



QR Declaration Review South West Producers

9 April 2019

➤ **Concerns about the opportunity to be heard**

- 9 pages of submissions followed by 770 pages
- The South West Producers are disappointed with the way QR has sought to strategically 'game' the declaration review process
- QR has made material changes to its arguments that have only been raised nearly 12 months into the process
- QR has not yet provided redacted material from their submission, despite being served with the required confidentiality undertakings

➤ QR's positions rely on these flawed arguments:

Criterion (a)

In a future without declaration, QR:

- > will have incentives to maximise volume (rather than monopoly pricing) due to:
 - > lack of vertical integration
 - > existing capacity on the West Moreton system
 - > position as a statutory authority
- > will face constraints from:
 - > users' ability to pay (in the 'low tonnage scenario')
 - > threat of declaration
 - > the Access Framework

Criterion (b)

- > Inland Rail or Surat Basin rail links will increase demand in the market

Criterion (c)

- > West Moreton cannot be significant as it is less significant than the Aurizon network
- > The test of significance is economic only (size alone is not important)

Criterion (d)

- > The conclusions under criterion (a) suggest that it does not promote the public interest for the service to remain declared



Criterion (a)

Access or increased access, on reasonable terms and conditions, as a result of declaration, would promote a material increase in competition in a dependent market



Criterion (a) is satisfied.

In a future without declaration...all market participants will face uncertainties relating to material price and non-price terms for below-rail services on the West Moreton and Metropolitan system... and these uncertainties will deter efficient entry and efficient participation across the West Moreton region coal tenements market

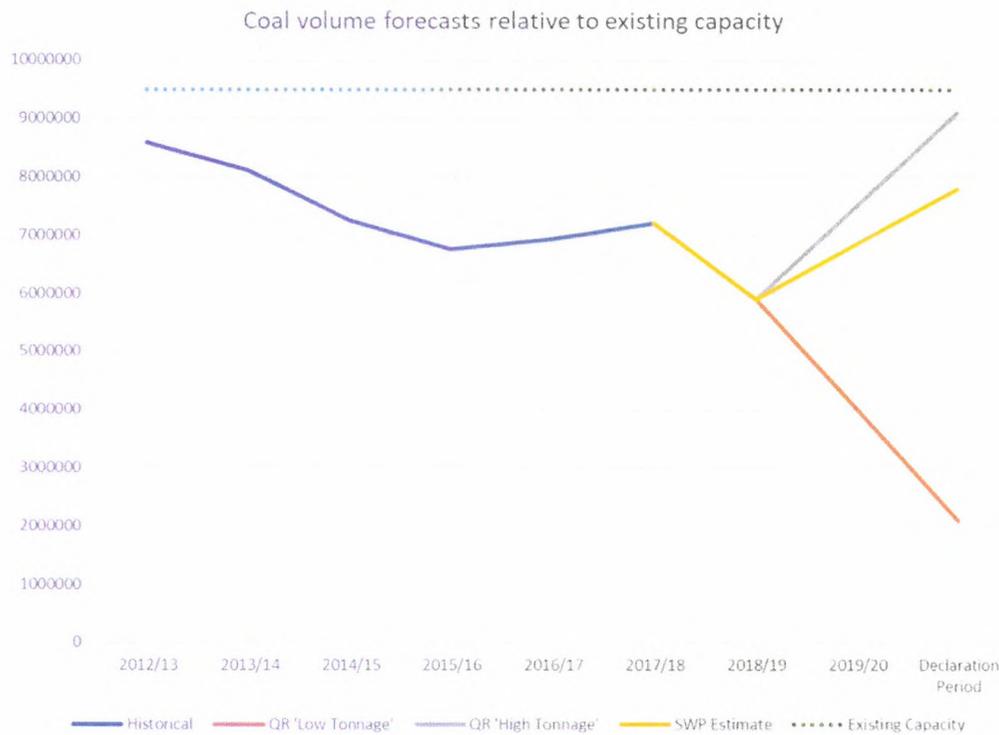
Access to the West Moreton and Metropolitan system services, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition, in the West Moreton region coal tenements market

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➤ Incentives of a non-vertically integrated monopolist

- Does not follow that because QR is not vertically integrated they automatically have incentives to maximise volume
- Non-vertically integrated monopolists still have *incentives to maximise profits*
- Often *a monopolist's profit maximising strategy is to engage in monopoly pricing* (not increase volumes) – which can adversely impact competition in a dependent market by:
 - Suppressing demand
 - Restricting entry or participation in the market

➤ Incentives arising from existing capacity



- Downturn likely to be of limited duration
- *Limited excess capacity expected over the declaration period*
- Likely future ~7.8 mtpa
- QR's loss capitalisation proposal shows anticipated higher volume
- *QR does not have the extent of incentives to increase volume suggested*
- *Ability to pay* is at most a transitory issue that *does not provide a sufficient constraint across the declaration period*

➤ **Position as a statutory authority does not incentivise QR to maximise coal volumes**

- Does not provide a constraint

- If anything, past conduct indicates a lack of incentives to maximise volumes:
 - Caps on contracted paths for coal traffics
 - No attempt to restructure pricing to keep Wilkie Creek volumes
 - No agreement on low-tonnage scenario reference tariffs
 - Resistance to productivity improvements

- QR / Government policies are not legally binding and can change across the declaration period

➤ The 'threat' of declaration is not a constraint

- Not a credible threat, such that it will not deter the exercise of market power in the absence of declaration.
- If service is not declared following declaration review – hard to imagine why it would be declared under the QCA Act / CCA in the future
- Part 3 QCA Act is not a mandatory pricing regime – monitoring and recommendations only

➤ The Access Framework / Deed Poll are not a constraint

- Despite being executed, the Deed Poll is still highly uncertain
- Term of the Deed Poll has been reduced to a 5 year term:
 - *any alleged constraint does not operate across the declaration period*
 - completely undermines certainty of investment in mine development which will clearly impact competition for tenements
- *Extreme difficulties in enforcement and dispute resolution* – no likelihood of compliance
- *QR has extensive amendment rights* – no certainty of terms
- Other limits on application
- Is an *artificial contrivance compliance with the existing terms of which does not represent the likely future*

➤ The Access Framework / Deed Poll are not a constraint

- *Pricing regime is highly uncertain* – no certainty of price without declaration
- Negotiating with a monopolist is not effective when:
 - Users have material sunk costs
 - Users have asymmetric information
 - No competing service
 - Private arbitration is unworkable, costly and highly uncertain in terms of results
- Even if Access Framework is assumed to be effective and enforceable, only pricing constraint would be revenue ceiling limit
- Highly uncertain what revenue ceiling limit actually without the QCA:
 - QR appears to very different views from Users/the QCA on what the ceiling would be
 - Extremely difficult for users to determine
 - QR likely to consider ceiling to be so high Access Framework will effectively permit monopoly pricing

➤ Two period economic hold-up problem cannot be resolved without declaration

- QR will be in a position to expropriate monopoly profits in the declaration period if service is not declared
- Not practical to enter life of mine contracts
 - Life of mine uncertain
 - Exposure to significant take or pay liability tail
- Renewal rights never granted by QR – would quarantine capacity and given high likely levels of utilisation not incentivised to do so without material cost to users
- The ‘multiple’ rounds reputational harm analysis does not apply in the West Moreton system

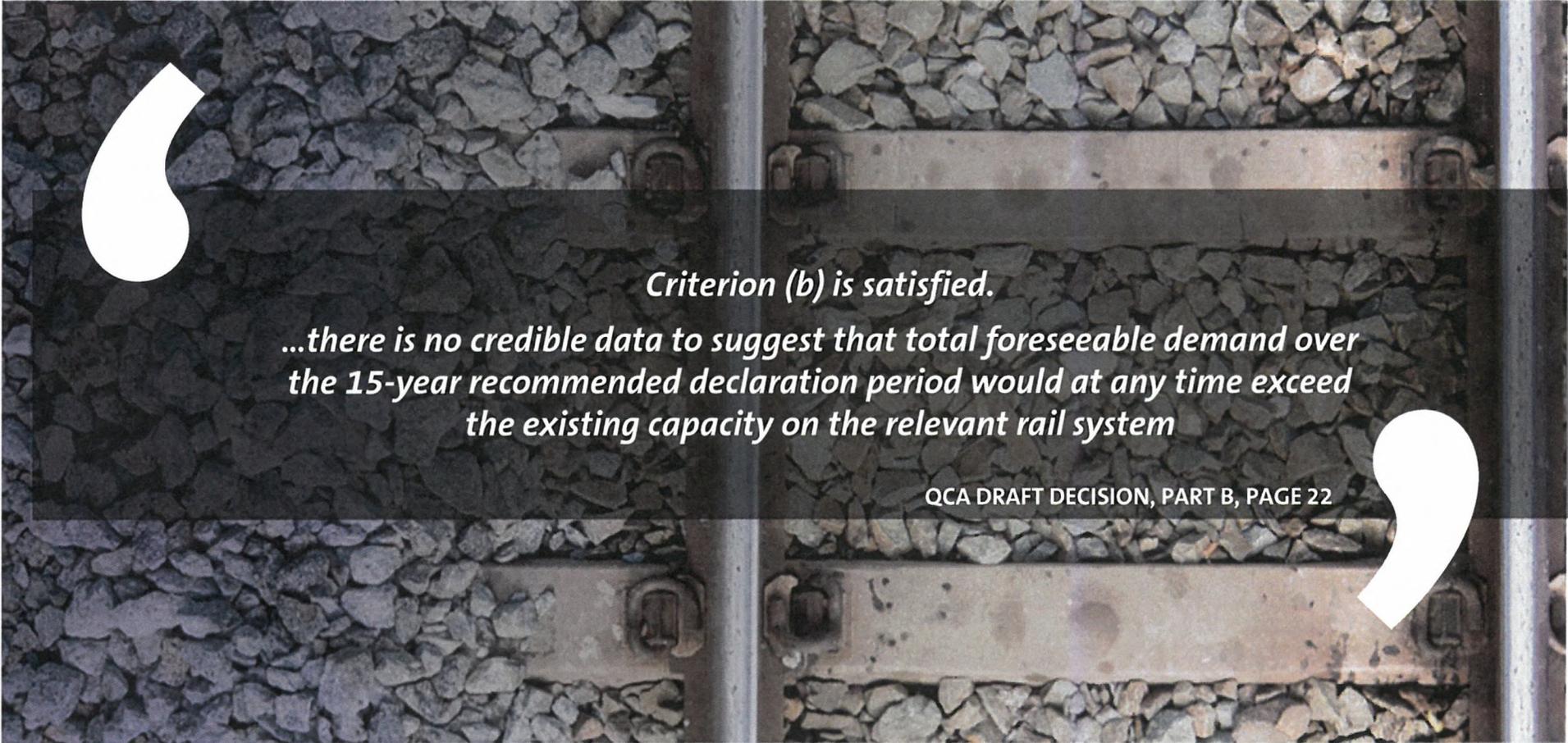


Criterion (b)-(d)

(b) Facility can meet total foreseeable demand over the declaration period at least cost

(c) Facility is significant having regard to its size or importance to the Queensland economy

(d) Access (or increased access) to the service on reasonable terms and conditions as a result of declaration would promote the public interest



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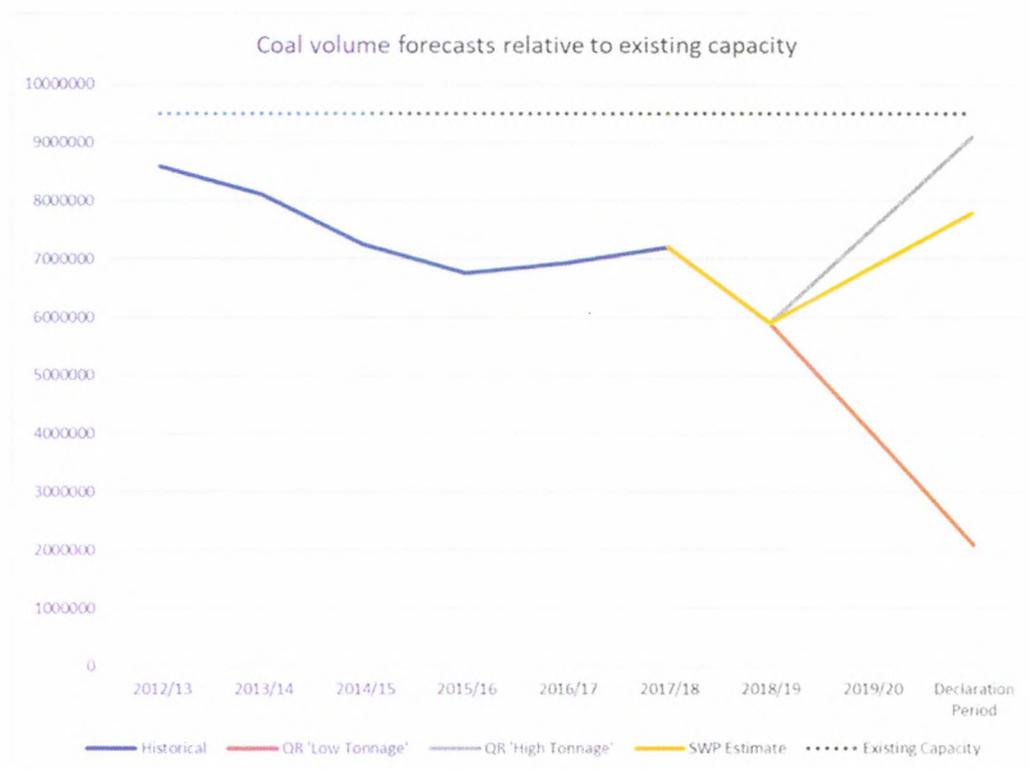
Criterion (b) is satisfied.

...there is no credible data to suggest that total foreseeable demand over the 15-year recommended declaration period would at any time exceed the existing capacity on the relevant rail system

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➤ Foreseeable demand is less than existing capacity



- *All credible demand forecasts below existing capacity*
- Road is not competitive – so *cost of meeting foreseeable demand with two or more facilities involves duplication*
- Inland Rail / Surat Basin rail connections speculative – and latter not in market anyway
- Based on QR Regional Network Master Planning Forum West Moreton network can be expanded to meet even highest Inland Rail projection in any case



Criterion (c) is satisfied.

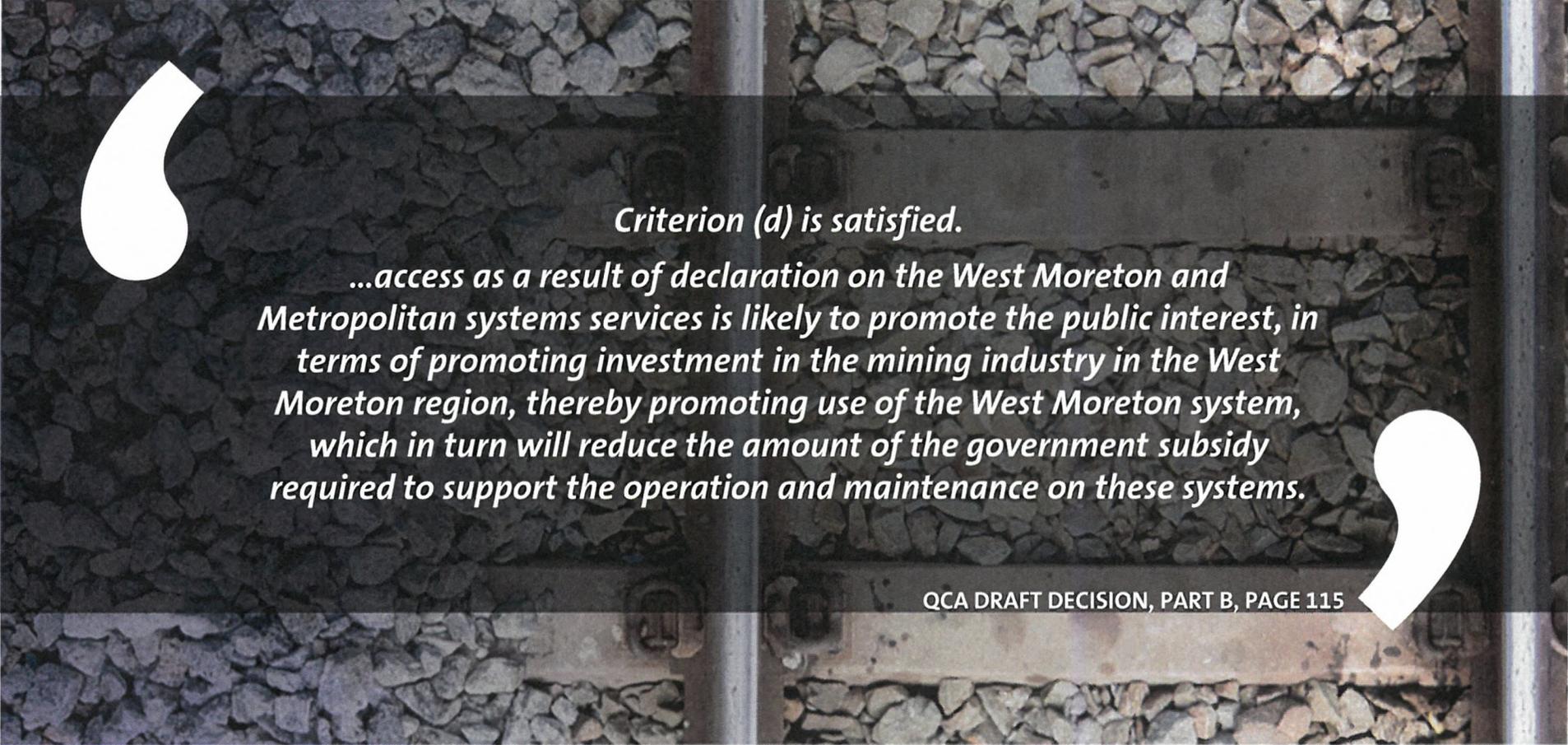
The QCA considers that each of the West Moreton and Metropolitan systems are significant, having regard to each of the systems' size and each of the systems' importance to the Queensland economy.



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➤ The facility for the West Moreton corridor coal rail access service is significant

- Significant by size – West Moreton is 314 km, 380 km from Cameby Downs to Port of Brisbane
- Significant to the economy – substantial economic contributions
- Criterion (c) is an assessment of the significance of facility on its own merits, not an assessment of whether it is less or more significant than other infrastructure such as Aurizon's network
- Comparison to the Herbert River cane railway is misconceived
 - assessed against national significance criterion
 - radial network 60 km longest haul, light cane rail, very different economic contribution



Criterion (d) is satisfied.

...access as a result of declaration on the West Moreton and Metropolitan systems services is likely to promote the public interest, in terms of promoting investment in the mining industry in the West Moreton region, thereby promoting use of the West Moreton system, which in turn will reduce the amount of the government subsidy required to support the operation and maintenance on these systems.

➤ Access as a result of declaration promotes the public interest

- As per the criterion (a) analysis, QR has an incentive to maximise profits and does not face material constraints without declaration
- Promotion of investment in the West Moreton mining industry arising from declaration produces public benefits:
 - Reduces / eliminates need for government subsidies
 - Greater royalties
 - Other economic contributions – regional development, employment etc.
- Administrative and compliance costs will be substantially higher in the absence of declaration due to the cost of disputes which are only able to be resolved through costly arbitrations or court proceedings