the revenue earned by QR for the purposes of the Approved Ceiling Revenue Limit (and the cap on take or pay).

It is possible there are further provisions which will also fail to achieve the intended results if certain West Moreton coal services are not considered Reference Train Services.

Aside from this concern, it is important that the QCA has the power to require the development of new Reference Tariffs because a provision of this nature provides the potential for the QCA to deal with pricing concerns in a consistent way across relevant access seekers and will, in some circumstances, be highly preferable to simply relying on access disputes where the QCA arbitrated terms are only binding on QR in respect of a single access seeker. For example, if Aurizon (as the current operator for multiple customers on the West Moreton network) was to introduce a new train configuration it would be preferable for there to be a single unified process for determining the new tariff (and impact on the existing tariff for services using the prior configuration).

We suggest the reinstatement of a provision which is similar to the former clause 6.4.2 (see the proposed clause 3.5 in Appendix A) and have also proposed drafting in clause 5 of Schedule D which would allow QCA to require development of a new reference tariff for a service with a different train service description.

### **3.4 Pricing and revenue limits**

#### Draft Decision 3.13-3.16

Consistent with its reasoning on the hierarchy of pricing principles, NHC supports the proposed amendments to clause 3.2 which establish price limits in a way which ensures that there are no cross subsidies, and which allows QR to charge below a floor limit only after gaining QCA approval.

### **3.5 Take or pay arrangements**

#### Draft Decision 3.17-3.20

As this decision relates solely to take or pay arrangements for non-reference train services this is not applicable to NHC. Take or pay issues regarding the West Moreton system are discussed in detail in Volume 2 of this submission.

### **3.6 Asset valuation methodology for negotiating access charges**

#### Draft Decision 3.21-3.24

NHC supports these Draft Decisions, and the QCA's proposed wording of clause 3.2.4(c).

In the case of the West Moreton system, a Regulatory Asset Base has been proposed by QR and by the QCA, each of which is based on a modified DORC (with differing modifications). NHC's views of the regulatory asset base and the valuation methodology proposed by the QCA in respect of the West Moreton network are discussed in detail in Volume 2 of NHC's submissions.

The final approved Regulatory Asset Base is the appropriate reference point for cl. 3.2, and reference to any other asset value in the context of the West Moreton network is not relevant or appropriate. We refer to our earlier comments (in Volume 2 and Section 3.2 of this Volume of NHC's submissions and previous submissions during the 2015 DAU process) which explain why an unmodified DORC value would be inappropriate.

### 3.7 Pricing for access rights at renewal (non-reference-tariff services)

#### Draft Decision 3.25-3.27

Subject to NHC's earlier comments (section 3.3) which seek to ensure that the QCA can require the development of new Reference Tariffs and the establishment of new Reference Train Services (for example, for coal services with different train service descriptions), this Draft Decision is not applicable to NHC.

### 3.8 Rate of return

#### Draft Decision 3.28-3.30

NHC supports the Draft Decisions in regard to the methodology to be applied to calculate QR's weighted average cost of capital. The methodology applies in a consistent way with previous QCA and other economic regulatory precedent, thereby promoting regulatory certainty.

NHC understands that the WACC of 6.93% is indicative and that the risk free rate and debt premium will be set at a point in time in the future (say in the first half of calendar year 2016) over an averaging period determined by the QCA (following consultation with QR). We assume, based on normal practice, that the averaging period will be a future date at the time that it is agreed (such that the rates are not known at that time and therefore QR has no ability to seek a favourable date range) and that the final decision will be prepared after the chosen dates have passed, so that the final decision can contain tariffs updated to reflect the movement in WACC parameters since the date range used for the indicative WACC in the Draft Decision.

### 3.9 Elements of Part 3 not discussed in draft decision

NHC supports the changes proposed by QCA to clause 3.6 regarding rate review provisions.

## 4 Operating requirements

Draft decision section	Draft decision numbers	Item	NHC response	Further drafting proposed by NHC?
4.1	4.1-4.3	Changes to train plans - notify	Significant concerns	Yes – See Schedule F
4.1	4.4-4.6	Changes to train plans - consult		Yes – See Schedule F
4.1	4.7-4.9	Changes to train plans – seek agreement		Yes – See Schedule F
4.1	4.10-4.12	Changes to train plans – seek agreement		Yes – See Schedule F
4.2	4.13-4.15	Minimising the effects of operational constraints	Support QCA draft decisions but propose further improvements	Yes – see cl 7.1 definition of 'Usable Scheduled Time'
4.3	4.16-4.18	Coordination with	Support QCA draft decisions	No

		adjoining networks		
4.4	4.19-4.21	Passenger services	Support QCA draft decisions	No
4.5	4.22-4.24	Operating requirements manual	Support QCA draft decisions	No
4.6	4.25-4.27	ORM amendment process	Support QCA draft decisions	No

#### 4.1 Changes to train plans

##### Draft Decision 4.1-4.3 (Notification)

NHC supports the proposed amendments to Schedule F, clauses 2.1(d) and 2.2(c) which require that a broader range of parties are notified of changes to train plans. This is not an onerous requirement and will promote efficient use and operation of the infrastructure.

However, NHC is concerned that clause 2.1(d) of Schedule F requires that QR provides only 20 business days' notice of changes to the MTP, particularly in regard to changes to the timing of possessions of relatively long durations. This unfortunately is indicative of what appears to be fairly ad-hoc, opaque and 'reactive' planning of possessions, where NHC's experience is that QR makes many 'last minute' changes, often for events that could have been foreseen significantly in advance if the scheduling and changing of planned possessions was subject to a more rigorous and proactive process. Proper planning of possessions seems highly likely to free up additional capacity in QR's network and allow for the more efficient use and operation of the infrastructure, consistent with the object of Part 5 of the QCA Act.

NHC suggests that:

- (a) QR currently publishes a MTP for each financial year and when this is published Access Holders in the coal export market plan their 'shipping stem' to suit (effectively making business decisions like organising shipping charters, setting customer delivery schedules and managing stockpile levels in reliance on the MTP);
- (b) QR should be required to provide six months' notice of proposed changes to the Planned Possessions which are expected to have a duration of greater than 4 days, and three months' notice of all other Planned Possessions (except Emergency Possessions) so that the changes can be discussed and outcomes optimised for all parties. Major construction or programmed activities such as bridge replacements or repair of formation failures require significant advance planning by QR and as such should be able to be 'locked down' 12 months in advance. Changes to Planned Possessions can have significant impacts on end-users' logistics including the shipping stem, impose material adverse costs impacts through demurrage and staffing/crewing changes. NHC accepts that QR can change Planned Possessions without the consent of the Access Holder where the above notice periods are complied with, as the impacts on the customer (such as changes to production plans, logistics, sales and shipping schedules) can generally be managed with sufficient notice. Where shorter notice is provided, QR should require the consent of the Access Holder (which NHC would accept is not to be unreasonably withheld with a view that minor changes would likely be able to be accommodated);
- (c) The requirement to obtain the agreement of the Access Holder to amendments to the MTP, where the modification would result in an Access Holder's scheduled Train Services not being met, should be extended to include all possessions; and

- (d) The concept of Urgent Possessions should be deleted. An Urgent Possession, as defined, is a potentially dangerous problem which QR has elected not to remedy for at least 5 days, and possibly for up to 3 months. NHC suggests that any potentially dangerous problem should be addressed within 5 days and therefore meet the definition of an Emergency Possession. For possessions which QR has decided need not be remedied for up to three months, we suggest that it should be possible to programme such work in the normal maintenance windows (Planned Possession) under the MTP.

#### **Draft Decision 4.4-4.6 (Consult)**

NHC supports the proposed changes to Schedule F, clause 2.2, subject to suggested drafting amendments which:

- (a) clarify that QR must comply with the DTP in making access available, subject to permitted variations to the DTP. This is required to create an obligation to make access available based on the DTP; and
- (b) the DTP will be developed from, and consistent with, the MTP, subject to permitted variations. This is required in order to establish a proper link between the MTP and the DTP (in the absence of which, the MTP would have little value).

#### **Draft Decision 4.7-4.9 (Seek agreement)**

NHC supports the proposed changes to Schedule F, clause 2.2 which require QR to make reasonable endeavours to reach agreement on scheduling a DTP in variation from the MTP. However, for the reasons discussed at the beginning of Section 4.1 of this submission, we consider that the concept of Urgent Possessions should be deleted.

NHC supports the proposed Part 5 requirement to report on QR's adherence to the timing of planned possessions in the MTP.

**Draft Decision 4.10-4.12 (Dispute):** NHC supports the QCA's proposed Schedule F, cl. 2.4, which ensures that changes to the MTP or DTP will not take effect while a dispute is being resolved. Any other approach would allow QR to give late notice of changes, such that it is not possible to complete the dispute process ahead of the date of the proposed change. QR could then implement the change regardless of whether the change was consistent with the undertaking. We note that this proposed clause does not apply to Emergency Possessions and Urgent Possessions. Consistent with the NHC submissions in respect of Draft Decisions 4.1-4.3, we suggest that Urgent Possessions be deleted from this clause.

## **4.2 Minimising the effects of operational constraints**

#### **Draft Decision 4.13-4.15:**

NHC supports the QCA's proposed amendments to Schedule F, cl. 2.3 relating to QR's obligation to use reasonable endeavours to minimise adverse effects on Train Services where the MTP is modified or the DTP varies from the MTP. Given that the obligation is limited to 'reasonable endeavours' and only applies in the case of 'material adverse effects', we agree that the obligation should apply to all changes, not only to changes in possessions, and that QR should be obliged to use reasonable endeavours to offer an alternative scheduled time which represents a usable replacement.



NHC have suggested improvements to the definition of Usable Schedule Time in Appendix A which properly take into account the ability of the rail operator and its customer to realistically (not theoretically) make use at late notice of the alternative train path(s) offered.

#### **4.3 Coordination with adjoining networks**

##### Draft Decision 4.16-4.18

NHC supports the QCA's proposed amendments to clause 4.2. Coordination with other railway managers and meaningful efforts to provide for the efficient operation of Through-Running Trains is essential to the efficient use and operation of QR's infrastructure, and of adjoining infrastructure (which is in the public interest and the interests of access holders). We also consider that the obligation goes no further than describing QR's existing practice. This provision is important to NHC due to consideration of the various possible futures for the West Moreton system (such as connection to an inland rail project, a bypass of the metropolitan system or a separation of ownership of the West Moreton and Metropolitan networks) which have the potential to make all or a vast majority of train services on the West Moreton system through running. Also, NHC's Colton project will utilise both the Queensland Rail and Aurizon rail networks.

#### **4.4 Passenger services**

##### Draft Decision 4.19-4.21

NHC supports the amendment of the network control principles to require that a network controller be acting reasonably when forming a view that it is necessary to deviate from the DTP to give priority to passenger train services. NHC appreciates the legislative requirement for passenger priority, but it is not in the interests of Access Seekers or Access Holders, the public interest or efficient use of the infrastructure for passenger priority to become a cloak for poor planning and scheduling practices. This is obviously a very significant issue for the West Moreton network given the interaction with the Metropolitan network.

#### **4.5 Operating requirements manual**

##### Draft Decision 4.22-4.24

NHC supports the QCA's proposed amendments to the Operating Requirements Manual (the ORM). The proposed changes restore some balance to the ORM in regard to the obligations of the parties, and clarify the procedures and how they link with the undertaking and Access Agreements.

NHC acknowledges that above rail operators may be better placed to comment on some of the detail in the ORM and requests that the QCA pay due regard to any submissions from Aurizon in respect of the detailed provisions in the ORM.

#### **4.6 ORM amendment process**

##### Draft Decision 4.25-4.27

NHC supports QR's proposal that the ORM be a schedule to the undertaking. Therefore, we agree with the QCA's view that the process for amending the ORM must be included in the undertaking or that changes must be made through DAAUs. Allowing for safety related and minor (people and position) changes to be dealt with through the undertaking, and addressing all other proposed changes via a DAAU process, is a practical approach. In regard to compensation, we accept that the QCA's draft decision which continues to limit claims for compensation under the SAAs to the parties to those agreements.

## 5 Reporting

Draft decision section	Draft decision numbers	Item	NHC response	Further drafting proposed by NHC?
5.1	5.1-5.3	Performance and access reporting	Support QCA draft decisions but propose further improvements	Yes – see clause 5.1.2
5.2	5.4-5.6	Reporting cost and price information – ref train services	Support QCA draft decisions but propose further improvements	Yes – see clause 5.2.2
5.2	5.7-5.9	Reporting cost and price information – non-ref. train services	No comments	No
5.3	5.10-5.12	Regulatory accounts and cost allocation manual	Support QCA draft decisions	No
5.4	5.13-5.15	Audit requirements	Support QCA draft decisions	No

### 5.1 Performance and access reporting

#### Draft Decision 5.1-5.3

NHC supports these Draft Decisions. Reporting on the time taken to issue IAPs within ranges, rather than as averages, will provide a meaningful indication on QR's performance in regard to this important step of the negotiation process.

However, the Draft Decision does not appear to have addressed or discussed the following suggestions, which were provided in NHC's June 2015 submission that NHC continue to consider should be reflected in the 2015 DAU:

- (a) **(Extent of separate reporting of West Moreton and Metropolitan System)**  
In NHC's June 2015 submission, NHC suggested that the separate reporting of the West Moreton and Metropolitan System required under cl. 5.1.2(b) should extend to the matters referred to 5.1.2(a)(vi) to (ix), not just those in (a)(ii) to (v). In particular, speed restrictions and track quality ((vi) and (vii) respectively) are issues that would be anticipated to be specific to parts of the network and potentially indicate maintenance or operating issues in relation to particular parts of the network for which the data is outside of a normal range. Similarly, the explanation of material changes in (ix) should be specific enough to occur on a system by system basis, as NHC anticipates that the causes of the material changes will often be specific to parts of QR's network rather than generally applicable.
- (b) **(Speed restrictions)** In NHC's June 2015 submission, NHC suggested that in relation to 5.1.2(a)(vi), the measures of average percentage and average km under temporary speed restriction do not adequately indicate the full impact of the speed restriction on operators. It was suggested that in addition to what is proposed, 5.1.2(a)(vi) should provide for reporting of the number of individual

restrictions and the percentage below normal line speed, which would provide a better indication of impact on train operations.

Revised drafting on these issues has been included in Appendix A for the QCA's consideration.

## **5.2 Reporting of cost and price information**

### Draft Decision 5.4-5.6 (reference train services)

NHC supports the Draft Decision to require reporting of actual costs against forecast costs (with the forecasts being the forecasts which were approved in development of the reference tariff). This provides valuable information for customers. The information assists in understanding the likely direction of future tariffs, and provides useful baseline information for the development of future undertakings and transparency that assists in making informed future investment decisions.

Ensuring that QR compiles this information, rather than providing only actual information such that the QCA or customers must assemble the comparison to forecasts, is likely to ensure that each item reported against forecasts is prepared on a like for like basis.

However, NHC is concerned that Part 5 of the 2015 DAU does not provide for reporting any breakdown of costs. As drafted, QR could report only two aggregated line items covering all operating expenditure and all maintenance costs. The minimum requirement should be to report in the same categories as those on which the approved forecast was based. In QR's May 2015 submission (pages 53 and 54) this comprised five categories for maintenance and four for operating expenditure. The QCA's mark-up of Aurizon Network's 2014 DAU provides a useful example of the level of information required in regard to maintenance.

In addition, when reporting actual costs against forecast costs, QR should be required to adopt the cost allocation methodologies which were approved and reflected in the forecast costs.

Appendix B is an extract of the QRC's recent October 2015 submission on Aurizon Network's costing manual. This extract provides QRC's views regarding allocation of costs for the purposes of reporting, and the level of detail to be reported in regard to operating expenditure. Although the QRC's comments were provided in the context of the costing manual, NHC considers that the principles explained by the QRC should be applied to the reporting of QR's costs under Part 5 – particularly the commentary provided under the headings of 'transparency' and 'expenses (operating costs)'.

### Draft Decision 5.7-5.9 (non-reference-train services)

These draft decisions are not applicable to NHC due to relating to non-reference train services.

## **5.3 Regulatory accounts and cost allocation manual**

### Draft Decision 5.10-5.12

NHC supports the requirement for QR to publically release audited financial statements within six months of each financial year. Transparency is important in a negotiate arbitrate model and where QR continues to have both a regulated (network) and an unregulated (passenger services) business.

## **5.4 Audit requirements**

### Draft Decision 5.13-5.15

NHC supports the amendments to Part 5 which allow the QCA to require an audit of compliance with any aspect of the undertaking or the QCA Act.

Access Seekers, Access Holders and End Users who suspect that QR may not be complying with the requirements of the access undertaking are highly unlikely to have sufficient information on which to base a dispute such that audit rights of this nature are critical to allow

the QCA (as independent regulator) to take steps to verify whether there is justification for any concerns held by other stakeholders. Stakeholders therefore rely on the QCA's ability to obtain information to verify compliance with the undertaking. The proposed power is similar to clause 3.5.2 of the 2008 undertaking, clause 9.8 of Aurizon Network's UT3 and clause 10.8 of Aurizon Network's 2014 DAU.

## 6 Administrative provisions

Draft decision section	Draft decision numbers	Item	NHC response	Further drafting proposed by NHC?
6.1	6.1-6.3	Transitional provisions – tariff-related reporting requirements	Support QCA draft decisions subject to comments regarding final decision	No – but see below reasoning

### 6.1 Transitional provisions – tariff-related reporting requirements

#### Draft Decision 6.1-6.3

NHC supports the requirement for QR to provide tariff-related information for the West Moreton network for the period from 1 July 2013. Reporting for this period is appropriate as delays in approval of a new undertaking, and the gap between undertakings which has resulted from QR's withdrawal of successive DAUs, should clearly not result in a permanent loss of important information for stakeholders.

However, NHC notes that one of the QCA's stated reasons for requiring this information to be reported is to ensure that stakeholders can understand the basis on which the adjustment charge has been calculated. To achieve this purpose, we consider that different information is likely to be required unless the QCA already has all of this information.

In particular, NHC anticipates that in order to calculate the adjustment amounts information is required on QR's West Moreton and Metropolitan system revenues under access agreements relating to coal services, rather than simply volume information. Volume information alone is not sufficient to estimate revenues, particularly when take or pay revenue is earned.

Assuming that the adjustment charge is calculated by reference to costs which the QCA would have approved for the relevant period, rather than by reference to QR's actual costs, that type of cost information is required in order to understand the adjustment charge calculation.

We suggest that these information requirements could be met through the final decision, rather than through the undertaking, but will be supportive of any approach that facilitates accurate calculation of the adjustment amount. Information for FY14 and FY15 in the format which the QCA has provided in Attachment A of the draft decision, plus actual revenues, is likely to be sufficient. On that basis NHC has not proposed amendments to clause 6.4 (as proposed by the QCA).

## 7 Standard Access Agreement

NHC's comments on Part 7 of the Draft Decision, and on the terms of the Standard Access Agreement, are provided in Volume 4 of NHC's submission. NHC supports the Standard Access Agreement remaining part of the access undertaking (so that there are appropriate controls on how it can be provided in the future).

## 8 Reference tariffs

NHC's detailed comments on Part 8 of the Draft Decision are provided in Volume 2 of NHC's submission.

Where there are material changes to the drafting of the body of the access undertaking arising from those comments, they are also included in Appendix A.

Examples include the Reference Tariff Schedule (Schedule D) where amendments have been included regarding:

- (a) the approach to take or pay; and
- (b) having the relinquishment fee properly taken into account in determining whether QR has earned above the approved ceiling limit (as the Draft Decision suggests on page 199 should occur, but the drafting in the Draft Decision does not currently appear to achieve).

## 9 Investment, planning and coordination framework

Draft decision section	Draft decision numbers	Item	NHC response	Further drafting proposed by NHC?
9.2	9.1-9.3	Network extensions	Support QCA draft decisions but propose further improvements	Yes – see cl 1.4 and Schedule I
9.3	9.4-9.6	Funding agreements	Support QCA draft decisions but propose further improvements	Yes – see cl 1.4, 7.1 definition of 'Extension Costs' and Schedule I
9.4	9.7-9.9	Network planning	Support QCA draft decisions but propose further improvements	Yes – see cl. 1.5

### 9.1 QCA's assessment approach

NHC supports the QCA's efforts to ensure that the final undertaking includes an efficient, transparent and accountable investment framework.

In regard to the QCA's assessment approach:

- (a) NHC supports the five points on page 224 of the Draft Decision which describe the characteristics that an investment framework must have to best balance

the section 138(2) criteria, namely that the framework:

- (i) provides a streamlined negotiation process to deliver access to the network in a timely manner and at a reasonable cost;
  - (ii) provides certainty on processes and obligations in negotiations, including the nature and timing of information and assistance required to be provided;
  - (iii) balances Queensland Rail's legitimate business interests with the rights and legitimate business interests of access seekers;
  - (iv) removes perceived or actual barriers in the negotiation process so all access seekers can be confident they are negotiating for access rights on a level playing field; and
  - (v) delivers access services (which include delivery of an extension project) at a reasonable cost consistent with the pricing principles contained in section 168A of the QCA Act; and
- (b) NHC supports the QCA's assessment approach to the assessment criteria shown in table 9.2 (page 225 Draft Decision).

The need for an effective investment framework, including a robust user-funding option, has been clearly demonstrated in Central Queensland and is equally relevant for the West Moreton network (given QR's indication it is not intending to fund customer specific rail spurs or loops). Without such a framework, the infrastructure owner is able to demand onerous conditions including excessive returns. Customers then face a choice between foregoing investment opportunities or accepting these terms (usually following substantial delays).

An effective investment framework is clearly required in order to provide for efficient investment in this infrastructure, and to promote competition in downstream markets.

There are a substantial number of amendments in Appendix A relating to this issue, intended to reflect the approach outlined above.

## **9.2 Network extensions**

### Draft Decision 9.1-9.3

NHC agree with the QCA's identification of the issues which arise under the 2015 DAU as drafted by QR (as detailed at pages 229-230 of the Draft Decision), and the significant asymmetries (and discretion reserved for QR) in the network extension process QR proposed to introduce.

NHC also supports the principle of establishing a workable network extension process which is available to access seekers where QR is unwilling to fund an extension of the network (and therefore generally supports the inclusion of clause 1.4, 2.7 and Schedule I).

However, there are a number of refinements required in order to give the extension process sufficient rigour to be able to be relied on by Access Seekers.

Drafting amendments to each of the relevant clauses is included in Appendix A. The amendments seek to:

- (a) make the obligations of Queensland Rail mandatory where that is appropriate (i.e. changes of must to should);
- (b) tighten up the language to reduce the likely prospect of disputes regarding whether certain criteria are satisfied (including making conditions to be satisfied more objective in nature rather than left to QR's discretion); and
- (c) make the language more appropriate to funding studies of expansions where

possible – as many of the clauses seem to have been drafted to apply to funding commissioning and construction and do not apply well to funding of studies which would also be required.

### 9.3 Funding agreements

#### Draft Decision 9.4-9.6

NHC generally supports draft decisions 9.4-9.6 which seek to provide more detail on the principles which will underpin the negotiation of a funding agreement.

However, we have a range of further suggestions on how the funding arrangements could be refined in order to be more balanced and appropriate.

NHC is aware of the complexity of the issues surrounding user-funding frameworks and of the long, difficult and costly process which participants in the Central Queensland coal network have experienced. We do not wish to replicate these complex arrangements for the West Moreton system, partly because we expect that the required expansion projects in this region will be of significantly smaller scale and lower cost. However, NHC also considers that there will be significant risks of delayed or lost investment opportunities if we rely entirely on the negotiation (and dispute) of Funding Agreements based on the loose and extremely high level principles set out in Schedule I. This risk is heightened by the untested nature of those principles and the long term of the undertaking.

Accordingly NHC submits the following combination of approaches as a practical alternative to the immediate development of a full suite of standard user funding agreements:

- (a) establish an Access Facilitation Deed (**AFD**) option for smaller projects (subject to applying a more market based reasonable interest rate than is applied under current AFDs). The AFD structure has proven to be a reasonable and relatively simple solution for smaller scale projects. QR's commitment to offer this form of user-funding for small (up to \$25m) projects would mitigate the need for the urgent development of the more complex alternatives. While there has not been sufficient time prior to making these submissions to agree this with QR, a proposal of this nature was raised with QR and QR has not indicated their objection or opposition. To the extent QR are opposed to this solution, NHC sees little option, but to impose the greater regulatory burden of a more extensive user funding solution;
- (b) require QR to submit and obtain approval for a standard Study Funding Agreement within a defined period following approval of the undertaking. Development of a standard SFA does not involve the same complexity as development of funding agreements for the construction phase, and having a standard agreement available will avoid delays and disputes in the early stage of project development. NHC notes the existence of a proposed standard Study Funding Agreement which the QCA has considered during the Aurizon Network access undertaking consideration process; and
- (c) QCA should retain the power, within the undertaking, to require QR to prepare and submit for approval a standard funding agreement covering the construction and operation phase. This is a fall-back option which we would envisage the QCA triggering only if the use of AFDs and the negotiation of funding agreements based on the Schedule I principles were found to be an ineffective solution. This fall-back option is proposed due to the long term of the undertaking, and to provide a pathway for resolving funding terms in the future for larger expansions.

Drafting is provided in Appendix A to reflect that approach.

## 9.4 Network planning

### Draft Decision 9.7-9.9

NHC supports the draft decision which has the effect of requiring that QR develop a Regional Network Master Plan for each Regional Network within 12 months of approval of the undertaking, and which requires the establishment of a Regional Network Capacity Group.

NHC considers that there needs to be a master planning process to provide visibility and transparency to end users of the potential future capital requirements and a useful trigger for consultation with operators and end users. QR's proposed drafting is not sufficient in that regard, and has the potential to result in inefficient and ad-hoc investment decisions being made due to the absence of more rigorous planning. NHC has experienced significant frustration at the lack of any clear process for planning for growth and assessing various capital investment and expansion options. It is clear to us that a formalised process with which QR must comply is both justified and now required.

As noted above, NHC strongly supports the concept of a Regional Network Capacity Group. However, to ensure the membership of that group is appropriate, NHC considers it necessary to clarify that it should include rail haulage operators who may not be Access Holders (i.e. where the relevant end user is the Access Holder). NHC has included an amendment to clause 1.5 in Appendix A to reflect this clarification.

## 10 Legal overview

NHC supports the QCA's assessment of its legislative obligations in respect of how it is to consider the 2015 DAU under the provisions of the QCA Act.

Determining appropriateness of the terms of a regulatory access undertaking necessarily involves balancing numerous factors, some (if not many) of which will involve some degree of tension with each other.

While NHC has suggested a number of refinements to the QCA's draft decision in the 4 volumes of its submissions, NHC strongly agrees that with the QCA's conclusions that:

- (a) encouraging upstream and downstream investment, including by ensuring regulatory certainty in decision making, is consistent with the object of Part 5 of the QCA Act (page 249 Draft Decision);
- (b) Queensland Rail's network has natural monopoly characteristics and Queensland Rail does not face the competitive pressures which are generally required for firms to operate in an economically efficient manner (page 249 Draft Decision);
- (c) the adjustment amount reflects regulatory expectations, thereby promoting regulatory certainty, which will encourage greater use of Queensland Rail's below rail infrastructure and mine investment (page 251 Draft Decision);
- (d) 'legitimate business interests' connotes a reference to what is objectively regarded as allowable and appropriate in commercial or business terms in the context of providing access to the declared service, meaning that a concept of reasonableness and proportionality is implied by the use of the word 'legitimate' (page 251 Draft Decision), as opposed to Queensland Rail's subjective view as a monopolist about what its preferred position is;
- (e) the competitiveness of consumers of rail services who sell their products in international markets (as NHC does) will be undermined if the cost of providing rail services are not efficient, and that is a matter relevant to the QCA's consideration of the public interest (page 254 Draft Decision);



- (f) an access undertaking that delivers regulatory certainty provides a major stimulus to the Queensland economy and local employment which is an important public interest consideration, and the development of new, or replacement, upstream producers may be at risk if there is material pricing uncertainty for rail access (page 254 Draft Decision);
- (g) providing an environment that promotes long term growth of the mining industry serviced by the network is in the public interest (page 256 Draft Decision);
- (h) the interests of access seekers include an effective negotiation framework, transparent and public information about access to and use of the network, adequate reporting, effective transitional arrangements as one undertaking replaces another, access principles that are effective for a balanced negotiation or renewal of an access agreement, standard access agreements that represent a fair risk allocation, effective obligations to maintain the network and a workable and effective extension and expansion framework (page 257 Draft Decision);
- (i) an adjustment amount for over-payment of access charges to Queensland Rail is clearly in the interest of access holders (page 258 Draft Decision);
- (j) the pricing principles are one of a number of factors to be weighed up under section 138(2) QCA Act and although section 168A(a) QCA Act states that prices should generate revenue to at least meet the efficient costs of providing access, it is also true that it is open for the QCA to consider a price that allows such a return to not be one that is appropriate (having regard to other factors) and prices above the efficient cost would not be in the interests of access seekers and holders, nor in the public interest (page 261 Draft Decision);
- (k) to the extent that the proposed West Moreton network does not generate expected revenue over the regulatory period that is at least enough to meet efficient costs and include a return on investment commensurate with the regulatory and commercial risks of providing access because of the adjustment, that pricing principle is outweighed by other considerations under section 138(2) QCA Act including the object of Part 5 of the QCA Act, the public interest and the interests of access holders and access seekers (page 262 Draft Decision);
- (l) the interests of end users and access holders are relevant under section 138(2)(h) QCA Act (page 262 Draft Decision); and
- (m) a return that generates windfall gains and monopoly profits is inconsistent with economically efficient investment, operation and use of a regulated network and has the potential to have both upstream and downstream investment impacts (page 264 Draft Decision).

## Conclusions

For the reasons set out in the 4 volumes of NHC's submissions NHC agrees with the QCA's ultimate conclusion in the Draft Decision that it is not appropriate to approve QR's 2015 DAU, having had regard to each of the matters referred to in section 138(2) of the QCA Act.

NHC generally supports the amendments proposed in the Draft Decision, subject to the comments provided in NHC's submissions, and considers the Draft Decision provides a much more appropriate attempt at balancing the factors the QCA is to have regard to than the 2015 DAU as originally proposed by Queensland Rail.

However, in order to be appropriate, the body of the proposed access undertaking would need to be refined in the way set out in this Volume 3 of NHC's submissions.

## Appendix A – Mark-up of proposed changes to 2015 DAU (from QCA draft version)

### 1.4 Extensions – Capacity investment framework

#### 1.4.1 Application

- (a) This **clause 1.4** applies when an Access Seeker notifies Queensland Rail, in accordance with **clause 2.7.2(d)** that it is willing to fund all Extension Costs directly incurred by Queensland Rail in developing, and constructing and owning the Extension that is necessary to provide the Additional Capacity required to grant the Access Rights in the relevant Access Application (or where the Access Seeker is only willing to partially fund such costs, Queensland Rail or other Access Seekers are willing to fund the remaining balance of such costs, with references to the Access Funder in the remainder of this clause 1.4.1 being references to each relevant Access Funder who is willing to provide funding in those circumstances).
- (b) Queensland Rail is obliged to Extend the Network or complete the relevant study stage of the Extension (as applicable) (unless otherwise agreed by Queensland Rail and the relevant Access Funder) to provide the Additional Capacity required by the Access Funder if:
- (i) The proposed Extension satisfies the Extension Conditions in **clause 1.4.2(c)** or for study stages if it is not currently demonstrably likely that an Extension would ultimately not be able to satisfy the Extension Conditions; and
- (ii) the Access Funder:
- (A) executes a Funding Agreement for the Extension agreed in accordance with **clause 1.4.3**; or
- (B) executes a Funding Agreement for the relevant study stage of the Extension in accordance with **clause 1.4.3**; and
- (iii) the Access Funder provides a bank guarantee in support of its commitments under the Funding Agreement as agreed by Queensland Rail (acting reasonably) and the Access Funder unless this requirement is waived, or another form of security is accepted, by Queensland Rail (acting reasonably).
- (c) Subject to **clause 1.4.1(d)**, nothing in this **clause 1.4**:
- (i) restricts or otherwise limits Queensland Rail's ability:
- (A) to Extend the Network;
- (B) to fund (in whole or in part) an Extension or otherwise invest in the Network;
- (C) to enter into arrangements with other persons (other than Access Funders) in relation to Extending the Network; or
- (D) to, at its cost, prepare plans and strategies and undertake studies and investigations in relation to Extending the Network (including Concept Studies,

Pre-feasibility Studies and Feasibility Studies); or

- (ii) obliges Queensland Rail to bear some or all of any Extensions Costs or to incur any Extension Costs in advance of funding being provided by the Access Funder, except to the extent that Queensland Rail is obliged to provide initial funding under an Access Facilitation Deed which obliges the Access Funder to repay all such prudent costs through 'Access Facilitation Charges'.
- (d) Queensland Rail will undertake all Extensions of the Network under the auspices of the Undertaking and the QCA Act to provide even-handed dealings with all Access Seekers, Access Funders and Access Holders and to ensure that Queensland Rail is not able to take advantage of its monopoly power to gain more favourable terms for Access Rights dependent on development of an Extension.

#### 1.4.2 Extending the Network

- (a) If Queensland Rail is notified under **2.7.2(c)** then Queensland Rail will promptly:
  - (i) in addition to the information provided pursuant to **clause 2.7.2(b)(ii)**, provide the Access Funder with all information on the Extension required, in accordance with sections 101(1) and 101(2) of the QCA Act, to provide the Additional Capacity required to grant the Access Rights in the Access Application. Without limiting the foregoing, this includes information on:
    - (A) necessary Authorisations that are reasonably required for the Extension (which are not already held by Queensland Rail);
    - (B) rights and interests in land that are reasonably required for the Extension (which are not already held by Queensland Rail);
    - (C) rail safety requirements reasonably required for the Extension;
    - (D) engineering, operational and other requirements that are reasonably required for the Extension; and
    - (E) the operational integrity of the relevant corridor that is to be extended;
  - (ii) discuss with the relevant Access Funder the options to proceed with the Extension, comprised of the following project stages:
    - (A) Concept Study
    - (B) Prefeasibility Study
    - (C) Feasibility Study
    - (D) the construction and commissioning of the Extension;
  - (iii) discuss with the relevant Access Funder options for that Access Funder to provide funding for each stage of the Extension (including offering to enter into an Access

Facilitation Deed in the circumstances required by **clause 1.4.4**; and

- (iv) negotiate and enter into arrangements in accordance with the Extension Access Principles set out in **Schedule I** and **clause 1.4.3** with the Access Funder in relation to the funding of the relevant stage of the Extension (**Funding Agreement**), including providing the Access Funder with a copy of any Standard Funding Agreement (applicable to the relevant stage or stages) as the starting point for such negotiations.

For clarity, there is no requirement that there be a single Funding Agreement for an Access Funder or for an Extension. Separate Funding Agreements may be entered into for each stage of the Extension. ~~The parties are~~ The Access Seeker is then free to make a decision on whether to proceed with an Extension at the completion of each stage of an Extension.

- (b) If either Queensland Rail or an Access Funder considers that a study process under this **clause 1.4** should be discontinued part way through a study project stage, then the parties (acting reasonably) will seek to agree whether the study process should continue but if the parties cannot agree then, subject to the terms of the relevant Funding Agreement(s), the study process will continue until the end of that stage subject to the relevant studies being funded.
- (c) For the purposes of **clause 1.4.1(b)(i)**, ~~t~~The Extension must satisfy the following conditions (or for study stages it is not currently demonstrably likely that an Extension would not ultimately be able to satisfy such conditions) (**Extension Conditions**):
  - (i) the Access Funder or Queensland Rail has obtained, or is reasonably likely to obtain, all necessary Authorisations reasonably required to Extend the Network;
  - (ii) the Access Funder or Queensland Rail has acquired or procured, or is reasonably likely to acquire or procure, all of the rights and interests in land that, in Queensland Rail's opinion (acting reasonably), are reasonably required to construct, own, operate and manage the Extension, (on terms satisfactory to Queensland Rail (acting reasonably)) including, for example, the inclusion of additional land into Queensland Rail's land tenure arrangements with the State relating to the Network;
  - (iii) ~~in Queensland Rail's opinion (acting reasonably)~~, the Extension (including constructing the Extension):
    - (A) is technically feasible;
    - (B) is consistent with the safe and reliable provision of Access and operation of the Network;
    - (C) does not adversely impact on the safety of any person maintaining, operating or using the Network;

- (D) does not adversely affect existing Access Rights;
  - (E) complies with the reasonable engineering, and operational and—other requirements of Queensland Rail (acting reasonably); ~~and~~
- (iv) Access Agreements have been executed with Queensland Rail for the Additional Capacity that is expected to be created by the Extension on terms and conditions consistent with this Undertaking unless otherwise agreed;
  - (v) those Access Agreements are or have become unconditional in all material respects except for conditions relating to Extending the Network which cannot be satisfied until the Network has been Extended; and
  - (vi) the Access Funder and Queensland Rail have executed construction, funding, operational, and other material arrangements reasonably required for the Extension (including the matters referred to above) and are unconditional in all material respects except for conditions relating to the Extension which cannot be satisfied until the Network has been Extended.
- (d) Queensland Rail and an Access Funder must use reasonable endeavours and act promptly to assist each other such that the Extension complies with the Extension Conditions.
  - (e) Subject to a Funding Agreement being executed in accordance with clause 1.4.3, Queensland Rail will:
    - (i) provide all project assistance that is reasonably required by an Access Funder to develop an Extension to comply with **clause 1.4.2(c)** at the required study standard;
    - (ii) apply for any Authorisation referred to in **clause 1.4.2(c)(i)** and seek to obtain land tenure or rights referred to in **clause 1.4.2(c)(ii)** ~~where Queensland Rail is the most appropriate party to do so; and~~
    - (iii) construct, own and commission any~~the~~ Extension that complies with **clause 1.4.1(b)**;
  - (f) If an Access Funder (acting reasonably) considers Queensland Rail is not undertaking, or is unnecessarily delaying, the provision of assistance under **clause 1.4.2(d)** or **1.4.2(e)**, or is not offering reasonable terms for the arrangements referred to in clause 1.4.2(c)(vi), then the Access Funder may refer the matter to the QCA under **clause 6.1.4** as a dispute. Nothing in this clause limits **clause 6.1**.
  - (g) For clarity, unless Queensland Rail agrees otherwise, Queensland Rail has no obligation to assist in satisfying the requirements set out in **clause 1.4.2** if it is required to incur or pay any Extension Costs in order to do so, except to the extent that Queensland Rail is obliged to provide initial funding under an Access Facilitation Deed which obliges the Access Funder to repay all such prudent costs by way of 'Access Facilitation Charges'.

### 1.4.3 Funding Agreements

- (a) The intent of a Funding Agreement is to have a workable, bankable

and credible mechanism for Access Funders to fund Extensions where Queensland Rail elects not to do so.

- (b) Without limitation to **clause 1.4.2**, a Funding Agreement must, unless otherwise agreed by Queensland Rail and the relevant Access Funder:
- (i) be consistent with this Undertaking including:
    - the Extension Access Principles in **Schedule I** (provided however that if there is any conflict between the terms of **clause 1.4** and the terms of **Schedule I**, the terms of this **clause 1.4** will be paramount);
  - (ii) result in the transaction being structured in a reasonable way for all parties;
  - (iii) except in the case of Access Facilitation Deeds, not result in Queensland Rail bearing some or all of the relevant Extension Costs;
  - (iv) require Queensland Rail to provide that an Extension is:
    - (A) scoped and studied in accordance with Prudent Practices;
    - (B) constructed efficiently and is consistent with Queensland Rail's obligations in **Schedule E**; and
    - (C) operated and managed by Queensland Rail in a manner that is consistent with Queensland Rail's obligations in relation to the operation and management of the Network under this Undertaking.
- (c) For the avoidance of doubt, any Standard Funding Agreement approved by the QCA under this Undertaking is deemed to satisfy the requirements in **clause 1.4.3(b)**.

#### **1.4.4 Access Facilitation Deeds**

- (a) Prior to the Commencement Date, Queensland Rail has entered a number of Access Facilitation Deeds in respect of funding contributions provided by Access Seekers in respect of previous Extensions.
- (b) For Extensions which:
- (i) Queensland Rail elects not to fund or is not willing to fund;
  - (ii) satisfy the Extension Conditions in clause 1.4.2(c); and
  - (iii) are estimated by a Feasibility Study to cost less than \$25 million to construct and commission.

Queensland Rail must offer to enter into an Access Facilitation Deed on substantially the same terms as those that exist at the Commencement Date in respect of the Network, provided that:

- (iv) the interest rate applied to determine the 'Access Facilitation Charge' must be equal to the efficient cost of debt for Queensland Rail determined by the QCA in the Final Decision approving this Undertaking; and

- (v) any other differences between the terms of an Access Facilitation Deed offered to an Access Seeker pursuant to this clause 1.4.4(b) and any Access Facilitation Deed entered in respect of the Network prior to the Commencement Date, must be justifiable by differences of the costs and risks of the relevant Extension to Queensland Rail.
- (c) For the purposes of this Undertaking, an Access Facilitation Deed entered after the Commencement Date will be considered a Funding Agreement, and an Extension the subject of such an Access Facilitation Deed will be considered to be funded by an Access Funder.

## 1.5 Master planning and extension coordination

- (a) This **clause 1.5** does not apply in relation to the Metropolitan Network.
- (b) Queensland Rail will prepare a Regional Network Master Plan for each Regional Network in the Network, being at the Approval Date the West Moreton Network, the Mt Isa Network and the North-Coast Network, within twelve (12) months of the Approval Date.
- (c) A Regional Network Master Plan should identify Queensland Rail's asset management strategy for the regulatory period and identify Extension options that may be required over the subsequent 10 years. A Regional Network Master Plan should include information on the following categories:
  - (i) operating capacity of the Regional Network and any relevant Regional Network operating assumptions;
  - (ii) asset management plans, including sustaining capital expenditure, to maintain the operational integrity of the Regional Network;
  - (iii) aggregate demand assessment for the next 10 years;
  - (iv) Rail Infrastructure Operations that may be required to meet aggregate demand; and
  - (v) identify any asset management, supply chain and technological innovation alternatives available to increase Available Capacity whilst keeping capital investment to a minimum.
- (d) Queensland Rail will establish a Regional Network Capacity Group and involve the Regional Network Capacity Group in the development of the Regional Network Master Plan for each Regional Network. A Regional Network Capacity Group will comprise:
  - (i) Access Holders that hold Access Rights for Train Services within the relevant Regional Network and Rail Operators that provide Above Rail Services to relevant End User Access Holders;
  - (ii) Access Seekers that are seeking Access Rights for Train Services along that Regional Network; and
  - (iii) Customers of Access Holders within the relevant Regional Network, (if relevant).

## **1.5.2 Rail Infrastructure Operations project initiation and process**

- (c) If either Queensland Rail or the relevant Regional Network Capacity Group considers that a study process under this **clause 1.5** should be discontinued part way through a study process stage then the parties (acting reasonably) will, seek to agree whether the study process should continue but if the parties cannot agree then subject to the terms of the relevant Funding Agreement(s), the study process will continue to the end of that stage subject to the relevant studies being funded.

## **1.6 Connecting to the Network**

### **1.6.1 Connection of private infrastructure**

Where an Access Holder or Access Seeker is investing in rail infrastructure which it proposes to connect to the Network, Queensland Rail must permit such investment occurring by:

- (a) providing reasonable access to land for the relevant Access Holder or Access Seeker, to the extent that access to the land is incidental to and essential for construction and ongoing operation of the Connected Infrastructure, provided that:
  - (i) the land is owned by Queensland Rail, or Queensland Rail has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
  - (ii) the access is not inconsistent with the terms of any lease, licence or other arrangement to which Queensland Rail is party in respect of the land;
- (b) entering into a Rail Connection Agreement with the relevant Access Holder or Access Seeker; and
- (c) notifying the relevant Access Holder or Access Seeker of the interface standard required by Queensland Rail.

### **1.6.2 Standard rail connection agreement**

- (a) Within 3 months of being requested by the QCA or an Access Seeker, Queensland Rail will submit to the QCA a proposed Standard Rail Connection Agreement.
- (b) The QCA will consider a proposed Standard Rail Connection Agreement given to it by Queensland Rail under clause 1.6.2(a) and either approve or refuse to approve it within thirty (30) days after it is received by the QCA or such further period as the QCA may determine.
- (c) If the QCA refuses to approve a proposed Standard Rail Connection Agreement submitted under clause 1.6.2(a), the QCA will give Queensland Rail a notice in writing within sixty (60) days:
  - (i) stating the reasons for its refusal; and
  - (ii) requiring Queensland Rail to amend the proposed Standard Rail Connection Agreement in the way the QCA considers appropriate and to resubmit the amended Standard Rail Connection Agreement to the QCA within 30 days after the giving of that notice or such further period as the QCA may in its absolute discretion determine.



- (d) The QCA may develop a proposed Standard Rail Connection Agreement that is consistent with the Undertaking, if:
- (i) Queensland Rail does not submit a proposed Standard Rail Connection Agreement in accordance with Clause 1.6.2(a);
  - (ii) Queensland Rail does not re-submit the proposed Standard Rail Connection Agreement in accordance with Clause 1.6.2(c);  
or
  - (iii) the QCA refuses to approve a proposed Standard Rail Connection Agreement that was resubmitted in accordance with Clause 1.6.2(c).
- (e) The QCA may approve a proposed Standard Rail Connection Agreement (including a proposed Standard Rail Connection Agreement developed by the QCA) only if the QCA:
- (i) is satisfied that, in the case of a resubmitted Proposed Standard Rail Connection Agreement, it is in accordance with the notice given under Clause 1.6.2(c);
  - (ii) is satisfied that the proposed Standard Rail Connection Agreement is consistent with this Undertaking;
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
  - (iv) has complied with Clause 1.6.2(f).
- (f) Where Queensland Rail submits a proposed Standard Rail Connection Agreement under Clause 1.6.2(a) or the QCA develops a proposed Standard Rail Connection Agreement under clause 1.6.2(d), the QCA will:
- (i) publish the proposed Standard Rail Connection Agreement on its website;
  - (ii) invite persons to make submissions on the proposed Standard Rail Connection Agreement to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time specified.
- (g) If the QCA approves a proposed Standard Rail Connection Agreement:
- (i) the Standard Rail Connection Agreement will apply from the date of the QCA decision, or such later date that the QCA determines;
  - (ii) the QCA will give Queensland Rail a notice in writing stating the reasons for its decision; and
  - (iii) Queensland Rail must publish the Standard Rail Connection Agreement on its website.
- (h) An approved Standard Rail Connection Agreement which was submitted in accordance with clause 1.6.2(a) or resubmitted in accordance with clause 1.6.2(c), may only be withdrawn by Queensland Rail if approved by the QCA.
- (i) If the QCA considers it necessary to do so, the QCA may ask Queensland Rail to submit a replacement Standard Rail Connection Agreement within a reasonable period advised by the QCA, in which

case this clause 1.6.2 will apply but with references to clause 1.6.2(a) being read as a reference to this clause 1.6.2(i).

- (j) Unless otherwise agreed between Queensland Rail and a proponent of Connected Infrastructure (for which Queensland Rail will not be the Railway Manager), any Rail Connection Agreement entered pursuant to this Undertaking after a Standard Rail Connection Agreement has been approved must be consistent with the terms of the Standard Rail Connection Agreement.

## **1.7 Amendments for unanticipated inequity or unfairness**

- (a) If the QCA considers it necessary that the Undertaking be amended so as to rectify a significant inequity or significant unfairness suffered by an Access Seeker, Access Holder or Queensland Rail, which inequity or unfairness was not generally foreseen or intended at the Approval Date then Queensland Rail will submit to the QCA a draft amending access undertaking addressing the relevant issue or issues, for approval under the QCA Act.
- (b) A draft amending access undertaking submitted in accordance with **clause 1.7(a)** may not be withdrawn prior to a final decision by the QCA to approve or refuse to approve it.
- (c) Where the QCA makes a final decision to refuse to approve the draft amending access undertaking submitted by Queensland Rail in accordance with **clause 1.7(a)** Queensland Rail must submit a revised draft access undertaking, incorporating the amendments required by the QCA in its final decision.

## **2.5.4 Excessive or unreasonable period of negotiation**

- (a) An Access Seeker who is in a queue but not first in that queue may notify Queensland Rail that it considers that the time taken by the Access Seeker first in the queue to negotiate an Access Agreement with Queensland Rail is unreasonable or excessive.
- (b) Where Queensland Rail receives a notification under clause 2.5.4(a) it will:
  - (i) determine whether the time taken by the Access Seeker first in the queue is unreasonable or excessive having regard to the duration of the extensions provided under clause 2.5.3 and the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances; and
  - (ii) make its determination and advise both Access Seekers of its decision within seven (7) Business Days of receiving the notification.

## **2.7.2 Issues to be addressed in negotiations**

- (a) During the Negotiation Period, Queensland Rail and the Access Seeker will negotiate, and endeavour to agree, the terms of an Access Agreement. In order to facilitate the negotiation process:
  - (i) Queensland Rail will provide to the Access Seeker:
    - (A) information that is reasonably required by the Access

Seeker in accordance with section 101(1) of the QCA Act, ~~provided such information is reasonably able to be provided by Queensland Rail and cannot be reasonably obtained from a source other than Queensland Rail;~~ and

- (B) information in accordance with Queensland Rail's obligation under section 101(2) of the QCA Act to the extent that it has not already been provided;
- (e) If the Access Seeker is a Renewal Access Seeker then the terms of the Access Agreement are to be negotiated generally in accordance with **clause 2.7.2** except that:
- (i) clause 2.7.2(a)(vii), 2.7.2(b) and 2.4.2(b) should not apply; and
  - (ii) if the Access Rights sought by a Renewal Access Seeker are for Access Rights for which no Reference Tariff applies then relevant Access Charges are to be consistent with the renewal pricing principles as set out in **Part 3**.

### 2.8.1 Negotiation Cessation Notice

- (a) Queensland Rail may, at any time, give a notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker pursuant to the relevant Access Application (**Negotiation Cessation Notice**) for any one or more of the following reasons:
- (i) the Access Seeker fails to comply with all of the relevant provisions of this Undertaking, and Queensland Rail (acting reasonably) is of the opinion that such non-compliance is material;
  - (ii) Queensland Rail (acting reasonably) is of the opinion that:
    - (A) there is no reasonable likelihood of material compliance by the Access Seeker with the terms and conditions of an Access Agreement; or
    - (B) the Access Seeker has no genuine intention of obtaining, or has no reasonable likelihood of using, the Access Rights requested;
  - (iii) the requirements under **clause 2.8.2** for giving a notice have been satisfied;
  - (iv) the Access Seeker has concurrent requests for Access which Queensland Rail reasonably believes to be duplicate requests such that if any one of those requests for Access were granted then the remainder of the concurrent requests would not be required by the Access Seeker (**Duplicate Requests**) and provided that:
    - (A) Queensland Rail has given the Access Seeker notice that it intends to cease negotiations because of the existence of Duplicate Requests and the reasons for this (including an identification of the key facts or

- circumstances that have led to that conclusion); and
- (B) the Access Seeker has not responded to the notice within 10 Business Days (or such later date as agreed by Queensland Rail (such agreement not to be unreasonably withheld)) advising which of the Duplicate Requests the Access Seeker (acting reasonably) wants to proceed with (if any) and has not otherwise provided information to Queensland Rail which demonstrates to Queensland Rail's reasonable satisfaction that the requests are not Duplicate Requests; or
  - (v) the Access Seeker fails to comply with the dispute resolution process under **clause 6.1** (including any outcome of that dispute resolution process) in relation to the relevant Access Application.
- (b) Without limitation to **clause 2.8.1(a)(ii)(A)**, it will be reasonable for Queensland Rail to form the opinion that the circumstance in **clause 2.8.1(a)(ii)(A)** exists where, at any time, the Access Seeker does not comply with the requirements under **clause 2.8.3**.
  - (c) In forming an opinion referred to in **clause 2.8.1(a)(ii)(B)**, Queensland Rail may, without limitation, consider any one or more of the following factors:
    - (i) whether the Access Seeker has secured, or is reasonably likely to secure:
      - (A) the rights required to enter and leave the Network (for example, rights to unload at its destination); and
      - (B) if applicable, a rail haulage agreement for the operation of Train Services referred to in its Access Application; and
    - (ii) the promptness of the Access Seeker in conducting its negotiations.
  - (d) For clarity, if an Access Seeker responds to Queensland Rail's notice given pursuant to **clause 2.8.1(a)(iv)(A)**, and informs Queensland Rail that it wants to proceed with one of the Duplicate Requests, Queensland Rail can only give a Negotiation Cessation Notice in respect of the unwanted Duplicate Request.

## 2.9.2 Mutually Exclusive Access Applications

...

- (i) Queensland Rail may change the order of a queue where:
  - (i) the Negotiation Period for an Access Application in the queue has ended in accordance with **clause 2.7.1(b)**;
  - (ii) a Negotiation Cessation Notice has been given under clause 2.8.1 relating to an Access Application in the queue;
  - (iii) an Access Application is added to the queue;

- (iv) in Queensland Rail's opinion (acting reasonably), allocating Access in respect of an Access Application in the queue but not first in the queue is more favourable to Queensland Rail's legitimate business interests as a Below Rail Services provider as described in **clauses 2.9.2(k)** (for coal carrying Train Services in the West Moreton Network) ~~or 2.9.2(j) or 2.9.2(k)~~ (for all other Train Services) (as applicable ~~the case may be~~):  
or
  - (v) the change is required to comply with this Undertaking – for example, where **clause 2.9.2(b)(iii)** applies and the relevant Customer subsequently nominates one of the Competing Access Seekers under **clause 2.6(a)(ii)**.
- (j) Subject to **clause 2.9.2(k)**, for the purpose of **clause 2.9.2(i)(iv)**, Queensland Rail will make such a decision based on the present value of contribution to Common Costs after reasonably considering the following factors:
- (i) the ability of the Access Seeker to satisfy, and to continue (after execution of an Access Agreement) to satisfy, the prudential requirements set out in **clause 2.8.3(a)**; and
  - (ii) any other effects that entering into the Access Agreement may have on contribution to Common Costs including any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of Queensland Rail ~~not~~ providing Access for that Train Service (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Contract Payments).
- (k) For the purposes of **clause 2.9.2(i)(iv)**, where a queue contains Mutually Exclusive Access Applications for coal carrying Train Services from different mines within the West Moreton Network, as between those Access Applications, Queensland Rail will place a later Access Application seeking an Access Agreement of at least 10 years in the queue ahead of an earlier Access Application seeking a term less than 10 years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with this Undertaking and the Standard Access Agreement. This is the only basis on which reordering of the queue under clause 2.9.2(i)(iv) can occur for Access Applications in respect of coal carrying Train Services in the West Moreton Network.

### 2.9.3 Renewals

- (a) Where an Access Seeker (who is not a Renewal Access Seeker) submits an Access Application for Access Rights concerning the Available Capacity that will arise when an existing Access Agreement expires, Queensland Rail will notify:
  - (i) the Access Holder for that Access Agreement;
  - (ii) that Access Holder's Customer (if any); and
  - (iii) the relevant Renewal Access Seeker (if any),

of Queensland Rail's receipt of that Access Application, as soon as reasonably practicable after receiving it.

- (b) Despite any other provision in this Undertaking to the contrary and subject to clause 2.9.3(c), Queensland Rail will not execute an Access Agreement with the Access Seeker referred to in clause 2.9.3(a) until the earlier of:
- (i) a Renewal Access Seeker fails to, or cannot, submit a relevant Renewal Application to Queensland Rail in respect of the relevant Renewal within the Renewal Timeframe (with Queensland Rail to provide a reminder notice of the Renewal Timeframe to an Access Holder who may be a Renewal Access Seeker on receiving an Access Application of the type described in **clause 2.9.3(a)** and at least 6 months prior to the applicable Renewal Timeframe expiring); or
  - (ii) where a Renewal Application has been submitted within the Renewal Timeframe:
    - (A) the negotiations with the Renewal Access Seeker have ended in accordance with **clause 2.7.1(b)** (subject to any extension of time agreed in accordance with **clause 2.7.1(b)(ii)(C)** (which will apply)); or
- (b) **Clause 2.9.3(b)** only applies where:
- (i) the relevant existing Access Agreement concerns coal carrying Train Services or other bulk mineral carrying Train Services;
  - (ii) the relevant Renewal Application is for a term of:
    - (A) at least the lesser of the period for which the Access Seeker referred to in **clause 2.9.3(a)** is seeking Access Rights and ten years; or
    - (B) the remaining life of the relevant mine as notified in writing to Queensland Rail by the Renewal Access Seeker (where it has no Customer) or otherwise the relevant Customer; and
  - (iii) **clause 2.9.3(c)(ii)(B)** has not previously applied for any past Renewal Application in connection with the relevant Access Rights, unless Queensland Rail agrees otherwise.
- (c) Subject to the priority provided in this **clause 2.9.3** and the exception referred to in **clause 2.9.3(e)**, Queensland Rail must negotiate with a Renewal Access Seeker in accordance with the provisions of this **Part 2** of the Undertaking. ~~Nothing in this **clause 2.9.3** obliges Queensland Rail to enter into an Access Agreement with a Renewal Access Seeker or to do so on the same terms as the relevant existing Access Agreement for the relevant existing Access Rights.~~
- (d) For the avoidance of doubt, when a Renewal Application is submitted the queuing provision (**clause 2.9.2**) does not apply.

#### 2.9.4 Development of Standard Agreements

- (a) Subject to **clause 2.7.2(e)**, unless otherwise agreed between

Queensland Rail and the Access Seeker, an Access Agreement must be consistent with:

- (i) this Undertaking; and
  - (ii) the terms of the Standard Access Agreement.
- (b) Within 3 months of the Approval Date, Queensland must submit to the QCA a proposed Standard Funding Agreement to apply to funding of study stages in respect of an Expansion.
- (c) If an Access Seeker reasonably requests Queensland Rail to develop a Standard Funding Agreement for Extension Costs in respect of the construction and commissioning stage of an Extension, Queensland Rail will develop and provide a Standard Funding Agreement for that stage/the relevant stage of an Extension (or all stages if reasonably requested):
- (i) ~~the terms of which should be consistent with the Extension Access Principles set out in **Schedule I** and the terms of **clause 1.4**, (provided that if there is any inconsistency between the terms of **Schedule I** and the terms of **clause 1.4**, the terms of **clause 1.4** will be paramount); and~~
  - (ii) which Queensland Rail must develop within 3 months of a request in accordance with this **clause 2.9.4(cb)**, or such longer period as agreed by Queensland Rail and the Access Seeker ~~the relevant parties~~ acting reasonably.
- (d) The terms of any Funding Agreement submitted pursuant to clause 2.9.4(b) or (c) must be consistent with the Extension Access Principles set out in **Schedule I** and the terms of **clause 1.4**, (provided that if there is any inconsistency between the terms of **Schedule I** and the terms of **clause 1.4**, the terms of **clause 1.4** will be paramount).
- (e) For the purpose of this **clause 2.9.4**:
- (i) a requirement to submit a proposed Standard Funding Agreement under this **clause 2.9.4** will be treated as if it were an initial undertaking notice given by the QCA under the QCA Act;
  - (ii) any proposed Standard Funding Agreement submitted by Queensland Rail to the QCA in accordance with this **clause 2.9.4** will be treated as though it was a draft access undertaking submitted under the QCA Act in response to an initial undertaking notice; and
  - (iii) Queensland Rail and the QCA will act in accordance with the provisions of the QCA Act as though this were the case. Without limiting the foregoing, relevant provisions of Division 7 of Part 5 of the QCA Act will apply including to lodging of the relevant document in response to deemed notice under **clause 2.9.4(e)(i)**, consideration and approval by the QCA, factors affecting approval, publication, submissions and period for approving the document.
- (f) If Queensland Rail fails to lodge a proposed Standard Funding Agreement where required by this clause 2.9.4, or if the proposed

Standard Funding Agreement as submitted is not approved by the QCA, the QCA may prepare and approve a Standard Funding Agreement (applicable to the relevant Extension project stages) as the QCA considers appropriate.

- (g) For clarity, after the provisions and/or agreement are approved by the QCA in accordance with this clause 2.9.4 this Undertaking will apply as though it were amended to include the approved Standard Funding Agreement.
- (h) Any dispute, in relation to this **clause 2.9.4** including about whether the requested standard Funding Agreement referred to in **clause 2.9.4(c)** is required, or the terms of a proposed standard funding agreement, or time for providing a standard funding agreement may be referred to the QCA for determination in accordance with **clause 6.1.4**.
- (i) The terms of any Standard Funding Agreement that is approved by the QCA developed in accordance with clause 2.9.4(b) may be relied on by Queensland Rail and Access Seekers to form the basis of their negotiations for a Funding Agreement in relation to that Access Seeker's Extension and can be insisted on as an appropriate form of Funding Agreement by an Access Seeker.

## **2.10 Performance Regime**

- (a) Within 3 months of the Approval Date, Queensland Rail will submit to the QCA a proposed set of 'Performance Levels' and financial outcomes for meeting and/or not meeting such Performance Levels for the purposes of the Standard Access Agreement (an Incentive Regime).
- (b) The QCA will consider a proposed Incentive Regime given to it by Queensland Rail under clause 2.10(a) and either approve or refuse to approve it within thirty (30) days after it is received by the QCA or such further period as the QCA may determine.
- (c) If the QCA refuses to approve a proposed Incentive Regime submitted under clause 2.10(a), the QCA will give Queensland Rail a notice in writing within sixty (60) days:
  - (i) stating the reasons for its refusal; and
  - (ii) requiring Queensland Rail to amend the proposed Incentive Regime in the way the QCA considers appropriate and to resubmit the amended Incentive Regime to the QCA within 30 days after the giving of that notice or such further period as the QCA may in its absolute discretion determine.
- (d) The QCA may develop a proposed Incentive Regime that is consistent with the Standard Access Agreement, if:
  - (i) Queensland Rail does not submit a proposed Incentive Regime in accordance with Clause 2.10(a);
  - (ii) Queensland Rail does not re-submit the proposed Incentive Regime in accordance with Clause 2.10(c); or
  - (iii) the QCA refuses to approve a proposed Incentive Regime that was resubmitted in accordance with Clause 2.10(c).
- (e) The QCA may approve a proposed Incentive Regime(including a



- proposed Incentive Regime developed by the QCA) only if the QCA:
- (i) is satisfied that, in the case of a resubmitted proposed Incentive Regime, it is in accordance with the notice given under Clause 2.10(c);
  - (ii) is satisfied that the proposed Incentive Regime is consistent with this Undertaking;
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
  - (iv) has complied with Clause 2.10(f).
- (f) Where Queensland Rail submits a proposed Incentive Regime under Clause 2.10(a) or the QCA develops a proposed Incentive Regime under clause 2.10(d), the QCA will:
- (i) publish the proposed Incentive Regime on its website;
  - (ii) invite persons to make submissions on the proposed Incentive Regime to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time specified.
- (g) If the QCA approves a proposed Incentive Regime:
- (i) the Incentive Regime will apply from the date of the QCA decision, or such later date that the QCA determines;
  - (ii) the QCA will give Queensland Rail a notice in writing stating the reasons for its decision;
  - (iii) Queensland Rail must publish the Incentive Regime on its website; and
  - (iv) Queensland Rail must include the Incentive Regime in its Standard Access Agreement and offer to amend each existing Access Agreement which is substantially in the form of the Standard Access Agreement to include the Incentive Regime (to the extent relevant to the Train Services the subject of such an access agreement).
- (h) An approved Incentive Regime which was submitted in accordance with clause 2.10(a) or resubmitted in accordance with clause 2.10(c), may only be withdrawn by Queensland Rail if approved by the QCA.
- (i) If the QCA considers it necessary to do so, the QCA may ask Queensland Rail to submit a replacement Incentive Regime within a reasonable period advised by the QCA, in which case this clause 2.10 will apply but with references to clause 2.10(a) being read as a reference to this clause 2.10(i).
- (b) Unless otherwise agreed between Queensland Rail and the relevant Access Seeker, any Access Agreement entered after an Incentive Regime has been approved must be consistent with the terms of the Incentive Regime (to the extent relevant to the Train Services the subject of such an access agreement).

### **3.1.2 Network Utilisation**

- (b) If the Available Capacity is demonstrably likely to be potentially

insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers, then:

- (i) Queensland Rail may (consistent with the principles set out in **clauses 3.1 to 3.3**) determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers (**Maximum Access Charge**);

### 3.5 Reference Tariffs

- (a) In recognition that, for individual Train Services, there may be a large range between the price limits established in **clause 3.2** within which Access Charges may be determined, Queensland Rail may develop Reference Tariffs for certain types of Train Services to assist in the facilitation of an efficient Access negotiation process.
- (b) Where the QCA has approved a Reference Tariff submitted to it by Queensland Rail, that Reference Tariff will be an acceptable means by which Queensland Rail provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the QCA Act as provided for in accordance with s.101(4) of the Act.
- (c) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (d) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, Queensland Rail will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with **clause 3.6**.
- (e) If Queensland Rail formulates an Access Charge for an Access Seeker's proposed Train Services based on a Reference Tariff, then Queensland Rail is taken to have complied with **clauses 3.1 and 3.2**.
- (f) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in **Schedule D**.
- (g) Unless otherwise agreed with the QCA, where a new coal mine is developed and Train Services servicing that mine will utilise the West Moreton network, the Train Services travelling between the mine (or, where the mine is or will be located on Private Infrastructure, the point where that Private Infrastructure connects to the Network) and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with and subject to the requirements of **Schedule D**.
- (h) The QCA may give Queensland Rail a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Reference Tariff for a new Reference Train Service.
- (i) The QCA may grant Queensland Rail an extension of the time for submitting, or resubmitting, a proposed Reference Tariff for a new Reference Train Service, if:

- (i) Queensland Rail provides a written request to the QCA for an extension of time which outlines the reasons why Queensland Rail requires the extension of time; and
- (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (j) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
  - (i) QR Network does not comply with a notice given by the QCA under **clause 3.5(h)** or **clause 3.5(o)(ii)** for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
  - (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by Queensland Rail.
- (k) Where Queensland Rail submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
  - (i) publish the proposed Reference Tariff;
  - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time.
- (l) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
  - (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
  - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
  - (iii) the QCA has complied with **clause 3.5(k)**.
- (m) The QCA will consider a proposed Reference Tariff for a new Reference Train Service given to it by Queensland Rail and either approve or refuse to approve it within sixty (60) days after the QCA receives a proposed Reference Tariff for a new Reference Train Service under this **clause 3.5** or such further period as the QCA and Queensland Rail may agree or as the QCA may reasonably determine and notify to Queensland Rail.
- (n) If the QCA approves a proposed Reference Tariff for a new Reference Train Service submitted under **clause 3.5(h)**, or resubmitted under **clause 3.5(o)(ii)**:
  - (i) the proposed Reference Tariff will apply from the earlier of:
    - (A) the date of the QCA decision;
    - (B) where **clause 3.5(g)** applies, the date of the first Train Service servicing the new coal mine; and
    - (C) where **clause 3.5(h)** applies, the date when the relevant notice is given by the QCA, except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
  - (ii) the QCA will give Queensland Rail a notice in writing stating the reasons for its decision; and
  - (iii) Queensland Rail must:

- (A) publish a new version of **Schedule D** which includes the Reference Tariff; and
  - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (o) If the QCA refuses to approve a proposed Reference Tariff for a new Reference Train Service the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
  - (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under **Clause 3.5(h)** requiring QR Network to amend the proposed Reference Tariff in the way the QCA considers it appropriate and resubmit the amended proposed Reference Tariff to the QCA within thirty (30) days of the notice.
- (p) If QR Network complies with the notice given under **clause 3.5(o)(ii)** above, the QCA may approve the resubmitted proposed Reference Tariff in accordance with **clause 3.5(n)**.
- (q) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;
  - (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
- (r) If the QCA grants QR Network an extension of time under **clause 3.5(i)**, QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.

#### 4.3.1 Amendments for safety matters

- (b) Where Queensland Rail amends the Operating Requirements Manual under this clause 4.3.1, it must notify each Access Holder and (if applicable) each Nominated Rollingstock Operator of the amendments made including the date on which the amendments take effect.
- (c) Except where Queensland Rail requires immediate or urgent compliance for safety reasons or to comply with any Law, the date specified in a notice under **clause 4.3.1(b)** must be set so as to allow a reasonable period as determined by Queensland Rail as a realistic period in which to implement the changes (being no less than ten Business Days where the amendment relates to a Safety Matter or a Material Change) for each Nominated Rollingstock Operator to amend its processes, procedures and plans to comply with the amended Operating Requirements Manual.

## 5.1.2 Content of quarterly report

A quarterly report published under **clause 5.1.1** will:

- (a) contain the following information:
  - ...
  - (vi) the number of instances of Track being subject to speed restrictions (and for each instance the percentage below the normal speed line), and the average percentage, and the average number of kilometres, of Track under a temporary speed restriction, for the subject Quarter (excluding Track in the Metropolitan Network);
  - ...
- (b) the information referred to in **clauses 5.1.2(a)(ii) to 5.1.2(a)(vix)**, will be limited to, and aggregated by, Train Services operated in the following parts of the Network:
  - (i) the West Moreton Network;
  - (ii) the Mt Isa Network;
  - (iii) the North Coast Network; and
  - (iv) the Metropolitan Network.

## 5.22 Content of Annual Report

An annual report published under **clause 5.2.1** will contain the following information for the relevant Year:

- ...
- (i) for each Regional Network to which a Reference Tariff applies:
  - (i) maintenance costs of each Regional Network compared with the forecasts used to develop the relevant tariff and scope of any maintenance performed compared with the maintenance forecasts used to develop the relevant tariff, and a summary of the major reasons for any material differences to what was forecast or planned;
  - (ii) operating expenditure compared with the forecasts used to develop the relevant tariff (including the allocation of corporate overhead or administration costs to the Regional Network to which the Reference Tariff applies) and a summary of the major reasons for any material differences;
  - (iii) the capital investment in the relevant Year and the roll-forward of the relevant Regulatory Asset Base; and
  - (iv) the aggregate gtk for Train Services of the type to which the Reference Tariff applies, with the reporting for the purposes of paragraph (i)(i) and (ii) being broken down by the same line items as submitted to the QCA in connection with the submission of this Undertaking and the report containing a summary of any allocation methodology applied for allocation costs which relate to multiple Regional Networks; and
- ...

## 6.4 Transitional Provisions

- (b) Any Access Applications or Renewal Applications Done before the Approval Date and not subject to **clause 6.4(a)**, are deemed to be Done and, as applicable, continue under this Undertaking to the extent this Undertaking provides for equivalent matters to be Done (for example, Access Application queueing and negotiations, such that the queue on the Approval Date reflects the queue immediately before the Approval Date).

## 7.1 Definitions

...

**Access** means the non-exclusive right to use a specified part of the Network for the purpose of operating Train Services, including the following services:

- (a) mainline running of a Train on the Network from its origin to destination (including utilisation of passing loops);
- (b) train queuing, staging, dwelling, or marshalling on the Network to the extent reasonably required for such mainline running;
- (c) shunting to the extent reasonably required for such mainline running;
- (d) use of the Network while loading and unloading of a Train is conducted;
- (d) use of ancillary below rail infrastructure including signalling, train control services and associated communication and electrical infrastructure;
- (e) access to walkways adjacent to the Network and crew changeover points connected to the Network; and
- (f) entry upon land owned or leased by Queensland Rail or to which Queensland Rail has authority to authorise access, to the extent it is incidental and essential to use of the Network

...

**Access Facilitation Deed** means a deed in substantially the form of the deeds of that name previously entered by Queensland Rail in respect of the Network (and other rail infrastructure in Queensland), subject to variations permitted under clause 1.4.4, which provide for the terms on which:

- (a) Queensland Rail will incur the costs of constructing and commissioning an Extension; and
- (b) an Access Funder will fund the Extension through repayment by 'Access Facilitation Charges'.

...

**End User Access Holder** means an Access Holder who is a party to an Access Agreement granting rights for the non-exclusive utilisation of a specified section of the Network for the purposes of operating Train Services but is not a Rolling Stock Operator and will or has contracted a Rolling Stock Operator to utilise the Access.

...

**Endorsed Variation Event** means the occurrence of any of the following events:

- (a) a Change in Law, Change to Credit or Impost Change occurs, that either alone or in combination with all other Changes in Law, Changes to Credit or Impost Changes that have occurred since the Approval Date, would cause a change in the costs reflected in any input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law, Change to Credit or Impost Change that have previously resulted in a variation of the Reference Tariff; or
- (b) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry; or
- (c) contracted Reference Train Services for a single origin, or in aggregate, on the West Moreton Network and the Metropolitan Network are greater than those used to develop Reference Tariffs for the West Moreton Network and the Metropolitan Network;

...

**Extension Costs** means the costs that would be reasonably expected to be incurred in undertaking an Extension adopting efficient work practices to construct and commission the Extension to the required service standard and to meet the Railway Manager's obligations under Access Agreements, including:

- (a) costs incurred by Queensland Rail and/or an Access Funder in connection with:
  - (i) obtaining all Authorities required for the purpose of the Extension, including the acquisition, lease, sublease or licence of any land;
  - (ii) designing, constructing and commissioning the Extension, including:
    - (i) amounts paid to contractors and suppliers of materials
    - (ii) legal costs
    - (iii) statutory fees and charges
    - (iv) compliance costs; and
    - (v) insurance premiums;
  - (iii) internal administrative, travel, accommodation and overhead costs to the extent that the costs are demonstrably incremental costs that would not have been incurred but for relate to the Extension;
- (b) capitalised interest incurred during the construction of an Extension that Queensland Rail and an Access Funder elects to add to the cost basis of the Extension in accordance with the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards No. 34, Capitalization of Interest Cost). Capitalised interest is to be calculated on daily resets and capitalised monthly, from the date the construction costs for an Extension are incurred by Queensland Rail and/or an Access Funder through to the date the Extension is either commissioned by Queensland Rail as a part of the Network or included in Queensland Rail's regulatory asset base;
- (c) but for the avoidance of doubt, despite anything in paragraphs (a) and (b) of this definition, Extension Costs do not include:

- (i) the GST component of any such costs, expenses or liabilities to the extent that Queensland Rail or an Access Funder is entitled to claim an input tax credit;
- (ii) any costs, expenses or liabilities for which Queensland Rail has been otherwise reimbursed;
- (iii) any costs (or component of costs) that have been assessed by either an independent auditor or the QCA and determined to not be prudently incurred in accordance with this Undertaking; or
- (iv) any costs that Queensland Rail would have incurred irrespective of the Extension.

...

**Rail Connection Agreement** means an agreement by which Queensland Rail agrees to the connection of the Network to Private Infrastructure.

...

**Renewal** means, in relation to an Access Holder's Access Rights that are to expire, the Renewal Access Seeker entering into an Access Agreement to hold or continue to hold Access Rights with the same origin and destination that are utilise an equivalent amount of capacity to, or less than, the relevant Access Holder's Access Rights immediately prior to their expiry ~~(including with the same destination and origin)~~ for a further term commencing immediately after the expiry of the relevant Access Rights;

...

**Standard Funding Agreement** means a form of Funding Agreement approved by the QCA pursuant to **clause 2.9.4.**

**Standard Rail Connection Agreement** means a form of Rail Connection Agreement approved by the QCA pursuant to **clause 1.7.**

**Urgent Possession** means a Possession:

- (a) ~~that is required to correct problems in relation to the Network that are considered by Queensland Rail to be potentially dangerous to persons or property; and~~
- (b) ~~that Queensland Rail intends to carry out within less than three months after the detection of the problem,~~  
other than an Emergency Possession;

...

**Usable Schedule Time** means a proposed Train Service that ~~considers an Operator's~~ is able to utilise without incurring material additional costs, taking into account:

- (a) the Operator's ability to utilise Rolling Stock and crew (as contemplated by the Operating Plan) to operate on that proposed Train Service;
- (b) Queensland Rail must also consider as part of the development of the proposed Train Service, the Operator's ability to operate any connecting Train Services if the proposed Train Service is operated; and
- (c) the End User's ability to receive, and timing need for, the product to be delivered by the Train Service at the unloading point.

...



**WACC** means the weighted average cost of capital approved by the QCA in its final decision approving this Undertaking, which as at the Approval Date, means a rate of ~~6.93% nominal post tax.~~

## Schedule A

### Preliminary Information and Capacity Information

#### 3. Capacity Information for an Extension

- (a) For the purpose of **clause 2.7.2(b)** of this Undertaking, the Capacity Information must identify if an Extension is required to the Network to provide the access rights sought in the Access Application,
- (b) If an Extension is required then Queensland Rail must provide detailed information on the required Extension, including:
  - (i) the capacity analysis, capacity modelling assumptions, and the modelling simulation outputs that underpin Queensland Rail's decision to require an Extension
  - (ii) either
    - (A) an outline of the investigations and works in relation to identifying and undertaking the Extension and indicative estimate of the cost of, and timing for, such investigations and works; or
    - (B) the proposed scope, standard and cost of the rail transport infrastructure (as defined in the TIA) works that will comprise the required Extension
  - (iii) any information on the Extension that Queensland Rail relied on in developing its response to **3(b)(ii)** above
  - (iv) reasons why Queensland Rail has identified the proposed rail transport infrastructure works as comprising an Extension
- (c) Queensland Rail to provide ancillary information for the Access Seeker, including the:
  - (i) operational integrity of the relevant corridor that is to be extended
  - (ii) minimum technical, engineering and safety standards required for the required Extension
  - (iii) design specifications, infrastructure standards for the Network near to or adjoining the required Extension
  - (iv) planning procedures developed and maintained by Queensland Rail which need to be taken into account in considering whether to proceed with an Extension
  - (v) all necessary authorisations reasonably required by Queensland Rail to proceed with the Extension (to the extent not already held by Queensland Rail);
  - (vi) all rights and interests in land that, in Queensland Rail's opinion are reasonably required (to the extent not already held by Queensland Rail) and the acquisition terms that would be satisfactory to Queensland Rail, acting reasonably

subject to the Access Seeker having entered into an applicable confidentiality agreement with Queensland Rail, the protocols, standards and procedures an Access Seeker is required to comply with under the terms of the Standard Access Agreement

- (d) Queensland Rail to also provide:
- (i) the indicative funding requirements for it to assist the Access Seeker to develop the required Extension through the relevant stage of the Access Seeker's investment process; and
  - (ii) a first draft funding agreement that is consistent with:
    - (A) where a Standard Funding Agreement exists for the relevant stage of the Extension process, the applicable Standard Funding Agreement; or
    - (B) where a Standard Funding Agreement does not exist for the relevant stage of the Extension process, the Extension Access Principles in **Schedule I** of this Undertaking; or
    - (C) where Queensland Rail is required to offer an Access Facilitation Deed under **clause 1.4.4**, the requirements of an Access Facilitation Deed under that clause.

## Schedule B

### Access Application information requirements

#### 4. Form of access agreement

Nominate whether the form of Access Agreement that the Access Seeker is seeking will be ~~in the~~ principally based on the form of the Standard Access Agreement or, where a different form is proposed, a description of (including the contractual outcomes being sought) and reasons for the proposed form.

#### 5. Coal and freight Train Services

##### 5.1 General Train Service details

Information describing the requested Train Services, including:

- (a) the route of operation (include diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/commodity;
- (f) the net tonnes of product per annum for each Year of operation, represented on a monthly basis or, where monthly railings are not even, the proposed distribution of net tonnes; and
- ~~(g) the proposed sectional run times;~~
- ~~(h) the proposed maximum dwell times, <sup>12</sup>time at loading facility, time at unloading facility and time at depot;~~

- (i) the proposed non standard operating modes or methods (if applicable);
- ~~(j) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Rail Infrastructure at locations specified by Queensland Rail during Possessions or during the operation of a Train Service.~~

## 5.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service or a variation to an existing Train Service for the Access Seeker;
- (b) required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term; ~~and~~
- (c) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (d) the requirements for shunting or dwell times enroute, separately for forward and return journeys.

## 5.3 Rolling Stock and above rail operational details

For all Access Seekers other than an End User Access Seeker, information describing the Rolling Stock and Train Configurations and other above rail operational issues, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagon;
- (g) the tare mass of each wagon;
- (h) if carrying containers:
  - (i) the tare mass per container; and
  - (ii) the average number of containers per wagon;
- (i) the average proposed load (of product) per wagon;
- (j) the maximum proposed gross tonnes per wagon;
- (k) the maximum axle load of locomotives and wagons;
- (l) the gross tonnes and the nominal payload per Train Service, separately for forward and return journeys; ~~and~~
- (m) the Comparison Train Length for the proposed Train;
- (n) the proposed sectional run times;
- (o) the proposed maximum dwell times, time at loading facility, time at unloading facility and time at depot;
- (p) the requirements for shunting or dwell times enroute, separately for forward and return journeys; and

- (q) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Rail Infrastructure at locations specified by Queensland Rail during Possessions or during the operation of a Train Service.

## 7. Transfers

Information relating to the Transfer including:

...

- (f) the information referred to in **clause 5.1 to 5.3** (or clauses 5.1 to 5.2 for End User Access Seekers) or **clauses 6.1 to 6.3** (as applicable);

## 8. Renewals

Information relating to the Renewal including:

...

- (f) details of all changes (if any) in:
- (i) the information referred to in **clause 5.1 to 5.3** (or clauses 5.1 to 5.2 for End User Access Seekers) or **clauses 6.1 to 6.3** (as applicable); and
  - (ii) the Operating Plan,  
from that relating to the relevant existing Access Agreement.

## Schedule D

### 4. Take or Pay

- (c) Take or Pay Charges:
- (i) will only be determined and charged where the revenue that Queensland Rail earns in relation to Reference Train Services in a Year is less than the Approved Ceiling Revenue Limited for that Year;  
and
  - (ii) where the Reference Train Services under an Access Agreement is wholly or partly altered, for the remainder of the term of that Access Agreement will be capped such that the amount of revenue received from all Access Charges under that Access Agreement in a Take or Pay Period does not exceed the revenue that would have been received as Take or Pay Charges in that Take or Pay Period based on the Reference Train Services at the time of execution of the Access Agreement (assuming that no Train Services operated under that Access Agreement in the Take or Pay Period and NTNO in clause 5(d) is equal to zero).
- (d) The amount of the Take or Pay Charges for a Take or Pay Period will be the amount which is ~~80~~100% of the amount calculated for that Take or Pay Period as follows:

[Existing Formula] \* 80%

...

provided always that the amount of Take or Pay Charges for a Take or Pay Period:

- (iv) will not be less than zero;

- (v) will not be such as to result in the revenue that Queensland Rail earns in relation to Reference Train Services in a Year being more than the Approved Ceiling Revenue Limit;
- (vi) where those charges would, but for **clause 4(d)(vi)**, result in the revenue that Queensland Rail earns in relation to Reference Train Services in a Year being more than the Approved Ceiling Revenue Limit, ~~will be determined equitably~~ the Take or Pay Charges for each Access Holder who would otherwise pay Take or Pay Charges for the Take or Pay Period will be reduced, with the total excess above the Approved Ceiling Revenue Limit being allocated as a reduction to each such Access Holder's Take or Pay Charges in proportion to the amount which would otherwise be payable by that Access Holder out of the total amount which would otherwise be payable by all Access Holders in aggregate across the relevant Train Services.

For the purposes of paragraphs (v) and (vi) above, where a Relinquishment Fee is received by Queensland Rail in relation to Reference Train Services, a proportion of the Relinquishment Fee will be deemed to have been received as revenue in each period to which the Train Services relinquished related (with the proportion reflecting the Train Services relinquished in that period compared to the total Train Services relinquished).

## 5. Variation of Reference Tariffs

### 5.1 Obligation to submit a variation

- (a) Queensland Rail:
  - (i) may submit a variation of a Reference Tariff to the QCA, if Queensland Rail considers that the variation will promote efficient investment in the coal transport supply chain in the West Moreton Network or Metropolitan Network; or
  - (ii) will submit a variation of a Reference Tariff to the QCA, subject to **clause 5.1(c)** within three months after:
    - (A) Queensland Rail becomes aware that an Endorsed Variation Event, or a Review Event, has occurred;
    - (B) an Access Holder or Access Seeker confirms to Queensland Rail that the train services it utilises (or proposes to utilise) will, on a sustained basis, be varied from the description of the Reference Train Service in **clause 2.1** of this **schedule D** to a different standard train service description (provided that the existing Reference Tariff for the existing Reference Train Service will also be continued in its current form for so long as an Access Holder is utilising the existing Reference Train Service, subject to any consequential changes resulted from the new train service being utilised); or
    - (C) a written notice being given to Queensland Rail by the QCA in accordance with **clause 5.1(b)**.
- (b) The QCA may give Queensland Rail a written notice requiring it to submit, within 30 days, a variation of a Reference Tariff if it has failed to submit a variation of a Reference Tariff under **clause 5.1(a)(ii)(A)** in respect of an

Endorsed Variation Event or **clause 5.1(a)(ii)(B)** in respect of a new standard train service description to be utilised.

- (c) The QCA may grant Queensland Rail an extension of the time for submitting, or resubmitting, a variation of the Reference Tariff if:
  - (i) Queensland Rail requests an extension of time; and
  - (ii) the extension of time is reasonable or necessary.

If the QCA grants Queensland Rail an extension of time under this **clause 5.1(c)**, Queensland Rail must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

## 5.2 Development of Reference Tariff variation by the QCA

The QCA may develop a variation of a Reference Tariff that is consistent with the requirements under this **clause 5** for such a variation:

- (a) if Queensland Rail does not comply with a written notice given by the QCA under clause 5.1(b) or 5.4(c)(ii) for it to submit, or resubmit, a variation of a Reference Tariff; or
- (b) if the QCA refuses to approve a variation of a Reference Tariff resubmitted by Queensland Rail in accordance with a notice given by the QCA under clause 5.4(c)(ii).

## 5.3 Requirements for Reference Tariff variation

- (a) A variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 5.1(a)** must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
  - (iii) if the variation is submitted under **clause 5.1(a)(i)**, include information on:
    - (A) the matters set out in **clause 3.2** of **Part 3** of this Undertaking; and
    - (B) why Queensland Rail considers that the variation of the Reference Tariff will promote efficient investment in the coal transport supply chain in the West Moreton Network or Metropolitan Network; ~~and~~
    - (C) if the variation is submitted under **clause 5.1(a)(ii)(A)**, include evidence that the Endorsed Variation Event or Review Event has occurred; and
    - (D) if the variation is submitted under **clause 5.1(a)(ii)(B)**, include details of the varied train service description which will be applicable to the new Reference Tariff.
- (b) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's proposed variation of a Reference Tariff and invite and consider comments from stakeholders regarding that proposed variation (provided that Queensland Rail must be given a reasonable period in which to respond to the QCA in respect of any such comments).

## 5.4 Decision to approve or refuse to approve variation

- (a) The QCA may approve a variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 5.1(a)** if the QCA is satisfied:
  - (i) for a variation submitted under **clause 5.1(a)(i)**, that the variation is consistent with the Undertaking;
  - (ii) for a variation submitted in respect of an Endorsed Variation Event or Review Event (Event), that:
    - (A) the Event has occurred; and
    - (B) the variation has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence that caused the Event; and
    - (C) the variation reflects the cost impact on Queensland Rail resulting from the relevant Event (including the impact on incremental maintenance, and incremental capital, costs); and, if applicable, the contracted Reference Train Services on the West Moreton Network and the Metropolitan Network being greater than those used to develop Reference Tariffs for the West Moreton Network and the Metropolitan Network.
  - (iii) for a variation submitted in respect of a new train service description, that:
    - (A) the new train service description will be utilised on a sustained basis by an Access Holder or Access Seeker;
    - (B) the new Reference Tariff has been calculated as if all other Reference Tariffs were also being recalculated due to any consequential impact of the operation of the new train services; and
    - (C) the variation reflects any differences in the cost impact on Queensland Rail resulting from train services operating on the basis of the new train service description.
- (b) If the QCA approves a variation to a Reference Tariff:
  - (i) it will give Queensland Rail a notice in writing stating the reasons for its decision;
  - (ii) the variation will apply:
    - (A) from the first day of the month immediately following the date of the occurrence of the Endorsed Variation Event or Review Event (as applicable); or
    - (B) where the date of the occurrence of the Endorsed Variation Event or Review Event is the first day of a month, from that date; and
  - (iii) Queensland Rail must:
    - (A) publish details of the variation on its website; and
    - (B) advise Access Holders and Access Seekers, in relation to the relevant Reference Train Service, of the variation.
- (c) If the QCA refuses to approve a variation to a Reference Tariff, it will give Queensland Rail a written notice:

- (i) stating the reasons for its refusal and the way it considers that the variation should be amended; and
- (ii) if that variation was required to be submitted by Queensland Rail in relation to an Endorsed Variation Event or a new train service description, requiring Queensland Rail to:
  - (A) vary the Reference Tariff in the way the QCA considers it appropriate; and
  - (B) resubmit the variation to the QCA,

within 20 Business Days after Queensland Rail receives the notice issued to Queensland Rail under this **clause 5.4(c)**.
- (d) Queensland Rail will comply with a notice given under **clause 5.4(c)(ii)**.
- (e) The QCA may approve a variation to a Reference Tariff that was:
  - (i) resubmitted under **clause 5.4(c)(ii)**; or
  - (ii) developed by the QCA under **clause 5.2**,

if the QCA is satisfied that the variation of the Reference Tariff:

  - (iii) is consistent with the matters specified under **clause 5.4(a)** (provided that for the purposes of so applying **clause 5.4(a)** the relevant variation will be treated as though it was submitted by Queensland Rail under the relevant provision in **clause 5.1(a)**); and
  - (iv) if **clause 5.4(e)(i)** applies, is consistent with the relevant notice given by the QCA under **clause 5.4(c)**.
- (f) If the QCA refuses to approve a variation to a Reference Tariff that was resubmitted under **clause 5.4(c)(ii)**, the QCA will give Queensland Rail a notice in writing stating the reasons for its refusal.
- (g) References in this clause to variation of a Reference Tariff include a reference to a variation to the Approved Ceiling Limit related to the variation of the Reference Tariff.

## 6. Adjustment Charges

### 6.1 Recovery or reimbursement of Adjustment Charges

- (c) For the avoidance of doubt, for a varied Reference Tariff introduced for a new train service description, the 'relevant Access Holder' in this **clause 6.1** of this **schedule D** will only be Access Holders to the extent they have utilised train services of that varied train service description prior to the date the varied Reference Tariff for that train service description commences.

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## Schedule F

### Network Management Principles

#### 1. Application

Unless otherwise required by any Law, the Network Management Principles set out in this **schedule F** will apply in relation to all Train Services.



## 2. Train Planning Principles

### 2.1 Master Train Plan Principles

- (a) A MTP will indicate the Capacity necessary to satisfy all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, and time allocated for Planned Possessions.
- (b) Access Holders' Train Service Entitlements and Queensland Rail's passenger Train Services will be allocated particular Train Paths.
- (c) A MTP will be in a form that sets out the time/distance (location) relationship of the Train Services and other activities on the relevant part of the Network and is readily convertible to a DTP.
- (d) Queensland Rail will notify all Access Holders and any other ~~affected parties whose activities may be affected~~ (for example, parties that are affected by the availability of access to the Network including operators of rail and port facilities) ~~whose activities are affected~~ by any modifications to a MTP at least:
  - (i) for Possessions of 4 days or more in duration, 6 months prior to the commencement of the modification; or
  - (ii) for Possessions of less than 4 days, 3 months 20 Business Days prior to the commencement of the modification,  
(except in the case of an ~~Urgent Possession or Emergency Possession~~)<sup>23</sup>.
- (e) Subject to **clause 2.1(f)**, an Access Holder must give Queensland Rail sufficient notice of any requested changes to a MTP to enable Queensland Rail to consider the requested changes and, if Queensland Rail agrees to the making of those modifications, to comply with **clause 2.1(d)**.
- (f) A notice given by an Access Holder under **clause 2.1(e)** must be given no less than:
  - (i) six months prior to the date to which the change relates, where the change relates to a passenger Train Service; or
  - (ii) three months prior to the date to which the change relates, where the change relates to a non-passenger Train Service.
- (g) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under that Access Agreement.
- (h) Queensland Rail will publish on its website the MTPs applicable as at the Approval Date and will update the MTPs published on its website, from time to time, so that the MTPs published are those applicable as at the last semi-anniversary or anniversary of the Approval Date, as applicable.
- (i) Despite **clause 2.1(h)**, an Access Holder or their Customer may (acting reasonably) request a copy of the current MTP from Queensland Rail, from time to time, and if Queensland Rail receives such a request Queensland Rail will provide a copy of the relevant MTP to that Access Holder or Customer as soon as reasonably practicable.
- (j) The MTPs published under **clause 2.1(h)**, or provided under **clause 2.1(i)**, will be complete and will not be redacted in any way. For the

avoidance of doubt, providing separate documents which show Possessions (such as the 'Western System Alignment Calendar') and Train Service Entitlements and/or Queensland Rail's passenger train services is not the provision of a complete MTP.

- (k) Nothing in this **schedule F** requires the preparation and publication of a single MTP that applies to the Network as a whole. Queensland Rail may prepare separate MTPs (and, as a consequence, DTPs) for different parts of the Network.

#### **Modifying a MTP**

- (l) Subject to **clauses 2.1(m)**, a MTP may be modified by Queensland Rail from time to time.
- (m) Queensland Rail will not modify the MTP where the modification would result in an Access Holder's scheduled Train Services not being met, unless Queensland Rail:
  - (i) has consulted with that Access Holder and given the notice required under **clause 2.1(d)** of this **Schedule F**; and
  - (ii) to the extent that the modification is not within the scope of that Access Holder's Train Service Entitlement and is not an Emergency Possession, has agreed the modifications with that Access Holder (such agreement not to be unreasonably withheld).

## **2.2 Daily Train Plan Principles**

- (a) A DTP will indicate all scheduled Train Services and Planned Possessions in a form that indicates the time/distance (location) relationship of all activities,
- (b) A DTP represents an expected performance target that, subject to variations to the DTP permitted by this **schedule F**:
  - (i) QR must comply with in making available Access to the Network for a particular day of operation; and
  - (ii) that each Access Holder must comply with for its Train Services, for a particular day of operation for a specified part of the Network.
- (c) At least one Business Day prior to the day of operation, Queensland Rail will schedule a DTP and provide all relevant Access Holders and Infrastructure Service Providers and any other ~~affected~~ parties who may be affected (including for example, relevant operators of rail and port facilities) with a copy of that DTP. For clarity, the DTP provided will be complete and will not be redacted in any way.
- (d) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under an Access Agreement.

#### **Scheduling a DTP in variation from a MTP**

- (e) A DTP must be developed from, and except as provided in this **schedule F** be consistent with, the applicable MTP. However, a DTP may be scheduled in variation to a MTP by Queensland Rail, without consultation, where, at least two Business Days prior to the day of operation, and prior to the DTP being scheduled:

- (i) any of the following apply:
  - (A) an Access Holder requests a short-term change to the times at which any of its Train Services, as scheduled in the MTP, operate; or
  - (B) an Access Holder requests to run an Ad Hoc Train Service; ~~or~~

provided that the variation does not result in any other Access Holder's scheduled Train Services not being met.
- (f) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail wishes to make a short-term change to the times at which one or more scheduled Train Services operate, provided that:
  - (i) the change is intended to accommodate:
    - (A) the modification of an existing Planned Possession occurring with the consent of affected Access Holders; or
    - ~~(B) the creation of an Urgent Possession; or~~
    - (BG) any other Operational Constraint affecting the DTP; and
  - (ii) Queensland Rail has, for changes under **clause 2.2(f)(i)(A)** and **(BG)**, consulted, and made reasonable endeavours to reach agreement in relation to the proposed modifications, with the affected relevant Access Holders; ~~and~~
  - ~~(iii) for changes under **clause 2.2(f)(i)(B)**, Queensland Rail has used its reasonable endeavours to consult with the relevant Access Holders.~~
- (g) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail makes a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession provided that where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.
- (h) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail and all affected Access Holders agree to the modification provided that where Queensland Rail seeks such a modification, Queensland Rail:
  - (i) invites affected Access Holders to consider the variation in an appropriate forum;<sup>24</sup> at least 36 hours prior to the day of operation; and
  - (ii) gives each of those parties a copy of the proposed variation at least 12 hours prior to the scheduled consideration of the variation.
- ~~(i) For clarity, Queensland Rail may schedule a DTP in variation from a MTP under any one of **clauses 2.2(e) to (h)** even if Queensland Rail~~

~~cannot do so under, or does not comply with, any of the other of those clauses in respect of that modification.~~

### **Making modifications to a DTP once scheduled**

(j) Queensland Rail may make modifications to a scheduled DTP on a case by case basis:

(i) where:

(A) before the day of operation, Queensland Rail receives a request from an Access Holder to run an Ad Hoc Train Service; or

(B) before a Train Service commences operation, the Access Holder requests a change to the time at which its Train Service will operate and that change is within the scope of the Access Holder's Train Service Entitlement,

provided that the modification does not result in any other Access Holder's scheduled Train Services not being met; or

(ii) where, before the commencement of a relevant Train Service, Queensland Rail notifies the Access Holder that an Emergency Possession is required; and

(iii) Queensland Rail has used ~~best~~reasonable endeavours to notify and consult with any Access Holder whose Train Services may be affected by the modification or any other affected party.

## **2.3 Minimising the adverse effects of Possessions**

(a) To the extent that:

(i) a MTP is to be modified under **clause 2.1**; or

(ii) a DTP is to be scheduled in variation from a MTP under **clause 2.2**,

Queensland Rail will use its ~~best~~reasonable endeavours to minimise any material adverse effects on Train Services that will be caused by that modification or variation.

(b) In determining what (if anything) can and should be done under **clause 2.3(a)** to minimise any material adverse effects, Queensland Rail may take into account:

(i) all relevant commercial, operational and other matters relating to the Network including:

(A) the proper, efficient and safe operation and management of the Network; and

(B) Prudent Practices; ~~and~~

(ii) the extent to which the modification or variation is consistent with the scope of any relevant Train Service Entitlements; and

(iii) the extent of the anticipated adverse impact to other parties as a result of the modification or variation.

(c) Subject to **clause 2.3(b)**, Queensland Rail must use its ~~best~~reasonable endeavours to offer an Access Holder, affected by a

modification referred to in clause **2.3(a)(i)** or **(ii)**, an Alternative Schedule Time.

- (d) For clarity, an Access Holder's Train Services cannot be materially adversely affected for the purpose of this **clause 2.3** to the extent that the modification or variation referred to in **clause 2.3(a)(i)** or **(ii)** does not prevent those Train Services operating in accordance with the Access Holder's Train Service Entitlement.
- (e) The amount of time prior to the relevant Possession commencing may affect the degree of consideration given to minimising adverse effects and what can be done to minimise adverse effects.
- (f) Nothing in this **clause 2.3** obliges Queensland Rail to pay compensation to Access Holders whose Train Services are adversely affected.

## 2.4 Disputes

Except in relation to Emergency Possessions and ~~Urgent Possessions~~, if there is a dispute between an Access Holder and Queensland Rail in relation to any proposed changes or modifications to either the MTP or DTP, the proposed change will not take effect until the dispute has been resolved using the dispute resolution provisions of the Undertaking.

## 3 Network Control Principles

### Principles for managing deviations from a DTP

- (i) It is necessary for Network Controllers to have sufficient discretion to take into account the varying objectives of different traffic types, and the circumstances of a particular part of the Network, in assessing the priority to be given to Train Services and other activities on the Network. Network Controllers will apply the following principles in managing deviations from a DTP:
  - (i) a Train Service may be given priority over other Train Services if it is reasonably necessary to do so:
    - (A) due to, or to avoid, an accident, emergency or incident relating to any part of the Network;
    - (B) to remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected;
    - (C) to remedy, or to mitigate or avoid, any Emergency Possession or ~~Urgent Possession~~ on any part of the Network being prevented or otherwise materially adversely affected; or
    - (D) to ensure the safe operation of any part of the Network;

## Schedule I –Extension Access Principles

### 1. Undertaking Premises

- (a) Queensland Rail cannot be forced to fund an Extension other than in accordance with this Undertaking, contractual obligations under Access

Agreements or Funding Agreements, or the ~~provisions of the Act regarding the mediated outcome or QCA~~ determination of access disputes in accordance with the provisions of the Act.

- (b) Queensland Rail ~~should not be able to~~ must not exploit or take advantage of its monopoly power and this Schedule I is intended to prevent that occurring in the context of investment and funding in relation to Extensions.
- (c) Where Queensland Rail is not required to fund an Extension and has elected, at their option, not to fund an Extension, an Access Seeker has the right to fund an Extension to:
  - (i) ~~Access Seeker should have the right to fund an Extension to~~ create the Additional Capacity required to accommodate its Access Application; ~~or~~
  - (ii) ~~Access Holder should have the right to fund an Extension to~~ create the Additional Capacity to remedy or replace sections of the network damaged or destroyed by a Force Majeure Event; and/or
  - (iii) ~~Access Holder should have the right to fund an Extension to~~ increase the Capacity in a System.

## 2. Undertaking Coverage

- (a) Queensland Rail will undertake all Extensions of the Network under the auspices of this Undertaking and the QCA Act such that Queensland Rail will provide even-handed dealing with all Access Seekers, Access Funders and Access Holders, and not take advantage of its monopoly position in negotiating or determining the terms on which Access Rights dependent on an Extension are obtained.
- (b) Access Charges in respect of Access Rights which are able to be provided as a result of an Extension will be determined in accordance with the pricing principles incorporated in this Undertaking ~~unless Queensland Rail and an Access Funder agree an alternative approach is appropriate in the circumstances.~~
- (c) The QCA has the following roles of and power to:
  - ~~making~~ binding arbitration determinations in relation to access disputes between Queensland Rail and an Access Funder arising from negotiations on or under Access Agreements and Extension and Funding Agreements (unless otherwise agreed).

## 3. Access Funding Condition

- (a) The Access Funding Condition
  - (i) requires the Access Funder to:
    - (A) fund ~~some or all~~ that part of the capital costs of the Extension not being funded by Queensland Rail or another Access Funder, including the following project stages of an Extension:
      - (1) Concept Study;
      - (2) Prefeasibility Study;
      - (3) Feasibility Study;
      - (4) Construction and commissioning;

- (B) fund Queensland Rail's Extension~~Efficient~~ Costs Incurred in developing and constructing the Extension;
- (C) execute a Funding Agreement to comply with clause 3(b)(i); provided that for both of clause 3(a)(i)(A) and (B), an Access Funder will be taken to have funded such costs where they have entered an Access Facilitation Deed where Queensland Rail initially funds some or all of those costs provided they are to be repaid by the Access Funder through an 'Access Facilitation Charge'; and
- (ii) requires Queensland Rail to:
  - (A) construct, own and commission the Extension required to create the Additional Capacity to deliver the contracted Access Rights; and
  - (B) operate and maintain the Network in accordance with the Undertaking and its obligations under each relevant Access Agreement;
- (iii) does not exempt Queensland Rail from bearing those costs it would routinely incur when assessing an access application or would otherwise bear irrespective of the Extension;
- (iv) cannot be used by Queensland Rail to require Access Funders to fund any costs incurred in an Extension if those costs are assessed to be not prudently incurred; and
- (v) requires the legitimate business interests of the parties to be addressed and agreed by the parties acting reasonably or failing agreement requires an access determination by the QCA in accordance with the QCA Act including section 119.
- (b) Nothing obliges Queensland Rail to bear some or all of any Extension Costs incurred in extending the Network in advance of a Funding Agreement being executed by the Access Funder.
- (c) No additional fees or on-costs may be charged by Queensland Rail in respect of the Funding Agreement, unless there are additional costs or risks assumed by Queensland Rail which Queensland Rail would not have assumed but for the Extension (provided that 'Access Facilitation Charges' under an Access Facilitation Deed will be permitted to include a component for interest on amounts initially funded by Queensland Rail). Queensland Rail must act reasonably in calculating any additional costs or risks and must provide justification for the additional costs and/or risks.
- (d) If a number of Access Funders fund an Extension, the Access Funders should be given the right to contract Access Rights for the Additional Capacity in proportion to the funding that they provide.
- (e) Where an Extension has been, or is being, funded by an Access Funder (**First Party**) and a subsequent party lodges an Access Application for Access Rights that were, or are being, created as a result of that funding by the First Party (**Subsequent Party**), Queensland Rail will:
  - (i) ~~take into account advice from the First Party to determine, acting reasonably, whether to apply similar funding requirements in its negotiations with the Subsequent Party;~~

- (ii) require the Subsequent Party to execute a Funding Agreement to share responsibility in respect of part of the funding originally borne by the First Party where it is reasonable for the Subsequent Party to do so; and
- (iii) re-negotiate in good faith the terms of the First Party's Funding Agreement to reflect the fact that the Subsequent Party is sharing the responsibility that was originally borne by the First Party, if paragraph (ii) above applies. For the avoidance of doubt, the QCA has the power to arbitrate, as an access dispute, the amendments to be made where the First Party and Queensland Rail fail to agree such amendments.
- (f) For the purposes of determining whether this clause applies to a Subsequent Party, a Subsequent Party will be deemed to use the funded Extension, if the Subsequent Party's Train Service would have required Additional Capacity (or more Additional Capacity than was required) if the funded Extension had not been built.

#### 4. Funding Agreement

The execution of a Funding Agreement will oblige Queensland Rail to:

- (a) provide Access Rights to the Access Funder in accordance with an Access Agreement which is conditional only on the Extension being commissioned;
- (b) designassist (including study), construct and commission an Extension consistent with a commercially balanced allocation of risks and liabilities (as applicable to the relevant stage of an Expansion being funded); and
- (c) for Funding Agreements in respect of construction and commissioning of an Extension, transfer to the Access Funder the full economic benefit that Queensland Rail derives from the Extension over the economic life of the Extension in accordance with Contributions AASB 1004 standard.

#### 5. Full Economic Benefit Transfer

- (a) The capitalised cost of an Extension will include all Extension Costs expended by the Access Funder on the Extension in accordance with the Undertaking.
- (b) The capitalised cost of an Extension will be used to calculate the full economic benefit that is to be transferred from Queensland Rail to the Access Funder over the economic life of the Extension, regardless of whether or not the Access Funder remains an Access Holder over that time period.
- (c) The full economic benefit derived by Queensland Rail as a result of the capital contribution comprises:
  - (i) an amount equal to the return on and of the capital component of Access Charges from any Access Holders that utilise the Capacity created by an Access Funder's contributed asset (with Queensland Rail being entitled to receive an amount equal to the components of Access Charges based on managing, maintaining and operating the network); and
  - (ii) any tax or other financial benefit accruing to Queensland Rail as legal owner of the Rail Transport Infrastructure covered by the Access Funding Condition, where the risks have been transferred to



the Access Funder as a result of the Access Funding Condition.

- (d) The Funding Agreement should be such that Queensland Rail receives no benefit (tax or cash flow) from the Access Funder's contributed asset, with Queensland Rail retaining only the portion of Access Charges related to its operating and maintenance costs.
- (e) Where the Access Charges from the contributed asset are not sufficient to cover both the return to the Access Funder, and the operating and maintenance costs for that section of the network, Queensland Rail is only ~~should only~~ be obliged to return the amount it has received from relevant Access Charges net of the related operating and maintenance costs in any given year (with Access Holders that continue to use the relevant Rail Transport Infrastructure receiving priority over Access Holders that have ceased using it, where Access Charges are not sufficient to cover all returns of capital).
- (f) The Funding Agreement ~~must~~ should enable an independent auditor to audit compliance with Part 5 of the Undertaking, from time to time and as reasonably required by the Access Funder over the economic life of the asset.

## 6. Access Funder Rights and Responsibilities

- (a) The Access Funder, at their option, can elect to
  - (i) undertake the study stages of an Extension with the assistance of Queensland Rail so that the Extension complies with the **clause 1.4** of the Undertaking; ~~or~~
  - (ii) require Queensland Rail to undertake the study stages of an Extension so that the Extension complies with the **clause 1.4** of the Undertaking; or-
  - (iii) execute separate Funding Agreements with Queensland Rail for each stage of the Extension.
- (b) The Access Funder is required to fund all of Queensland Rail's Extension Costs including, but not limited to:
  - (i) providing assistance to the Access Funder to develop the scope, standard and cost of the Extension at each stage of the Extension project
  - (ii) undertaking an Extension study or investigation on behalf of the Access Funder at each stage of the Extension project
  - (iii) constructing and commissioning an Extension, subject to an Access Funder being taken to have funded such costs where they have entered an Access Facilitation Deed where Queensland Rail initially funds some or all of those costs provided they are to be repaid by the Access Funder through an 'Access Facilitation Charge'.
- (c) Subject to **clause 5(a) and 5(b)** above, the Access Funder will absorb all costs incurred by the Access Funder that relate to the Extension and are assessed by the QCA (in accordance with **clause 1.4.6** of the Undertaking) to be inefficient or not prudently incurred.

## 7. Queensland Rail Rights and Responsibilities

- (a) Queensland Rail, at the request of an Access Funder, and in accordance with **clause 1.4.2(c)** (and where applicable, **clause 1.4.4**) of the Undertaking, will promptly:
  - (i) provide the Access Funder with all reasonably required information on the Extension;
  - (ii) provide a first draft contract to underpin negotiations of a Funding Agreement; and
  - (iii) subject to executing a Funding Agreement in accordance with **clause 1.4.3(b)** of the Undertaking:
    - (A) provide all project assistance that is reasonably required by an Access Funder to develop an Extension to the required study standard;
    - (B) apply for any Authorisation, land tenure or land rights required for the Extension; and
    - (C) construct, commission and own the Extension.
- (b) Subject to **clause 3(c)** above, Queensland Rail will absorb all costs incurred by Queensland Rail that relate to the Extension and are assessed by the auditor or the QCA (in accordance with **clause 1.4.6** of the Undertaking) to be inefficient or not prudently incurred.

## 8. Extension Studies

- (a) Queensland Rail should collaborate with Access Funders in relation to key matters affecting the cost and timing of the Extension, including, but not limited to, project scope, standard, approvals, procurement strategy, cost, construction and timing.
- (b) Prior to the execution of a study Funding Agreement, the:
  - (i) Access Funder and Queensland Rail must agree the scope of works to be delivered by Queensland Rail at the relevant study stage;
  - (ii) Queensland Rail must provide an Access Funder with
    - (A) an estimate of the reasonable Extension Costs it expects to incur during the relevant study stage;
    - (B) project controls to manage the timing and cost risks in the Funding Agreement; and
    - (C) a timetable for the completion of the scope of works.
- (c) Queensland Rail must expeditiously assist, investigate and/or undertake studies for an Extension that is funded by an Access Funder and report variations to the agreed timetable.
- (d) The study Funding Agreement should appoint an independent auditor to audit Queensland Rail's compliance with requiring the Access Funder to fund its Extension Costs.
- (e) The independent auditor is to undertake a compliance audit on the completion of the scope of works in each Funding Agreement. Queensland Rail's costs that are not assessed by the independent auditor to be prudently incurred Extension Costs are to be reimbursed back to the Access Funder.

## 9. Extension Construction

- (a) Queensland Rail must expeditiously construct Extensions funded by Access Funders.
- (b) Access Funders should be given the opportunity to collaborate with Queensland Rail in relation to key matters affecting the cost and timing of the Extension, including, but not limited to, project scope, standard, cost, procurement strategy, construction and timing.
- (c) Prior to the execution of a Funding Agreement:
  - (i) the Access Funder and Queensland Rail, both acting reasonably, must agree;
    - (A) the Extension project scope to be delivered by Queensland Rail in constructing and commissioning the Extension;
    - (B) the procurement strategy to provide that the Extension project complies with the prudence tests contained in **Schedule E** of the Undertaking;
    - (C) the estimated cost of the construction project;
    - (D) the project timetable for the commissioning of the Extension;
    - (E) the inclusion of appropriate project controls and/or contract terms for the Access Funder to manage the timing and cost risks in constructing and commissioning the Extension;
    - (F) funding, operational; and other material arrangements reasonably required for the construction of the Extension; and
    - (G) rights of inspection and audit in relation to each party's compliance with the Funding Agreement.
  - (d) The Extension Funding Agreement should appoint an independent auditor to audit Queensland Rail's compliance with requiring the Access Funder to fund its Extension Costs.
  - (e) The independent auditor is to undertake a compliance audit on the commissioning of the Extension. Queensland Rail's costs not assessed by the independent auditor to be prudently incurred Extension Costs are to be reimbursed back to the Access Funder.

## 10. Funding Agreement Terms and Conditions

### 10.1 Allocation of Contract Risks

- (a) The identification, allocation and management of risks ~~must~~ should be balanced and contract risks should be allocated to the party best placed to manage the risk.
- (b) An appropriate balancing of risks in a Funding Agreement should recognise the following risk positions of the parties in an Extension undertaken:
  - (i) a Funding Agreement is only required if Queensland Rail elects, at its option, to not fund an Extension;
  - (ii) apart from funding an Extension, an Access Funder has to comply with the Undertaking;

- (iii) the Undertaking gives Queensland Rail responsibility for:
  - (A) approving the efficient scope and standard of an Extension (subject to the prudence of that scope and standard being determined by the QCA);
  - (B) efficiently constructing and owning the Extension;
  - (C) operating and maintaining the Network, inclusive of the Extension; and
- (iv) the efficient cost of an Extension should be assessed in accordance with Schedule E of the Undertaking.
- (c) As Queensland Rail is responsible for designing, constructing and commissioning the Extension, but an Access Funder will be funding costs of the Extension, a balancing of risks in a Funding Agreement ~~must~~should provide appropriate oversight and project controls in respect of Queensland Rail's conduct for the Access Funder to manage the cost and timing risks that it has accepted in funding an Extension to accommodate its request for Access.

## 10.2 Security

- (a) As per **clause 1.4.1(b)(iii)** of the Undertaking, Queensland Rail may require the Access Funder to provide a bank guarantee in support of its commitments under a Funding Agreement.
- (b) Any required bank guarantee should reflect the cash flow risk that Queensland Rail has taken on in the Extension and may provide the ability for Queensland Rail to issue 3-6 month 'cash calls' in advance to cover Queensland Rail's reasonably anticipated costs during that period of construction of the Extension.
- (c) Where an Access Funder defaults on a cash call, Queensland Rail is entitled to
  - (i) require some form of security deposit equivalent to its financial exposure, ~~where the default was not attributable to a legitimate Dispute~~; and
  - (ii) stop all construction activities until the default has been remedied-, where the default was not attributable to a legitimate Dispute.
- (d) An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by Queensland Rail.
- (e) The Access Funder shall not be entitled to commence Train Services specified in the Access Agreement unless and until all funding provisions of the Funding Agreement are completed or complied with (except in relation to Access Facilitation Deeds where funding is expressly agreed to be provided by way of post commissioning funding through 'Access Facilitation Charges'). Queensland Rail will use all reasonable endeavours to facilitate the Access Funder's completion or compliance with such provisions.

## 10.3 Infrastructure Management

Subject to the measures to provide appropriate project controls consistent with clause 10.1(c) of this Schedule I, Queensland Rail is responsible for the

management, operation and control of the Extension during construction and commissioning, in accordance with the Undertaking.

#### **10.4 Insurance**

Insurances are to be effected by the parties to appropriately provide for the relevant insurance risks in the construction of the Extension.

#### **10.5 Indemnities and Liabilities**

Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff.

#### **10.6 Limitation of Liability**

- (a) The liabilities of the parties for default shall be limited as agreed in the Funding Agreement, with such limitations to reflect an appropriate balancing of risk taking into account the party best placed to manage the risk of events which may give rise to such liability arising.
- (b) The Funding Agreement will specify the circumstances in which each party has a claim against the other party for delays in the Extension project caused by breach of the Funding Agreement or negligence by the other party, with such circumstances to reflect an appropriate balancing of risk taking into account the party best placed to manage the risk of such events occurring.
- (c) Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

#### **10.7 Default, suspension and termination**

The Funding Agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.

#### **10.8 Force Majeure Event**

- (a) The obligations of either party (other than an obligation to pay monies outstanding) will be suspended where by reason of a Force Majeure Event that party is delayed in, or prevented from, carrying out its obligations under the Funding Agreement.
- (b) The Funding Agreement will provide for a process that might result in termination of the Funding Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

#### **10.9 Assignment**

On commissioning of the Extension, the Access Funder may assign the whole of its Economic Benefit Transfer calculated in accordance with **clause 5** of this **Schedule I**, under the Funding Agreement to another person, with the prior written consent of Queensland Rail (such consent not to be unreasonably withheld).

#### **10.10 Representation and warranties**

The Funding Agreement may set out representations and warranties given by both the Access Funder to Queensland Rail and Queensland Rail to the Access Funder.

### 10.11 Confidentiality

The Funding Agreement must permit and must not prevent an Access Funder from referring any issue, regardless of confidentiality, to the QCA for review in accordance with the dispute resolution processes under the QCA Act and Undertaking (as applicable).

### 10.12 Material Change

- (a) Extension Costs may need to be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost of Queensland Rail performing its obligations under the Funding Agreement.
- (b) A material change will be defined in the Funding Agreement and should be limited to changes in taxes, laws or approvals and are to be assessed on a case-by-case basis in consultation with the Access Funder.

### 10.13 Disputes

If there is a dispute in relation to negotiation or completion of any study or Extension including regarding whether Queensland Rail has:

- (a) complied with this Undertaking; or
- (b) unnecessarily delayed the Extension; or
- (c) inefficiently managed the construction and commissioning of the Extension,

the QCA will arbitrate the dispute (having regard to relevant matters including Queensland Rail's compliance with the Undertaking, the construction project timetable and any circumstances ~~Queensland Rail claims have delayed~~ which have impacted on the construction).

**Appendix B – Previous QRC Submission regarding Aurizon Costing Manual**

19 October 2015

Queensland Competition Authority  
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BRISBANE QLD 4001

Email: [rail@qca.org.au](mailto:rail@qca.org.au)

## **Aurizon Network's proposed Costing Manual – QRC Submission**

The Queensland Resources Council (QRC) appreciates the opportunity to provide feedback on Aurizon Network's proposed Costing Manual.

We understand that the proposed Costing Manual has been provided under the current (2010) Access Undertaking. Despite this, we consider that any revision of the Costing Manual at this point in time should be designed to meet the needs of stakeholders under the new Access Undertaking (UT4). We have therefore taken into account the QCA's January 2015 Draft Decision on the 2014 Draft Access Undertaking when preparing our comments.

Aurizon Network has proposed only very limited changes to the current approved Costing Manual. Our concerns with the proposed approach are:

- The proposed output of the process, which is limited to three pages of high level financial statements, is of little use to QRC or its members.
- Some of the methodologies specified in the costing manual, including allocation methodologies, would prevent the data (even if provided at a greater level of detail) from being useful.

For QRC and its members, information regarding Aurizon Network's actual costs and revenues is of use primarily because it will assist us to consider and provide submissions on Aurizon Network's claimed Maximum Allowable Revenue ("MAR") under future undertakings. Part 10 of the proposed UT4 requires that Aurizon Network provide a range of reports, of which the Annual Financial report (prepared in accordance with the Costing Manual) is one example. In the following sections, we provide comments on each element of information which is proposed to be provided in these financial statements, and the extent to which this information (when considered in conjunction with the remainder of the reporting requirements under Part 10) is likely to meet our needs.

In addressing information shortfalls, QRC is not concerned as to whether additional detail is provided within the financial statements, or is provided through separate reporting, provided that the principles reflected in the Costing Manual (with amendments discussed below) should be followed when preparing other financial information under Part 10 of the Undertaking.



## **REVENUES:**

Purpose of information: Information on Aurizon Network's revenues is useful for a range of purposes. Information which assists stakeholders to understand the extent and nature of revenue being earned by Aurizon Network beyond the regulated access charges is particularly important. Examples of how this information may be useful include:

- Disclosure of significant 'non-coal' revenue would indicate that certain Aurizon Network costs should be notionally allocated to 'non-coal', reducing the MAR which is recoverable from coal customers under future undertakings.
- Significant amounts of unregulated revenue earned from coal customers is also relevant to cost allocations (such as overheads) and may also be relevant to the consideration of whether the ability of Aurizon Network to levy these unregulated charges can undermine the effectiveness of the undertaking.

Disclosure under UT4: The level of detail proposed under the pro-forma financial statements is inadequate, and there is no additional reporting proposed under UT4. We would suggest that greater detail is required in regard to revenue items beyond regulated access charges, including a separate breakdown for each material additional charge. In the FY2013 financial statements, Aurizon Network reported over \$40 million of revenue in the category "Other".

## **EXPENSES (OPERATING COSTS):**

Purpose of information: When considering Aurizon Network's claimed costs within the MAR for future undertakings, we would expect that QCA and stakeholders will have regard to a range of information, including:

- The actual or approved costs of similar entities (benchmarking).
- Aurizon Network's actual costs.
- Efficient costs estimated through a 'shadow benchmark' approach, in which the efficient cost of activities is directly calculated, rather than derived from the costs of existing operations which may or may not be efficient.

QRC understands that Aurizon Network's actual costs are not necessarily a reliable indicator of efficient costs, however, actual costs are inevitably considered during the assessment process. From QRC's perspective, any evidence that actual costs are below claimed UT5 costs would raise concerns regarding whether the claimed cost is efficient, and we would seek an explanation for the claimed increase.

Disclosure under UT4: The proposed financial statements provide only very high level information regarding Aurizon Network's expenses. This is partially addressed through the proposed Annual Maintenance Cost Report (10.1.3 of the proposed UT4). What is lacking is a similar report for operating expenses including corporate overheads. Such a report (or additional detail within the financial statements) should be prepared and presented on a basis which aligns with the methodologies accepted by the QCA when approving these elements of the MAR under UT4. Therefore:

- Line items/expense elements should be presented in the same categories, and at the lowest

level of detail, for which costs were determined under the final UT4 decision.

- Actual costs should be reported against the comparable MAR allowance, and variances shown.
- All data should be presented separately for each coal system.
- Where actual costs require allocation, the allocation methodology used in the preparation of reports should align with the allocation methodology adopted by the QCA in determining the MAR, rather than allocating on a 'reasonable basis' as proposed under 3.2(c)(ii) and (iii) of the Costing Manual. This would apply to costs allocated from other group entities (such as corporate overheads), and allocations within Aurizon Network (for example, allocations between regulated below rail services and other functions).
- If allocation percentages have varied from those used in the final UT4 decision (for example, a percentage based on the Aurizon Network share of employee numbers has been updated), then the updated and original allocator should be displayed so that changes in underlying costs can be distinguished from changes in allocation percentages.
- Intercompany transfers of costs should be included in Aurizon Network's actual costs only to the extent that the transfer is consistent with the UT4 decision.
- Actual costs should not be replaced by efficient costs in the reports as Aurizon Network proposes in the revised Costing Manual (3.2(b), 4.1(b)(ii)). To the extent that actual costs are higher or lower than efficient costs (as determined by the QCA under each new undertaking), this should be reported. Higher actual costs may indicate an area in which Aurizon Network could improve, or could indicate that efficient costs have been underestimated. Lower actual costs may indicate that efficient costs have been overestimated. In either case, actual costs, including actual costs allocated based on an approved methodology, should be reported. Reporting efficient costs in place of actual costs would provide no useful information, as efficient costs (as approved by the QCA) are already available in the documents which lead to the approval of each undertaking.

#### **DEPRECIATION AND AMORTISATION:**

Information on depreciation and amortisation provided in the Statement of Earnings Before Interest and Tax, and the Statement of Assets, is of little use to QRC or its members. Our understanding is that the assets referenced in these statements may not align with the assets in the RAB, and that depreciation rates used may not align with those used for regulatory purposes. Also, the information is not presented for each Coal System. We expect that the information provided in the Annual Regulatory Asset Base Roll-Forward Report (10.1.6 of the draft undertaking) will provide more useful information.

#### **TRANSPARENCY:**

QRC seeks transparency of the calculation of approved tariffs, and an ability to compare actual costs with the approved allowances on a like to like basis. We refer to Section 5.2 of the QCA's recent draft decision on Queensland Rail, which states that "access holders are entitled to transparency regarding the calculation of tariffs" and which supports reporting of actual costs against the forecasts which were used to derive tariffs.

**COMMENTS ON DRAFTING OF COSTING MANUAL:**

QRC seeks improved reporting of Aurizon Network's costs and revenues. The financial statements prepared in accordance with the Costing Manual are of lesser interest. The Costing Manual itself appears an overly detailed description of processes which could be described in a page of dot points as a Schedule to the undertaking. The key requirements from our perspective are that:

- Aurizon Network provides reports containing details set out in Part 10 of the undertaking, which should be expanded to include more detailed information on revenues and costs (similar to the propose Maintenance Cost Reports).
- Cost reports should be prepared in a way which is consistent with the development of the MAR, particularly where costs need to be allocated (including corporate costs).

The QRC contact on this submission is Andrew Barger, who can be contacted on 3316 2502 or alternatively via email at [andrewb@qrc.org.au](mailto:andrewb@qrc.org.au)

Yours sincerely



Michael Roche  
**Chief Executive**