

23 October 2020

Professor Flavio Menezes  
Chair  
Queensland Competition Authority

**DBCTM Response to the QCA Draft Decision on the 2019 DAU**

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Dear Professor Menezes

DBCTM welcomes the QCA's Draft Decision on the 2019 DAU, and the conclusion that with some further amendments the 2019 DAU is capable of approval.

DBCTM considers that the Draft Decision has appropriate regard to the matters set out in section 138 of the Queensland Competition Authority Act 1997 (QCA Act) and strikes an effective balance between the interests of access seekers and DBCTM, and is therefore likely to facilitate a meaningful opportunity for commercially negotiated outcomes.

This submission addresses the additional amendments identified by the QCA in the Draft Decision as necessary to approve a pricing model without a reference tariff. On the whole, DBCTM agrees to the additional amendments sought by the QCA and has proposed drafting to address these remaining concerns. DBCTM considers that the 2019 DAU, as amended herein, is now in an appropriate form for approval.

DBCTM looks forward to your consideration of its proposed amendments to the 2019 DAU, and is available to answer any queries that arise.

Yours sincerely



Anthony Timbrell  
Chief Executive Officer  
**DBCT Management**

Attachment 1: DBCTM October 2020 Submission

DBCT MANAGEMENT



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## **DBCT 2021 Access Undertaking**

**DBCT Management response to QCA Draft Decision**

**October 2020**

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## 1 Introduction

- 1 DBCTM welcomes the opportunity to provide this submission in response to the QCA's Draft Decision dated 26 August 2020 (**Draft Decision**) on the 2019 Draft Access Undertaking (**2019 DAU**).
- 2 DBCTM considers that the Draft Decision has appropriate regard to the matters set out in section 138 of the *Queensland Competition Authority Act 1997 (QCA Act)* and strikes an effective balance between the interests of access seekers and DBCTM, and is therefore likely to facilitate a meaningful opportunity for commercially negotiated outcomes.
- 3 In previous submissions, DBCTM has sought to address the issues raised in the User Group submissions<sup>1</sup> and by the QCA in its Interim Draft Decision dated 24 February 2020 (**Interim Decision**), to ensure that DBCTM's proposed pricing model is appropriate to be approved. The QCA's Draft Decision, for the most part, agrees that these proposed amendments address the issues raised such that the 2019 DAU is capable of approval, subject to some further amendments.
- 4 This submission addresses the additional amendments identified by the QCA in the Draft Decision as necessary to approve a pricing model without a reference tariff.<sup>2</sup> On the whole, DBCTM agrees to the additional amendments sought by the QCA and proposes drafting to address these remaining concerns, as summarised in the table below.

**Figure 1: DBCTM's further proposed amendments to the 2019 DAU**

Proposed amendment	DBCTM Comment
<b>Information provision to address information asymmetry</b>	
More detailed methodology information	DBCTM proposes to adopt additional requirements for DBCTM to disclose and explain its methodology for estimating inflation, WACC, working capital management and tax obligations as part of its information requirements.
Detail of corporate cost benchmarking	DBCTM proposes to include a requirement to provide further detail on the benchmarking methods that were considered and the resulting estimates that were used to determine efficient corporate costs.
Provision of QCA approved rehabilitation costs estimate	DBCTM proposes to adopt a change to the requirement to provide <i>DBCTM's</i> forecast of rehabilitation costs, to a requirement for DBCTM to provide <i>the QCA's</i> estimate of rehabilitation costs, as set out in its final decision on the 2021 AU. Rehabilitation costs are discussed in more detail in section 4.5.
Extension of forecast period for access applications in the last 18 months of pricing period	DBCTM proposes to extend the period of forecast information it provides to access seekers when those access seekers will commence access within 18 months of a new pricing period (and the prices that are negotiated or arbitrated will therefore continue into the next pricing period).
Specification of depreciation methodology	DBCTM proposes to amend its previously proposed requirements to provide depreciation information, in order to simplify the approach to calculating depreciation. DBCTM's proposed approach to calculating depreciation is discussed in greater detail in section 4.2.
<b>Amendments to the pricing model to facilitate effective arbitration</b>	
Additional information re: arbitration outcomes for access seekers.	DBCTM proposes to extend the amount of information provided to access seekers regarding arbitration outcomes, but not to provide information regarding the determination of the initial TIC as this would risk becoming a de facto reference tariff.

<sup>1</sup> See User Group September 2019, November 2019, April 2020 and June 2020 Submissions.

<sup>2</sup> QCA Draft Decision, p. 58

<b>Implementation of the pricing model within the 2019 DAU</b>	
Providing information on expected Expansion Pricing Approach as part of Conditional Access Agreement process	DBCTM proposes to introduce a requirement to provide information regarding the Expansion Pricing Approach that DBCTM considers appropriate to apply to the expansion, when commencing the conditional access agreement process under section 5.4(l). This will enable access seekers to form a preliminary view on pricing matters
Ability to terminate Conditional Access Agreements prior to commitment to expand	DBCTM proposes to introduce a requirement to include in all conditional access agreements, unless agreed otherwise, an ability for expanding access seekers to terminate the conditional access agreement once the pricing approach has been determined, but before DBCTM has committed to an expansion

- 5 For the QCA's convenience, Appendix 6 and 7 set out the full suite of proposed amendments as tracked changes to the 2019 DAU and SAA, with explanations of these changes set out in the tables at Appendix 1.
- 6 DBCTM is confident that the negotiate/arbitrate model laid out in the 2019 DAU, and amended in response to the QCA Draft Decision, will enable DBCTM to negotiate appropriate, mutually beneficial terms with its customers and future access seekers. The negotiate/arbitrate model ensures that the parties have a meaningful opportunity to reach an agreed outcome, while providing the parties the certainty that where they are unable to agree, the QCA is able to reconcile any disputes through compulsory arbitration.
- 7 Further, DBCTM considers the Arbitration Guideline included with the Draft Decision strikes the right balance by clearly laying out the process for arbitration, without providing a prescriptive methodology for setting prices which would risk ultimately defeating any attempt at negotiation.
- 8 This submission is structured as follows:
- 8.1 Section 2 briefly outlines DBCTM's efforts toward consultation with users since the Draft Decision
  - 8.2 Section 3 sets out the amendments proposed by DBCTM to ensure the 2019 DAU is appropriate to be approved and:
    - 8.2.1 addresses information asymmetry;
    - 8.2.2 facilitates effective negotiations and arbitration; and
    - 8.2.3 effectively implements the negotiate/arbitrate pricing model.
  - 8.3 Section 4 sets out DBCTM's responses to the QCA's questions for stakeholders including:
    - 8.3.1 DBCTM's proposed approach to simplify the calculation of depreciation for the purposes of providing depreciation and asset base information to access seekers, in order to better facilitate effective negotiations; and
    - 8.3.2 DBCTM's response to the QCA's Draft Decision on Remediation.
  - 8.4 Section 5 sets out DBCTM's response to non-pricing provisions in the 2019 DAU

## 2 Further consultation with users

9 As part of the previous Collaborative Submission process, DBCTM and the User Group discussed a number of non-pricing issues raised by the User Group and were able to reach agreement on a large number of these issues.<sup>3</sup>

10 Since the publication of the Draft Decision, and consistent with the QCA's encouragement of further discussions, DBCTM has reached out on a number of occasions to discuss issues which it considered were capable of agreement with the User Group. Specifically:

10.1 On 23<sup>rd</sup> September, early in the submission period, DBCTM wrote to the User Group explaining:<sup>4</sup>

[DBCTM's June 2020 Submission] identified a small number of issues where we had not yet found common ground, but that we considered could potentially be resolved with further discussion.

The QCA's Draft Decision acknowledged these issues and encouraged stakeholders to engage in further discussions in an attempt to reach a consensus about a possible way forward.

To assist with these discussions we have set out in the table at Attachment A for each of the unresolved issues:

- the relevant clause reference(s);
- an explanation of the issue as raised by the User Group in its September 2019 Submission;
- DBCTM's response including, where possible, clarifications and potential solutions, and questions for the User Group.

We ask the User Group to review these issues and DBCTM's response and respond to the questions set out in bold in the table. DBCTM will then consider further amendments to the 2019 DAU to address the remaining issues. We found this approach effective when collaborating on the June 2020 submission and we trust this will assist in enabling the User Group to understand DBCTM's current position and provide a response.

DBCTM requested that in order to allow time for DBCTM to take into account the User Group's responses in considering any proposed amendments to the 2019 DAU, and to allow for potential clarifying discussions, that the User Group provide a response by 2<sup>nd</sup> October 2020.<sup>5</sup> On the 20<sup>th</sup> October the User Group replied stating only that it believed that the non-pricing related issues were so intertwined with pricing matters that it cannot see a way forward in terms of engagement.

10.2 On 30<sup>th</sup> September the User Group emailed DBCTM to request remediation information that was provided to Advisian, specifically "access to 'Attachment 2' (i.e. the Axiom detailed spreadsheet) and any additional information provided by GHD/DBCTM to Advisian such that it can be considered by an appropriate technical expert." DBCTM responded the same day with the requested attachment, explaining that it was not aware of what 'additional information' it was referring to, but offering to respond to any specific information requests that the User Group wanted to send through. No comments from the User Group have been forthcoming on the remediation information requested, nor have any further requests for information been made.

<sup>3</sup> See DBCTM's June 2020 Submission

<sup>4</sup> See DBCTM letter to User Group, dated 23 September 2020, Appendix 3

<sup>5</sup> See DBCTM letter to User Group, dated 23 September 2020, Appendix 3

10.3 On 13<sup>th</sup> October DBCTM provided by email a draft section of this submission which set out DBCTM's proposed simplified depreciation approach to apply under the information requirements under the 2019 DAU. DBCTM explained:

Further to our last correspondence, please find attached our proposed depreciation methodology for the 2019 DAU. We would welcome any feedback the User Group has on this approach prior to the submission. Please let me know if anything isn't clear or [you] have any queries.

Are you expecting to send a response to our non-price related issues letter from 23rd September?

On the 20<sup>th</sup> October the User Group replied stating only that it was not supportive of DBCTM's proposed depreciation methodology as it reduces the terminal useful life to the end of the initial lease term.<sup>6</sup> The User Group did not propose an alternative approach.

- 11 Disappointingly, the User Group has not sought to collaborate with DBCTM on these issues, despite the fact that the User Group has previously engaged on some issues of the same subject matter. As such, where possible DBCTM has relied on the User Group's previous comments in proposing the further amendments set out in this submission, attempting to provide concessions where possible but without the feedback of the User Group.
- 12 Finally, over the last month DBCTM has met with the majority of existing users as part of the pricing review under clause 7.2 of the existing user agreements, in order to discuss the pricing review process and understand individual user's issues and requirements. This process is ongoing and DBCTM is optimistic that it will reach agreement with some users without the need for arbitration.

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<sup>6</sup> Refer section 4.2. DBCTM notes that the proposed simplified depreciation approach aligns the terminal useful life for the purposes of depreciation to that of the initial lease term. However, the offsetting characteristics of the approach mean that depreciation calculations are in fact lower over the next two regulatory periods

### 3 Proposed amendments to the 2019 DAU

#### 3.1 Summary

- 13 The Draft Decision identified amendments that the QCA considers necessary to approve a pricing model without a reference tariff. In particular, the QCA considers that it is appropriate to amend the 2019 DAU to:<sup>7</sup>
- 13.1 enable access seekers to make an informed assessment about an access price proposal for the purposes of negotiating with DBCTM;
  - 13.2 facilitate the role of arbitration as an effective incentive for parties to act reasonably during negotiations; and
  - 13.3 provide for a more balanced negotiation process on pricing matters.
- 14 The Draft Decision set out a number of specific amendments that the QCA considers appropriate to achieve these objectives. DBCTM accepts the majority of the QCA's amendments and proposes to amend the 2019 DAU to implement these amendments. On the rare occasion where DBCTM has not implemented the specific amendment sought by the QCA, DBCTM has sought to propose alternative amendments and provide the rationale for its approach.
- 15 This section sets out the suite of amendments that DBCTM has proposed to address the issues identified in the QCA's Draft Decision so that the amended 2019 DAU is appropriate to be approved. Specifically:
- 15.1 it provides an overview of the amendments previously proposed by DBCTM to address issues raised by the User Group and the QCA (which the QCA has agreed in its Draft Decision are appropriate to be adopted ); and
  - 15.2 sets out a number of further amendments that DBCTM proposes in response to the QCA's Draft Decision.
- 16 DBCTM's further proposed amendments to the 2019 DAU are set out in the table below.

**Figure 2 : DBCTM's further proposed amendments to the 2019 DAU**

Proposed amendment	DBCTM Comment
<b>Information provision to address information asymmetry</b>	
More detailed methodology information	DBCTM proposes to adopt additional requirements for DBCTM to disclose and explain its methodology for estimating inflation, WACC, working capital management and tax obligations as part of its information requirements.
Detail of corporate cost benchmarking	DBCTM proposes to include a requirement to provide further detail on the benchmarking methods that were considered and the resulting estimates that were used to determine efficient corporate costs.
Provision of QCA approved rehabilitation costs estimate	DBCTM proposes to adopt a change to the requirement to provide <i>DBCTM's</i> forecast of rehabilitation costs, to a requirement for DBCTM to provide <i>the QCA's</i> estimate of rehabilitation costs, as set out in its final decision on the 2021 AU. Rehabilitation costs are discussed in more detail in section 4.5.
Extension of forecast period for access applications in the last 18 months of pricing period	DBCTM proposes to extend the period of forecast information it provides to access seekers when those access seekers will commence access within 18 months of a new pricing period (and the prices that are negotiated or arbitrated will therefore continue into the next pricing period).

<sup>7</sup> QCA Draft Decision, p. 58

Proposed amendment	DBCTM Comment
Specification of depreciation methodology	DBCTM proposes to amend its previously proposed requirements to provide depreciation information, in order to simplify the depreciation approach adopted. DBCTM's proposed approach to calculating depreciation is discussed in greater detail in section 4.2.
<b>Amendments to the pricing model to facilitate effective arbitration</b>	
Additional information re: arbitration outcomes for access seekers.	DBCTM proposes to extend the amount of information provided to access seekers regarding arbitration outcomes.
<b>Implementation of the pricing model within the 2019 DAU</b>	
Providing information on expected Expansion Pricing Approach as part of Conditional Access Agreement process	DBCTM proposes to introduce a requirement to provide information regarding the Expansion Pricing Approach that DBCTM considers appropriate to apply to the expansion, when commencing the conditional access agreement process under section 5.4(l). This will enable access seekers to form a preliminary view on pricing matters
Ability to terminate Conditional Access Agreements prior to commitment to expand	DBCTM proposes to introduce a requirement to include in all conditional access agreements, unless agreed otherwise, an ability for expanding access seekers to terminate the conditional access agreement once the pricing approach has been determined, but before DBCTM has committed to an expansion

- 17 While this section seeks to explain the key amendments and how they address the issues raised by the QCA and User Group, Appendix 1 sets out in detail the specific changes proposed by DBCTM and the reasons for those changes.
- 18 Similarly Appendices 6 and 7 show how those amendments would be implemented, as a mark-up to the 2019 DAU and SAA. As is always the case, when making changes to a document there are a variety of different ways to implement the same change. In drafting the proposed amendments DBCTM has sought to apply as light a touch as possible, in order to minimise the number of changes to the processes in the 2019 DAU, which are based on the established framework set out in the 2017 AU. If necessary, DBCTM is happy to discuss alternative drafting for the amendments.
- 19 This section discusses the proposed amendments in the order grouped by the QCA in its Draft Decision:
- 19.1 Information provision to address information asymmetry.
  - 19.2 Amendments to the pricing model to facilitate effective arbitration.
  - 19.3 Implementation of the pricing model within the 2019 DAU.
- 20 The QCA's Draft Decision set out the QCA's approach to a number of non-pricing issues in section 8 of its Draft Decision. DBCTM addresses these issues and sets out its proposed amendments in response in Appendix 1 and in section 5 below.

### 3.2 Information provision to address information asymmetry

#### Summary of amendments to address information asymmetry

- 21 The QCA's Draft Decision explained that the amendments proposed by DBCTM to introduce prescriptive information requirements 'made a significant attempt to deal with the issues related to information asymmetry between DBCTM and potential access seekers'.<sup>8</sup>
- 22 DBCTM now proposes a small number of further amendments to address the remaining issues identified in the QCA's Draft Decision. DBCTM is confident that the amended 2019 DAU provides sufficient information to enable informed and effective negotiations.

<sup>8</sup> QCA Draft Decision, p. 61

- 23 The table below summarises the key amendments that DBCTM proposes to make to the 2019 DAU to address information asymmetry.

**Figure 3: Summary of key proposed changes to 2019 DAU to address information asymmetry**

Proposed amendment	DBCTM Comment
<b>April 2020 Proposed Amendments</b>	
Introduction of prescriptive information requirements	In April 2020 DBCTM proposed to introduce extensive prescriptive information requirements which require DBCTM to disclose a suite of historical and forecast information in a pre-determined format. The information is tailored to facilitate effective negotiations at DBCT.
<b>October 2020 Proposed Amendments</b>	
More detailed methodology information	DBCTM proposes to adopt additional requirements for DBCTM to disclose and explain its methodology for estimating inflation, WACC, working capital management and tax obligations as part of its information requirements.
Detail of corporate cost benchmarking	DBCTM proposes to include a requirement to provide further detail on the benchmarking methods that were considered and the resulting estimates that were used to determine efficient corporate costs.
Provision of QCA approved rehabilitation costs estimate	DBCTM proposes to adopt a change to the requirement to provide <i>DBCTM's</i> forecast of rehabilitation costs, to a requirement for DBCTM to provide <i>the QCA's</i> estimate of rehabilitation costs, as set out in its final decision on the 2021 AU. Rehabilitation costs are discussed in more detail in section 4.5.
Extension of forecast period for access applications in the last 18 months of pricing period	DBCTM proposes to extend the period of forecast information it provides to access seekers when those access seekers will commence access within 18 months of a new pricing period.

### Previously proposed amendments

- 24 The 2019 DAU as originally submitted included the ability for access seekers to request a broad range of information from DBCTM,<sup>9</sup> including the information that access seekers could seek under the QCA Act.<sup>10</sup>
- 25 In response to the QCA's Interim Decision, DBCTM proposed extensive, prescriptive information requirements which require DBCTM to disclose a suite of historical and forecast information in a pre-determined format.<sup>11</sup> The information requirements were tailored to facilitate effective negotiations. To provide additional assurance, the amendments require the information to be certified by two senior managers of DBCTM.

### QCA Draft Decision

- 26 In its Draft Decision the QCA stated:<sup>12</sup>

Overall, we consider that DBCTM has made a significant attempt to deal with the issues related to information asymmetry between DBCTM and potential access seekers that we identified in our interim draft decision. The information contained in the schedules typically reflects the type of information previously used to determine the reference tariff.

- 27 Notwithstanding the QCA's broad approval of DBCTM's proposed information requirements, the QCA's Draft Decision identified a small number of additional amendments that it considers should be made to the 2019 DAU to ensure that information asymmetry issues are adequately addressed.

<sup>9</sup> 2019 DAU, section 5.2(c)

<sup>10</sup> QCA Act, section 101

<sup>11</sup> See: DBCTM April 2020 Submission; 2019 DAU sections 5.2, 5.5(a), 5.5(d), 5.5(i)-(k), sch. H and I

<sup>12</sup> QCA Draft Decision, p. 61

- 28 Specifically the QCA considers it appropriate for DBCTM to amend the 2019 DAU to:<sup>13</sup>
- 28.1 require DBCTM to:
    - 28.1.1 disclose and explain the methodology used for estimating inflation, WACC, working capital management and tax obligations;
    - 28.1.2 detail the benchmarking methods considered, and the resulting estimates, used to determine efficient corporate costs; and
    - 28.1.3 specify the appropriate remediation cost estimate to apply for the 2019 DAU period, as determined by the QCA;
  - 28.2 require all information specified in the information sets to be provided for the Terminal component upon which an access seeker is negotiating access; and
  - 28.3 provide additional information to access seekers who enter into an access agreement within the 18 months prior to 30 June 2026.

### **DBCTM Response**

- 29 DBCTM has accepted all of the QCA's suggested changes and has implemented these changes in the proposed amendments to the 2019 DAU set out in Appendix 6 and explained in Appendix 1.
- 30 The QCA also considered that it was appropriate for DBCTM to amend the methodology to calculate depreciation costs during the 2019 DAU period, to reflect the QCA's determination on this matter.<sup>14</sup> DBCTM agrees with the QCA that the specification of an approved depreciation methodology is preferable to providing asset specific information to access seekers.
- 31 While the QCA has not identified any specific issues with the methodology proposed by DBCTM, in this submission DBCTM proposes a simplified approach to calculating depreciation in order to facilitate the negotiation process with access seekers, and provide greater transparency. DBCTM discusses its proposed changes to the depreciation methodology in greater detail in section 4.2.

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<sup>13</sup> QCA Draft Decision, p. 70

<sup>14</sup> QCA Draft Decision, p. 70

### 3.3 Amendments to the pricing model to facilitate effective arbitration

#### Summary of amendments to facilitate effective arbitration

- 33 Following the QCA's Interim Decision, DBCTM proposed to align the arbitration criteria with the criteria under section 120 of the QCA Act.
- 34 DBCTM supports the publication of an arbitration guideline, and proposes to provide additional information regarding the outcomes arbitrations to access seekers, consistent with the QCA's Draft Decision.
- 35 DBCTM does not, however, consider the QCA's suggestion on the full provision of arbitration outcomes to access seekers and existing users as entirely appropriate, on the basis that it is unnecessary and would likely provide strong disincentives to engage in meaningful negotiations. To address the QCA's concerns, DBCTM proposes amendments to the 2019 DAU to align the DAU with that of other Australian regulatory arbitration regimes and how they deal with the publication of arbitration outcomes.
- 36 The table below sets out DBCTM's key proposed amendments to the 2019 DAU.

**Figure 4: Summary of key proposed changes to 2019 DAU to facilitate effective arbitration**

Proposed amendment	DBCTM Comment
<b>April 2020 Proposed Amendments</b>	
Align arbitration criteria with section 120 of the QCA Act	In its April 2020 amendments in response to the Interim Decision, DBCTM proposed to align the arbitration criteria to be applied by the QCA with the criteria set out in section 120 of the QCA Act, which the QCA would be required to apply in determining an access dispute under the legislative negotiate/arbitrate regime.
Align arbitration criteria in 2019 SAA with previous SAAs	DBCTM also proposed to align the provisions of the 2019 SAA regarding the arbitration criteria applicable when arbitrated by a commercial arbitrator, with the criteria applicable under the existing user agreements.
<b>October 2020 Proposed Amendments</b>	
Additional information re: arbitration outcomes for access seekers.	DBCTM proposes to extend the amount of information provided to access seekers regarding arbitration outcomes, but not to provide information regarding the determination of the initial TIC as this would risk being interpreted as a de facto reference tariff.
Not implemented - Providing arbitration outcomes to non-participating access seekers	The QCA's Draft Decision considers that arbitration outcomes should be provided to existing users. DBCTM does not consider that this is appropriate, as it will create a disincentive to participate in negotiations and will hamper an efficient and effective negotiation process.  Pricing reviews for existing users should be undertaken in accordance with the terms of those agreements.

#### Previously proposed amendments

- 37 In response to the QCA's Interim Draft Decision, DBCTM proposed to align the arbitration criteria with the statutory criteria under section 120 of the QCA Act.<sup>15</sup>
- 38 DBCTM also proposed amendments to the 2019 SAA, which would align the arbitration criteria that would be applied by a commercial arbitrator, when the QCA was unwilling or unable to act, with the arbitration criteria that would apply in those circumstances under the 2017 SAA.<sup>16</sup>

<sup>15</sup> DBCTM April 2020 Submission, sections 3.4 and 3.5

<sup>16</sup> DBCTM April 2020 Submission, sections 3.4 and 3.5

## QCA Draft Decision

- 39 The QCA's Draft Decision agreed with DBCTM's proposed amendments and considered that they provide future and existing access seekers with sufficient certainty:<sup>17</sup>

We are of the view that DBCTM's proposed amendments to the arbitration criteria provide access seekers, future access holders and existing users with sufficient certainty as to the criteria which will apply for a dispute on the TIC under the 2019 DAU and various user agreements. We consider that the arbitration factors outlined in section 120 of the QCA Act are appropriate criteria for us to apply as part of the arbitration process. Such an approach is aligned with the intention of the QCA Act and provides us with sufficient flexibility to make appropriate access determinations on pricing matters. In general, we consider the application of these criteria as part of the arbitration process provides an adequate constraint on the ability of DBCTM to exercise market power in negotiating a TIC with access seekers.

Additionally, the arbitration criteria are sufficiently flexible to provide scope for parties to reach negotiated outcomes on pricing matters, including to reflect, among other things, the value of access to an access seeker.

- 40 The QCA's Draft Decision considered that DBCTM should provide further information on arbitration outcomes than the initial TIC to non-participating access seekers:<sup>18</sup>

In the interests of transparency, we consider there is merit in requiring DBCTM to provide information on arbitrated outcomes, beyond the initial TIC. We consider that information should include the determination itself and the reasons for the determination. Access Seekers and DBCTM will then be similarly informed on arbitrated outcomes when entering into negotiations and arbitrations.

In this regard, we recognise the importance of confidentiality and the need to balance the legitimate interest of the parties to arbitrations in maintaining confidentiality, with the public interest associated with providing sufficient transparency. This is consistent with those considerations applicable to our consideration of confidentiality under the QCA Act (s. 207).

We therefore consider it appropriate for the 2019 DAU to provide for:

- the QCA to consult with the parties to any arbitration regarding a form of the final QCA or arbitrator determination (and associated reasons) that is appropriate for publication
- a process for parties to request, and for DBCTM to provide, a copy of any public version of determinations and reasons to third parties.

- 41 The QCA also considered that arbitration outcomes should be provided to existing users:<sup>19</sup>

DBCTM's 2019 DAU only provides for information on arbitrated outcomes to be given to access seekers. As periodic reviews of access charges will occur under access agreements, we consider that access holders should also be able to request information on arbitrated outcomes from DBCTM, so that they are similarly informed on arbitrated outcomes when entering into negotiations and arbitrations under their access agreements. Our proposed amendments will require DBCTM to either publish on its website, or make available upon request by any person, a copy of the determination and reasons for the determination (e.g. cl. 17.5(b) in Box 2). We seek stakeholder views as to their preferred approach to the method of publication.

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<sup>17</sup> QCA Draft Decision, p. 71

<sup>18</sup> QCA Draft Decision, pp. 72-73

<sup>19</sup> QCA Draft Decision, p. 73

We consider the provision of arbitrated outcomes in this manner will not limit the scope for negotiations, noting that DBCTM is not obligated to use information determined in prior arbitrations for the calculation of prices for subsequent access seekers.

- 42 The QCA provided potential drafting for these proposed amendments.<sup>20</sup>
- 43 The QCA also explained its Draft Decision to publish an arbitration guideline that is procedural in nature, providing guidance for parties involved in a dispute as to how the QCA intends to manage such disputes.<sup>21</sup> The QCA provided its draft guideline as Part B of its Draft Decision.
- 44 The QCA noted that it did not consider it appropriate for the arbitration guideline to prescribe the methodology it would apply in an arbitration, noting:<sup>22</sup>

We do not consider that prescribing the methodology for pricing that would apply during an arbitration is necessary to adequately address the concerns we have identified with market power and information asymmetry. We also acknowledge that publishing guideline documents that are overly prescriptive may reduce the prospect of successful negotiated outcomes, or may increase the likelihood that all access agreements will have their access charges determined by arbitration.

- 45 The QCA also noted that it may from time to time revise the guideline, and where substantive changes are proposed it would conduct appropriate consultation.<sup>23</sup>

#### **DBCTM response to QCA Draft Decision**

- 46 As explained below:
- 46.1 DBCTM considers that provision of detailed information regarding arbitration to access seekers could undermine the negotiate/arbitrate process, with the TIC determined at risk of being interpreted as a de facto reference tariff.
- 46.2 DBCTM supports the QCA's Draft Decision not to include a prescriptive pricing methodology in the arbitration guideline.

#### *QCA's proposal to provide arbitration outcomes to non-participating access seekers*

- 47 Requiring DBCTM to disclose details about the outcomes of arbitrations would create a real disincentive for access seekers and access holders to negotiate with DBCTM, even prior to arbitrations having occurred. Disclosure of arbitrated TICs would likely be interpreted as a de facto reference tariff, prejudicing the likelihood of meaningful commercial negotiations. The provisions of the QCA Act expressly restrict the disclosure of information in circumstances such as this – where the disclosure is likely to damage the commercial activities of the access provider.<sup>24</sup>
- 48 Further, DBCTM considers that arbitrations and their outcomes should remain *private*. The QCA Act confirms the common law position that privacy is a fundamental element of arbitrations by the QCA.<sup>25</sup> That is, arbitrations are private to the parties to the arbitration. This position is consistent with arbitrations under

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<sup>20</sup> QCA Draft Decision, Box 2, pp. 74-75

<sup>21</sup> QCA Draft Decision, p. 76

<sup>22</sup> QCA Draft Decision, p. 76

<sup>23</sup> QCA Draft Decision, p. 76

<sup>24</sup> See sections 101(3) and 127(3) of the QCA Act

<sup>25</sup> QCA Act, section 194(1)

*The Commercial Arbitration Act 2013 (Qld)*,<sup>26</sup> Part IIIA of the *Competition and Consumer Act 2010 (Cth)*,<sup>27</sup> and the common law position as affirmed by the High Court.<sup>28</sup>

- 49 The concept of privacy of arbitrations is a separate and distinct concept to that of confidentiality in arbitrations. The concept of privacy means that only parties to the arbitration participate in the arbitration and that the proceedings are not public. Whereas confidentiality under the relevant provisions of the QCA Act is in relation to inter partes confidentiality. The concept of confidentiality under the QCA Act does not derogate from the fundamental element of the privacy of arbitrations (i.e. that arbitrations and the outcomes should be limited to the parties to arbitration).
- 50 This being said, DBCTM understands the QCA's concerns regarding the information asymmetry that may occur where DBCTM has been party to an arbitration and the other party has not.
- 51 This is why DBCTM has previously proposed to provide some information regarding arbitration outcomes to access seekers. DBCTM considers that access seekers are the class of users that are most likely to be disadvantaged by any potential information asymmetry regarding arbitration outcomes, given they are unlikely to have participated in previous arbitration or QCA regulatory processes.

*The appropriate scope of information regarding arbitration outcomes to be provided to access seekers*

- 52 When DBCTM proposed the amendments to the 2019 DAU to require DBCTM to provide information to access seekers as part of its Indicative Access Proposal, it did so on the basis that this was likely to be the most useful information for Access Seekers. It was not intended to limit the transparency of QCA arbitration outcomes.
- 53 In light of the QCA's concerns regarding the scope of information provided to access seekers regarding arbitration outcomes, DBCTM has revisited the information that it proposes to provide to access seekers to ensure that access seekers are well placed to engage in effective negotiations and are not disincentivised from doing so.
- 54 DBCTM proposes to provide additional information regarding the outcomes of arbitrations determined by the QCA as set out below. However, DBCTM does not consider it appropriate to provide information regarding the Initial TIC determined by the arbitrator. Providing information regarding the initial TIC or any information that discloses a charge or component of a charge will provide a strong disincentive on parties to negotiate and will risk becoming interpreted as a de facto reference tariff.
- 55 However, to address the QCA's concerns DBCTM proposes that key information regarding principles and methodologies of the determination be adopted consistent with other regulatory regimes for arbitrations. Specifically, DBCTM considers that it should be required to provide a summary of key information on the following aspects of the QCA's determination (where relevant) (as adopted from section 44ZNB(3) of the *Competition and Consumer Act 2010 (Cth)*):
- 55.1 the principles the QCA applied in making the determination;
  - 55.2 the methodologies the QCA applied in making the determination;
  - 55.3 how the QCA took into account the matters mentioned in subsection 120(1) of the QCA Act in making the determination; and
  - 55.4 any matter the QCA took into account under subsection 120(2) in making the determination and the reasons for doing so.

<sup>26</sup> See, for example, *Commercial Arbitration Act 2013 (Qld)*, section 27E and section 2 – definition of 'confidential information'

<sup>27</sup> Section 44ZD CCA

<sup>28</sup> See, *Esso Australia Resources Ltd v Plowman (1995) 183 CLR 10*

- 56 DBCTM considers that this arbitration outcome information, coupled with the significant amount of other information which DBCTM is required to provide (including the explicit provision that an access seeker can ask the QCA for advice or directions in relation to information provided),<sup>29</sup> will provide access seekers with a strong basis to enter into effective negotiations with DBCTM, without undermining incentives to negotiate.
- 57 DBCTM submits that this information should be provided on a strictly confidential basis, in order to mitigate the risk of the disincentive referred to above.
- 58 DBCTM considers that this approach will be more appropriate than that suggested in the QCA's proposed drafting, as it will allow DBCTM to provide the key information needed to inform negotiations without providing the full determination.
- 59 This approach is similar to that applied under the negotiate/arbitrate regime set out in Part 23 of the National Gas Rules (**NGR**), which requires that only key information is shared, and the detail of any arbitration is otherwise kept confidential including tariffs and prices determined under arbitration. Specifically the key information to be disclosed to access seekers under the NGR is:<sup>30</sup>
- 59.1 the non-scheme pipeline the subject of the arbitration;
  - 59.2 with the consent of the prospective user, the parties to the access dispute;
  - 59.3 the name of the arbitrator who made the final access determination; the time elapsed between the access dispute being referred to the arbitrator and the making of the final access determination;
  - 59.4 which of the pipeline services offered on the non-scheme pipeline was the subject of the access dispute; whether the prospective user has given notice that it wishes to enter into an access contract in accordance with the final access determination; and
  - 59.5 if the final access determination includes a determination with respect to asset valuation, the valuation method adopted, the assets to which the valuation applied and the determination of the asset value.
  - 59.6 DBCTM notes that the Draft Decision refers to the Final Determination in the Port of Newcastle access dispute<sup>31</sup> under the national access regime, in support of its proposed approach of disclosing arbitration outcomes.<sup>32</sup> However, DBCTM understands that in that case the full determination was released with the consent of both parties to the arbitration, on the basis that its disclosure would not harm their commercial interests. This approach is consistent with the proposed changes to the 2019 DAU which allow for disclosure of arbitration outcomes with the consent of the parties.<sup>33</sup> As such, this is not an appropriate measure for the level of disclosure permitted under the National Access Regime.
- 60 Further, this approach is consistent with the approach under section 44ZNB(3) of the CCA which lists the matters that the ACCC arbitration report must contain, namely:
- 60.1 the principles the Commission applied in making the determination;
  - 60.2 the methodologies the Commission applied in making the determination and the reasons for the choice of the asset valuation methodology;
  - 60.3 how the Commission took into account the matters mentioned in subsection 44X(1) in making the determination;

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<sup>29</sup> 2019 DAU, section 5.5(j)

<sup>30</sup> See NGR Rule 581

<sup>31</sup> ACCC, Final determination: Statement of reasons, Access dispute between Glencore Coal Assets Australia Pty Ltd and Port of Newcastle Operations Pty Ltd, 18 September 2018

<sup>32</sup> QCA Draft Decision, p. 73

<sup>33</sup> See section 17.4 of the marked up 2019 DAU in Appendix 6

- 60.4 any matter the Commission took into account under subsection 44X(2) in making the determination and the reasons for doing so;
- 60.5 any information provided by the parties to the arbitration that was relevant to those principles or methodologies;
- 60.6 any implications the Commission considers the determination has for persons seeking access to the service or to similar services in the future;
- 60.7 if applicable—the reasons for the determination dealing with matters that were already agreed between the parties to the arbitration at the time the access dispute was notified; and
- 60.8 if applicable—the reasons for the access dispute being the subject of a joint arbitration hearing under section 44ZNA despite the objection of a party to the arbitration

### *Providing arbitration outcomes to existing users*

- 61 While DBCTM considers that it may be appropriate for access seekers to be provided with key information regarding arbitration outcomes as outlined above, DBCTM does not agree with the QCA's Draft Decision that arbitration outcomes should be provided to existing users.
- 62 DBCTM considers that the risk that providing arbitration outcomes will act as a disincentive to negotiate is more pronounced for existing users. In DBCTM's initial meetings with individual users, some have expressed a genuine concern that while they are open to bilateral negotiation, the risk that a price will be published at some future point is a material consideration. Existing users and their individual representatives perceive that they potentially stand to be embarrassed by the publication of an arbitrated price at a level below that determined through negotiation, and may therefore be reluctant to reach a binding agreement with DBCTM. That is, the mere risk a subsequently published arbitrated price could be lower than an agreed price creates a disincentive to negotiate. This is not considered by some to be a symmetrical risk – in that the benefit of agreeing a lower price than that potentially published as an arbitrated outcome is not considered to outweigh the perceived risk of agreeing a higher price.
- 63 More generally, DBCTM considers that the pricing reviews under the existing user agreements should be governed by the existing contractual terms entered into between the parties. DBCTM does not consider it appropriate for the QCA to introduce additional obligations on DBCTM that do not relate to the provision of access to access seekers, but rather concern the ongoing terms of access applicable under an existing contractual agreement.
- 64 It is fundamental to the very nature of an *access* undertaking, that any obligations relate to the provision of access to access seekers.
  - 64.1 This is reflected in section 137 of the QCA Act which sets out what the contents of an access undertaking may include. Section 137(2)(b) specifies that an access undertaking may include details of information to be given to *access seekers*. While the list in section 137(2) is non-exhaustive, the inclusion of 'information to be given to access seekers' and exclusion of any equivalent provision for existing users clearly indicates that Parliament did not envisage that information requirements would apply to existing users.
  - 64.2 This principle is also reflected in the section 138 factors which the QCA must have regard to in determining whether a draft access undertaking is appropriate for approval. The section 138 factors clearly require the QCA to consider the interests of the owner or operator of the service and persons who may seek access to the service. However, there is no such requirement for the QCA to consider the interests of existing users. DBCTM acknowledges that it is possible that there may be some circumstances where it would be appropriate to have regard to the interests of existing users, and section 138(h) allows for the QCA to have regard to any other matter that it considers relevant. However, that discretion should only be exercised *where relevant*. DBCTM submits that the interests of existing users will only be relevant to the

consideration of an *access* undertaking, where they have a direct bearing on the interests of access seekers.

### *Sharing outcomes of non-TIC related arbitration determinations*

- 65 The QCA noted that its proposed amendments relate only to providing arbitration determinations relating to the TIC and sought stakeholder views on whether this clause should be broadened to include all arbitration determinations.<sup>34</sup>
- 66 DBCTM does not consider that it should be required to share the outcomes of arbitration determinations unrelated to the TIC. Such arbitrations are likely to be rare, and relate to issues specific to a particular user or access seeker. DBCTM does not consider that sharing the outcomes of such arbitrations is necessary to facilitate effective negotiations more generally.

### *Arbitration Guidelines*

- 67 DBCTM supports the QCA's Draft Decision to publish an arbitration guideline and considers that it will help facilitate an effective and efficient arbitration process.
- 68 DBCTM also supports the QCA's Draft Decision not to include a prescriptive pricing methodology. As previously submitted, a guideline document which prescribed the methodology that the QCA must apply:<sup>35</sup>
- 68.1 could have the effect of the QCA predetermining issues not currently before it, and preclude the ability of the QCA to decide an arbitration having regard to the relevant facts of the dispute;
  - 68.2 would reduce the prospect of successful negotiated outcomes and increase the likelihood that all access agreements will have their access charges determined by arbitration; and
  - 68.3 is at odds with guidelines from other regulators that arbitrate access disputes under negotiate-arbitrate regimes. Those regulators adopt approaches to drafting arbitration guidelines that are focused on principles and process.
- 69 DBCTM considers that it is appropriate that the guidelines are guidelines only, and are not binding on the QCA. While DBCTM considers that the guidelines provide a good process for the conduct of an effective and efficient arbitration, and expects that the QCA will in most circumstances apply the guidelines, retaining the flexibility to depart from the guidelines will ensure the QCA is not forced to adopt a process that is not fit-for-purpose.

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<sup>34</sup> QCA Draft Decision, p. 73

<sup>35</sup> See DBCTM April 2020 Submission, Section 5

### 3.4 Implementation of the pricing model within the 2019 DAU

#### Summary of amendments to implement the pricing model within the 2019 DAU

- 70 The QCA's Draft Decision explains its concerns that access seekers may need to enter into access agreements before a TIC has been agreed or arbitrated. DBCTM explains in this section why this uncertainty does not adversely affect the interests of access seekers in a material way.
- 71 Notwithstanding DBCTM's view that the uncertainty faced by these access seekers is immaterial to access seekers' operations, DBCTM has proposed amendments to address the QCA's concern. The table below summarises the key amendments that DBCTM proposes to make to the 2019 DAU to effectively implement the 2019 DAU pricing model.

**Figure 5: Summary of key proposed changes to 2019 DAU to effectively implement the 2019 DAU Pricing Model**

Proposed amendment	DBCTM Comment
<b>April 2020 Proposed Amendments</b>	
Information provided as part of Indicative Access Proposal	As explained above, in its April 2020 response to the Interim Decision DBCTM proposed to introduce extensive new prescriptive information requirements which require DBCTM to disclose a suite of forecast information in a pre-determined format.  This information is to be provided when DBCTM provides an indicative access proposal to an access seeker, under section 5.5 of the 2019 DAU, and will inform access seekers decisions to execute binding access agreements as part of the notifying access seeker process.
<b>October 2020 Proposed Amendments</b>	
Providing information on expected Expansion Pricing Approach as part of Conditional Access Agreement process	DBCTM proposes to introduce a requirement to provide information regarding the Expansion Pricing Approach that DBCTM considers appropriate to apply to the expansion, when commencing the conditional access agreement process under section 5.4(l). This will enable access seekers to form a preliminary view on pricing matters
Ability to terminate Conditional Access Agreements prior to commitment to expand	DBCTM proposes to introduce a requirement to include in all conditional access agreements, unless agreed otherwise, an ability for expanding access seekers to terminate the conditional access agreement, once the pricing approach has been determined, but before DBCTM has committed to an expansion

#### QCA Draft Decision

- 72 The QCA's Draft Decision explained that it considered it appropriate for DBCTM to amend the 2019 DAU to provide for a more balanced negotiation process on pricing matters.<sup>36</sup> The key issue of concern to the QCA was that in some circumstances, in order to secure capacity access seekers may need to enter into access arrangements before the access charges for the services were certain, noting:<sup>37</sup>

In making this draft decision, we have sought not to unnecessarily restrict the scope for parties to negotiate the TIC. However, we are concerned that the proposed negotiation arrangements when coupled with the 2019 DAU pricing model, may require an access seeker to enter into a binding access agreement without knowing the likely TIC or whether the access seeker would be able to obtain a TIC (through negotiation or arbitration) that did not exceed the value it placed on that access.

We consider it may be appropriate for the 2019 DAU to provide for a more balanced negotiation process on pricing matters.

- 73 Rather than set out how the QCA considered the 2019 should be amended it noted that there may be various ways to provide for a more balanced negotiation process and sought stakeholder views on the

<sup>36</sup> QCA Draft Decision, p. 82

<sup>37</sup> QCA Draft Decision, p. 81

appropriate form of amendments.<sup>38</sup> The QCA set out a number of possible amendments which could potentially achieve this:<sup>39</sup>

- Providing for access seekers to be better informed on pricing matters before access agreements are to be signed, either through delaying the signing of agreements until negotiations on price have occurred or providing sufficient information to access seekers upfront so they can form a view on the reasonable TIC. In the case of conditional access agreements, while the ability of access seekers and DBCTM to negotiate a TIC prior to a QCA price ruling may be limited, a proposed pricing approach could be outlined by DBCTM enabling access seekers to form at least a preliminary view on pricing matters.
- Enabling access seekers to have more scope to terminate an access agreement if the negotiation-arbitration process does not deliver a TIC that is acceptable to the access seeker.
- Providing additional certainty as to how we are to conduct arbitrations under these binding agreements. We note that such an approach may limit scope for negotiation on pricing matters.

## DBCTM Response

### *Problem definition*

74 DBCTM does not necessarily agree with the QCA's articulation of the problem. 'Providing for a more balanced negotiation process' suggests that the uncertainty of entering into an access agreement without a price first being determined affects access seekers but not DBCTM. In fact, this uncertainty affects both parties equally.

75 DBCTM submits that a better definition of the QCA's concern is that there may be a risk that uncertainty regarding the access charges would deter access seekers from entering into access agreements with DBCTM (framed this way, the same risk does not apply to DBCTM as DBCTM *must* enter into access agreements consistent with the process set out in the 2019 DAU in any event).

### *No evidence that uncertainty deters access seekers*

76 However, there is no evidence that this risk would materialise in practice:

76.1 In June 2020 DBCTM entered into conditional access agreements with five Access seekers for the full capacity of the 8X terminal expansion. An example of an executed conditional access agreement is set out in Appendix 5.<sup>40</sup> The example clearly shows that the conditional access agreements provide no certainty as to the charges that would apply for expanding access seekers. Despite this, DBCTM has successfully executed conditional access agreements with access seekers for all of the capacity that will be delivered by the 8X terminal expansion, demonstrating that a lack of certainty regarding access charges is not a material deterrent to access seekers entering into conditional access agreements.

76.2 In fact, all previous expansions have been undertaken without certainty as to access charges. The access undertakings applying to the 7X expansion phase 1 (completed in 2008) and phase 2/3 (completed in 2009), have all required access seekers to enter into conditional access agreements prior to the QCA determining the access charges for the expansion.

76.3 Finally, all existing users have successfully entered into access agreements without certainty as to future access charges. Even when a reference tariff has been in place, the maximum timeframe that a reference tariff has historically been applied is a pricing period of 5 years.

<sup>38</sup> QCA Draft Decision, p. 82

<sup>39</sup> QCA Draft Decision, p. 81, 82

<sup>40</sup> DBCTM notes that all executed conditional access agreements are substantially the same as the example set out at appendix 5.

Following this, access charges have been subject to a pricing review as per clause 7.2 of the existing user agreements. There is no evidence that this uncertainty has deterred existing users from entering into these long-term commitments to use capacity at DBCTM.

77 DBCTM also reiterates that some uncertainty is simply part of the commercial reality for all businesses. Uncertainty regarding the range of access charges that would be arbitrated by the QCA is not sufficient to materially prejudice the interests of access seekers.

*Why does uncertainty arise in these processes?*

78 As explained by the QCA, the 2019 DAU contemplates two scenarios in which an access seeker may need to enter into an access agreement before an initial TIC has been determined.<sup>41</sup>

79 In the case of an expansion, an access seeker will enter into a conditional access agreement which will not specify the initial TIC to apply.

79.1 This is necessary in order to ensure that expanding access seekers are committed to an expansion, so that an expansion can be funded and undertaken, and so that DBCTM can execute the process set out in cl 20(b) of the existing user agreements and avoid wasted investment in feasibility studies in cases where capacity could become available without an expansion. It also recognises that the final costs of the expansion will not be confirmed at the time where a commitment is needed from expanding access seekers in order to progress the expansion. Instead, the conditional access agreement process allows for the TIC to be negotiated or arbitrated following the expansion when there is greater clarity regarding the prudent and efficient costs of expansion.

79.2 To mitigate the uncertainty involved in the conditional access agreement process, DBCTM introduced a new process to the 2019 DAU whereby the parties would agree to an 'Expansion Pricing Approach' before the commencement of an expansion. An Expansion Pricing Approach is defined broadly to mean the dollar amount, formula, mechanism or process for setting an Initial TIC, which will be applied to determine the Initial TIC for a Terminal Component, following a Terminal Capacity Expansion. This provides the parties with sufficient flexibility to agree to an approach that will enable access seekers to confidently enter into a Conditional Access Agreement, and for DBCTM to progress an expansion. In circumstances where agreement on the Expansion Pricing Approach is not possible, the determination of the Expansion Pricing Approach may be referred for arbitration by the QCA.

79.3 DBCTM considers that the Expansion Pricing Approach mechanism is an effective and pragmatic way to reduce the uncertainty faced by both DBCTM and expanding access seekers.

79.4 [Redacted]

80 The other scenario where an Access Seeker may enter into an access agreement prior to the determination of an initial TIC is under the notifying access seeker (**NAS**) process.

80.1 To ensure the efficient operation of the queueing process it is necessary to require access seekers to indicate whether they are prepared to enter into an access agreement in a timely manner once capacity becomes available. DBCTM drafted the 2019 DAU to allow access seekers to enter into agreements before a TIC was determined, with the explicit purpose of protecting access seekers by ensuring that DBCTM has no perceived ability to discriminate between access seekers on the basis of price (by allowing them to enter into an agreement

<sup>41</sup> QCA Draft Decision, p. 80

<sup>42</sup> See Appendix 5

before price is determined, either by negotiation or arbitration).<sup>43</sup> This ensures the ‘first-come, first-serve’ principle that underpins the queuing process is preserved.

- 80.2 As previously indicated, DBCTM is open to improvements to the process. Unfortunately, despite DBCTM’s attempts, the User Group has refused to engage on the substance of how this process could be improved – offering no substantive suggestions, and only submitting that the negotiate/arbitrate model should be rejected outright.
- 80.3 The most apparent alternative to DBCTM’s adopted approach would be to amend the NAS process so that every access seeker in the queue has the opportunity to negotiate and arbitrate an initial TIC, before DBCTM executes access agreements. DBCTM submits that this could be immensely time consuming, inefficient and ultimately unworkable.
- 80.4 Of course, the NAS process does not prevent access seekers and DBCTM from agreeing the initial TIC to apply, prior to the execution of access agreements.

### *Amendments will be inconsequential in practice*

- 81 DBCTM notes that access agreements and conditional access agreements have already been signed for all capacity that will possibly be available in the upcoming regulatory period. As such, DBCTM submits there is no clear case for making additional changes beyond those proposed by DBCTM above, as they will have no practical effect (as it is highly unlikely that additional access agreements or conditional access agreements will be executed during the regulatory period). As such, any further amendments would be inconsequential.
- 82 DBCTM notes that section 138(5) of the QCA Act provides that:<sup>44</sup>

The authority may not refuse to approve a draft access undertaking only because the authority considers a minor and inconsequential amendment should be made to a particular part of the undertaking.

### *Proposed amendments to address the QCA’s concerns*

- 83 Notwithstanding DBCTM’s position that changes are not needed to provide for a more balanced negotiation process on pricing matters, and that the practical impact of any amendments would be minor and inconsequential, to address the QCA’s concerns DBCTM has proposed amendments to provide additional information to access seekers.
- 84 The QCA suggested three possible approaches to addressing the its concern. Of those approaches, DBCTM considers that only the first and second approach are workable in practice. DBCTM’s proposed amendments are therefore directed at those approaches.
- 85 The first approach involves providing for access seekers to be better informed on pricing matters before access agreements are to be signed.
- 85.1 DBCTM considers that DBCTM’s proposed amendments to the 2019 DAU will ensure that Notified Access seekers will have sufficient information to be able to form a view on what would be a reasonable TIC. Proposed sections 5.5(d)(7) and (8), along with existing sections 5.5(d)(5) and (6) require DBCTM to provide a significant amount of information to access seekers as part of an indicative access proposal which must be provided within 20 business days of receiving an access application (unless DBCTM gives notice of additional time needed in accordance with section 5.5(b)).
- 85.2 With respect to the expansion process, DBCTM proposes to introduce a requirement to provide information regarding the Expansion Pricing Approach that DBCTM considers appropriate to apply to the expansion, when commencing the conditional access agreement process under

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<sup>43</sup> 2019 DAU, section 5.4

<sup>44</sup> Emphasis added

section 5.4(l). This will assist expanding access seekers to form a preliminary view on pricing matters

- 86 The QCA's second approach concerns enabling access seekers to have more scope to terminate an access agreement if the negotiation/arbitration process does not deliver a TIC that is acceptable to the access Seeker.
- 86.1 With respect to the expansion process, as mentioned above DBCTM has already provided a broad ability for access seekers to terminate their Conditional Access Agreements. However, DBCTM considers that a right to terminate once an expansion has been committed to would create significant additional risk for DBCTM in undertaking an expansion, and would result in an immense disincentive for DBCTM to undertake expansions, such that an expansion would likely be considered unreasonable and uneconomic. DBCTM considers its current approach, which enables the Pricing Approach to be agreed prior to an expansion being commenced provides an appropriate balance between providing expanding access seekers with some certainty of the likely TIC to apply post-expansion and providing flexibility to enable the TIC to have regard to the actual costs of the expansion. DBCTM proposes to introduce an amendment to the 2019 DAU which will require all Conditional Access Agreements to include (unless the parties agree otherwise) an ability for the expanding access seeker to terminate the agreement up until two weeks after the determination of a pricing approach by the QCA, provided the expansion has not already been committed to by DBCTM by submitting a terminal capacity expansion application. This termination right will not apply where the parties agree to a Pricing Approach, on the expectation that an expanding access seeker would not agree to a Pricing Approach which would lead it to terminate the agreement.
- 86.2 While DBCTM is in principle open to allowing access seekers to terminate their access agreements in circumstances where the parties were unable to agree to an initial TIC and the access seeker is not satisfied with the arbitrated outcome, DBCTM is concerned that this would result in all access seekers in the queue signing access agreements as part of the NAS process, as it would be a free option, with the ability to terminate later on the ostensible basis that the arbitrated outcome was not satisfactory. Given this, DBCTM considers that no amendments should be made to allow Notified Access Seekers to terminate their agreements.
- 87 Finally, the QCA suggested that it could provide additional certainty as to how it would conduct arbitrations. As identified by the QCA, this would significantly limit the scope for commercial negotiations on pricing matters, and undermine the operation of the negotiate/arbitrate pricing model. In any event, DBCTM considers that protections outlined above are adequate to ensure that access seekers are not unduly deterred from entering into access agreements where the initial TIC is yet to be determined.

## 4 Feedback on specific issues requested by the QCA

### 4.1 Summary

88 This section sets out DBCTM's responses to a number of issues which the QCA requested specific feedback on. The QCA's questions and a high level overview of DBCTM's response is set out in the table below.

**Figure 6: Summary of DBCTM responses to QCA feedback questions**

QCA Question for stakeholders	DBCTM response
<p><b>The appropriate methodology to estimate depreciation costs</b></p> <p>Our draft decision is to require DBCTM to provide information on depreciation based on an approved methodology to be assessed transparently as part of this 2019 DAU assessment process. We seek stakeholder views on the appropriate methodology for DBCTM to apply when calculating depreciation.</p>	<p>DBCTM agrees with the QCA that the specification of an approved depreciation methodology is preferable to providing asset specific information to access seekers.</p> <p>DBCTM has proposed a simplified approach to calculating depreciation in order to facilitate the negotiation process with access seekers, and provide greater transparency.</p>
<p><b>TIC update - Schedule C of the 2019 DAU</b></p> <p>We seek stakeholder views on DBCTM's proposed approach for updating the TIC during the regulatory period, including the merits or otherwise of removing schedule C (or elements of schedule C) from the 2019 DAU</p>	<p>The parties can negotiate tailored approaches to updating the TIC on a case-by-case basis, but DBCTM considers that the tried and tested provisions in the 2019 DAU provided an effective starting point for negotiation and should be retained.</p>
<p><b>Price review processes</b></p> <p>The 2019 SAA and existing user agreements provide for the periodic review of access charges. We seek stakeholder views on the way in which the various price review processes will operate and interact in the absence of a reference tariff.</p>	<p>DBCTM considers that the existing user agreements, the 2019 DAU and 2019 DAU SAA provide scope for the arbitrator to take into account the terms of the final access undertaking effective for the relevant pricing period in determining price review disputes, when that undertaking has been determined.</p>
<p><b>The appropriate value of the remediation cost estimate</b></p> <p>Our draft decision considers it appropriate for the QCA to assess the remediation cost estimate to apply for the 2019 DAU period. We seek stakeholder views on the appropriate remediation cost estimate.</p>	<p>DBCTM engaged GHD to respond to the material variances in Table 3 of the Draft Decision (<b>GHD Response</b>),<sup>45</sup> which should address the QCA's concerns. DBCTM has also included its recommendations for the way forward in section 4.5</p>
<p><b>Non-pricing provisions</b></p> <p>Noting the DBCT User Group's view that pricing and non-pricing provisions in the 2019 DAU are closely connected and should be considered as a package, we seek stakeholder views about the appropriateness of the non-pricing provisions, in light of our draft decision to approve a pricing model without a reference tariff.</p>	<p>DBCTM has worked through the issues raised by the QCA and User Group methodically in order to exhaustively address these issues. The amendments to address these issues are set out in Appendix 1.</p>

### 4.2 The appropriate methodology to estimate depreciation costs

#### QCA Draft Decision

89 One of the amendments the QCA considers is required in order for the 2019 DAU to be appropriate to be approved concerns the provision of information on depreciation. The QCA has suggested that DBCTM should provide information on depreciation based on an approved methodology to be assessed transparently as part of the 2019 DAU.<sup>46</sup> The QCA has sought further submissions on the matter.<sup>47</sup>

<sup>45</sup> Refer Appendix 2 – GHD Advisory – Response to QCA's draft decision on 2019 DAU

<sup>46</sup> QCA Draft Decision, p. 13

<sup>47</sup> QCA Draft Decision, p. 66

As part of the information provision requirements, DBCTM is to provide depreciation values to access seekers, determined by applying its specified methodology for calculating depreciation of the RAB. The methodology it is proposing to calculate depreciation relies on assumptions that differ from those applied in previous access undertakings for the service at DBCT (for instance, aligning the asset life with the length of DBCTM's Terminal lease).

- 90 The Draft Decision explained the QCA's view that access seekers would have limited scope to make an informed assessment of an alternative depreciation value based on the information DBCTM proposed to provide under the 2019 DAU. The QCA noted:<sup>48</sup>

Requiring DBCTM to provide the underlying asset information to access seekers would overcome this issue, enabling access seekers to apply an alternative approach for calculating depreciation if they wish to do so.

- 91 The QCA also noted that providing the underlying asset information to access seekers would enable them to apply an alternative approach to calculating depreciation, but that an expectation that access seekers would form a view on depreciation based on this information during negotiations would place an additional time (and cost) burden on access seekers, in the timeframes provided in the 2019 DAU for negotiating access.<sup>49</sup>

## DBCTM's response

### Summary

- 92 DBCTM proposes to amend the approach it applies to calculate depreciation for the purposes of providing asset base and depreciation information to access seekers as part of an indicative access proposal.
- 93 Rather than calculating depreciation based on asset information for hundreds of individual assets (as DBCTM has done under previous access undertakings), DBCTM proposes to simplify the calculation by grouping the values of these individual assets into 6 asset groups, based on their remaining asset lives. DBCTM will then depreciate each of these groups based on a proxy asset life for the group, applying a similar methodology to that which was applied by the QCA in determining the reference tariff under the 2017 AU.
- 94 While DBCTM is proposing to aggregate the asset life information for the purposes of calculating depreciation, it will actually provide access seekers with more disaggregated information – regarding DBCTM's asset base and depreciation values – than previously proposed. DBCTM had previously proposed to provide a single value for its asset base and depreciation in each financial year, which could have made it difficult for access seekers to scrutinise DBCTM's approach. DBCTM's proposed asset grouping approach, enables access seekers to assess DBCTM's approach to calculating depreciation, and the roll forward of the asset base, without the unnecessary complexity of doing so at an individual asset level.
- 95 As illustrated below, DBCTM's proposed approach does not materially alter the depreciation profile of the terminal assets as compared to the 2017 AU.

### Providing aggregated asset information

- 96 The QCA correctly notes that under the 2017 AU, depreciation was determined from the remaining lives of hundreds of different assets, each with different asset lives and installation dates.<sup>50</sup>

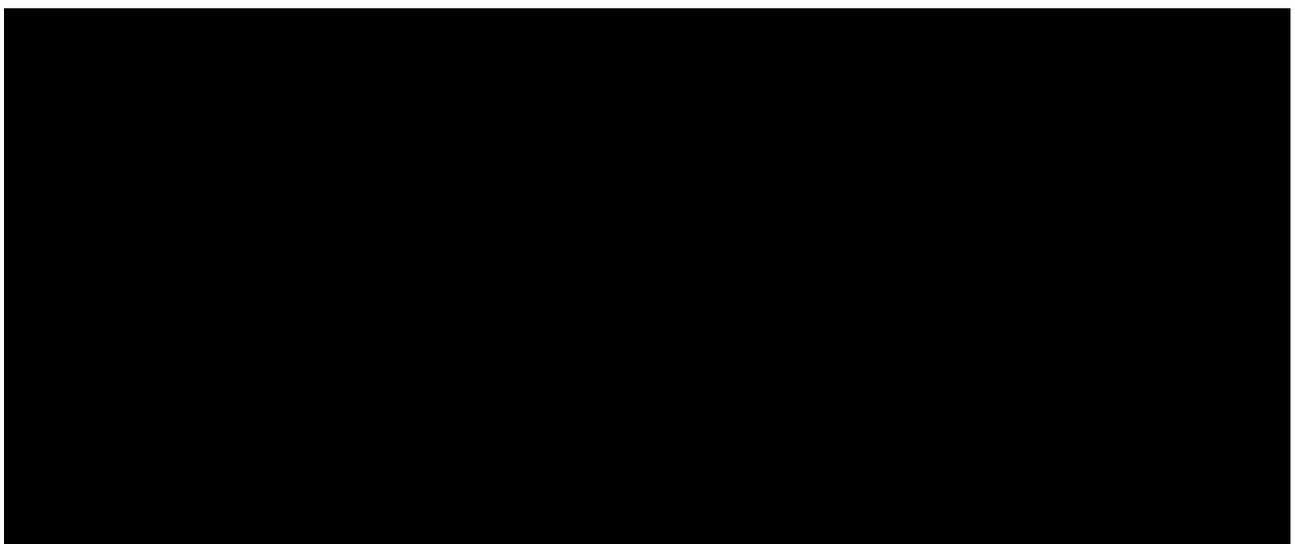
<sup>48</sup> QCA Draft Decision, p. 66

<sup>49</sup> QCA Draft Decision, p. 66

<sup>50</sup> QCA Draft Decision, p. 66

- 97 However, rather than providing such granular information to access seekers, which the QCA acknowledges may place an additional time (and cost) burden on access seekers, DBCTM proposes to provide a simplified set of asset information by grouping the hundreds of assets which comprise the terminal into 6 broad categories.
- 98 This approach will enable access seekers to quickly, easily and accurately calculate depreciation costs and will remove any complexity that would be associated with providing full depreciation schedules comprised of hundreds of individual assets. Further, this approach will deliver a depreciation profile substantially similar to that which would apply under the 2017 AU.
- 99 DBCTM proposes to group all existing assets into 6 broad categories based on their remaining useful lives (as determined by using the asset lives approved by the QCA under previous access undertakings) as at 1 July 2021. Specifically:
- 99.1 **(Asset Group 1)** Remaining asset lives of up to 2 years;
  - 99.2 **(Asset Group 2)** Remaining asset lives of between 2 and 10 years;
  - 99.3 **(Asset Group 3)** Remaining asset lives of between 10 and 15 years;
  - 99.4 **(Asset Group 4)** Remaining asset lives of between 15 and 20 years;
  - 99.5 **(Asset Group 5)** Remaining asset lives of between 20 and 25 years; and
  - 99.6 **(Asset Group 6)** Remaining asset lives of greater than 25 years.
- 100 DBCTM will provide asset base information based on each of these asset groups and, for the purposes of calculating depreciation, each asset group will be allocated a proxy remaining asset life and depreciated in accordance with that remaining asset life (see Figure 8). As explained further below, assets with a remaining life of more than 25 years are allocated to asset group 6 and depreciated over 30 years.
- 101 DBCTM intends to provide the depreciation and capital base information required in Schedule I of the 2019 DAU, as illustrated in the tables below for the next five years. The information will be provided to access seekers as part of the ‘current and forecast information’ included in an Indicative Access Proposal.<sup>51</sup> DBCTM notes that it will also provide this information to existing users during negotiations under their existing user agreements.

**Figure 7: Opening Capital Base (\$m)<sup>52</sup>**

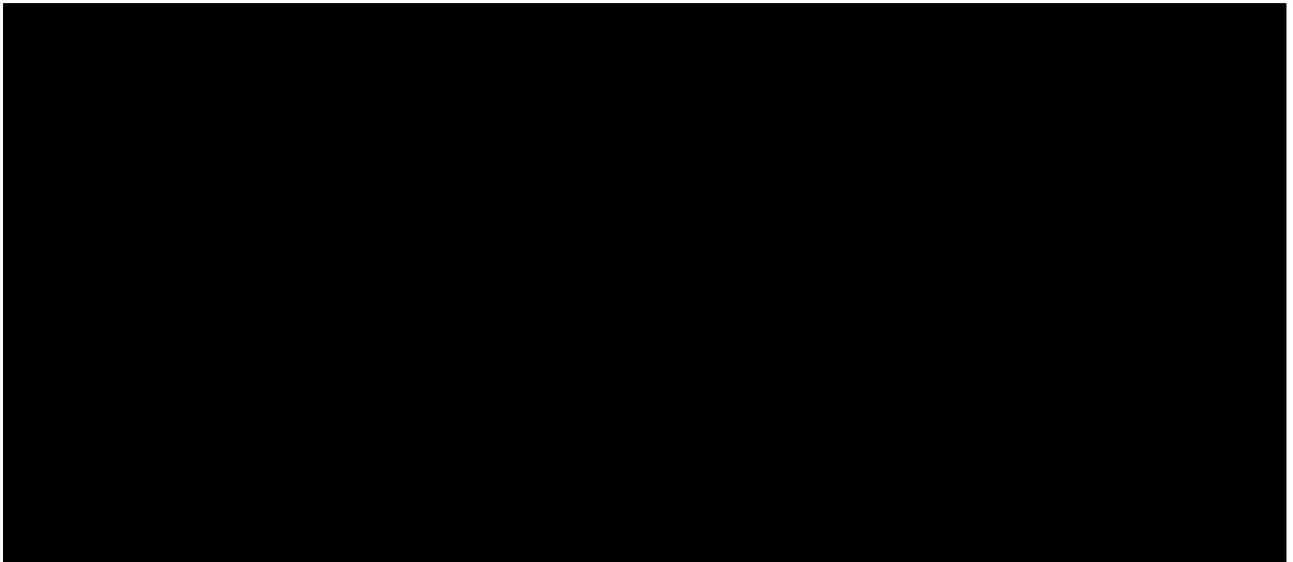


<sup>51</sup> DBCTM’s 23 April 2020 submission, p. 21

<sup>52</sup> Existing assets only – does not include capital additions. Inflation assumed at 0.00% in this table for illustrative purposes

- 102 The opening value of existing assets is ██████████ as at 1 July 2021, which represents:
- 102.1 the Opening RAB that formed the basis of the TIC approved by the QCA on 8 June 2020<sup>53</sup>
  - 102.2 less depreciation in accordance with QCA-approved asset lives for comprising assets
  - 102.3 plus indexation (assumed to be the same as the default inflation rate).
- 103 Each year the capital base will be indexed. As noted by the QCA in the Draft Decision,<sup>54</sup>
- DBCTM specifies the methodology it will apply to determine outturn inflation for the preceding period. Access seekers are able to verify this information as it is publicly available
- 104 Further detail regarding the carrying values of all existing assets comprising the RAB is issued annually in accordance with section 10.1 of the 2017 AU. The Regulatory Accounts Report for Financial Year 2019-20 was provided to all users in October 2020

**Figure 8: Depreciation (\$m)<sup>55</sup>**



### Aligning asset life with lease length

- 105 DBCTM proposes that depreciation of Asset Group 6 (which includes all assets with remaining lives greater than 25 years) is subject to truncation of 30 years to the end of DBCT's lease term (2051). Historically these assets were truncated at the shorter of the asset's useful life and 2054. DBCTM considers 2051 the more appropriate date, for the following reasons:
- 105.1 The simplified depreciation approach proposed ensures that medium-term impacts on depreciation values do not result in higher depreciation values than would've been calculated by the prior methodology.
  - 105.2 It represents the contractual expiry of DBCTM's lease (15 September 2051). Whereas, the current truncation to 2054<sup>56</sup> is based on the QCA's previous assessment of DBCT's economic life. For modelling simplicity, DBCTM proposes that June 2051 is the reference point for depreciation.

<sup>53</sup> [https://www.qca.org.au/wp-content/uploads/2019/05/qca-letter-dbctms-2020-21-arr\\_-reference-tonnage-and-2019-20-necap.pdf](https://www.qca.org.au/wp-content/uploads/2019/05/qca-letter-dbctms-2020-21-arr_-reference-tonnage-and-2019-20-necap.pdf)

<sup>54</sup> QCA Draft Decision, p. 62

<sup>55</sup> Existing assets only – does not include capital additions. Inflation assumed at 0.00% in this table for illustrative purposes

<sup>56</sup> QCA Final Decision, November 2016, p. 124

- 105.3 An economic life to 2054 assumes that DBCTM will extend the lease, of which there is no certainty. In its response to the QCA in 2016, DBCTM submitted that:<sup>57</sup>
- There is no certainty that the lease will be extended. However, the QCA's draft decision implicitly assumes that DBCTM will extend its lease (noting that this would have to be a 49-year extension option) to recover the remaining RAB value from 15 September 2051 to 30 June 2054. Without this assumption, DBCTM would not be able to recover its return of capital on the RAB over the last three years.
- 105.4 It does not infer a regulatory requirement for DBCTM to renew its lease in order to recover revenue due in the initial lease period. DBCTM will have to assess if extending the lease for another 49 years is in its legitimate business interest, and there is no certainty at this stage that it will occur. The only certainty is the initial lease expiry in 2051.
- As it approaches the lease-end date, DBCTM will have to consider whether taking on the obligations associated with a 49-year extension (e.g. investment obligations in the PSA) is in its business interests... Accordingly, it is not appropriate for the QCA's assumption to be that DBCTM will extend its lease; there is, as discussed above, no certainty the lease will be extended.
- What is certain, however, is that the lease ends on 15 September 2051.<sup>58</sup>
- 105.5 It is commercially appropriate as DBCTM can only recover revenue due to depreciation of Asset Group 6 over the lease period, and is therefore in DBCTM's legitimate business interests:
- If DBCT's economic life is the reference point for calculating depreciation, there is a risk DBCTM may not recover its return of capital on assets over the September 2051 to 30 June 2054 period. This would be inconsistent with the pricing principles and DBCTM's legitimate business interests (ss. 138(2)(g) and (c) of the QCA Act).<sup>59</sup>
- 105.6 It is standard industry practice and an AASB<sup>60</sup> requirement to depreciate over the shorter of the useful life of the asset or the lease period.
- 105.7 It aligns with rehabilitation obligations in the PSA.
- 106 As demonstrated below, the effect of aligning the remaining asset lives with the term of DBCTM's lease is offset by the simplified categorisation of assets into asset groups, such that the aggregate depreciation profile of existing assets remains substantially the same over at least the next two regulatory periods.

### Depreciation methodology

- 107 DBCTM proposes to determine depreciation for the purposes of providing asset base and depreciation information to access seekers, in accordance with the following formula:

D = (OCB + indexation) / AL ; where:

D: Depreciation

OCB: Opening Capital Base

Indexation: OCB x i

i: Inflation

AL: Asset Life (years)

<sup>57</sup> DBCTM Response to QCA's Draft Decision, 8 July 2016, p.32

<sup>58</sup> DBCTM Response to QCA's Draft Decision, 8 July 2016, p.32

<sup>59</sup> DBCTM Response to QCA's Draft Decision, 8 July 2016, p.32

<sup>60</sup> [https://www.aasb.gov.au/admin/file/content105/c9/AASB117\\_08-15.pdf](https://www.aasb.gov.au/admin/file/content105/c9/AASB117_08-15.pdf) p. 9

- 108 Table 3 below is an illustrative example of the depreciation formula, based on Asset Group 2 for the 2021-26 regulatory period and assuming a 2.00% inflation rate:

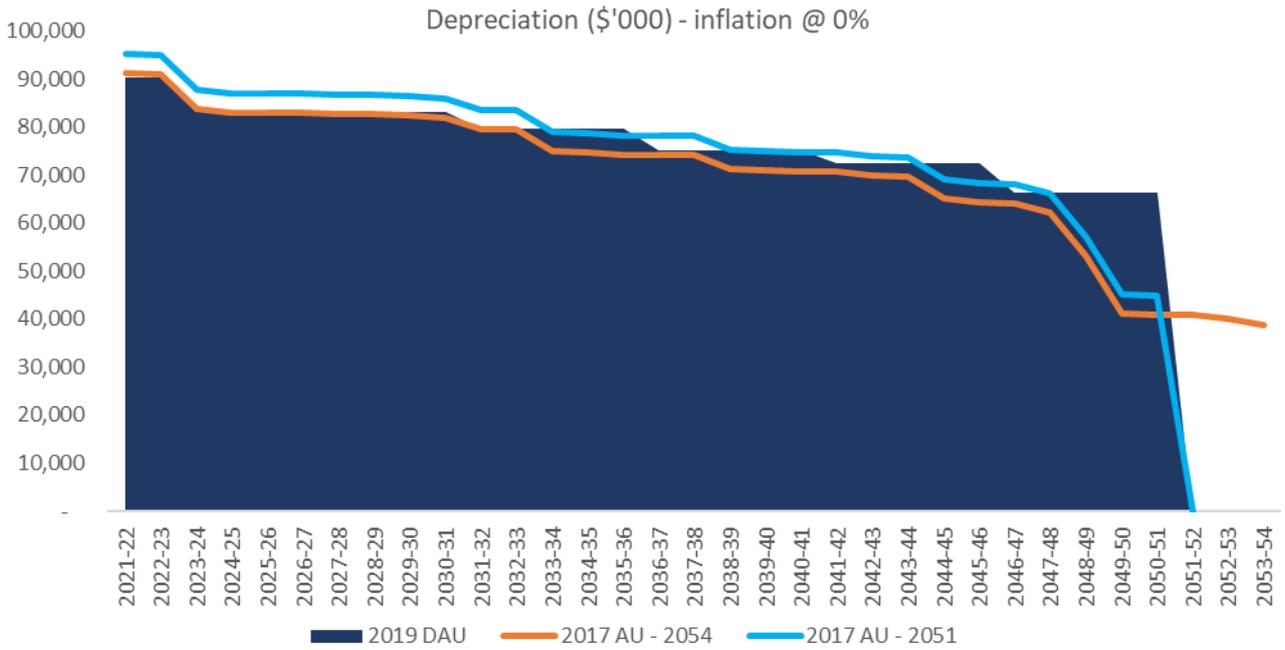
**Figure 9: Application of depreciation formula**

Asset Group 2	2021-22	2022-23	2023-24	2024-25	2025-26
OCB	34.4	31.6	28.7	25.6	22.4
+ Indexation	0.7	0.6	0.6	0.5	0.4
OCB + i	<b>35.1</b>	<b>32.2</b>	<b>29.2</b>	<b>26.1</b>	<b>22.8</b>
/ AL (years)	10.0	9.0	8.0	7.0	6.0
- Depreciation	<b>(3.5)</b>	<b>(3.6)</b>	<b>(3.7)</b>	<b>(3.7)</b>	<b>(3.8)</b>
Closing balance	<b>31.6</b>	<b>28.7</b>	<b>25.6</b>	<b>22.4</b>	<b>19.0</b>

### Impact of the simplified depreciation methodology

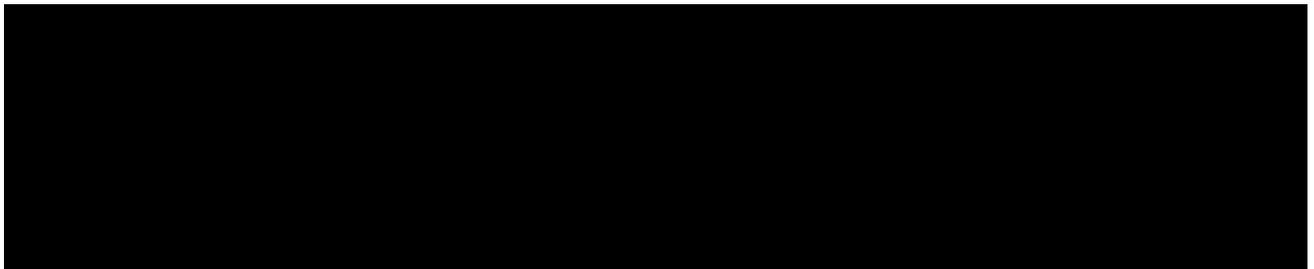
- 109 DBCTM has sought to retain the simplicity of the underlying depreciation formula that has historically applied to the RAB, while removing the complexity associated with hundreds of comprising assets and associated economic lives and installation dates.
- 110 This approach will enable access seekers to quickly, easily and accurately calculate the depreciation charge, due to the fact that it only contains 6 major asset groups and removes any complexity associated with depreciation schedules that are comprised of hundreds of individual assets.
- 111 As discussed earlier, depreciation on Asset Group 6 will be truncated to 2051, being the end of DBCT's lease. The impact of this approach on depreciation of current assets is charted below. The chart illustrates:
- 111.1 the current QCA-approved RAB and depreciation methodology with depreciation truncated to 2054;
- 111.2 the QCA-approved RAB, with depreciation truncated to 2051; and
- 111.3 the 2019 DAU approach (as outlined in this section) with depreciation truncated to 2051.
- 112 The 2017 AU as depreciated to 2051 results in higher annual depreciation than the 2017 AU (to 2054) of ~\$4m per year. The 2019 DAU approach aligns more closely to the current 2017 AU (to 2054) approach, with the former resulting in ~\$1.9m lower depreciation than the current approach.
- 113 The chart below further demonstrates the appropriateness of the proposed approach as compared to the other two. As illustrated below, the 2019 DAU methodology reflects a more gradual reduction over the long term. Inflation has been assumed at 0% in the numbers below to illustrate the impact of depreciation only.

**Figure 10: Comparison of depreciation approaches**



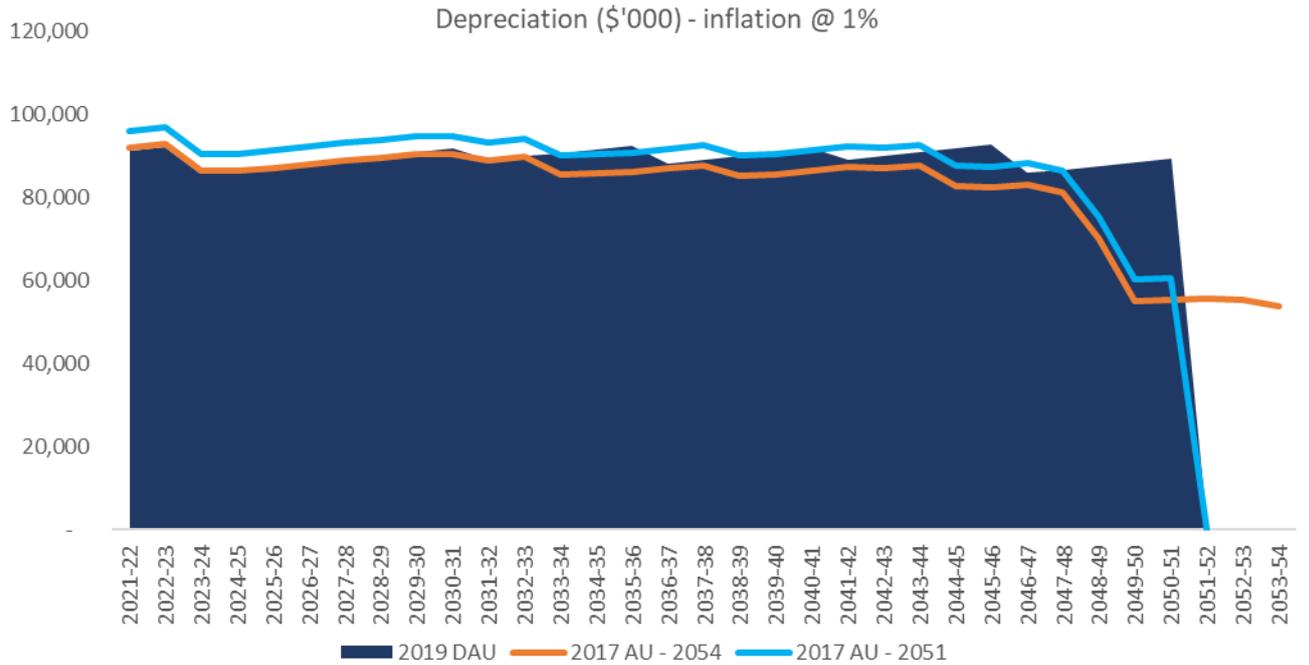
114 Over the next regulatory period, the 2019 DAU calculates depreciation to be lower by \$1.9m compared to the current 2017 AU calculation.

**Figure 11: 2019 DAU vs 2017 AU (2054)**

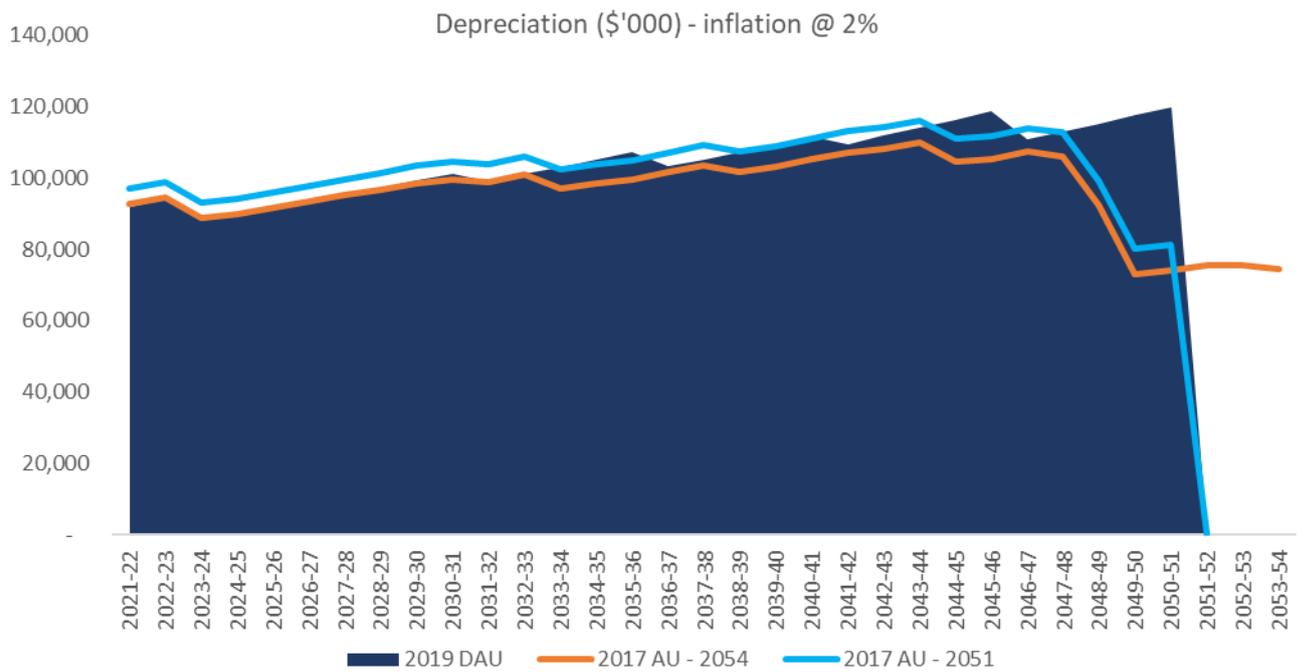


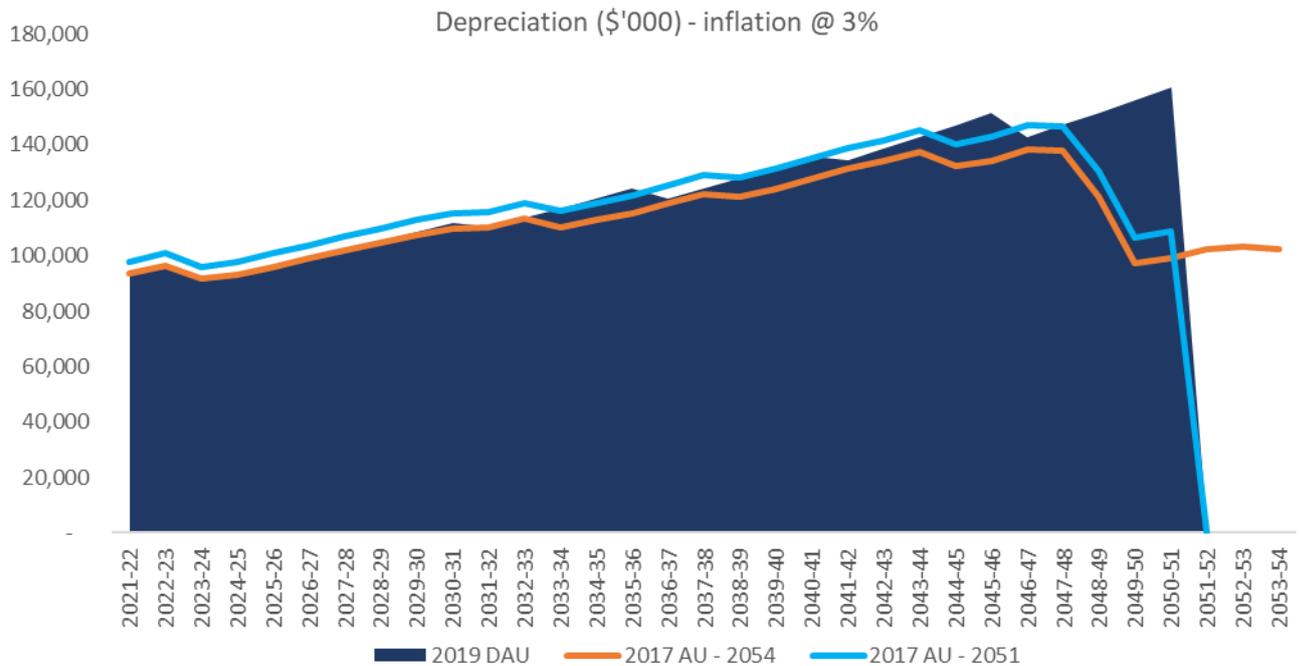
115 DBCTM assessed the impact of a range of inflation outcomes (at 1%, 2% and 3%) on the depreciation methodology as compared to the current 2017 AU approach. The 2019 DAU depreciation profiles per the inflation scenarios are materially similar to the 2017 AU, with the 2019 DAU being ~\$2.0m lower over the next regulatory period in all three scenarios. The results are shown below.

**Figure 12: Depreciation profiles at 1% inflation**



**Figure 13: Depreciation profiles at 2% inflation**



**Figure 14: Depreciation profiles at 3% inflation**

## Future Assets

- 116 Future assets represent capital programs that are completed and handed over to the Operator in the twelve month period ending 31 March every year, with the first occurring on 31 March 2021.
- 117 Under the 2019 DAU, the TIC is adjusted by, among other items, a return of asset (depreciation) on future assets on 1 July each year, with the first adjustment occurring on 1 July 2021.
- 118 In accordance with sections 12.10(b)(2)(A) and 12.10(b)(3) of the 2019 DAU (and in line with historical practice), DBCTM will continue to seek Operator recommendation and unanimous user approval prior to undertaking works.<sup>61</sup> Further, DBCTM will continue to provide written notice under section 12.10(b)(2)(B) to all users whose TIC will be amended by reference to any commissioned NECAP – expressly referring them to their right to object to its inclusion under the section. Finally, in accordance with section 10.1 of the 2019 DAU, DBCTM will provide users with detailed information relating to each new asset’s balance and asset life – in addition to the carrying value of the 6 asset groups previously discussed. DBCTM will provide this information to access seekers to the extent negotiations occur for new access agreements during the regulatory period.
- 119 In the originally proposed 2019 DAU, DBCTM sought to simplify the determination of asset lives for new capital expenditure by defining them to simply be 20 years. DBCTM remains of the view that on balance, this simplified approach is appropriate. However, to align with the approach for existing assets, DBCTM proposes to assign new assets to one of the 6 asset groups, based on their assessed economic lives. The following factors<sup>62</sup> will be taken into account when determining the economic lives of future assets:
- 119.1 The design life to which the asset is constructed.
  - 119.2 The Operator’s major asset replacement program.
  - 119.3 The economic life of the parent asset (if applicable).
  - 119.4 The timing of the actual handover into operation of the asset.

<sup>61</sup> DBCTM may undertake NECAP works in accordance with section 12.10(c) if required

<sup>62</sup> As detailed in DBCT’s 2017 AU – [Modelling DAU](#) of 14 September 2017, p. 11

- 119.5 The physical condition of the asset after inclusion in the RAB, and
- 119.6 If the economic life of the asset extends beyond the initial lease, June 2051.
- 120 These factors ensure that assets are appropriately depreciated.
- 121 Depreciation will be calculated on new assets in the year after their inclusion in the capital base, by applying the same formula as specified above.

## Implementation

- 122 Rather than specifying the depreciation methodology to be applied in the 2019 DAU itself, DBCTM proposes for it to be required to calculate depreciation in accordance with the methodology specified in the QCA's Final Decision on the 2019 DAU.
- 123 DBCTM is happy to discuss its proposed depreciation approach further with the QCA and Stakeholders.

## 4.3 Updating the TIC during the regulatory period

### QCA Draft Decision

- 124 The QCA's Draft Decision asked for stakeholder feedback on the approach to updating the TIC, stating:<sup>63</sup>

While we are of the view that updating the TIC in a clear and transparent manner throughout the pricing period may be reasonable, we seek stakeholder views on the proposed approach for updating the TIC and the specific processes outlined in schedule C.

In this regard, a prescriptive approach as to how a TIC will be updated in the undertaking may limit the scope for negotiation on these matters. Acknowledging that negotiated outcomes on the TIC may take on many forms, we also seek stakeholder views on the merits or otherwise of removing the approach for updating the TIC (or elements of schedule C) from the 2019 DAU.

### DBCTM Response

- 125 DBCTM considers that updating the TIC in a clear and transparent manner, as proposed by the processes in Schedule C of the 2019 DAU, is appropriate.
- 126 The annual amendment of the TIC for inflation<sup>64</sup> ensures that the TIC does not decrease over the course of the pricing period in real terms. This enables parties to focus negotiations on the Initial TIC in real terms. The Review Events effected by Schedule C<sup>65</sup> are designed to operate equitably among all Users. In DBCTM's view, none are particularly controversial and each is designed to provide a baseline for negotiations. For example:
- 126.1 The NECAP Review Event mechanisms are designed to ensure that DBCTM does not face inappropriate incentives (e.g. under- or overinvestment in the terminal) by specifying a clear process for the recovery of non-expansion capital expenditure. It works alongside other provisions in the 2019 DAU (see sections 10 and 12);
- 126.2 The utilisation adjustments to the TIC are based on the contracted capacity at the terminal, not the actual TICs charged to other users, meaning these provisions do not allow the TICs of users to be arbitrarily affected by the TICs agreed by other users; and

<sup>63</sup> QCA Draft Decision, p. 68

<sup>64</sup> 2019 DAU, Schedule C, Part B 3(a)-(d)

<sup>65</sup> 2019 DAU, Schedule C, Part B (e)-(j)

- 126.3 The socialised expansion Review Event is designed to give effect to a QCA Price Ruling in the event the QCA determines that an expansion should be socialised.
- 127 However, while DBCTM considers there to be merit in using these mechanisms to update the TIC, the TIC adjustment provisions in Schedule C will still be subject to negotiation.
- 128 While an alternative approach may be to remove the TIC update provisions from the 2019 DAU and leave such adjustments to be determined solely between the parties, DBCTM considers that, having regard to the fact that the review event provisions are designed to operate equitably across all users and are well understood, their inclusion forms a useful guide for negotiations. This will promote efficient and effective negotiations, without limiting the opportunity for negotiation of a TIC or those provisions. As such DBCTM submits that the TIC adjustment provisions set out in Schedule C of the 2019 DAU are appropriate and should be retained.

#### 4.4 Price review processes

##### QCA Draft Decision

- 129 The QCA has requested stakeholder feedback on the way in which the price review processes interact:<sup>66</sup>

We welcome stakeholder feedback on the way in which the various price review processes operate and interact in the absence of a reference tariff. In particular:

- We consider it important for access holders to be able to form a view on whether they have been offered a reasonable TIC during negotiations under access charge reviews, whether that be under existing user agreements or the 2019 SAA. We seek stakeholder views on whether additional information provision requirements in the undertaking are necessary, so that access holders can request information that is consistent with information provided to an access seeker for negotiation of the TIC.
- The DBCT User Group considered that the SAA may result in the contractual pricing review occurring before there is an opportunity under the next undertaking to determine a reference tariff. In this regard, we note that both the 2017 SAA and 2019 SAA provide for existing charges to continue to apply until an agreement or determination has been made, at which point any determination or agreement will operate retrospectively from the start of the relevant pricing period. Noting that there may be amendments to information provision and regulatory arrangements in future access undertakings, we consider that any review of access charges should have regard to the terms of the access undertaking effective for the relevant pricing period. We seek stakeholder views on the extent to which existing user agreements and the 2019 SAA provide scope for parties to review access charges, based on the terms of the access undertaking effective for the relevant pricing period.

##### DBCTM Response

###### *Providing information to existing users*

- 130 While existing users will already have a significant amount of information to inform price review negotiations, DBCTM considers it is in all parties' interests that existing users are well informed when negotiating the pricing terms to apply to an upcoming pricing period under their existing user agreements.
- 131 To this end, it is DBCTM's intention to provide existing users with substantially the same information that it is required to provide access seekers under the 2019 DAU (with DBCTM's proposed amendments), with the exception of arbitration outcomes given the significant risk that it would provide a disincentive for

<sup>66</sup> QCA Draft Decision, pp. 68-69

effective negotiations. DBCTM has previously communicated this to the User Group, and is currently in the process of preparing this information for the purposes of its current price review negotiations.

- 132 However, while DBCTM will provide this information to existing users, it does not consider it necessary to include a requirement to do so in the access undertaking. For the reasons explained above DBCTM does not consider it appropriate for the access undertaking to impose an obligation on DBCTM in favour of existing users. Instead, the price review negotiation processes should be governed by the terms set out in existing user agreements. In any event, given that DBCTM intends to provide information to existing users voluntarily to facilitate efficient negotiations, any such obligation is unnecessary.

### *Consideration of future approved access undertakings*

- 133 DBCTM agrees with the QCA that it may be appropriate for price reviews under existing user agreements to have regard to the terms of the access undertaking that is in effect for the relevant pricing period.
- 134 Under the existing user agreements, if a pricing review is referred to the QCA for arbitration, there is scope for the QCA to consider the terms of an access undertaking that will apply for the upcoming pricing period in determining the arbitration. Indeed, where the QCA is the arbitrator under the existing user agreements, the parties must request the arbitrator to progress the arbitration in conjunction with the process at that time for development of a new access undertaking (with the intention that reviewed charges will be determined no later than the commencement of the new access undertaking).<sup>67</sup>
- 135 In these circumstances, while the QCA must still consider the dispute in accordance with section 120 of the QCA Act (as would be required by the 2019 DAU), it would be open to the QCA to have regard to many of the same matters that it had regard to in approving the new access undertaking under section 138(2) of the QCA Act. The QCA could also have regard to the new access undertaking itself, to the extent it relates to the matters listed in section 120(1) of the QCA Act.<sup>68</sup>
- 136 If the QCA is unable or unwilling to arbitrate the matter a commercial arbitrator is also likely to have regard to any new access undertaking that is in effect for the relevant pricing period, as it would be required to have regard to the ‘then current approach of the QCA in respect of appropriate charges for services comparable to the Services (with the intent that the arbitration should produce an outcome similar to that which might have been expected had the QCA determined it)’.<sup>69</sup>
- 137 As explained above, DBCTM does not consider it appropriate for an access undertaking to reopen the contractual terms between existing users and DBCTM and impose additional obligations on the parties.
- 138 However, with respect to new access agreements, on the terms of the 2019 AU SAA, DBCTM has proposed minor amendments to clause 7.2(b) of the 2019 AU SAA to expressly permit a pricing review to have regard to an approved access undertaking that is in effect in the relevant pricing period. DBCTM is able to provide proposed drafting if the QCA wishes to make such an amendment.

## **4.5 Remediation costs**

### **QCA Draft Decision**

- 139 The Draft Decision considers it appropriate for the QCA to assess the remediation cost estimate to apply for the 2019 DAU period. The QCA seeks stakeholder views on the appropriate remediation cost estimate – in particular, on the specific matters outlined in Chapter 7 of the Draft Decision.

<sup>67</sup> See clause 7.2(c)(ii) of the 2017 SAA.

<sup>68</sup> As per section 120(2) of the QCA Act

<sup>69</sup> See clause 7.2(e)(vii) of the 2017 SAA

- 140 The QCA refused to approve DBCTM's estimate of \$1.22 billion to rehabilitate the DBCT site on the grounds that it may be overestimated, noting that:<sup>70</sup>

In forming our view, we recognise that the materiality of the overall difference in estimates between GHD and Advisian was not reason in itself to conclude the relevant aspects of GHD's estimate were inappropriate. We are also aware that these differences could be attributed to either:

- GHD and Advisian differing in their views on the most prudent and/or efficient approach to return the DBCT site to its natural state, or
- Advisian being unable to verify GHD's justification or source of information, instead developing its own approach and sourcing its own data in the development of its independent estimate.

A difference in views, lack of justification or differences in commercial sources do not necessarily mean relevant aspects of GHD's rehabilitation plan are imprudent and/or inefficient. However, our assessment of the consultants' reports, particularly of Advisian's discussion of each material difference, has informed our current view that GHD's rehabilitation estimate may be overestimated, due to certain aspects not being prudent and/or efficient. This is particularly evident in view of the material matters discussed in Table 3.

### DBCTM Response

- 141 DBCTM remains committed to working constructively with the QCA and Advisian, together with any interested stakeholders, in order to resolve the outstanding issues associated with the estimate and its underlying assumptions.

- 142 In the Draft Decision, the QCA noted:<sup>71</sup>

We consider that GHD may be able to better explain the particular reasons for its approach to these matters, where the explanations of those reasons were not included in its reporting or adequately ventilated during Advisian's review. Additional information from DBCTM and GHD in response to our concerns on these matters would enable us to make a decision from a more informed position.

- 143 DBCTM therefore engaged GHD to respond to the material differences between the Advisian estimate and the GHD estimate, and to address the QCA's concerns in respect of transparency and justification. The GHD Response is provided in Appendix 2.

- 144 DBCTM is satisfied that the GHD Response addresses the QCA's concerns. The GHD Response explains GHD's view that the Advisian estimate materially understates the rehabilitation costs. This section provides some further discussion of material aspects of the rehabilitation estimate and other relevant matters, including DBCTM's proposed way forward for consideration by the QCA.

- 145 The following tables lists relevant issues from Table 3 of the Draft Decision and DBCTM's proposed way forward on these issues. The Advisian and GHD estimates should be adjusted to give effect to these proposals, which will apply common assumptions to minimise material variances in the estimates. This should provide the QCA with increased confidence to inform its final decision on the 2019 DAU with respect to a remediation cost estimate. DBCTM and GHD welcome any further engagement with the QCA and Advisian and other stakeholders on these matters.

<sup>70</sup> QCA Draft Decision, pp. 93-94

<sup>71</sup> QCA Draft Decision, p. 98

**Figure 15: summary of DBCTM response to Draft Decision on remediation costs**

Issue	Cost impact	DBCTM Recommendation
<b>QCA draft decision – Table 3 – Material differences between GHD and Advisian</b>		
Waste disposal	\$31.71m of direct costs	Use GHD assumption; or Use Hogan's Pocket as disposal site, however the entire cost of expansion of that facility to accommodate the DBCT waste volumes should be included either explicitly or within the relevant rate
Bulk earthworks volumes	\$103.33m of direct costs for all materials handling (earthworks) related costs	Use volumes calculated by Advisian
Bulk earthworks rate		Use rates supplied by GHD (benchmarked by DBCT experience)
Imported clean fill		Use rates supplied by Advisian
Contaminated soil removal	\$51.78m of direct costs for all contaminated soil and substrate removal related costs	Use mid-point of Advisian and GHD depth (325mm). DBCTM to provide sampling for future estimates
Contaminated road substrate removal		Use mid-point of Advisian and GHD depth (375mm). DBCTM to provide sampling for future estimates
Contaminated substrate removal under substation		Use mid-point of Advisian and GHD depth (625mm). DBCTM to provide sampling for future estimates
Offshore pile removal	\$45.86m of direct costs	Accept complete removal of piles into estimate and Rehabilitation Plan
Indirect labour and project management costs	\$5.79m to \$30.79m of the total estimate	Reinstate DBCTM proposal for project management
Risk and contingency allowance	\$100m of the total estimate	Reinstate GHD contingencies based on industry standards and benchmarked by DBCTM experience
<b>Additional issues identified</b>		
Remediation date	-	Accept 2051 as the relevant date with regard to the rehabilitation of DBCT
Classification of estimate	-	Nominate as consistent with AACEI Class 4 or FEL 1 level (or equivalent other standard)
Qleave levy	\$1m	Adjust to reflect recent increase to 0.575%
Escalation	\$86m	Accept 2.6% escalation and escalate both estimates from nominated base dates to end June 2021 for comparative purposes

### *The relevant date for rehabilitation*

146 The scenario for rehabilitation of DBCT contemplates that it would occur around the end of the economic life of the Bowen Basin. This may be triggered for example by reduced demand, alternative technologies, depleted or uneconomic reserves, forced closure of coal mines, or a combination of one or more of these or other factors. It is reasonable to assume this would be an extended process as mine production runs out and facilities are shut down. In this case all related facilities (mines, rail, and terminals) would be rehabilitated over this period.

147 The Advisian Report also considered in its assumptions:<sup>72</sup>

that at the time of demolition and rehabilitation works all mines in the Bowen Basin utilising DBCT and Hay Point will be at end of life operations also or have alternative measures in place for shipping... and that the

...Goonyella rail network servicing Hay Point and DBCT will be demolished by others[. The] balloon loop servicing only DBCT is considered within the estimate.

<sup>72</sup> Refer Advisian Report section 4.3 *Key assumptions* p.31

- 148 The QCA has previously determined that the economic life of the Bowen Basin, and consequently DBCT, is expected to end in 2054. However, DBCTM considers that 2051 should be accepted by the QCA as the relevant date with regard to rehabilitation of DBCT, given DBCTM's obligations under the PSA.
- 149 Under the PSA, DBCTM's rehabilitation obligations fall due at the end of the initial lease in 2051. This date is not materially different from 2054, given the extended period over which the Bowen Basin coal facilities would be closed down. Further, DBCTM could not rehabilitate the terminal if the relevant date was 2054 as this would require a renewal of the lease, in which case the rehabilitation obligation would only fall due in 2100. Similarly, if the economic life of the Bowen Basin was reduced for any reason, then DBCTM's rehabilitation obligation still falls due in 2051.
- 150 Consequently, DBCTM recommends that the QCA should accept 2051 as the relevant date for rehabilitation of the terminal, as DBCTM has a contractual obligation in respect of this date, and it is broadly consistent with the QCA's previous determination of 2054 as the relevant date.

### *The classification of the rehabilitation estimate*

- 151 The classification of the rehabilitation estimate has been the cause of some material variances, particularly in respect of contingency and methodologies used to develop the estimate. The GHD Estimate was a Class 4 estimate on the industry standard AACEI matrix, which is in the range of accuracy of a FEL 1 feasibility study as contemplated by the access undertaking.
- 152 The cost and time to prepare an estimate is significant, even for an AACEI Class 4 or FEL 1 estimate. For example, the 8X FEL 1 Study cost in the order of \$0.5 million, and the 8X FEL 2 Study will require a comparatively higher degree of time and effort and will cost in the order of \$5 million. For practical reasons, it seems appropriate to limit the classification of the rehabilitation estimate to an AACEI Class 4 or FEL 1 level estimate. This is important as the rehabilitation is not due for 30 years, and it is likely the estimate will have changes to its scope in that time,<sup>73</sup> for example if the 8X expansion is implemented. DBCTM would only expect to move to a more accurate estimate in the years prior to the commencement of rehabilitation.
- 153 As the QCA noted in its Draft Decision, the estimates have improved in level and quality of detail, and this is likely to continue over time. For example, GHD was requested to provide a Rehabilitation Plan and Estimate in a manner which required it to use industry standards and benchmarks, and was informed by GHD's significant experience and expertise in these matters.
- 154 DBCTM therefore recommends that the QCA should consider nominating the classification of the estimate to AACEI Class 4 or FEL 1 level (or equivalent other standard), for the benefit of all stakeholders. This will ensure that expectations of the estimate are aligned.

### *Waste disposal*

- 155 At the time of rehabilitation, it is to be expected that substantial volumes of waste and contaminated material would have been transferred from other Bowen Basin operations to existing recycling and waste disposal facilities close to DBCT. As a result, these facilities would likely be congested or full after being expanded to their limit, and other facilities will need to be identified.
- 156 The GHD Response notes that the Advisian estimate did not include costs for expansion of the facilities, rather it assumed that the facilities would already be expanded to suit the volumes required for disposal.
- 157 DBCTM agrees that the waste disposal facilities close to DBCTM could be used if expanded. However, if adopting this assumption it is appropriate that the cost of expanding these facilities (to accommodate all of the waste from DBCT) be included in the estimate either explicitly or as part of the rate.

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<sup>73</sup> As noted by the QCA in its Draft Decision, p. 100

### *Bulk earthworks*

- 158 The GHD Response has addressed the variance in bulk earthworks volumes. Due to intellectual property concerns, GHD could not provide its calculations, and consequently Advisian developed its own estimate of the volumes. GHD was of the view that Advisian's methodology provided a more comprehensive view of the volumes, but even so, GHD considers that the volumes calculated by both methods is similar.
- 159 DBCTM's experience was not provided to GHD to facilitate its estimate of rates. Rather, GHD relied on its own local and global experience to form its view on rates. In order to better inform the QCA and stakeholders, DBCTM subsequently supplied GHD with actual contracted rates for bulk earthworks for a major dam building program at DBCT (the Water Quality Improvement Project). As noted in the GHD Response, these rates demonstrate that the rates developed by Advisian are well below the range, and as a result Advisian's pricing of volumes may be considerably understated.
- 160 DBCTM supports the conclusions in the GHD Response in this matter. Therefore, DBCTM recommends that the volumes calculated by Advisian be used, combined with the rate calculated by GHD as this has been validated by DBCTM experience (which can be made available to Advisian).

### *Contaminated material*

- 161 The assumed volumes of contaminated material varied considerably between Advisian and GHD, primarily due to different assumptions of the depths of contaminated soil. The GHD Response provides additional evidence and reasoning for its estimate which should address the QCA's concerns in regard to transparency and appropriateness.
- 162 DBCTM recently identified in the current 8X FEL 2 Study that bedding coal has been used in place of fill in the DBCT stockyard. This is because it is suitable for that application, and is generally not suitable for sale due to contamination. This saves significant costs for terminal users as the bedding coal does not need to be moved and relocated after the surface has been re-profiled. However, this means that layers of bedding coal and compacted fill are present up to 1 metre deep at various locations across the terminal. Further investigations in the future will likely determine the extent of this deep bedding coal at the terminal. Even so, this is significantly greater depth than that assumed by Advisian (250mm) and GHD (400mm), and casts considerable doubt on the assumptions made for bedding coal, which likely comprises the largest volume of contaminated material.
- 163 In addition, the recently approved NECAP Series Q program includes the construction of a new road and works in the substations, which may provide an opportunity for sampling the depth of material that would need to be removed in these areas. Outside of these opportunities, it is not appropriate to conduct the large scale sampling and geotechnical work that may be required to calculate the volumes more accurately, as these are expensive and could potentially impact terminal operations.
- 164 DBCTM supports the conclusions in the GHD Response on this issue.
- 165 Given this, DBCTM considers that the estimates should be recalculated based on the mid-points of the Advisian and GHD assumptions for depths of the relevant contaminated materials. DBCTM expects it will have more relevant evidence from the terminal in future updates of the rehabilitation estimate which should better inform this assessment.

*Offshore pile removal*

166 The Advisian Report noted that<sup>74</sup>

In the case of complete removal of piles, the GHD methodology and costing is a reasonable position. However, Advisian strongly believe our approach would be more environmentally prudent.

167 DBCTM acknowledges that other terminals may not have completely removed offshore piles. In DBCTM's view, this is primarily because complete removal of offshore piles costs more than other methods, and because there are no environmental requirements related specifically to rehabilitation of offshore piles. The GHD Response provides a comprehensive environmental assessment of both options, which strongly supports complete removal of the piles as this approach delivers better environmental outcomes in the long term, consistent with the GBRMP Act.

168 On the basis of the available evidence, complete removal of the piles is feasible, consistent with the long-term provisions of the GBRMP Act, and it will achieve the requirements of the PSA. Therefore DBCTM recommends that the QCA accepts this approach as prudent and reasonable to adopt in the Rehabilitation Plan. In the event that environmental requirements relating to rehabilitation of offshore piles are clarified, then the relevant changes will be incorporated into the Rehabilitation Plan.

*Indirect labour and project management costs*

169 DBCTM supports the GHD Response on this issue.

170 In regard to DBCTM's project management strategy, DBCTM has successfully run many projects either using its own team of experienced project management professionals, or in conjunction with a highly regarded EPCM partner. DBCTM considers that its original strategy should be applied, as this is the intended approach for delivering the rehabilitation project.

*Risk and contingency allowance*

171 DBCTM has serious reservations regarding the "threats and opportunities" approach used by Advisian to assess the contingency. In DBCTM's view, this unilateral risk analysis approach is not in common use for a project at this stage, and not considered as an industry standard as far as can be ascertained. DBCTM typically uses quantitative risk analysis at a time close to the commencement of the related project. This is a risk ranging exercise conducted in a workshop facilitated by experts where comprehensive input is supplied by a cross section of the project team - including project managers, engineers and operations personnel, and based on detailed information such as would be available in a FEL 2 Study.

172 DBCTM has supplied GHD with benchmarks based on experience at DBCT. In particular, DBCTM draws attention to the Capacity Expansion Application for Phase 2/3 of the 7X Expansion submitted to the QCA in 2005.<sup>75</sup> This included a contingency in the order of 25% and was accepted by the QCA. Phase 1 of the 7X expansion was already in progress at the time. This was based on a risk analysis conducted by an expert (Broadleaf Capital) in a workshop comprising key members of the project team with a very high level of available detailed information. For reference, a summary of the budget is shown below (from a later submission).<sup>76</sup>

<sup>74</sup> Refer Advisian Report *Key differences and justification/rationale* p.20

<sup>75</sup> This document was submitted to the QCA on September 2005 and published on the QCA website as part of the 2006 AU, however it has since has been archived. The submission is available from DBCTM.

<sup>76</sup> This document was the DAAU for actual cost of 7X Phase 2/3, submitted in August 2010 and since archived by the QCA. The submission is available from DBCTM.

Figure 16: Budget Summary

<b>Table 18 : Cost Performance of Phase 2/3 Expansion</b>						
Description	CEA Budget	Contingency Allocation	Total Budget	Actual Cost	Overrun	
					Value	%
Contract Costs	\$422.9M	\$114.3M	\$537.2M	\$606.8M	\$69.6M	13%
Other Costs	\$89.6M	\$12.1M	\$101.7M	\$136.0M	\$34.3M	34%
Contingency	\$126.4M	(\$126.4M)				
<b>Construction Costs</b>			\$638.9M	\$742.7M	\$103.9M	16%
<b>Other Costs % of Construction Cost</b>			16%	18%		
Financing & IDC	\$75.2M	-	\$75.2M	\$93.2M	\$17.9M	24%
<b>Total Phase 2/3</b>	<b>\$714.1M</b>	<b>-</b>	<b>\$714.1M</b>	<b>\$835.9M</b>	<b>\$121.8M</b>	<b>17%</b>

- 173 Further, as noted in the GHD Response, Advisian has recommended contingencies significantly higher than 25% for projects managed by the Queensland Department of Transport and Main Roads.<sup>77</sup>
- 174 Even so, DBCTM acknowledges that Advisian has supplied a useful analysis which will add value to the estimate and Rehabilitation Plan. It is not unreasonable that a risk analysis should be conducted with key members of the rehabilitation project, however this is a significant undertaking and could not be completed in the time available before the QCA publishes its final decision.
- 175 Consistent with DBCTM's recommendation regarding the classification of the estimate, DBCTM considers that the original contingencies from the GHD estimate be applied.

#### Escalation

- 176 Advisian and GHD both proposed an overall escalation figure of 2.6%. GHD's estimate was based in October 2018, and Advisian's in March 2020. Advisian did not explicitly de-escalate its estimate to align with GHD, however noted that contingencies were included in its estimate to account for that.
- 177 DBCTM recommends that both estimates be escalated to end June 2021 to align with the commencement of the 2019 DAU on 1 July 2021. This is material as DBCTM calculates escalation on the GHD estimate to be in the order of \$86m.<sup>78</sup> Further, it is appropriate that escalation amounts are separated from the amount being escalated and from contingency, as this will allow the QCA to compare and assess these issues more effectively.

#### Qleave levy

- 178 Qleave recently increased its levy from 0.475% to 0.575% of the project cost.
- 179 DBCTM considers that both estimates be updated to reflect this change.

## 4.6 Non-pricing provisions

- 180 The QCA has sought feedback on the non-pricing provisions of the 2019 DAU. DBCTM addresses these issues in the section below.

<sup>77</sup> Refer to [Guidance Note 3B – Deterministic Contingency Estimation](#) footnotes on p. 11

<sup>78</sup> Variance due to escalation = \$1.22 billion x (1 + 2.6%)<sup>(2 + 8/12)</sup> escalating for 3 years from estimate base date of October 2018 to end June 2021 for commencement of 2019 DAU in July 2021

## 5 Non-pricing terms

### 5.1 Summary

181 The Draft Decision sought feedback on the non-pricing provisions of the 2019 DAU, stating:<sup>79</sup>

Noting the DBCT User Group's view that pricing and non-pricing provisions in the 2019 DAU are closely connected and should be considered as a package, we seek stakeholder views about the appropriateness of the non-pricing provisions, in light of our draft decision to approve a pricing model without a reference tariff.

182 Table 4 of the QCA's Draft Decision laid out the QCA's detailed analysis and draft decision on the relevant non-pricing provisions.<sup>80</sup>

183 As explained in section 2 of this submission, DBCTM has reached out to the User Group early in the Draft Decision consultation process, asking for engagement on the small number of remaining non-pricing issues that parties are yet to agree on.<sup>81</sup>

184 Disappointingly, the User Group has failed to engage with DBCTM's proposed discussion points and solutions.

185 Notwithstanding this lack of engagement, DBCTM has methodically worked through the issues raised by the User Group and the QCA, which were set out in section 8, table 4 of the Draft Decision. Table B in Appendix 1 sets out DBCTM's proposed amendments to the 2019 DAU in response to these non-pricing issues and the reasons why DBCTM has proposed those amendments. Proposed drafting for these amendments is set out in Appendix 6. DBCTM notes that in order to reduce unnecessary complexity or ambiguity, it has also made a small number of self-explanatory and uncontroversial minor amendments to the 2019 DAU drafting, which do not detract from the effect of the original drafting. These minor amendments have also been tracked in Appendix 6.

186 This section explains the small number of issues for which DBCTM does not propose amendments, and responds to the issues which the QCA has asked for specific feedback on.

### 5.2 Short term capacity

#### Provisions of the 2019 DAU

187 In order to promote the efficient allocation of short-term capacity which may become available from time to time, the 2019 DAU included a Notifying Access Seeker process for 'Short-Term Available Capacity'. 'Short-Term Available Capacity' was defined as "Available System Capacity which is available commencing within the next 12 months and that is not able to be renewed".

188 As part of the June 2020 collaborative submission process the User Group raised issues regarding the time frames for allocating short-term capacity. In response to these comments, DBCTM's June 2020 Submission proposed to adopt the timeframes for the short-term available capacity process suggested by the User Group.

189 The User Group also requested clarification regarding:

<sup>79</sup> QCA Draft Decision, p. 13

<sup>80</sup> QCA Draft Decision, section 8

<sup>81</sup> See letters from DBCTM to User Group, dated 23 September 2020 and 2 October 2020, Appendix 3

- 189.1 how short term capacity would be offered to access seekers in the queue, explaining that the User Group was concerned that capacity could be offered as Short-Term Available Capacity at DBCTM's discretion (even if it was available as long-term renewable capacity); and
- 189.2 how DBCTM would 'parcel up' short term available capacity (for example as a bundle, or separately).
- 190 DBCTM's June 2020 Submission proposed to discuss this subject further with the User Group and explained:<sup>82</sup>

For context, in the upcoming regulatory period there is a maximum available capacity of 1.4 mtpa in 2021-22. This means that there is no risk that DBCTM will offer capacity that should be offered as long term capacity as short-term capacity, and there seems to be little need for greater prescription regarding what constitutes Short-Term Available Capacity in the 2019 DAU.

More generally, DBCTM will offer long-term capacity (with renewal rights) where available. DBCTM does not consider it appropriate to offer renewal rights for contracts under 10 years. To do so would afford greater rights to new access seekers who, without committing to long term capacity, would secure evergreen renewal rights. This may create unintended incentives for capacity hoarding whereby the attractiveness of evergreen rights means the access seeker secures capacity in the short term to reserve its evergreen status.

### QCA Draft Decision

- 191 The Draft Decision considered the short-term available capacity process and supported DBCTM's intention to consult further with the User Group, commenting:<sup>83</sup>

DBCTM said its proposal would promote the efficient and equitable allocation of short-term parcels of capacity that may become available from time to time but would otherwise not be used. The DBCT User Group supported the intention of the proposal but was concerned it would enable DBCTM to offer capacity on a short-term basis, even if that capacity should be available for long-term contracting (with associated renewal rights and other protections). It also said the process lacked clarity. For example, it was not clear whether capacity would be offered as a single block or split into smaller blocks. DBCTM responded that greater prescription and clarity was unnecessary and said there was no risk it would offer long-term capacity as short-term capacity, noting that limited capacity was expected to become available.

While we consider the definition of 'short-term available capacity' does not sufficiently distinguish it from capacity that would be available for long-term contracting, it is unclear whether DBCTM would have an incentive to offer long term capacity as short-term capacity. We also note DBCTM's view that it would be inappropriate for new access seekers to obtain evergreen renewal rights through short-term agreements, on the basis that it may create unintended incentives for capacity hoarding. However, the DBCT User Group did not appear to argue for the provision of renewal rights in short-term agreements, and did not suggest amending the provisions in the 2019 DAU that limit renewal rights to agreements that are at least 10 years long (s. 13.2 of the 2019 DAU and cl. 20 of the 2019 DAU SAA).

We support DBCTM's intention to consult with the DBCT User Group about the concerns raised and welcome further submissions from stakeholders about the appropriateness of DBCTM's proposal.

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<sup>82</sup> DBCTM June 2020 Submission, p. 30

<sup>83</sup> QCA Draft Decision, p. 108-109

**DBCTM response**

192 Shortly after the QCA published its Draft Decision, DBCTM wrote to the User Group to better understand the issue raised by the User Group and potential solutions.<sup>84</sup>

The 2019 DAU introduced the concept of Short-Term Available Capacity, so that certain types of capacity can be allocated more efficiently by shortening the timeframes for the allocation process. It does not alter the way in which DBCTM offers access to capacity at the terminal, including how it is packaged.

The concerns raised by the User Group are not completely clear to DBCTM.

**Please confirm that the amendments and clarifications set out in DBCTM's June 2020 Submission pages, 33-34 address the User Group's issues.**

**Alternatively please propose potential amendments to the 2019 DAU which would address its concerns.**

In doing so we ask that the User Group recognises that:

- it is important that DBCTM retains a degree of flexibility in how it packages capacity such that it can do so efficiently; and
- any amendments should be proportionate to the issue that they address. In this respect DBCTM notes that in the upcoming regulatory period there is a maximum available capacity of 1.4mtpa for 2021-22

If it would address the User Group's concerns DBCTM is comfortable to include an obligation in the 2017 DAU which requires DBCTM to offer renewal rights where it is able to do so, provided the Access Seeker is willing to enter into an access agreement for a term of 10 years or longer.

193 Due to the User Group's lack of engagement on this issue, it is still not clear to DBCTM how the proposed 2019 DAU expedited process for short-term capacity would enable DBCTM to offer capacity on a short-term basis, even if that capacity should be available for long-term contracting.

194 While DBCTM will always offer long term capacity where it is available, as explained to the User Group, DBCTM considers that it is important that it retains some flexibility as to how it packages capacity, as prescriptive rules may not account for every scenario and may be inefficient or unworkable in practice. In any event, in the upcoming regulatory period there is a maximum available capacity of 1.4mtpa for 2021-22.

195 Provided an access seeker commits to a term of at least 10 years (indicating that access seeker's commitment to the terminal), DBCTM has no disincentive to providing renewal rights and is unaware of any evidence to the contrary.

196 Notwithstanding the User Group's lack of engagement, if the QCA considers it necessary, DBCTM is open to including an express obligation in the 2019 DAU that would require it to offer renewal rights for capacity where it is able to do so, provided the access seeker enters into an access agreement for a term of 10 years or longer. If the QCA considers such an obligation is necessary, DBCTM is happy to propose drafting for such an obligation.

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<sup>84</sup> Refer Appendix 3 - DBCTM letter to User Group, dated 23 September 2020

### 5.3 Exercising options to renew when terminal is capacity constrained

#### Provisions of the 2019 DAU

- 197 When there is excess demand for capacity at DBCT, the 2019 DAU SAA provides that DBCTM may bring forward the date by which access holders are required to exercise or waive their options to renew their agreements.<sup>85</sup>
- 198 DBCTM must notify access holders in the order of agreement expiry date, starting with the earliest expiring agreement. Notices may be given to access holders at the same time if their agreements expire within six months of each other. Each access holder (or tranche of access holders) then has 90 days to exercise or waive its option before the next notice can be issued (**Renewal Process**).
- 199 If the access application which triggered the renewal process is not converted into a User Agreement within 3 months after the process is completed, the status quo existing before notice from DBCTM is reinstated.<sup>86</sup>

#### QCA Draft Decision

- 200 The QCA's Draft Decision requested feedback on the workability of these provisions, stating:

We seek stakeholders' views about the workability of these provisions, as we understand they have recently been applied in the context of the 8X expansion project. We would particularly like to know whether the requirement to provide each tranche of access holders with 90 days to exercise their options would delay the expansion process. To the extent problems have been identified, we encourage stakeholders to suggest potential solutions.

#### DBCTM response

- 201 DBCTM has recently undertaken the Renewal Process with existing users. The results of the Renewal Process justified the funding of feasibility studies for the anticipated 8X expansion.
- 202 In order to give effect to the renewals under clause 20, and provide certainty of future demand for access, DBCTM has entered into conditional access agreements with a number of access seekers for access to expansion capacity. If DBCTM had not entered into such agreements within 3 months, the status quo would have been reinstated under clause 20(e) of the existing user agreements.
- 203 While DBCTM considers that this process has operated for the most part efficiently, DBCTM considers that there could be benefit in removing clause 20(e), to allow the outcome of the Renewal Process to remain on foot, without the requirement to enter into an access agreement. Or at a minimum, where only expansion capacity is available.
- 204 This would provide for greater certainty of demand for the terminal and would assist with the planning of future expansions at an earlier stage, while allowing conditional access agreements to be executed at a time closer to the expansion. However, given clause 20(e) is already present in the existing user agreements, DBCTM acknowledges that this could put existing users and future access holders on an uneven footing.
- 205 DBCTM also considers that the timeframe for access holders to either waive or exercise their right to renewal could be shortened, provided that access holders have sufficient time to properly consider whether to renew their agreements.

<sup>85</sup> 2019 DAU SAA cl. 20

<sup>86</sup> 2019 DAU SAA, cl 20(e)

## 5.4 Terminal Regulations

### Provisions of the 2019 DAU

- 206 The terminal regulations govern the procedures for operating the Terminal and providing services under access agreements. Consistent with the process under the 2017 AU, if the Operator of the Terminal wishes to amend the terminal regulations, it must obtain DBCTM's consent. Before deciding whether to provide consent, DBCTM must conduct reasonable consultation with stakeholders and consider the request against specified criteria. Stakeholders have 30 days to lodge an objection to DBCTM's decision with the QCA, and the QCA must then make a determination in accordance with the dispute resolution procedures.<sup>87</sup>

### QCA Draft Decision

- 207 The QCA's Draft Decision noted concerns raised by the User Group and suggested the User Group and DBCTM provide further comments in submission:<sup>88</sup>

The DBCT User Group said it was difficult for users to understand the impacts of proposed changes to the terminal regulations. To address this concern and to improve the assessment of the proposed changes by DBCTM (and, in the event of any objections, the QCA), the DBCT User Group suggested the following amendments to the 2019 DAU:

'where changes [to the terminal regulations] are proposed that would be reasonably anticipated to impact on ordering, scheduling, plann[ing] or capacity, ... those changes should only be able to be proposed where the operator has first obtained and provides to access holders and access seekers in the queue robust and independent modelling about how the changes would impact on users, terminal capacity and terminal efficiency.'

While we acknowledge the concerns of the DBCT User Group, we query whether an undertaking could impose such an obligation on the Operator of the Terminal when it is not the access provider. The DBCT User Group and other stakeholders may wish to discuss their concerns with DBCTM and provide further comments in submissions.

### DBCTM Response

- 208 DBCTM has recently consented to amendments to the terminal regulations designed to improve throughput and improve the efficiency of the terminal. Before doing so DBCTM undertook extensive consultation, which included group and individual meetings with stakeholders, responding to queries and conducting operational trials of the proposed changes to the ordering process.
- 209 On 25 February 2020 DBCTM provided its consent to the terminal operator's proposed amendments to the terminal regulations. Notwithstanding DBCTM's extensive engagement with stakeholders, and the support of the majority of DBCTM's users, two parties made formal objections to DBCTM's consent to the proposed amendments and referred the matter to the QCA for determination.<sup>89</sup>
- 210 After a period of over six months in which various stakeholders provided submissions to the QCA, the QCA determined that the criteria specified in clauses 6.2(c)(1) to 6.2(c)(4) of the 2017 AU were satisfied with respect to DBCTM's consent to the proposed amendments.<sup>90</sup> Accordingly, on 17 September 2020, the QCA rejected both objections to DBCTM's consent to the proposed amendments to the terminal regulations.<sup>91</sup>

<sup>87</sup> 2019 DAU, section 17

<sup>88</sup> QCA Draft Decision, p. 117-118

<sup>89</sup> See: <https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2017-access-undertaking/proposed-amendments-to-dbct-terminal-regulations/>

<sup>90</sup> See: <https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2017-access-undertaking/proposed-amendments-to-dbct-terminal-regulations/>

<sup>91</sup> See: <https://www.qca.org.au/project/dalrymple-bay-coal-terminal/2017-access-undertaking/proposed-amendments-to-dbct-terminal-regulations/>

The time taken to make these much-needed amendments to the terminal regulations was approximately 2 years from start to finish.

- 211 DBCTM considers that, if anything, the 2019 DAU should be amended to streamline the consent process, and is concerned that any further conditions on making amendments to the terminal regulations – such as the requirement to provide detailed modelling of the impact of all proposed amendments – could operate as an impediment to making important changes that promote the efficient operation of the terminal.
- 212 DBCTM has provided stakeholders modelling of the impacts of previous amendments to the terminal regulations on an ad hoc basis, where it has considered it necessary to justify the proposed amendments. However, a requirement to undertake detailed modelling of all changes, regardless of materiality, could result in unnecessary cost and time delays in making amendments to improve the operation of the terminal.

## 5.5 Ring-fencing

### Provisions of the 2019 DAU

- 213 The 2019 DAU removed any references to the “Trading SCB” given that DBCTM applied to ASIC for the entity to be deregistered.
- 214 Given this, the User Group requested a clear commitment from DBCTM and its Related Bodies Corporate not to own Supply Chain Businesses (which in turn is defined widely enough to include an entity like the Trading SCB).<sup>92</sup>
- 215 In DBCTM’s June 2020 submission, DBCTM agreed to make a commitment not to own a Supply Chain Business in the 2019 DAU, recognising that amendments to the Access Undertaking may be required in circumstances where ownership of DBCTM changed.

### QCA Draft Decision

- 216 The QCA’s Draft Decision considered that the amendment to introduce a commitment not to own a supply chain business was appropriate and noted that DBCTM could submit a DAAU for its consideration if circumstances changed.<sup>93</sup>
- 217 However, an amendment is not required to include such a commitment. Section 9.1 of the 2019 DAU as initially drafted provides:

#### **No related Supply Chain Businesses**

DBCT Management and its Related Bodies Corporate will not own or operate a Supply Chain Business in any market that is related to or uses the Terminal.

- 218 DBCTM considers that this obligation adequately addresses the User Group’s concerns.
- 219 DBCTM’s initial submission accompanying the 2019 DAU explained that its related Supply Chain Business, the Trading SCB, would be deregistered by the date of commencement of this 2019 DAU.<sup>94</sup> DBCTM notes that the Trading SCB has now been formally deregistered as shown in Appendix 4.

## 5.6 Different terms

<sup>92</sup> User Group September 2019 Submission, pp. 66 and 76

<sup>93</sup> QCA Draft Decision, p. 118

<sup>94</sup> DBCTM July 2019 Submission, para 330

## Provisions of the 2019 DAU

- 220 The 2019 DAU provides that in some circumstances DBCTM may seek terms and conditions for providing access that differ from the terms and conditions in the standard access agreement.<sup>95</sup>

## QCA Draft Decision

- 221 The QCA's Draft Decision stated that DBCTM may seek – or in some cases require, acting reasonably, terms and conditions for providing access that differ from the terms and conditions in the standard access agreement.<sup>96</sup>
- 222 Based on this characterisation, the QCA explained:<sup>97</sup>

The DBCT User Group said by allowing DBCTM to require agreement on different terms, the purpose of the standard access agreement may be undermined. The DBCT User Group considered the purpose of the standard access agreement was to provide certainty as to the terms DBCTM could require, while allowing access seekers to agree to variations.

Section 13.1(c) appears to contemplate that access seekers can require DBCTM to contract for access on terms that are substantially the same as the terms in the standard access agreement. To the extent that different terms are sought by either party, section 13.1(c) has been amended to clarify that the matter be referred for arbitration if the parties cannot agree. However, an amendment to section 5.4(e)(5)(A) now refers to an access seeker contracting on the terms of the standard access agreement or, if required by DBCTM, acting reasonably, on other terms agreed between DBCTM and the access seeker. A similar amendment has been made to section 5.4(h).

It is unclear precisely what DBCTM intends by these references to it 'requiring' terms that are different to the standard access agreement, which are then agreed. However, as a general observation, we do not consider it likely to be appropriate for DBCTM to have the ability to require (without the agreement of an access seeker) terms that are substantially different to those in the standard access agreement, as this would not provide an appropriate balance between the legitimate interests of DBCTM and those of access seekers (ss. 138(2)(c), (d), (e) of the QCA Act).

Consistent with our draft decision that it is appropriate for access charges to be negotiated between the parties, we consider that the 2019 DAU should be amended to provide for DBCTM and the access seeker to negotiate different terms. In that context, it is unlikely to be appropriate to refer to either party 'requiring' the other to adopt terms that depart from the standard access agreement. We consider that the standard access agreement has a role to provide guidance for those negotiations as the agreed 'starting point' (as provided by s. 13.1(d)), and if any departure cannot be agreed then the parties should have access to arbitration.

## DBCTM Response

- 223 While DBCTM acknowledges that the wording of section 5.4(e)(5)(A)(ii) suggests that DBCTM has the power to unilaterally require, acting reasonably, the agreement to different terms, DBCTM does not consider this to be the case.
- 224 Section 5.4(e)(5)(A)(ii) is included in 2019 DAU to ensure it has sufficient flexibility to allow DBCTM and access seekers to contract on different terms where the terms of the 2019 DAU SAA are not fit for purpose. For example where a notifying access seeker agrees to alternative terms with DBCTM in accordance with section 5.4(e)(2)(B).

<sup>95</sup> 2019 DAU, sections 5.4(e)(5), 5.4(h), 13.1 (and others)

<sup>96</sup> QCA Draft Decision, p. 107 left hand column

<sup>97</sup> QCA Draft Decision, p. 107

- 225 DBCTM considers that in the vast majority of circumstances the 2019 DAU SAA will be fit for purpose and as such it considers the circumstances where it would, acting reasonably, require other terms, would be rare (if at all). Accordingly, the SAA still serves its primary purpose of providing certainty for access seekers.
- 226 It is worth noting that the provisions referred to by the QCA do not require access seekers to automatically accept alternative terms proposed by DBCTM, and access seekers will have the ability to dispute the terms with DBCTM. If the QCA considers that it is appropriate to amend the words “if required by DBCT Management” to “if proposed by DBCT Management” (or similar), DBCTM considers this would be a reasonable amendment.

## 5.7 Reporting tonnage information to Aurizon Network

### Provisions of the 2019 DAU

- 227 The 2019 DAU provides for DBCTM to share information on changes in contracted tonnage with the below-rail provider (currently Aurizon Network). This includes information on individual access holders that do not exercise an option to renew their contract tonnage.

### QCA Draft Decision

- 228 In respect of that provision in its Draft Decision the QCA stated that:<sup>98</sup>

DBCTM said the provision would promote supply chain efficiency. The DBCT User Group supported the provision of aggregated information but not information on individual access holders. It considered that measures were already in place to address rail and port alignment issues, including rail capability forming part of the access application process, and requirements in the Aurizon Network undertaking for port capacity to be demonstrated before rail capacity could be contracted. In response, DBCTM reiterated that supply chain efficiency would improve if it were able to identify relevant access holders. It proposed to consult with stakeholders about possible ways to address their concerns, without adversely affecting supply chain efficiency. We welcome further submissions from stakeholders following these discussions.

### DBCTM Response

- 229 On 23 September 2020 DBCTM wrote to the User Group explaining why the provision of disaggregated information to Aurizon was important for supply chain efficiency and requesting clarification as to why the provision of this information would harm the interests of users:<sup>99</sup>

The provision of aggregated information as proposed by the User Group would hinder DBCTM’s ability to achieve its objective of supply chain alignment and efficiency. DBCTM strongly considers it will produce better outcomes if it is able to identify relevant Access Holders in order to improve the efficiency of the system.

DBCTM acknowledges that the Aurizon Network has a role in ensuring alignment of the supply chain, but disagrees that it is inappropriate for DBCTM to seek to improve the efficiency of the process, given the impact that coordination issues has on the efficient utilisation of the terminal.

**Please clearly identify any reasons why it would not be appropriate for DBCTM to provide information regarding the non-renewal of an Access Holder’s contract to the rail network provider.**

<sup>98</sup> QCA Draft Decision, pp. 117-118

<sup>99</sup> DBCTM letter to User Group, dated 23 September 2020

DBCTM will then consider possible solutions to any problems identified that will not adversely impact the efficient operation of the terminal.

- 230 The User Group did not respond to DBCTM's request for feedback. As such DBCTM is unable to identify any legitimate reason why information on changes in contracted tonnage should not be shared with the below-rail provider. Rather, the sharing of this information will promote coordination resulting in potential efficiency improvements at the terminal. DBCTM therefore proposes that no changes be made to these provisions in the 2019 DAU.

## 5.8 Minor issues

### 5.8(a)(4)- Negotiation Cessation Notice

- 231 The User Group proposed that the wording of section 5.8(a)(4) be amended. DBCTM wrote to User Group explaining:<sup>100</sup>

Section 5.8(a)(4) enables DBCTM to cease negotiations in circumstances where (inter alia) an Access Seeker is not willing or able to provide security reasonably requested by DBCTM in accordance with the AU.

The User Group's proposed amendment seeks to limit this ability to cease negotiations to circumstances where the Access Seeker is not willing or able to provide the security *by the time that Security is required to be provided in accordance with an Access Agreement*.

The purpose of this amendment is unclear, and does not seem workable from a practical perspective given that negotiations would occur prior to entering into an Access Agreement. While section 5.9(d) allows for DBCTM to require security (or additional security) under an Access Agreement, this would occur following the conclusion of negotiations.

**Please further explain the intention of this proposed amendment and how it would work from a practical perspective.**

- 232 DBCTM has received no response from the User Group on this issues. Therefore, DBCTM proposes to make no changes to this provision for the reasons explained to the User Group.

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<sup>100</sup> Letter from DBCTM to User Group dated 23 September 2020

**Appendix 1 Table of proposed amendments to the 2019 DAU****Table A: Pricing model related changes in response to QCA's Interim Draft Decision**

DBCTM proposed the following amendments in its April 2020 Submission, to address the QCA's required amendments necessary for a pricing model that does not include reference tariffs as set out in the QCA's Interim Draft Decision<sup>1</sup> and reiterated in its Draft Decision.<sup>2</sup> DBCTM notes that these amendments were previously proposed as a mark-up to the 2019 DAU as an attachment to DBCTM's April 2020 Submission. These amendments remain in the 2019 DAU marked up in this submission in Appendices 6 and 7.

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<sup>1</sup> QCA Interim Decision, p. 36

<sup>2</sup> QCA Draft Decision, p. 45

#	Provisions of DAU	Description of proposed amendment to 2019 DAU	DBCTM proposed amendments to 2019 DAU
A1	ss. 5.2, 5.5(a), 5.5(d),5.5(i)-(k), sch. H and I	<p><b>Information provisions</b></p> <p>Introduces new, prescriptive information requirements which require DBCTM to disclose key information in a pre-determined format. The information is tailored to facilitate effective negotiations at DBCT. DBCTM will provide (amongst other things):</p> <ul style="list-style-type: none"> <li>• information about the utilisation of the terminal, including the current and future contracted position of the terminal and the availability of spare capacity;</li> <li>• historical pricing at the terminal;</li> <li>• information on the historical regulated asset base, as well as the current capital base, updated to account for indexation, capital expenditure and depreciation;</li> <li>• an independent assessment of efficient corporate costs for DBCT;</li> <li>• forecast non-expansion capital expenditure;</li> <li>• estimates of DBCTM's weighted average cost of capital; and</li> <li>• other information.</li> </ul> <p>This information is to be provided confidentially to access seekers following the receipt of a valid access application.</p> <p>The information must be certified by two senior managers of DBCTM.</p> <p>Also introduces explicit reference to compliance and enforcement provisions of the QCA Act.</p>	<p>These changes were proposed to address the QCA's criteria for the approval of a pricing model that does not include reference tariffs, namely:<sup>3</sup></p> <p><b>Information provisions that facilitate negotiations</b></p> <p>Provision of the necessary information would allow access seekers to enter negotiations from an appropriately informed position. A model that provides such information will contribute to effective negotiations with prices that are likely to be at least reflective of the efficient costs of supply, reducing the dependence on costly and time-consuming arbitrations</p> <p>In its Draft Decision the QCA considered it 'appropriate for the 2019 DAU to adopt DBCTM's proposed amendments to the information provision arrangements, as provided for in appendix 4 of its April 2020 submission.'<sup>4</sup></p>

<sup>3</sup> QCA Interim Draft Decision, p. 38

<sup>4</sup> QCA Draft Decision, p. 66

#	Provisions of DAU	Description of proposed amendment to 2019 DAU	DBCTM proposed amendments to 2019 DAU
A2	s. 11.4(d)	Aligns the arbitration criteria in the 2019 DAU with section 120 of the QCA Act.	<p>These changes were proposed to address the QCA's criteria for the approval of a pricing model that does not include reference tariffs, namely:<sup>5</sup></p> <p><b>Arbitration criteria that constrain asymmetrical market power</b></p> <p>The criteria that we must have regard to in arbitrations should act to credibly constrain DBCTM's market power and lead to pricing that reflects at least the efficient costs of supply, consistent with the pricing principles of the QCA Act (s. 168A). Effective criteria should provide certainty to our approach, reducing the monetary and time costs for parties and potentially incentivising agreement through negotiation</p> <p>And:<sup>6</sup></p> <p><b>Certainty that the arbitration criteria do not impede competition for capacity</b></p> <p>The arbitration criteria should not result in access seekers being materially worse off in negotiations compared to access holders, where the latter may benefit from arbitration criteria that more effectively constrain DBCTM's market power under existing access agreements. It is critical to provide certainty that access holders and seekers operate on 'equal footing' in this regard, whereby neither party is exposed to monopoly pricing or prices that are otherwise inconsistent with the pricing principles in section 168A of the QCA Act.</p> <p>In its Draft Decision the QCA explained that it considered the arbitration factors outlined in section 120 of the QCA Act were appropriate criteria for DBCTM to apply as part of the arbitration process:<sup>7</sup></p>

<sup>5</sup> QCA Interim Draft Decision, p. 38

<sup>6</sup> QCA Interim Draft Decision, p. 38

<sup>7</sup> QCA Draft Decision, p. 71

#	Provisions of DAU	Description of proposed amendment to 2019 DAU	DBCTM proposed amendments to 2019 DAU
A3	SAA cl 7.2	Aligns the provisions of the 2019 SAA regarding the arbitration criteria applicable when arbitrated by a commercial arbitrator, with the criteria applicable under the existing user agreements.	<p>These changes were proposed to address the QCA's criteria for the approval of a pricing model that does not include reference tariffs, namely:<sup>8</sup></p> <p><b>Certainty that the arbitration criteria do not impede competition for capacity</b></p> <p>The arbitration criteria should not result in access seekers being materially worse off in negotiations compared to access holders, where the latter may benefit from arbitration criteria that more effectively constrain DBCTM's market power under existing access agreements. It is critical to provide certainty that access holders and seekers operate on 'equal footing' in this regard, whereby neither party is exposed to monopoly pricing or prices that are otherwise inconsistent with the pricing principles in section 168A of the QCA Act.</p> <p>In its Draft Decision the QCA explained that it is appropriate for DBCTM to amend the 2019 DAU to align the arbitration criteria to apply to price reviews that will occur under the 2019 SAA with those in the 2017 SAA.<sup>9</sup></p>
A4	Schedule I (11)	Provides for the outcomes of arbitration determinations to be released to (non-participating) access seekers, whether an arbitration is conducted by the QCA or another party.	<p>These changes were proposed to address the QCA's criteria for the approval of a pricing model that does not include reference tariffs, namely:<sup>10</sup></p> <p><b>Clear and efficient process in negotiation and arbitration and transparency around arbitrated outcomes</b></p> <p>Transparency of arbitration outcomes leads to efficient price determinations and decreases the likelihood of rolling arbitrations.</p>

<sup>8</sup> QCA Interim Draft Decision, p. 38

<sup>9</sup> QCA Draft Decision, p. 80

<sup>10</sup> QCA Interim Draft Decision, p. 38

**Table B: Non pricing changes in response to User Group comments (DBCTM June 2020 Submission)**

DBCTM proposes the following amendments in response to the non-pricing issues raised by the User Group in Schedule 3 of its September 2019 submission. The majority of these changes were first proposed in DBCTM's June 2020 Collaborative Submission, though DBCTM has since proposed some further amendments to address the User's issues, as explained in the table.

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B1	s. 1.6(b)	<p><b>Amendments to reflect the 2017 AU</b></p> <p>Removes the provision recording DBCTM's intention to apply to amend the undertaking to reflect those any amendments made to the 2017 Access Undertaking prior to the Approval Date.</p>	<p>DBCTM agreed to remove this provision at the request of the User Group on the basis that it has no practical effect.</p> <p>The QCA considers that it is appropriate to remove the provision given stakeholder agreement.<sup>11</sup></p>
B2	ss 3.3	<p><b>Operation and Maintenance Contract</b></p> <p>Reinstates s. 3.3 of the 2017 AU which specifies that DBCTM undertakes to maintain the Operation and Maintenance Contract and ensure that the terms of the Operation and Maintenance Contract, if amended at any time, remain substantially the consistent with the terms set out in Schedule J of the amended 2019 DAU.</p>	<p>While DBCTM maintains the view that section 3.3 is unnecessary in light of section 3.2 (indeed the User Group acknowledges this does not impose any additional burden on DBCTM), DBCTM is prepared to reinstate the provision.</p> <p>The QCA's considers that it is appropriate to reinstate the amendment given DBCTM's agreement.<sup>12</sup></p>
B3.	s. 5.3(f) Schedule G	<p><b>Renewal of access Applications</b></p> <ol style="list-style-type: none"> <li>Simplifies the wording of clause 5.3(f).</li> <li>Amends paragraph (b) of the definition of 'access application' in schedule . G, to extend the applicability of that paragraph to section 5.3. This will clarify that applications submitted before the commencement of the 2019 DAU are access applications for the purposes of section 5.3.</li> </ol>	<p>DBCTM has adopted the User Group's proposed simplification of wording and adjustment to the applicability of the definition of Access Application under paragraph (b).</p> <p>The QCA considers that the amendments are appropriate to clarify and simplify the provisions.<sup>13</sup></p>

<sup>11</sup> QCA Draft Decision, p. 104

<sup>12</sup> QCA Draft Decision, p. 104

<sup>13</sup> QCA Draft Decision, p. 105

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B4	s. 5.3(g)	<p><b>Notice of expiry of access Applications</b></p> <p>Reintroduces obligation for DBCTM to give notice to Access Seekers before expiry of an access application. The new provision requires DBCTM to give notice at least 2 months prior to the expiration of the Access Application.</p>	<p>While DBCTM considers that sophisticated access seekers are more than capable of managing their renewal timelines, DBCTM is prepared to reinstate the notification requirement.</p> <p>The QCA considers that access seekers should be responsible for tracking and managing expiry dates.<sup>14</sup> However, given DBCTM is prepared to reinstate the notification obligation the QCA considers it appropriate to amend the 2019 AU to do so.<sup>15</sup></p>
B5	s. 5.3A	<p><b>Revised date of commencement</b></p> <p>Clarifies that the revised date for commencement of access cannot be in the past.</p>	<p>The User Group proposed this amendment and DBCTM agrees that is a useful clarification.</p> <p>The QCA considers that the amendment is appropriate and improves the clarity and workability of the drafting.<sup>16</sup></p>
B6	Schedule G 'Renewal Application'	<p><b>Renewal Application definition</b></p> <p>Clarifies the definition of renewal application in Schedule G.</p>	<p>The User Group proposed this amendment and DBCTM agrees that is a useful clarification.</p> <p>The QCA considers that the amendment is appropriate and improves the clarity and workability of the drafting.<sup>17</sup></p>

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<sup>14</sup> QCA Draft Decision, p. 105

<sup>15</sup> QCA Draft Decision, p. 105

<sup>16</sup> QCA Draft Decision, p. 106

<sup>17</sup> QCA Draft Decision, p. 106

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B7	Schedule A	<p><b>Requirement to provide environmental approval info</b></p> <p>Removes discrete obligation for access seeker to provide details of the status of the Environmental Approval for the Source Mine Project as part of an Access Application or Renewal Application.</p>	<p>The User Group queried the requirement for information about the status of a mine's environmental approval, noting there was already a requirement for information on progress to obtain 'necessary approvals', and asked DBCTM to clarify what information it wished to receive.</p> <p>DBCTM explained in its June 2020 Submission that it hoped to receive reasonable evidence to show that mining operations are likely to commence around the time requested in the access application. DBCTM also explained that it expected it may be appropriate to provide information not in the public domain where appropriate confidentiality protections are in place.</p> <p>Following the QCA's Draft Decision DBCTM attempted to engage further with the User Group to explain its position and to better understand the User Group's concerns.</p> <p>As explained above, the User Group has refused to engage with DBCTM on these issues.</p> <p>Notwithstanding this lack of engagement from the User Group, DBCTM has further considered whether it would be able to obtain the identified information through the existing requirements for an Access Seeker to provide information regarding its progress in obtaining the necessary approvals for the Source Mine Project, and has proposed to remove the separate requirement to provide information regarding environmental approvals on the basis that 'necessary approvals' would capture information on environmental approvals.</p> <p>DBCTM considers that this should clarify the intended operation of the provisions for access seekers and user.</p>

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B9	ss. 5.4(e)(5), 5.4(f), 5.4(g)(1)	<p><b>Timeframes for short term capacity</b></p> <p>Extends the timeframes applicable to the processes for allocating Short Term Available Capacity from 30 days to 60 days (where the term is less than 5 years) and 3 months (where the term is greater than 5 years).</p>	<p>DBCTM proposed this change at the request of the User Group which considered 60 days would be a more appropriate timeframe for Users to make a decision whether to take up the Short-Term Available Capacity and organise the relevant documents and security where the Short-term Capacity is for a term of 5 years or less and 90 days if it is for a period of over 5 years.</p> <p>The QCA considers that the 2019 DAU should be amended to include those suggested timeframes.<sup>18</sup></p>
B10	s 5.4(e)(1)	<p><b>Notifying access seeker process</b></p> <p>Clarifies that an Access Seeker's date for date for the commencement of access cannot be a date that precedes the Notice.</p>	<p>The User Group supported the concept that the Notifying Access Seeker does not need to nominate a date that is at least 6 months before the access seeker which is then first in the queue, but considered that it should be made clear that the notifying access seeker cannot nominate a date in the past (given that to obtain access, other access seekers in the queue have to match the commencement date sought).</p> <p>DBCTM agreed to this proposed amendment suggested by the User Group.</p> <p>The QCA considered that this amendments would clarify and improve the workability of the provisions and would be appropriate to be approved.<sup>19</sup></p>

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<sup>18</sup> QCA Draft Decision, p. 109

<sup>19</sup> QCA Draft Decision, p. 110

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B11.	s 5.4(e)(1)	<p><b>Notifying access seeker process</b></p> <p>Deems a notifying access seeker to have sought access from a date earlier than that of the first access seeker if it seeks access commencing within 6 months of the notice that triggers the notifying access seeker process if for any reason the access seeker that is first in the queue has a date for commencing access that is already in the past</p>	<p>The User Group supported the concept that the Notifying Access Seeker does not need to nominate a date that is at least 6 months before the access seeker which is then first in the queue, but considered that it should be made clear that the notifying access seeker will be deemed to have sought access from a date earlier than that of the first access seeker if it seeks access commencing within <u>3 months</u> of giving the notice that triggers the notifying access seeker process if for any reason the access seeker that is first in the queue has a date for commencing access that is already in the past.</p> <p>DBCTM explained in its June 2020 submission that it was comfortable proposing this amendment, but considered a <u>6 month</u> period would make more sense from a commercial perspective</p> <p>Subject to receiving further information from stakeholders about an appropriate time period, the QCA considered that this amendments would clarify and improve the workability of the provisions and would be appropriate to be approved.<sup>20</sup></p> <p>DBCTM reached out to the User Group to confirm that a 6 month period would be workable,<sup>21</sup> but received no response from the User Group on this issue. As such DBCTM has implemented the change as proposed.</p>
B12	s. 5.4(f)(3), (4), s. 5.4(h)	<p><b>Priority of Notifying Access Seeker</b></p> <p>Clarifies that access seekers in the queue (Notified Access Seekers) would <u>not</u> have priority over the Notifying Access Seeker and that DBCTM will only execute access agreements with Notified Access Seekers with a higher priority than the Notifying Access Seeker.</p>	<p>DBCTM proposed this amendment in response to the User Group's comments as part of the June 2020 collaborative submission process. The amendment makes it clear that priority is based on commencement date and then order in the queue and that the Notifying Access Seeker should have priority over those access seekers who are behind them in the queue in circumstances where it has an earlier, or the same, commencement date.</p> <p>The QCA considers that this amendment will clarify and improve the workability of the provisions and would be appropriate to be approved.<sup>22</sup></p>

<sup>20</sup> QCA Draft Decision, p. 110

<sup>21</sup> Letter from DBCTM to User Group dated 23 September 2020

<sup>22</sup> QCA Draft Decision, p. 110

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B13	s. 5.4(g)	<p><b>Timeframes</b></p> <p>Specifies timeframe as 10 Business Days rather than 14 days.</p>	<p>The User Group made this suggestion, to address circumstances where the process is triggered at a time of year when there are numerous public holidays and the timeframe is effectively less working days than anticipated.</p> <p>DBCTM is comfortable with the alternative timeframe.</p> <p>Taking into account stakeholder agreement the QCA considers that 10 business days was an appropriate timeframe.<sup>23</sup></p>
B14	s.5.4(h)	<p><b>Security requirements for Notifying Access Seeker</b></p> <p>Allows for Notifying Access Seeker to be afforded the same rights to dispute the required Security and additional timeframe to obtain Security as afforded to Notified Access Seekers under clause 5.4(g).</p>	<p>The User Group requested that Notifying Access Seekers be afforded the same rights to dispute the required Security and additional timeframe to obtain Security as afforded to Notified Access Seekers under clause 5.4(g).</p> <p>DBCTM is comfortable with the change suggested by the User Group, so has proposed amendments to give effect to it.</p> <p>The QCA considers the amendments appropriate to provide for the consistent treatment of access seekers participating in the process<sup>24</sup></p>
B15	s. 5.4(i)(1)	<p><b>Timeframes</b></p> <p>DBCTM can remove a Notified Access Seeker from the Queue if they do not take up capacity with a commencement date within only a short timeframe in advance of their proposed access commencement date.</p> <p>This amendment reduces the timeframe from 2 years to 1 year.</p>	<p>The User Group suggested this change on the basis that an additional 2 years of charges was such a significant a cost that refusal to take on that obligation should not result in removal from the queue.</p> <p>DBCTM is comfortable with the change suggested by the User Group, so has adopted the proposed amendment.</p> <p>The QCA considers that the amendment is appropriate for approval.<sup>25</sup></p>

<sup>23</sup> QCA Draft Decision, p. 112

<sup>24</sup> QCA Draft Decision, p. 112

<sup>25</sup> QCA Draft Decision, pp. 112-113

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B16	s. 5.4(i)(1)	<p><b>Queue removal disputes</b></p> <p>Removes the requirement that a dispute regarding the removal from the queue to be 'bona fide' for a Access Seeker to retain its position in the queue.</p>	<p>The User Group suggested the requirement that a dispute be bona fide should be removed and such that any dispute should to be resolved before an Access Seeker is removed from the queue.</p> <p>DBCTM is comfortable with the change suggested by the User Group, so has adopted the proposed amendment.</p> <p>The QCA considers that this amendment is appropriate for approval.<sup>26</sup></p>
B17	s. 5.4(i)(1)	<p><b>Start date to maintain queue position</b></p> <p>Clarifies that a Notified Access seeker with a commencement date within the next year must execute an access agreement <i>which has a start date the same or earlier than the Notifying Access Seeker's.</i></p>	<p>The User Group identified its concern that when clause 5.4(i)(1) refers to execution of an access agreement it does not confine that to one that has a start date sufficient to give the Notified Access Seeker priority under clause 5.4(f) (which is presumably what was intended).</p> <p>DBCTM is comfortable clarifying that the reference to the execution of an access agreement is confined to where the commencement date is the same or earlier than that of the Notified Access Seeker.</p> <p>The QCA considers the proposal appropriate because it is in the interests of Access Seekers.<sup>27</sup></p>

<sup>26</sup> QCA Draft Decision, pp. 112-113

<sup>27</sup> QCA Draft Decision, p. 109

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B18	s. 5.4(i)(5)	<p><b>Queue position when access to lower tonnages sought</b></p> <p>Clarifies that if a Notified Access Seeker responds with a signed Access Agreement in respect of a lower tonnage, or shorter term than their Access Application, they will retain their place in the Queue in respect of the remaining tonnage or term applied for.</p>	<p>The User Group requested that a clarification should be included to confirm that if a Notified Access Seeker responds with a signed Access Agreement in respect of a lower Tonnage, or shorter term than their Access Application, they will retain their place in the Queue in respect of the remaining Tonnage or term applied for.</p> <p>DBCTM explained in its June 2020 Submission that it was reluctant to make this amendment/clarification. DBCTM is concerned that this change could create an incentive for access seekers to mount very large access applications to reserve places in the queue for tonnage not contracted for in the first tranche(s). DBCTM proposed to discuss this issue and potential solutions with the User Group.</p> <p>DBCTM wrote to the User Group requesting suggestions as to how this risk could be mitigated.<sup>28</sup> The User Group did not respond to DBCTM's request.</p> <p>Notwithstanding this, DBCTM proposes to clarify the existing section 5.4(i)(5) to make it clear that where a Notified Access Seeker responds with a signed Access Agreement in respect of a lower tonnage, or shorter term than their Access Application, they will retain their place in the Queue in respect of the remaining tonnage or term applied for</p>
B19	s. 5.4(i)(6)	<p><b>Queue position when not accepting lesser tonnage</b></p> <p>Removes ability for DBCTM to remove an access seeker from the queue where it does not take up a lesser tonnage than it was seeking in its access application.</p>	<p>The User Group requested this amendment explaining that it may be, for example, that access for the full amount is necessary to support a greenfield mine development or mine expansion and the lesser amount is not sufficient and is therefore not accepted (even though the access seeker remains genuinely interested in the greater volume of capacity applied for).</p> <p>DBCTM is comfortable with the change suggested by the User Group, so has adopted the proposed amendment.</p> <p>Taking into account the User Group's concerns, and noting DBCTM's support, the QCA considers that DBCTM should amend the 2019 DAU to remove the ability to remove an access seeker from the queue.<sup>29</sup></p>

<sup>28</sup> Letter from DBCTM to User Group dated 23 September 2020

<sup>29</sup> QCA Draft Decision, p. 113

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B20	s. 5.6(a)	<p><b>Timeframes for Short-Term Capacity</b></p> <p>Change of timeframe from 14 days to 10 Business Days (in case this process is triggered at a time of year when there are numerous public holidays and the timeframe is effectively less working days than anticipated).</p>	<p>DBCTM agreed to this changes which was requested by the User Group.</p> <p>The QCA considers that this is an appropriate timeframe.<sup>30</sup></p>
B21	s. 5.7(a)	<p><b>Timeframe to initiate negotiations</b></p> <p>Change of timeframe from 14 days to 10 Business Days (in case this process is triggered at a time of year when there are numerous public holidays and the timeframe is effectively less working days than anticipated).</p>	<p>DBCTM agreed to this changes which was requested by the User Group.</p> <p>The QCA considers that this is an appropriate timeframe.<sup>31</sup></p>
B22	s. 5.8(3)	<p><b>Negotiation cessation notice timeframes</b></p> <p>Under the 2019 DAU DBCTM can issue a negotiation cessation notice where there is no reasonable likelihood of an access seeker utilising access from its nominated commencement date.</p> <p>This amendment adds flexibility by only allowing a negotiation cessation notice to be issue where there is no reasonable likelihood of an access seeker utilising access <u>within a reasonable period</u> after its nominated commencement date.</p>	<p>The User Group proposed this amendment to recognise that many factors may impact upon the date of commencement of shipping.</p> <p>DBCTM is comfortable with the change suggested by the User Group, so has adopted the proposed amendment.</p> <p>The QCA considers the amendment appropriate to provide for a reasonable degree of flexibility.<sup>32</sup></p>

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<sup>30</sup> QCA Draft Decision, p. 109

<sup>31</sup> QCA Draft Decision, p. 113

<sup>32</sup> QCA Draft Decision, p. 114

Item	Provision of DAU	Description of proposed amendment to 2019 DAU	DBCTM's Reasons for the amendment
B25	s. 12.1(h)	<p><b>Assumed consultation for ILC members</b></p> <p>Removal of provision which assumes, when the independent expert is the Integrated Logistics Company (ILC), that the members of the ILC have been consulted for the purposes of the estimation of the Terminal Capacity, Expansion Component Capacity or System Capacity.</p>	<p>This amendment was requested on the basis that it cannot be assumed that all entities that are members will have been consulted when the ILC is engaged by DBCTM to provide capacity estimates and that the ILC membership is subject to change.</p> <p>DBCTM explained in its June 2020 Submission the ability to assume consultation for ILC members was intended to improve the efficiency of the process, by avoiding duplication in the consultation process and that a requirement for all access holders to be consulted could extend timeframes significantly, potentially resulting in periods of time where DBCTM is unable to contract capacity when it otherwise would be able.</p> <p>DBCTM wrote to the User Group requesting suggestions as to how the consultation process could be conducted expediently while still ensuring that the relevant parties are adequately consulted.<sup>33</sup></p> <p>While DBCTM is disappointed that the User Group did not engage constructively to provide suggestions to improve the efficiency of the consultation process, DBCTM proposes to remove the assumption that members of the ILC have been consulted where the ILC is the independent expert.</p>
B26	s. 12.1(i) -	<p><b>Grounds for objecting to independent capacity assessment</b></p> <p>The 2019 DAU provides that the only grounds of objection to the capacity assessment undertaken by an independent expert should be that it is made in breach of the AU or an Access Agreement or in manifest error.</p> <p>This amendment reinstates the original drafting of this section in the 2017 AU, which includes the ability to object, with the addition of a 30 Business Day window to make the objection..</p>	<p>The User Group raised concerns with the provision of the 2019 DAU and requested that the wording of the 2017 AU be reinstated.</p> <p>The QCA considers that the 2017 AU drafting should be reinstated taking into account stakeholder support.<sup>34</sup></p> <p>DBCTM's is comfortable with the User Group's suggested changes so has proposed and amendment to reinstate the 2017 AU wording. DBCTM has also introduced a requirement for objections to be made within 30 Business Days of the estimate being released in order to ensure the process is efficient and stakeholders can have certainty of the capacity estimate following the objection window.</p>

<sup>33</sup> Letter from DBCTM to User Group dated 23 September 2020

<sup>34</sup> QCA Draft Decision, p. 119

### Table C: further amendments proposed to address QCA Draft Decision

DBCTM proposes the following amendments to address issues identified in the QCA's Draft Decision.

#	Section	Description of proposed amendment to the 2019 DAU	DBCTM's reasons for the amendment
<b>Information provisions</b>			
C1	Schedule I(2),(5) & (10)	<b>Methodology information</b> Adds requirements for DBCTM to disclose and explain its methodology for estimating inflation, WACC, working capital management and tax obligations as part of its information requirements.	The QCA considers it appropriate for DBCTM to disclose and explain its methodology for estimating inflation, WACC, working capital management and tax obligations. <sup>35</sup> DBCTM is comfortable with the QCA's position and proposes these amendments to implement the QCA's position.
C2	Schedule H(3), Schedule I(3), Schedule C Part B 3(h)	<b>Depreciation</b> Changes to the depreciation information required to be provided by DBCTM to access seekers.	DBCTM's previously proposed amendments required it to provide depreciation information in accordance with the methodology set out in Schedule I(3). The QCA considers that DBCTM to provide information on depreciation based on an approved methodology to be assessed transparently as part of this 2019 DAU assessment process. DBCTM agrees with the QCA that the specification of an approved depreciation methodology is preferable to providing asset specific information to access seekers. DBCTM has proposed an approach explained in detail in section 4.2 which will provide greater transparency as to how it calculates depreciation. DBCTM proposes to implement this by including a requirement for DBCTM to calculate depreciation in accordance with the approach set out in the QCA's final decision.
C3	Schedule I(7)	<b>Rehabilitation costs</b> Changes the requirements to provide DBCTM's forecast of rehabilitation costs, to a requirement for DBCTM to provide the QCA's estimate of rehabilitation costs as set out in its final decision on the 2021 AU.	The QCA considers it appropriate for DBCTM to specify the appropriate remediation cost estimate to apply for the 2019 DAU period, as determined by the QCA. DBCTM is comfortable with the QCA's position and proposes these amendments to implement the QCA's position.
C4	Schedule I(9)	<b>Corporate cost benchmarking</b> Adds requirement for DBCTM to provide further detail on the benchmarking methods that were considered and the resulting estimates that were used to determine efficient corporate costs.	The QCA considers it appropriate for DBCTM to provide detail on the benchmarking methods that were considered and the resulting estimates that were used to determine efficient corporate costs. <sup>36</sup> DBCTM is comfortable with the QCA's position and proposes these amendments to implement the QCA's position.

<sup>35</sup> QCA Draft Decision, pp 62, 63, 66, 70

<sup>36</sup> QCA Draft Decision, pp 64,65, 66, 70

#	Section	Description of proposed amendment to the 2019 DAU	DBCTM's reasons for the amendment
C5	5.29(c)(2), 5.5(d)(7)	<b>Information provision for the relevant Terminal component</b> Amends the requirement to provide information, <i>as it relates to the relevant Terminal Component</i> .	The QCA noted that should there be an expansion that is differentially priced during the regulatory period, there may be more than one Terminal component for negotiations to be based on. The QCA considers that DBCTM should be required to provide all information specified in schedules H and I for the Terminal component in respect of which an access seeker is negotiating access. <sup>37</sup>  DBCTM agrees and proposes this amendment to clarify that information should be provided for the relevant terminal component.
C6	Schedule I	<b>Timing of initial TIC negotiations and implications for information provision</b> DBCTM proposes to amend the definition of 'Forecast Period' such that where an Indicative Access Proposal is provided after 1 January 2025, the period will extend until 30 June 2031.	DBCTM's proposed amendments to information provision requirements only provide forecast information to access seekers for the five-year pricing period (1 July 2021 to 30 June 2026). The 2019 SAA then provides for the review of access charges to commence at the start of the following pricing period.  However, as noted by the QCA, the 2019 SAA (cl. 7.2(c)) requires the parties to commence each review no later than 18 months prior to the start of the pricing period. It therefore appears that access seekers who enter into access agreements within the 18 months prior to 30 June 2026 may not be able to formally 'trigger' a review of access charges. This means the initial TIC negotiated between the parties will apply across two pricing periods (the period up until 30 June 2026 and the following pricing period).  The QCA is of the view that these access seekers will not be adequately informed in negotiating the initial TIC that will apply across two pricing periods, as they will only have forecast information until the 30 June 2026. The QCA considered that there should be amendments to provide for better information provision for relevant access seekers, or an ability for those access seekers to review access charges based on updated information for the following pricing period.  DBCTM has proposed amendments to expand forecast period for which DBCTM must provide information, where an access application is received within 18 months of a pricing period.

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<sup>37</sup> QCA Draft decision, p. 67

#	Section	Description of proposed amendment to the 2019 DAU	DBCTM's reasons for the amendment
C7	Schedule I, 17.4(d)	<p><b>Providing information on arbitration outcomes beyond the initial TIC</b></p> <p>DBCTM proposes amendments to require it to provide a summary of the following arbitration outcome information:</p> <ol style="list-style-type: none"> <li>1 the principles the arbitrator applied in making the determination;</li> <li>2 the methodologies the arbitrator applied in making the determination;</li> <li>3 how the arbitrator took into account the matters mentioned in subsection 120(1) of the QCA Act in making the determination; and</li> <li>4 any matter the arbitrator took into account under subsection 120(2) of the QCA Act in making the determination and the reasons for doing so.</li> </ol> <p>This information would be provided on a strictly confidential basis.</p>	<p>DBCTM proposes to extend the amount of information provided to access seekers regarding arbitration outcomes, but not to provide information regarding the determination of the initial TIC as this would risk being interpreted as a de facto reference tariff.</p> <p>DBCTM's full reasons are set out in section 3.3.</p>
C8	5.4(l)	<p><b>Providing information on expected Expansion Pricing Approach as part of Conditional Access Agreement process</b></p> <p>DBCTM proposes to introduce a requirement to provide information regarding the Expansion Pricing Approach that DBCTM considers appropriate to apply to the expansion, when commencing the conditional access agreement process under section 5.4(l).</p>	<p>The QCA's Draft Decision suggested that the 2019 DAU could require DBCTM to outline the proposed pricing approach prior to requiring access seekers in the queue to enter into conditional access agreements, in order to enable access seekers to form a preliminary view on pricing matters.<sup>38</sup></p> <p>DBCTM proposes to adopt this change.</p>

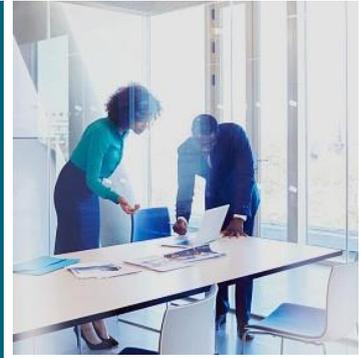
<sup>38</sup> QCA Draft Decision, p. 81, 82

#	Section	Description of proposed amendment to the 2019 DAU	DBCTM's reasons for the amendment
C9	5.4(l)(3)	<p><b>Conditional Access Agreements to include termination provisions</b></p> <p>DBCTM proposes to include an requirement for DBCTM to include in every conditional access agreement a right to terminate any time prior to 30 days after the determination of an expansion pricing approach or DBCTM's submission of a expansion application</p>	<p>The QCA's Draft Decision explained that it considered it may be appropriate for the 2019 DAU to provide for a more balanced negotiation process on pricing matters and suggested that DBCTM could do this by enabling access seekers to have more scope to terminate an access agreement if the negotiation-arbitration process does not deliver a TIC that is acceptable to the access seeker.<sup>39</sup></p> <p>In response to these comments DBCTM has proposed this change. DBCTM's full reasons for the proposed amendments are set out in section 3.4.</p>
C10	SAA cl 7.2(b)	<p><b>Taking into account access undertaking for future pricing periods</b></p> <p>Change to 7.2(b) of the 2019 DAU SAA to allow expressly allow price review to have regard to any final access undertaking that will be effective in the upcoming pricing period to which the price review relates.</p>	<p>The QCA's Draft Decision noted that both the 2017 SAA and 2019 SAA provide for existing charges to continue to apply until an agreement or determination has been made, at which point any determination or agreement will operate retrospectively from the start of the relevant pricing period. Noting that there may be amendments to information provision and regulatory arrangements in future access undertakings, it considers that any review of access charges should have regard to the terms of the access undertaking effective for the relevant pricing period.</p> <p>DBCTM proposes this change such that the pricing review under the 2019 DAU may expressly have regard to any final access undertaking that will be effective in the upcoming pricing period to which the price review relates.</p>

DBCTM notes that in order to reduce unnecessary complexity or ambiguity, it has also made a small number of self-explanatory and uncontroversial minor amendments tweaks to the 2019 DAU drafting, which do not detract from the effect of the original drafting.

<sup>39</sup> QCA Draft Decision, pp. 68-69

**Appendix 2 GHD Advisory – Response to QCA's draft decision on 2019 DAU**



# **GHD's response to QCA's draft decision on 2019 DAU (DBCT Rehabilitation Plan and Cost Estimate)**

DBCT Management

21 October 2020

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# 1. Executive summary

DBCT Management (**DBCTM**) engaged GHD Advisory (**GHD**) to respond to aspects of the rehabilitation plan and rehabilitation cost addressed in the draft decision (**Draft Decision**) released by the Queensland Competition Authority (**QCA**) on DBCTM's 2019 Draft Access Undertaking (**2019 DAU**).

## 1.1 Background

DBCTM's 2019 DAU submission included a report from GHD (**GHD Report**) that set out a rehabilitation plan and cost estimate (**GHD Estimate**) for enabling DBCT to be rehabilitated in accordance with the Port Services Agreement (**PSA**). The GHD Estimate was \$1.22 billion (\$ October 2018). As part of its Draft Decision, the QCA commissioned advice from Advisian (the **Advisian Report**) to review the approach and findings of the GHD Report, and provide an independent cost estimate for rehabilitating DBCT in accordance with the PSA. The Advisian Report provided a cost estimate of \$814 million.

## 1.2 This report

The Draft Decision identified key areas of difference between the GHD Report and Advisian Report, notably:

- Locations and approaches for waste disposal
- Unit rates and volumes for bulk earthworks
- Extent of contaminated materials at the DBCT site
- Approaches for removing offshore piles
- Risk and contingency allowances
- Indirect labour and project management costs.

DBCTM has engaged GHD to respond to these key areas of difference; this report responds to these matters.

Good practice for rehabilitation estimation is to adopt a conservative approach for work scoping and cost planning, as significant uncertainty regarding the extent of work required for remediation requires assumptions to allow for sufficient funds to be generated to cover the works. GHD's approach recognises that DBCTM is the *sole* bearer of the financial risk associated with rehabilitating DBCT.

DBCTM needs to act prudently in considering the high levels of risk it is exposed to in respect of rehabilitation obligations and costs, especially since its obligation materialises more than 30 years from now. Accordingly, a somewhat conservative approach for determining the scope of works and associated costs for meeting the PSA's rehabilitation requirements is highly appropriate and consistent with the financial risks that DBCTM confronts in having to meet its PSA obligations. It is in this context that GHD prepared the GHD Report and GHD Estimate.

Table 1-1 summarises GHD's positions on justifying and clarifying why the differences exist.

**Table 1-1: Summary of responses to material differences between GHD Report and Advisian Report**

Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
Waste disposal	\$31.71 million of direct costs	GHD assumed non-contaminated waste would be disposed at Hogan's Pocket Waste Facility (65 km from site) (pp. 139) and contaminated waste transported to a commercial facility in Roma (750 km from site) (pp. 133). The resulting disposal rate is \$383 per tonne (pp. 141).	<p>Advisian assumed general waste disposal at Paget Transfer Station (30 km from site) and contaminated waste at Hogan's Pocket (65 km from site) (p. 31). The resulting disposal rate is \$350 per tonne (pp. 19, 49).</p> <p>Advisian noted that neither contaminated waste site (Hogan's Pocket or Roma) currently has capacity to accommodate the demands, but it expects notice periods would allow these facilities to expand (pp. 18, 50).</p>	<p>For DBCTM to prudently estimate its rehabilitation obligations, it should assume moderate to heavy soil contamination and the intersection with volumes and types of materials that <i>existing</i> facilities can accommodate. The purpose of the remediation allowance is to enable sufficient funds to be generated to cover the cost of rehabilitation when it falls due.</p> <p>It is unclear whether Advisian has included such an allowance for expansion of waste disposal facilities in its cost estimate; however, GHD considers that where Advisian's unit rates for disposal do not accommodate waste disposal expansion costs, then these unit rates are lower than would be achieved during rehabilitation.</p>

Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
Bulk earthworks volumes	\$103.33 million of direct costs for all materials handling (earthworks) related costs	GHD modelled pre-construction landform based on digitisation of pre-construction earthworks layout drawings from 1981, and final landform based on Light Detection and Ranging (LIDAR) data flown in 2013, 'as-built' drawings of dams in 2015 and 'as- built drawings' from the 7X expansion project (pp. 47–49).	<p>Advisian independently modelled earthworks volumes using digitised aerial images flown in 1977 as the pre-construction landform (from Department of Natural Resources, Mines and Energy or <b>DNRME</b>) and orthorectified (geometrically corrected) using 2013 LIDAR data (used by GHD) and 2015 digital terrain data (from DNRME). Final landform data was generated from the 2013 LIDAR data, modified for structures anticipated to be removed prior to earthworks. Advisian estimated dam storage volumes from images provided by GHD to calculate water surface levels removed, and verified its estimate during its site visit (pp. 56–62).</p> <p>In reviewing GHD's approach (without provision of earthworks modelling from GHD), Advisian could only determine the methods used by GHD for Domain 2 (stockyards) and noted GHD's volumes did not match the volumes reported in Axiom's<sup>1</sup> estimate (pp. 56).</p>	While Advisian's and GHD's approaches for deriving bulk earthworks volumes are different, the volumes, at an overall site level, are highly comparable. While the approaches differ, they both have their merits and, more importantly, the outputs yielded are similar. Accordingly, the majority of the cost difference sits with the selection of unit rates, rather than the volumes themselves.
Bulk earthworks rate		GHD priced plant and labour (with contractor margin) at \$372 per hour with productivity of 27.64m <sup>3</sup> /hr,	Advisian estimated plant and labour at \$915 per hour with a productivity of 115 m <sup>3</sup> /hr, resulting in a 'sell price' of \$7.96/m <sup>3</sup> (pp. 18,	

<sup>1</sup> GHD subcontracted the estimation of the rehabilitation costs to Axiom.

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Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
		resulting in a 'sell price' of \$13.46/m <sup>3</sup> . <sup>2</sup> GHD did not elaborate on these figures.	77). Advisian explained these figures are based on its industry and commercial sources specific to Queensland, verified by recent bulk earthworks projects in the state (pp. 18).	(WQIP) NECAP project, was recommended by the Operator, approved by Users and accepted by the QCA The upper bound of the related bulk earthworks rate was \$13.73/m <sup>3</sup> (\$ March 2020, the estimation date referred to in the Advisian report). Hence, based on DBCTM's experience, GHD's rate is appropriate and Advisian's rate is likely understated.
Imported clean fill		GHD applied a clean fill rate of \$35/m <sup>3</sup> (but did not clarify its source) <sup>3</sup> , and Axiom applied a rate of \$50 per cubic metre (based on recent project experience in the locality) (pp. 139). This resulted in two different rates for imported clean fill being used in GHD's estimate.	Advisian sourced screened topsoil rates delivered to site by local landscaping suppliers. It applied a higher rate of \$48.50 /m <sup>3</sup> (including contractor mark-up). Advisian stated this rate is a conservative position given the large quantities would likely be supplied by a producer that would be able to pass on savings from economies of scale (pp. 18).	GHD presented two different rates for imported clean fill. The first rate of \$35/m <sup>3</sup> was applied to fill all Rail Receiving Pit (RRP) voids (small volumes) <sup>4</sup> . By contrast, the second rate of \$50/m <sup>3</sup> was applied to fill voids in the stockpile areas (very large volumes) <sup>5</sup> .  The cost differences exist because procuring clean fill for small volumes can be readily met by nearby facilities. By comparison, obtaining clean fill for the large stockyard volumes requires that

<sup>2</sup> These assumptions were not reported by GHD but were determined in Advisian's review of GHD's cost estimation and modelling (Advisian report, p. 18). Advisian noted that it could not verify how GHD determined its bulk earthworks rates or if it was peer-reviewed to a similar rigour.

<sup>3</sup> This assumption was not reported by GHD but determined in Advisian's review of GHD's cost estimation and modelling (Advisian report, p. 50).

<sup>4</sup> See cell E20 of tab "Table 1.1 - Cost Detail" of Attachment 2 (GHD's Rehabilitation Cost Estimate for DBCT)

<sup>5</sup> See cell H143 of tab "CBS" of Attachment 2 (GHD's Rehabilitation Cost Estimate for DBCT)

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Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
				further facilities be accessed, resulting in higher transport costs. In general, the economies of scale from seeking larger clean fill volumes are offset by the greater transport distances to get clean fill brought to site.
Contaminated soil removal	\$51.78 million of direct costs for all contaminated soil and substrate removal related costs	GHD assumed removal of 400 millimetres of bedding coal and contaminated soil. It did not provide an explanation for this assumption. <sup>6</sup>	Advisian assumed removal of 250 millimetres of contaminated soil based on recent commercial experience with a producer with similar expected hydrocarbon contamination in the soil (pp. 19). It also assumed bedding coal is removed prior and sold by DBCTM to cover costs under normal operating conditions (pp. 53).	The GHD Report reflects a conservative estimate of stripping depth and the extent of contamination to remove all contaminated materials at DBCT. This aligns to GHD's recent experience in assisting clients with assessing and meeting asset-closure obligations, including with leading practice guidelines such as the National Remediation Framework, while also achieves the rehabilitation objective of returning the site to pre-construction state and condition. <sup>7</sup>
Contaminated road substrate removal		GHD assumed removal of 500 millimetres of material under roads removed. It did not provide an explanation for this assumption. <sup>4</sup>	Advisian assumed removal of 250 millimetres of road substrate based on recent commercial experience with a producer with similar expected hydrocarbon contamination of road substrate (pp. 19–20). It made the	On the basis of Department of Transport and Main Road (TMR) drawings and a preliminary pavement design, GHD allowed for 500mm of material under roads to be removed to ensure all road

<sup>6</sup> This assumption was not reported by GHD but determined in Advisian's review of GHD's cost estimation and modelling (Advisian report, pp. 19–20).

<sup>7</sup> GHD Report, p. 21

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Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
			assumption that any large contamination spills would be cleaned up and earthen pads were contaminate-free at time of construction.	subbase, road base, and asphalt or concrete material is included in the removal. This is a separate task to removing hydrocarbon contamination.
Contaminated substrate removal under substation		GHD assumed removal of 1 metre of material under substation areas, classified as low contamination substrate. It did not provide an explanation for this assumption. <sup>4</sup>	Advisian assumed removal of 250 millimetres of material under substation areas (pp. 19–20). It made the assumption that any large contamination spills would be cleaned up and earthen pads were contaminate-free at time of construction. This position was based on recent commercial experience with a producer with similar expected hydrocarbon contamination.	Given the age of these sites, a large percentage of which have been in operation since DBCT was initially constructed, it is reasonable to assume that they may have been contaminated with transformer insulating fluids. While spills are normally minimised and contained, transformer insulating fluids are generally of a low viscosity and hence have a relatively high penetrability into surrounding soils. As the true extent of contamination is unknown, a conservative estimate of 1,000mm is appropriate.
Offshore pile removal	\$45.86 million of direct costs	GHD considered two options (full or partial removal) (pp. 52) and estimated for full removal of piles. Its justification for this choice was that completely removing piles maximises long-term rehabilitation of the offshore domain (pp. 86).	Advisian came to the position that complete removal of piles could have a detrimental impact on marine life. Given the agreed positions of letting the sea floor fill in naturally over time, its position was for the piles to be cut to just below the existing seafloor level. It explained that this would allow embedded parts to be covered over time as the seafloor	Where rehabilitation activities presented greater risk or potentially harmful environmental outcomes, GHD applied the hierarchy of considerations to enable decision-making. GHD retains its view that full pile removal is the more appropriate of the two options (full pile removal or cutting off 1 metre below seabed) for fulfilling the 'natural state and

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Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
		GHD identified that there is no leading practice method or preferable environmental option accepted by government agencies and there has also not been a similar project with matched scale or varying locations with similar marine environment to benchmark an approach (pp. 52).	is naturally restored to its natural state (pp. 52).	condition' requirement in the PSA. In addition, GHD's proposed method of using vibratory equipment to remove the piles creates a less significant radius of distraction and is moderately impactful relative to other removal techniques. Hence, while complete extraction has a greater short-term environmental impact, the impact is moderate when compared with other removal techniques.
Indirect labour and project management costs	Between \$5.79 million and \$30.79 million of the total estimate—depending on the allowance for DBCTM's project management role	GHD utilised two approaches for indirect labour rates. It used a first principles build-up for one portion of its estimate <sup>8</sup> , and its subcontractor (Axiom) applied a 10% allowance to the direct costs estimated for rehabilitation works. The latter approach outlined that the project management team was assumed to be supplied by DBCTM (pp. 142).	Advisian assumed project management would be outsourced to a relevant Tier 1 contractor and built up the relevant costs based on an organisational structure it developed (QCA pp. 48–49). It also added a 10 allowance (\$50 million) for costs it assumed DBCTM would bear as part of its project management role but implied this was highly conservative and included for comparison purposes with GHD. It suggested this cost could be approximately 5 of direct cost (pp. 125).	DBCTM's project management team have successfully executed major projects with its own team or with an EPCM partner and expect to do the same with the rehabilitation project. In addition, 7X capital costs, which the QCA approved, included 16.8% EPCM costs. Accordingly, GHD maintains that a 10% allowance for such costs is appropriate.

<sup>8</sup> This assumption was not reported by GHD but determined in Advisian's review of GHD's cost estimation and modelling (Advisian report, pp. 47–48).

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Issue	Variance	GHD position (reference to GHD report)	Advisian position (reference to Advisian report)	Response Summary
Risk and contingency allowance	\$100 million of the total estimate	GHD applied an additional 25 to direct costs as risk and contingency allowance. <sup>9</sup> It did not provide an explanation for this assumption nor a reference for this benchmark.	Advisian built-up a risk profile for each type of work by domain, based on prevailing documentation and verified its risk profiles during its site visit (pp. 126–128). It also included client risks and other contingencies based on an assumption of project management by a Tier 1 contractor (pp. 123–124).	GHD maintains the appropriateness of a 25% contingency allowance for decommissioning and demolition costs, and 20% contingency for disposal, remediation and rehabilitation costs. Evidence from TMR indicates that a 40% contingency would have been appropriate for the class of cost estimate that GHD has prepared <sup>10</sup> . Hence, GHD's contingency allowances may be understated, and Advisian's more so.

<sup>9</sup> This assumption was not reported by GHD but determined in Advisian's review of GHD's cost estimation and modelling (Advisian report, p. 126).

<sup>10</sup> Project Cost Estimating Manual (PCEM) – Seventh Edition, Transport and Main Roads, July 2017, p. 45

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The opinions, conclusions and any recommendations in this report are based on conditions encountered and information reviewed at the date of preparation of the report. GHD has no responsibility or obligation to update this report to account for events or changes occurring subsequent to the date that the report was prepared.

The opinions, conclusions and any recommendations in this report are based on assumptions made by GHD described in this report. GHD disclaims liability arising from any of the assumptions being incorrect.

If GHD has relied on information provided by the client and/or others when preparing the document containing the following should be added to the generic disclaimer detailed above:

GHD has prepared this report on the basis of information provided by DBCT Management and others who provided information to GHD (including government authorities), which GHD has not independently verified or checked beyond the agreed scope of work. GHD does not accept liability in connection with such unverified information, including errors and omissions in the report which were caused by errors or omissions in that information.

## 2. Background

As part of its 2019 Draft Access Undertaking (**2019 DAU**) submission to the Queensland Competition Authority (**QCA**), DBCT Management (**DBCTM**) engaged GHD Advisory (**GHD**) to prepare a comprehensive rehabilitation plan that would satisfy the requirements of the Port Services Agreement (**PSA**).

Part of the rehabilitation plan included an estimation of an associated rehabilitation cost estimate. GHD's rehabilitation plan for DBCT (**GHD Report**) determined the rehabilitation cost estimate (including direct, indirect and contingency costs) to be \$1.22b (\$ October 2018) (**GHD Estimate**).

In assessing the 2019 DAU, the QCA engaged Advisian to:

- review the prudence and efficiency of the rehabilitation plan and costs that GHD developed
- determine an independent rehabilitation-cost estimate.<sup>11</sup>

Advisian's advice to the QCA (the **Advisian Report**) was published as part of the QCA's Draft Decision on the 2019 DAU (**Draft Decision**).

Advisian's rehabilitation cost estimate was \$814m (\$ March 2020), approximately 30% lower than GHD's Estimate of \$1.22b (\$ October 2018).<sup>12</sup> DBCTM has requested that GHD review the key differences between the approach taken by GHD and Advisian, with specific regard to items the QCA's Draft Decision identified as requiring further explanation.<sup>13</sup>

### 2.1 GHD's response to the QCA's Draft Decision

The key areas in the QCA's draft decision on the 2019 DAU that seek clarification and further information, which are addressed in this report, include:

- Locations and approaches for waste disposal (section 3.1)
- Unit rates and volumes for bulk earthworks (section 3.2)
- Extent of contaminated materials at the DBCT site (section 3.3)
- Approaches for offshore pile removal (section 3.4)
- Risk and contingency allowances (section 3.5)
- Indirect labour and project management costs (section 3.6).

### 2.2 Approach for the GHD Report and GHD Estimate

The GHD Report and GHD Estimate for the rehabilitation of DBCT reflects DBCTM's obligations under the PSA, current legislative requirements, guidelines and leading practice considerations. The GHD Report was based on the battery limits and asset composition at the facility as at October 2018.

The rehabilitation obligation by DBCTM will not fall due until after September 2051, at which time the relevant considerations informing the October 2018 rehabilitation plan will be outdated. To manage the significant uncertainty associated with the actual obligation occurring in 2051, the GHD Report was prepared

<sup>11</sup> QCA Draft Decision on 2019 DAU, p. 89

<sup>12</sup> If the GHD Estimate was expressed in \$ March 2020 terms instead of \$ October 2018 terms, the gap between the GHD Estimate and Advisian's estimate would have been wider. This is because producer prices have increased over that period (by just over 2.5%, if using the A83737106J index (inputs to coal mining industry) from the Australian Bureau of Statistics (**ABS**)).

<sup>13</sup> See Table 3, Draft Decision, pp. 95-97

as a conceptual rehabilitation plan, not a closure plan. In GHD's experience, it is standard industry practice for closure planning to occur five to ten years prior to actual closure, whereby a rehabilitation plan that sets out the risks faced by the operator are addressed through a detailed scope of work.

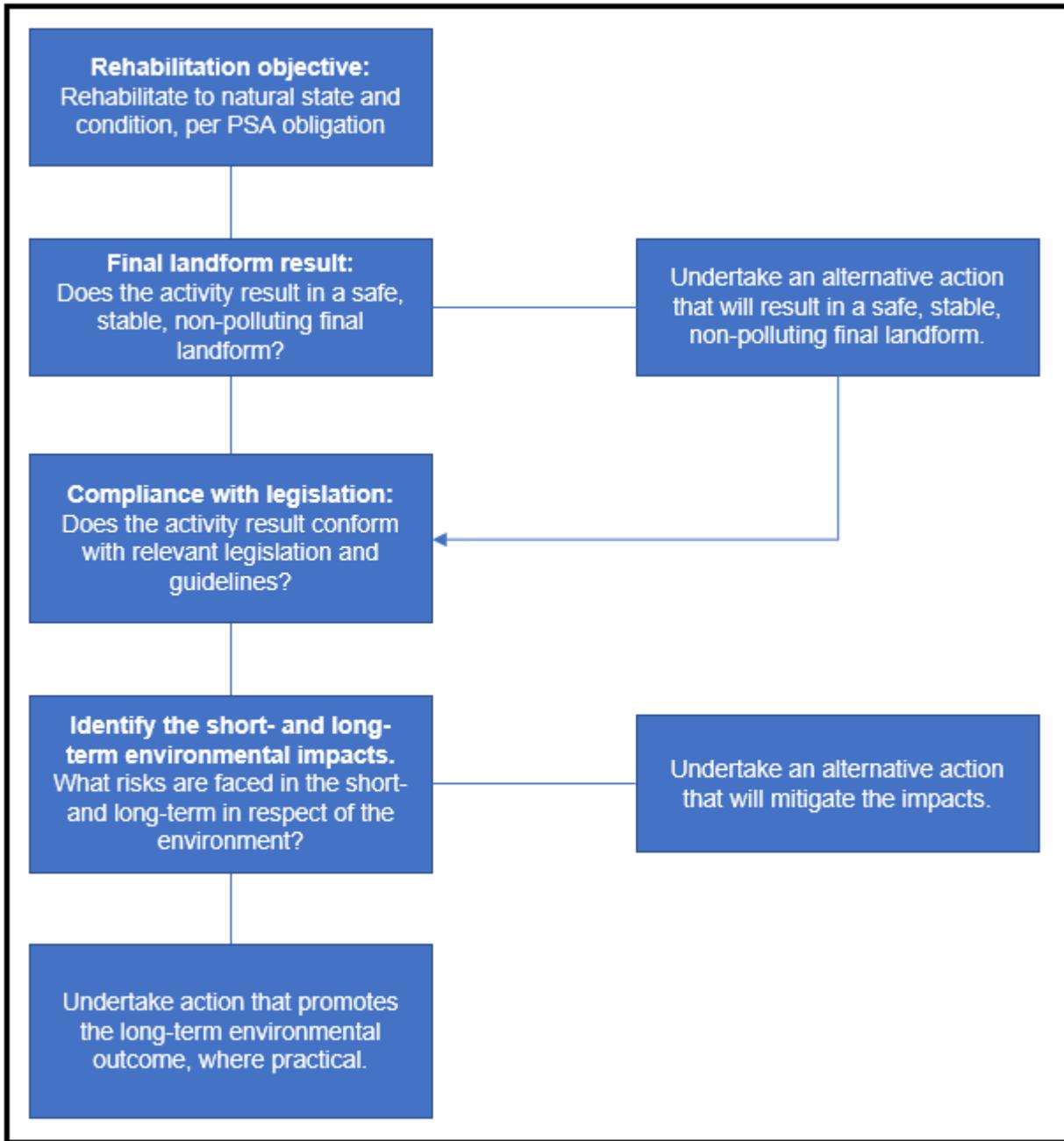
The GHD Report was developed to be a 'living' rehabilitation plan that sets out the scope and cost of works that would be required if the obligation was to fall due now, but enabling the integration of any legislative, guideline, practice, infrastructure or technology changes that would impact the scope and cost of any rehabilitation work. Therefore, the GHD Report reflects the scope of works and associated cost estimate if the requirement was to fall due now, and is intended to become increasingly detailed over time as more information becomes available. When DBCTM is preparing to close the facility, the GHD Report can be updated to reflect information from important tests such as soil sampling and groundwater sampling to determine the final scope of work required to rehabilitate the DBCT site.

In addition, the GHD Report acknowledges there is considerable uncertainty about the Federal and Queensland Government's requirements for rehabilitation of port-terminal infrastructure in Queensland, particularly where that infrastructure is proximally located to the Great Barrier Reef Marine Park (**GBRMP**).

The GHD Report reflects the scope of work required to rehabilitate the DBCT site to natural state and condition, insofar as the rehabilitation activities also promote a safe, stable and non-polluting final landform and the work is compliant with current legislation and guidelines.

Where an activity may not result in a safe, stable and non-polluting landform, then an alternative action that would achieve this outcome, as well as remaining compliant with legislation, would be adopted. Where rehabilitation activities presented greater risk or potentially harmful environmental outcomes, GHD applied the hierarchy of considerations to enable decision-making, shown in Figure 1 (next page).

**Figure 1: Hierarchy of decision criteria for rehabilitating DBCT**



Under this hierarchy, for example, GHD did not consider that importing fill material to restore the berth pockets to pre-dredged depths would be appropriate. This is because the short-term environmental impacts of importing fill material for berth pockets were likely to be so severe and difficult to control appropriately, that the most conservative approach was to not remediate or rehabilitate these areas. By contrast, GHD considered that while complete extraction of jetty piles had greater short-term environmental impacts compared with pile removal at a metre below seabed level, the former approach promoted better longer-term environmental outcomes.

## 3. GHD response to Draft Decision

### 3.1 Waste disposal

A key difference between the GHD and Advisian approaches relate to assumptions on the appropriate facilities to which contaminated waste can be transported.<sup>14</sup> This results in GHD's direct cost estimate being \$31.71m higher than Advisian's estimate. After reviewing the Advisian Report, GHD considers that this cost difference is driven by differing views on the total volume and ratio of contaminated to general waste removed from the site, location of disposal sites and disposal rates.

#### 3.1.1 Comparing GHD and Advisian approaches

GHD assumed that a sizeable share of soils and substrates (i.e. 128,501 tonnes)<sup>15</sup> would face heavy contamination. GHD assessed which facilities proximate to DBCT could physically accommodate sizeable volumes of heavily contaminated waste.

The GHD Report did not assume that waste facilities would expand to accommodate waste at DBCT, as GHD considered that the additional cost of expansion would not reflect efficient outcomes for users of DBCT. Given the extent of heavy contamination of soils and substrates, including the large volumes of those materials, the nearest suitable location identified was in Roma, 750km from DBCT. The resulting disposal rate for heavy contaminated waste was \$383 per tonne and \$282 per tonne for medium contaminated waste.<sup>16</sup>

By comparison, Advisian assumed lesser contamination levels and lower volumes of soil and substrates requiring removal. Advisian also assumed that facilities would be expanded and, as a result, a much closer facility could be selected, namely the Hogan's Pocket facility (within 65km of DBCT). Advisian had a constant rate of \$350.33 per tonne for both medium and heavily contaminated waste<sup>17</sup>.

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<sup>14</sup> QCA Draft Decision on 2019 DAU, p. 95

<sup>15</sup> GHD Report, Appendix A, Axiom's Basis of Estimate, Attachment C. While GHD assumed that 128,501 tonnes of soils and substrates would face heavy contamination, it is noted that even greater volume (i.e. 451,100 tonnes) faced medium contamination. Accordingly, GHD did not assume that all soils and substrates would be heavily contaminated.

<sup>16</sup> Advisian, p. 51. Comparison of GHD and Advisian disposal rates captured in table 14.

<sup>17</sup> Ibid.

### 3.1.2 GHD's observations on why GHD and Advisian approaches differ

GHD makes the following observations regarding Advisian's assumptions and approaches:

- The extent of contamination of the soils and substrates at the site in the 2050s is likely to be considerably higher than the Advisian estimate. At current rates<sup>18</sup>, DBCT will handle more than 2 billion tonnes of coal in the next 30 years, about twice the volume handled in the last 35 years, with a much higher proportion of coal fines than in previous years.<sup>19</sup> Given this, the amount of coal-handling activity occurring at DBCT is likely to be much greater than currently, meaning that contamination levels will be correspondingly higher. In addition, DBCT's terminal performance continues to be optimised to maximise throughput as part of the ongoing capital works program. Hence, it is reasonable for a prudent decision maker to assume that soils would be 'moderately' to 'heavily' contaminated to a depth significantly more than 250mm.
- Any assumption of expansions of the Hogan's Pocket facility should include waste from all other infrastructure in the Bowen Basin, which will necessarily occur at the same time as mines in the Bowen Basin are seeking to remediate. GHD's assumptions are appropriate because:
  - DBCTM cannot control expansion or usage of the Hogan's Pocket facility, which must be considered a common user facility. It is not unreasonable to conclude that Hogan's Pocket may not be available at the time
  - If the Hogan's Pocket facility is to expand, it will have to do so in a very substantial way. Consequently, the average disposal cost per tonne may be considerably greater than currently, as the Hogan's Pocket facility will have to recover the full costs of its expansion.
  - Any required expansion in waste facilities that is triggered by the rehabilitation of DBCTM ought to form part of the rehabilitation cost estimate, on the basis that the expansion would not have been required but for the DBCT rehabilitation activity.
  - There is also a likelihood that investment in road infrastructure could be required to enable the vehicles required to move waste from DBCT to Hogan's Pocket. GHD considers that this cost should also be accommodated in a cost estimate that assumes an expansion in existing facilities is required, as the investment would not be required but for the rehabilitation activity at DBCT.

For DBCTM to prudently estimate its rehabilitation obligations, it should assume moderate to heavy soil contamination and the intersection with volumes and types of materials that *existing* facilities can accommodate. The purpose of the remediation allowance is to enable sufficient funds to be generated to cover the cost of rehabilitation when it falls due. It is unclear whether Advisian has included such an allowance in its cost estimate, however, GHD considers that where Advisian's unit rates for disposal do not accommodate expansion costs, then these unit rates are lower than would be achieved at DBCT.

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<sup>18</sup> Current throughput 70 million tonnes per annum (Mtpa) x 30 years = 2.1 billion tonnes. This does not include increased volumes forecast by miners or terminal expansions.

<sup>19</sup> Increased proportion of coal fines noted in [WQIP capex report](#)

## 3.2 Bulk earthworks

Advisian's assumptions for unit rates and volumes for bulk earthworks result in its estimate being \$103.33m lower (direct costs) than GHD's estimate.<sup>20</sup> This section responds to some of the key differences, namely:

- Unit rates for earthworks
- Volumes for earthworks
- Unit rates for clean fill.

### 3.2.1 Unit rates for earthworks

Advisian said GHD's approach results in a 'sell price' of \$13.46/m<sup>3</sup>, compared with Advisian's number of \$7.96/m<sup>3</sup>.<sup>(21)</sup> GHD's figure of \$13.46/m<sup>3</sup> is sourced from Axiom's historical cost estimating data from previous projects that Axiom has been involved with.

The starting point for the unit rate is the \$63.46/m<sup>3</sup> that Axiom determined for RBE "Bulk Earthworks - Import Stockpile to fill" in the GHD Estimate. The approach for deriving the \$63.46/m<sup>3</sup> unit rate is set out in Table 3-1. This total unit price method is used during AACE Class 4 estimating (rather than first principle estimating that a contractor would use when tendering a project). The method allows the user of the estimating spreadsheet to update rates for current timing and location of projects in an efficient fashion.

**Table 3-1: Derivation of total unit price**

Parameter	Total	Bulk Material	Freight	Labour	Contractor Distributables	Construction Equipment
RBE "Bulk Earthworks - Import Stockpile to fill" (\$/m <sup>3</sup> )	\$63.46/m <sup>3</sup>		\$50/m <sup>3</sup>	\$2.17/m <sup>3</sup>		\$11.29/m <sup>3</sup>

The meaning of the relevant columns are as follows:

- Bulk Materials (and Freight) – \$50/m<sup>3</sup> – this is the purchase and delivery cost of the fill material sourced offsite to be transported to an on-site stockpile.
- Labour – \$2.17/m<sup>3</sup> – this relates to the direct labour to install the commodity (e.g. earthworks) at site; it is the result of hours/m<sup>3</sup> (0.036 hours /m<sup>3</sup>) multiplied by an hourly labour rate for the installation activity (\$60/hour). The hourly rate represents an average crew rate and the cost to the hiring contractor. Labour rates are built up using current enterprise bargaining agreements.
- Contractor's Distributables (and Construction Equipment) – \$11.29/m<sup>3</sup> – this represents all the other expenses, overheads and profit of the installation contractor. Expenses include small tools and consumables, personal protective equipment, construction equipment, staff and supervision, maintenance and support personnel. Other overheads include mobilisation and demobilisation costs, and temporary facilities/offices/works, etc. Contractor's Distributables is, typically, expressed as a multiplier of direct costs. Any factors for Construction Equipment are built into the Contractor's Distributables. In this case, the \$11.29/m<sup>3</sup> for Contractors' Distributables (and Construction Equipment) is based on \$2.17/m<sup>3</sup> x 5.2 = \$11.29/m<sup>3</sup> (the multiplier of 5.2 is derived from Axiom's historical analysis for comparable projects).

<sup>20</sup> QCA Draft Decision on 2019 DAU, pp. 95-96

<sup>21</sup> QCA Draft Decision on 2019 DAU, pp. 95-96

The \$13.46/m<sup>3</sup> unit rate that Advisian refers to is based on the following derivation: removing the \$50/m<sup>3</sup> Bulk Material (and Freight) cost from the \$63.46/m<sup>3</sup> total-cost unit rate, the remaining Labour and Contractor's Distributables (and Construction Equipment) costs is \$13.46/m<sup>3</sup>. GHD considers that the \$13.46/m<sup>3</sup> is appropriate in light of recent earthworks costs at DBCT, namely for the *NECAP J – Water Quality Improvement Project (WQIP)*.

DBCTM provided GHD earthworks rates from the Rail Loop Dam construction portion of the WQIP. These rates are from 2014 for bulk earthworks onsite at DBCT for dam construction, an activity considered a similar exercise to what would be required in rehabilitating DBCT. The project was competitively tendered, with bulk earthworks cut and fill rates ranging from \$9.58/m<sup>3</sup> to \$13.37/m<sup>3</sup> (2014 prices). Consistent with the conservative approach for shaping the GHD Estimate, the figure of \$13.37/m<sup>3</sup> (\$2014) would be the appropriate reference point.

Assuming the \$13.37/m<sup>3</sup> rate is in June 2014 dollars and recognising that the Advisian Report was based on March 2020 dollars, it is appropriate to escalate the \$13.37/m<sup>3</sup> rate to March 2020 dollars. Using the ABS coal-mining (inputs) producer price index (A83737106J), the \$13.37/m<sup>3</sup> (June 2014) would become \$13.76/m<sup>3</sup> (March 2020).<sup>22</sup> This rate is highly comparable with the \$13.46/m<sup>3</sup> rate that the GHD Estimate (via Axiom's analysis) employed.

GHD further notes that the Rail Loop Dam was recommended by DBCT P/L (**the Operator**), approved to proceed by Users, and accepted by the QCA for addition to the RAB. Therefore, the total capital cost for the Rail Loop Dam, including the earthworks unit rates embedded within it, should be considered as a prudent benchmark. This suggests that Advisian's estimate of \$7.96/m<sup>3</sup> for bulk earthworks is well below the range achievable at DBCT. Accordingly, GHD submits that the bulk-earthworks unit rate of \$13.46/m<sup>3</sup> is appropriate.

### 3.2.2 Volumes for earthworks

In its 2019 DAU Draft Decision, the QCA stated:

*Advisian independently modelled earthworks volumes using digitised aerial images flown in 1977 as the pre-construction landform (from DNRME) and orthorectified (geometrically corrected) using 2013 LIDAR data (used by GHD) and 2015 digital terrain data (from DNRME). Final landform data was generated from the 2013 LIDAR data, modified for structures anticipated to be removed prior to earthworks. Advisian estimated dam storage volumes from images provided by GHD to calculate water surface levels removed, and verified its estimate during its site visit. In reviewing GHD's approach (without provision of earthworks modelling from GHD), Advisian could only determine the methods used by GHD for Domain 2 (stockyards) and noted GHD's volumes did not match the volumes reported in Axiom's estimate.<sup>23</sup>*

Both GHD and Advisian determined earthworks volumes using digitised aerial imagery and LIDAR data. Advisian used a different technique to generate the original landform by using digitised aerial images flown in 1977 as the pre-construction landform (from DNRME) and orthorectified (geometrically corrected) using 2013 LIDAR data and 2015 digital terrain data (from DNRME). Conversely, GHD used the 1X general arrangement drawing set (which showed the original landform major contours) and developed models using data taken from these drawings.

<sup>22</sup> GHD notes the compound annual growth rate for this producer price index is only 0.5%, which is below the long-term escalation rate of 2.6% proposed by Advisian and GHD for expressing the rehabilitation cost in 2051/2054 costs.

<sup>23</sup> QCA Draft Decision on 2019 DAU, p. 95

GHD considers that Advisian's approach may result in a higher level of accuracy for pre-construction landform data compared with the GHD approach, noting that GHD has not sought to verify the details and intricacies of Advisian's approach.

GHD observes that the overall bulk earthworks volumes generated by GHD and Advisian are similar, and are within the margins of accuracy for a Class 4 cost estimate. Table 3-2 shows that GHD's and Advisian's fill, import and 'total borrow stockpile to fill' volumes are highly comparable, with less than a 10% difference.

**Table 3-2: Comparison of GHD's and Advisian's cut-and-fill volumes for rehabilitating DBCT**

Parameter	GHD <sup>24</sup>	Advisian <sup>25</sup>	Variance
Total Cut volume (m <sup>3</sup> )	3,732,050	4,790,675	28%
Total Fill volume (m <sup>3</sup> )	6,559,800	6,347,492	-4%
Total Import volume (m <sup>3</sup> )	3,383,293	3,450,586	2%
Total Borrow Stockpile to Fill volume (m <sup>3</sup> )	3,176,507	2,896,906	-9%

GHD (via Axiom) determined the Borrow Stockpile to Fill (RBE01) by assuming that the following commodities would be recovered and processed to be used as fill:

- Bulk earthworks - Cut to Stockpile - Non-contaminated (RAA)
- Recovered Concrete - above ground (BCA)
- Concrete - in ground (BCB)
- Marine Structures - Concrete deck (BEC).

GHD then assumed a 5% volume loss (noting that Advisian assumed 10% losses due to compaction<sup>26</sup>); this was applied evenly (pro rata) over the Domains requiring 'Fill'. GHD determined that the total bulk-earthworks volumes be approximately 48.4% of the expected fill volume (hence, 3,176,507 m<sup>3</sup> from 6,559,800 m<sup>3</sup>). An excerpt from Axiom's Basis of Estimate is set out below (Table 3-3), and readers are referred to the 'Total Qty' column.

<sup>24</sup> GHD Plan, Appendix A, Axiom's Basis of Estimate, Attachment C

<sup>25</sup> Advisian Report, Table 15

<sup>26</sup> Advisian Report, text below Table 15

**Table 3-3: Axiom's Basis of Estimate regarding bulk-earthworks volumes**

CBS	Major Commodity	UOM	Total Qty	Total Hrs	Total A\$m
<b>RA</b>	<b>Excavation</b>	<b>m<sup>3</sup></b>	<b>3,732,050</b>	<b>88,177</b>	<b>34.8</b>
RAA	Cut to Stockpile: Non- contaminated	m <sup>3</sup>	3,189,500	73,359	29.1
RAB	Cut to Fill: Non-contaminated	m <sup>3</sup>	130,000	5,330	2.0
RAC	Cut to Stockpile- Contaminated	m <sup>3</sup>	412,550	9,489	3.8
<b>RB</b>	<b>Fill</b>	<b>m<sup>3</sup></b>	<b>6,559,800</b>	<b>237,334</b>	<b>257.5</b>
RBE01	Borrow Stockpile to Fill	m <sup>3</sup>	3,176,507	114,926	42.8
RBE	Import to Fill	m <sup>3</sup>	3,383,293	122,408	214.7
<b>Other</b>	<b>Other</b>	<b>m<sup>2</sup></b>	<b>2,970,710</b>	<b>3,453</b>	<b>0.9</b>
RBB	Ground Surface Treatment: Acid Neutralisation	m <sup>2</sup>	573,000	573	0.2
RBH	Final Profiting	m <sup>2</sup>	2,397,710	2,880	0.7
n/a	<b>Total Bulk Earthworks</b>	<b>m<sup>3</sup></b>	<b>10,291,850</b>	<b>328,964</b>	<b>293.2</b>

Regarding Advisian's point that "GHD's volumes did not match the volumes reported in Axiom's estimate", GHD assumes Advisian is referring to differences between Table 7-3 in the GHD Plan and the tables in Attachment C of Axiom's Basis of Estimate. The data in Table 7-3 is erroneous; the GHD Estimate adopted the figures presented in the tables in Attachment C of Axiom's Basis of Estimate. GHD confirms that Axiom's numbers in Attachment C are correct and that the GHD Estimate has adopted these figures.

Overall, Advisian has calculated that 17% additional bulk earthworks cubic meters would be required to be handled and processed in some fashion with a slight reduction in the bulk material cost (\$48.50/m<sup>3</sup> versus 50/m<sup>3</sup>, a reduction of 3%). The variance between Advisian and GHD's bulk earthworks volumes is greatest with the amount of material requiring to be cut, with Advisian calculating that 28% more would be required (see Table 3-2), however, this is offset significantly by the difference in bulk earthwork labour rates between Advisian and GHD. This differential is the single largest contributor to cost, representing a 40.9% reduction between Advisian's bulk earthworks labour rate and that established by GHD.

In summary, while the Advisian and GHD approaches for deriving bulk earthworks volumes are different, the volumes at an overall site level are highly comparable. Hence, while the approaches differ, they both have their merits and the outputs yielded are similar.

### 3.2.3 Unit rates for imported clean fill

The Draft Decision states that GHD applied a clean fill rate of \$35/m<sup>3</sup> (but did not clarify its source), but that Axiom (GHD's subcontractor) applied a rate of \$50/m<sup>3</sup> (based on recent project experience in the locality). This resulted in two different rates for imported clean fill being used in GHD's estimate. By comparison, Advisian's rate was \$48.50/m<sup>3</sup>.<sup>27</sup>

To clarify the differences in the \$35 and \$50/m<sup>3</sup> rates, GHD did present two different rates for imported clean fill. The first rate of \$35/m<sup>3</sup> was applied to fill all RRP voids (small volumes)<sup>28</sup>. By contrast, the second rate of \$50/m<sup>3</sup> was applied to fill voids in the stockpile areas (very large volumes)<sup>29</sup>.

The cost differences exist because procuring clean fill for small volumes can be readily met by nearby facilities. By comparison, obtaining clean fill for the large stockyard volumes requires that further facilities be accessed, resulting in higher transport costs. In general, the economies of scale from seeking larger clean fill volumes are offset by the greater transport distances to get clean fill brought to site.

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<sup>27</sup> QCA draft decision on 2019 DAU, p. 96

<sup>28</sup> See cell E20 of tab "Table 1.1 - Cost Detail" of Attachment 2 (GHD's Rehabilitation Cost Estimate for DBCT)

<sup>29</sup> See cell H143 of tab "CBS" of Attachment 2 (GHD's Rehabilitation Cost Estimate for DBCT)

## 3.3 Contaminated materials

### 3.3.1 Legal obligations

The *Environmental Protection Act 1994* (EP Act). Chapter 7, Part 1 Division 1, states that a person must not carry out any activity that causes or is likely to cause environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise harm (**general environmental duty**). This means that all contamination must be removed from the site. To achieve this, GHD has opted for a conservative approach, in accordance with the National Remediation Framework.

The general environmental duty also means that when dealing with land that is, or may be contaminated, DBCTM is required to actively seek information to understand the risks of contamination. Specifically, DBCTM is required, where the nature and extent of the contamination and associated risks to human health and the environment are not reasonably known, to engage a suitably qualified person to investigate the site prior to commencing an activity that may disturb contaminants. The National Remediation Framework states that:

*'During the earlier stages of the remediation screening, it may be sufficient to generate broad estimates of soil volumes to obtain preliminary costs for transport and further treatment or disposal to allow comparison with other remediation options. However, prior to formation of a Reconciliation Action Plan (RAP), it will be necessary to obtain more accurate estimates of the total volume of soil to be treated – this will also be required to enable firm costs to be supplied by remediation providers or landfill operators'<sup>30</sup>.*

Legislative requirements and site practices have generally become more stringent and improved over time, which can limit the dispersion of contaminants because of current land use practices, maintenance and technology and incidents.

### 3.3.2 Draft Decision

The Draft Decision states that a key difference between GHD's and Advisian's assumptions for the extent of soil contamination relate to the assumed depths of soil and substrate that need to be removed during the rehabilitation process. The key differences in estimates are referred to in Table 3-4.

**Table 3-4: GHD's and Advisian's soil contamination depth assumptions**

Parameter	GHD	Advisian
Bedding coal and contaminated soil	400mm	250mm
Contaminated road substrate	500mm	250mm
Contaminated substrate under substations	1,000mm	250mm

The three key differences result in significantly different volume (and cost) estimates of how much contaminated material DBCTM must remove from the site. Advisian found the direct-cost difference to be \$51.78m.<sup>31</sup>

<sup>30</sup> National Remediation Framework (2020) *National Remediation Framework Guidelines*. <https://www.remediationframework.com.au/national-remediation-framework/download-nrf-guidelines>

<sup>31</sup> QCA Draft Decision on 2019 DAU, p. 96

Detailed studies including sampling and geotechnical assessments, which can be costly, would be required to fully assess the level of contamination at the site. Such studies are not required presently as the outcomes will likely differ when the rehabilitation obligation falls due, and they are costly and disruptive to operations without providing any valuable material for the purposes of rehabilitation. GHD notes that these studies should be completed close to the time of rehabilitation to confirm depth and extent of contamination<sup>32</sup>. The current rehabilitation plan is at concept level and forecasts the state of the terminal at the end of the lease.

The rehabilitation plan will be updated and refined as new information becomes available and will be finalised in accordance with the requirements of the PSA prior to commencing the rehabilitation. Accordingly, GHD's conservative assumptions regarding the extent of contamination is appropriate for the rehabilitation planning and estimate.

### 3.3.3 Bedding coal and contaminated soil removal

The GHD Report assumed that 400mm of bedding coal and contaminated soil would need to be removed, while Advisian assumed 250mm of contaminated soil would be removed. Advisian also assumed that bedding coal is removed prior and sold by DBCTM to cover costs under normal operating conditions.<sup>33</sup>

DBCT has been in operation since 1983, which provides a greater risk of legacy contamination issues at the site when compared to present day operations. Over the previous 37 years from commissioning, contamination levels will be influenced by historic spills, site maintenance and land uses. For example, the historic use of asbestos brake pads on trains will influence the level of contamination of the rail loop. This historic level of contamination has not been recorded or predicted with accuracy, GHD therefore anticipates that there will be a variation of contamination across the site.

GHD has extensive experience in managing closure obligations on behalf of confidential clients, including for coal-fired power stations and mine sites. GHD's experience is that legacy contamination is one of the single greatest risks faced by infrastructure owners, and it is not an item that can be accurately predicted. Therefore, based on GHD's extensive experience, GHD considers that conservative assumptions are the most appropriate to apply in respect of contaminated soil.

GHD's experience in managing and assessing closure obligations on behalf of mining and transport clients indicates that heavily contaminated areas on sites are generally associated with rail loops, fuel storage and workshop areas. Contamination of these areas is influenced by historical and future contaminants from items such as asbestos brakes, fuel and hydraulic fluid leaks. The rail loop has been in use since 1983, with additional rail receival pits (**RRPs**) being constructed. The rail loop will also continue to be operational over the life of DBCT. Therefore, it is appropriate to assume a higher level of contamination in relation to the soils and substrates in and around the RRP's.

The extent of contamination is unable to be readily benchmarked, as the extent of contamination is site-specific and is dictated by a number of different factors including soil characteristics, characteristics of potential contaminants, site maintenance, history of spills and the extent of any prior remediation. For example, GHD has recently undertaken a project that assessed the extent of contamination at coal-fired power stations in Australia.

The project included a contamination assessment for the Tennyson Power Station Redevelopment for Mirvac Queensland. GHD undertook detailed site investigations to delineate the extent of contamination, coal and coal ash across the site. Findings from the investigation at the Tennyson Power Station identified

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<sup>32</sup> GHD Report, p. 13

<sup>33</sup> QCA Draft Decision on 2019 DAU, p. 96

coal located at various locations across the site from 100mm to 500mm below ground level. Accordingly, a conservative estimate would have been 500mm, noting GHD adopted 400mm for its report.

The discrepancy in the depth of impact of contamination shows that benchmarking is not appropriate for contamination assumptions, and the extent of contamination is driven by many different factors relating to the soil, contaminant, and current and historical practices in respect of remediation. A spill of hydrocarbons at two sites are likely to have varying impacts in respect of the extent of contamination on-site as spills of hydrocarbon do not disperse evenly through the soil profile and contaminants do not coat soil consistently. GHD considers that the true extent of soil contamination cannot be reasonably known without extensive sampling and geotechnical investigations being undertaken across a site.

Factors other than legacy contamination, maintenance and technology can also contribute towards the extent of soil contamination. For DBCT, GHD considers that the following factors are important to have regard to in determining an appropriate depth to apply for costing purposes:

- The pressure of the coal held within the stockyard over the operational life of the terminal would crush the bedding coal over time, resulting in leaching to soils.
- DBCT is located within a cyclone-prone area, meaning that any bedding coal any fine material would likely leach into soils during heavy rainfall events.
- Use of dust suppressants within the stockyards to limit the travel of coal dust into surrounding residential areas may cause coal fines to leach into soils.
- The current land use in each domain of the site to predict potential contaminants.

The GHD Report reflects a conservative estimate of stripping depth and the extent of contamination to remove all contaminated materials at DBCT. This aligns to GHD's recent experience in assisting clients with assessing and meeting asset-closure obligations, including with leading practice guidelines such as the National Remediation Framework; while also achieves the rehabilitation objective of returning the site to pre-construction state and condition.<sup>34</sup>

Removal of all coal-bearing material, including abandoned and remnant coal, bedding coal and coal sediment in dams and drainage systems, is required to achieve the rehabilitation obligation. Bedding coal in the stockyard is a contaminant, as it is a potential pollutant, particularly for groundwater sources. DBCTM will be required to remove all coal from the stockyards, including any that is saleable (low product grade coal).<sup>35</sup> GHD assumed that the coal will also contain natural material and will not be suitable for sale. Therefore, this will require removal and disposal.

However, under the DBCT's Terminal Regulations<sup>36</sup>, the Operator must credit the terminal handling charges with the sale value of any coal recovered during maintenance. Hence, in the unlikely event that the bedding and remnant coal is not contaminated with natural materials, it cannot be sold to the benefit of the rehabilitation project.

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<sup>34</sup> GHD Report, p. 21

<sup>35</sup> Advisian Report, p. 19. Advisian states that DBCTM could sell the 300mm of low-grade coal laid down over the stockyard during construction of the Terminal. However, Advisian's approach does not recognise that DBCTM cannot sell that coal unless the sale value is credited to terminal handling charges (ie to the benefit of Users), not the rehabilitation project. In any case, the coal could not be exported with the terminal no longer functioning for that purpose.

<sup>36</sup> Refer QCA website [DBCT Terminal Regulations 2019](#) clause 8.1

### 3.3.4 Contaminated road substrate removal

GHD assumed that 500mm of contaminated road substrate (from road formation) would need to be removed. Advisian assumed 250mm of road substrate would be removed.

Table 7-2 of the GHD Report describes the design assumption for removal of both roads and tracks. Roads are defined as a 'road constructed with a base and an asphalt or concrete surface', whereas a track is 'a graded dirt or gravel track'.

The road assumption includes the asphalt cap, road base and sub-base. Without detailed drawings showing the exact method of construction of the roads, GHD referred to detailed Queensland Department of Transport and Main Roads (TMR) drawings for roads, and assumed that an urban-street style road would be appropriate for the purposes of calculating quantities. In addition, GHD undertook a preliminary pavement design in accordance with Austroads Pavement Design Guidelines Part 2, with the following assumptions:

- Subgrade California Bearing Ratio (CBR) of 3%
- Design Traffic of 40 vehicles per day (50% heavy vehicles)

This resulted in a pavement depth of 500mm, comprising:

- Bitumen Seal
- 120mm of CBR 80 Base Course layer
- 370mm of CBR 35 Sub-base Course layer.

On the above basis, GHD allowed for 500mm of material under roads to be removed to ensure all road subbase, road base, and asphalt or concrete material is included in the removal. This is a separate task to removing hydrocarbon contamination.<sup>37</sup> Road base and subbase material will be highly compacted and, if not removed, may form a barrier to root penetration and impact vegetation growth in these areas. This is also consistent with the rehabilitation objective of creating a stable, non-polluting final landform and complying with legislative requirements.

### 3.3.5 Contaminated substrate under substations

GHD assumed that 1,000mm of contaminated substrate under substations would need to be removed. Advisian assumed 250mm of substrate under substations would need to be removed.

GHD has assumed that up to a 1,000mm of material shall be removed from the footprint of the various electrical substations located around the site. The material was assessed as C2 which is considered to be "medium contamination" with regard to the commodity and hence disposal.

In the case of the QR Substation, a site visit of the area was not performed within the timeframe. This is because the site is not controlled by DBCTM; hence, GHD was not in a position to assess the exact nature of substrate beneath this entity. It was therefore reasonable to assume that it would be contaminated with similar products as the Rail Loop and assessed as C3 or "high contamination. Given the age of the substations, it is highly likely that the soils within the substation boundaries are contaminated with polychlorinated biphenyls.

In addition, GHD notes that transformer fluids are of generally low viscosity and have high penetrability within soils.<sup>38</sup> In the absence of any testing performed at DBCT, GHD determined the depth of 1,000mm across the

<sup>37</sup> Presented in GHD's cost-estimation model

<sup>38</sup> See

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjy9fVo7XsAhUoxzgGHXNNBGUQFjABegQIBBAC&url=https%3A%2F%2Fhrcaak.srce.hr%2Ffile%2F180703&usg=AOvVaw06Nk3vTf8r5kqKUMRJEogH> and [https://www.rdi.uwa.edu.au/\\_\\_data/assets/pdf\\_file/0003/1637301/dauberman\\_2002\\_DR.pdf](https://www.rdi.uwa.edu.au/__data/assets/pdf_file/0003/1637301/dauberman_2002_DR.pdf).

area of a given substation as a reasonable average for the purposes of calculating the overall cost estimate. GHD has based this likelihood on recent experience it has had with testing at a confidential power station client in New South Wales, the client for which is planning to shut down and have engaged a wide series of soil contamination testing and containments. These tests showed that substation contamination included total recoverable hydrocarbons, copper, other heavy metals (notably cadmium) and perfluorooctanesulfonics that exceeded required levels at the maximum depth of the test borehole of 7.85m and in groundwater test bores at 10m.

The QR substation, size and earthworks volumes to be processed are found in Table 3-5.

**Table 3-5: Substation, size and earthworks volumes**

Name	#	Size	Waste Stream	Volume
QR Substation <sup>39</sup>	1	114m x 50m	C3	5,700 m <sup>3</sup>
Ergon 33kV Substation	1	120m x 60m	C2	7,200 m <sup>3</sup>
Main Substation	1	70m x 40m	C2	2,800 m <sup>3</sup>
Site Substations	16	30m x 20m (average)	C2	9,600 m <sup>3</sup>
<b>Totals</b>	<b>19</b>			<b>25,300 m<sup>3</sup></b>

The percentage of C3 "high contaminated" material associated with the QR Substation represents 4.5% of the "DCC Dispose of Heavy Contaminated Soils (Hydrocarbons)" waste stream. Likewise, the volume of C2 "medium contaminated" associated with the remaining substations is 4.3% of the "DCB Dispose of Medium Contaminated Soils" waste stream.

Given the age of these sites, a large percentage of which have been in operation since DBCT was initially constructed, it is reasonable to assume that they may have been contaminated with transformer insulating fluids as part of their operations. While spills are normally minimised and contained, transformer insulating fluids are generally of a low viscosity and hence have a relatively high penetrability into surrounding soils. Again, without performing a series of soil tests within the substation boundaries, the true extent of contamination is unknown and thus, conservative assumptions should be applied. GHD maintain its position that a 1,000mm depth for contaminated substrates under substations is appropriate.

<sup>39</sup> Operated by Aurizon Network

## 3.4 Offshore pile removal

The Draft Decision states that the main difference between the GHD and Advisian offshore pile removal approaches relate to which approach is more appropriate – extracting the piles in full or cutting the piles below seabed level. This difference in approach culminates in GHD’s direct cost estimate being \$45.86m higher than Advisian’s estimate.<sup>40</sup> Advisian came to the view that complete removal of the piles could have a detrimental impact on marine life, and suggested that piles be cut 1 metre below the existing seafloor level.

### 3.4.1 GHD’s approach

GHD considered two options for offshore demolition, namely: complete removal of the piles (Option A); and cutting off 1 metre below seabed level (Option B). GHD recommended Option A as the more appropriate approach, on the following basis:

*We consider that completely removing the piles is the most appropriate means to maximise the long-term rehabilitation of this [Offshore] Domain. While complete removal poses short-term environmental risks and considerations, including impacts on species endemic to the Domain, complete removal will enable the natural coastal processes and sand flows to provide a great long-term environmental benefit. This will also create a better long-term ecosystem for species endemic to the region and benthic communities. We consider the above scope to be the most appropriate for achieving a pre-construction landform that is safe, stable and non-polluting ...<sup>41</sup>*

Elements that shaped GHD's recommendation include:

- Given the sustained increase of environmental legislation in Australia in the last 30 years, GHD expects that environmental protection measures will continue to increase. As such, it is not unreasonable to expect that complete removal of in-situ infrastructure may well be a regulatory requirement at the time of rehabilitation. GHD considers it prudent to price the requirement specified in the PSA, to the extent that it is physically possible and economically feasible to achieve.
- Full removal of all infrastructure installed for operations would return the environment to its pre-developed natural state and condition. Strictly speaking, retention of piles below the seafloor (Option B) does not return the environment to its natural state. It may also be riskier to leave the piles in the seabed, as the piles could degrade over time, leading to metals dissolving in the water and leaching to the environment, potentially harming marine flora and fauna. Accordingly, Option A is the more appropriate method of fulfilling the ‘natural state and condition’ requirement and to avoid any potential for metal leaching.
- DBCT is currently excised from the Great Barrier Reef Marine Park (GBRMP), falling within the Port exclusion area for the Port of Hay Point. Rezoning of the GBRMP boundaries or other legislative instruments governing the operational environment of DBCT is feasible, which may require the return of the environment to pre-developed natural state and condition. The Great Barrier Reef Marine Park Authority (GBRMPA), the party responsible for managing the GBRMP, is obliged to ‘provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region’<sup>42</sup> (underlining added) Accordingly, long-term environmental needs are more important than short-term needs.

<sup>40</sup> QCA Draft Decision on 2019 DAU, p. 97

<sup>41</sup> GHD Report, p. 79

<sup>42</sup> Great Barrier Reef Marine Park Act 1975, cl. 2A(1)

### 3.4.2 Comparing the GHD and Advisian approaches

Both the GHD Report and Advisian Report note that there are expected short-term impacts to the marine environment should complete removal (Option A) be undertaken (noting that impacts are also predicted with Option B, but are likely to be lesser given the predicted duration of works). As noted above, Option B 'will enable the natural coastal processes and sand flows to provide a great long-term environmental benefit'. Hence, GHD's recommendation of Option A is consistent with the Great Barrier Reef Marine Park Act 1975, which is the legislation governing GBRMPA's activities. Advisian's report does not address these considerations, and it is possible that its recommendation of Option B will not satisfy GBRMPA's requirements.

To provide context around the environmental risk associated with implementing Option A, compared with the financial risk exposure to DBCTM should Option B be assumed to occur but Option A be required, the following information on potential environmental impacts is provided:

Both Option A and Option B would remove the entirety of the piles above the seabed. This would therefore remove the biodiversity values currently associated with the piles. The loss of these biodiversity values would likely need to be managed by offsetting or relocating extant reef communities.

Impacts to water quality are expected near the works via the suspension of in-situ sediments. This is expected to occur for both Option A and Option B. There is also potential for flow-on effects to nearby sensitive photosynthesizers such as corals and seagrasses to be realised if generated plumes migrate from site. Understanding of the current anthropogenic pressures on water quality in the region is important to provide context to the potential impact to water quality from the proposed activities, and the resilience of the sensitive receptors in the region:

- There is currently a requirement for maintenance dredging to be undertaken at the Port of Hay Point to maintain navigable depths. This involves the removal and sea placement of sediments that have settled in the berth pockets, swing basin and channel. The most recent campaign saw approximately 353,740 m<sup>3</sup> of material dredged and placed at the disposal area 6 km offshore over a 33 day period. Extensive monitoring of water quality was undertaken before, during and after this dredging campaign. This concluded that dredging "had little impact on turbidity" (VE, 2019a<sup>43</sup>), with conditions during dredging considered to be within the natural seasonal variation experienced on site. Furthermore, nearby sensitive corals were also monitored before, during and after dredging. Findings from that assessment concluded "no apparent impact from maintenance dredge activities was evident on the monitored coral parameters" (VE, 2019b<sup>44</sup>).
- The expected disturbance of sediments, and subsequent generation of turbid plumes associated with Option A and Option B activities, is expected to be on a significantly smaller scale than that which occurs during maintenance dredging activities. As such, impacts to water quality and flow-on effects to sensitive receptors are expected to be within the natural variance currently experienced at the site.
- The underwater noise generated during demolition works also has the potential to affect sensitive receptors such as cetaceans (e.g. inshore dolphins and whales) if they are present during demolition activities. As noted above, Option A is expected to occur for a period of approximately 142 weeks, whilst Option B is expected to be 71 weeks in duration. As such, it would be reasonable to assume that cetaceans that are known to be sensitive to underwater noise will be present in the region during demolition works, and impacts to those species would need to be managed through mitigation measures such as soft starting equipment and having fauna spotters on hand during demolition works to watch for any cetaceans that may enter the work area during works. It also could mean demolition

<sup>43</sup> Vision Environment (2019a). Hay Point Maintenance Dredge Water Quality Monitoring. Report for North Queensland Bulk Ports. Vision Environment, Gladstone, Australia.

<sup>44</sup> Vision Environment (2019b). Hay Point Maintenance Dredge Coral Impact Monitoring Report for North Queensland Bulk Ports. Vision Environment, Gladstone, Australia.

activities would take longer than expected, especially if cetaceans are present more frequently than anticipated at the time of closure.

GHD considered both the short- and long-term environmental impacts that would occur as a result of the different options for pile removal. In GHD's view, Option A, being complete extraction of piles, provides a higher standard than cutting off at seabed, promoting a greater long-term environmental outcome. It also facilitates future usage of the site, in the event that new piles need to be installed or dredging is required. This outcome is more consistent with the objective of returning the site to preconstruction state and condition. Accordingly, GHD retains its view that Option A is the more appropriate of the two options for fulfilling the 'natural state and condition' requirement in the PSA. In addition, GHD's proposed method of using vibratory equipment to remove the piles creates a less significant radius of distraction and is moderately impactful relative to other removal techniques. Hence, while complete extraction has a greater short-term environmental impact, the impact is moderate when compared to other removal techniques.

## 3.5 Indirect labour and project management costs

The Draft Decision (in reference to Advisian's report) states that Advisian's assumptions for indirect labour and project management (**PM**) costs resulted in a rehabilitation cost estimate that is \$5.79-\$30.79m lower than compared with GHD's assumptions.<sup>45</sup>

### 3.5.1 Advisian's approach

Advisian said its approach for establishing indirect costs was founded upon a traditional delivery approach to execute the works. Advisian priced indirect costs on the basis that a Tier 1 Contractor would control the site under the direction of a Project Management Office (**PMO**) established by DBCTM (Owner's Team). Advisian stated its approach represents a more risk-balanced delivery model and would enable the works to be planned and executed in a more effective and timely manner. As a result, the indirect costs sit largely within the Contractor's price, with the PMO and Owner's costs separate. Advisian has assigned risk where it is most likely to be managed in both the Contractor's price and the Owner's costs.<sup>46</sup> In comparison, Advisian noted the following about GHD's approach:<sup>47</sup>

*The GHD portion of the estimate has 'distributable costs' for labour sitting in two portions of the estimate – 4.5 years of cost is located within the distributable cost section, with the remaining 3.5 years grouped under offshore, direct works. Both sections are staffed with a project manager (\$150/hr), two project engineers (\$120/hr) and a health and safety officer (\$100/hr). These resources are assumed to belong to the head contractor undertaking the works, and the rates are within the market rates. The indirect costs in the GHD portion of the estimate amount to \$36.4m.*

*Within the Axiom estimate, an allowance of 10% of direct costs has been apportioned to indirect labour costs and is documented as the DBCTM Project Management team. It is unclear on the rates that have been applied to individual positions within the team, however; the assumptions within the report are clear that a management team is supplied by the asset operator. While this approach is reasonable, it is noteworthy that the costs are at the higher end of the industry norms of between 3-7 percent for a PMO on demolition projects. The cost allocated to indirect labour within the Axiom estimate is \$53.5m.*

### 3.5.2 GHD's response

In response to Advisian's comment, GHD does not consider its estimate of PM costs are 'at the higher end of the industry norms'. In GHD's preparation of the cost estimate for rehabilitating DBCT to its natural state and condition, the following split of responsibilities occurred:<sup>48</sup>

- GHD estimated decommissioning and demolition costs
- Axiom (GHD's subcontractor) estimated disposal, remediation and rehabilitation costs.

In GHD's view, Advisian is in alignment about the appropriateness of assumptions that GHD adopted in relation to decommissioning and demolition costs. The only comment that GHD makes is that the Qleave

<sup>45</sup> QCA Draft Decision on 2019 DAU, p. 97

<sup>46</sup> Advisian Report, p. 21

<sup>47</sup> Advisian Report, pp. 47-48

<sup>48</sup> GHD Report, p. 3

Levy is, as of 1 July 2020, 0.575%<sup>49</sup>, rather than 0.475% as in Advisian's report.<sup>50</sup> Hence, Advisian's and GHD's cost estimate should be revised upwards accordingly. GHD notes that Advisian considers that Axiom's estimate on indirect costs for disposal, remediation and rehabilitation costs is beyond industry norms (i.e. use of 10% instead of 3%-7%).

However, GHD observes that in the past four years of NECAP submissions that the QCA has approved for DBCTM, PM costs (also known as distributable costs) accounted for approximately 10% (sometimes more) of total project costs (excluding financing costs and interest-during-construction costs):

- 2020 NECAP claim<sup>51</sup>
- 2019 NECAP claim<sup>52</sup>
- 2018 NECAP claim<sup>53</sup>
- 2017 NECAP claim<sup>54</sup>.

In addition, the 7X expansion project, which the QCA accepted as having prudent and efficient capital costs, the engineering, procurement, construction and management (**EPCM**) cost component (equivalent to PM costs) was 16.8%.<sup>55</sup> This is well above the 10% proposed in the GHD Report.

Finally, GHD notes that the Operator (user-owned) recommends the NECAP costs prior to their approval by users, which means that the Operator and the terminal users consider all NECAP costs, including PM costs, to be prudent and efficient. GHD acknowledges that a PMO could be set up, as per Advisian's approach. In this regard, however, GHD notes that Axiom's Basis of Estimate stated the following:

*It is assumed that DBCTM will manage the Rehabilitation Project and directly engage major Australian based consultants and contractors to assist and carry out the project scope of works as further described below. This approach is considered to be the lowest cost method wherein DBCTM assembles its own Rehabilitation Management team of professionals with the required skills of project planning and delivery. As the functions of project engineering and procurement of plant equipment associated with new project builds are not involved, it is expected that an EPC / EPCM type consultant is not required. Should an external project management consultant be engaged, then a further cost of 5% to 8% of the project management value could be expected.<sup>56</sup>*

Given DBCTM is far more familiar with the DBCT assets than would an external Tier 1 contractor for a PMO, GHD considers that Axiom's approach is appropriate. Accordingly, GHD maintains that a 10% allowance for PM costs is appropriate.<sup>57</sup>

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<sup>49</sup> <https://www.gleave.qld.gov.au/building-and-construction/levy-payers/paying-the-levy/levy-calculator>

<sup>50</sup> Advisian Report, p. 125

<sup>51</sup> \$2.5M out of \$23.9M, <https://www.qca.org.au/wp-content/uploads/2019/05/qca-letter-dbctms-2020-21-arr-reference-tonnage-and-2019-20-necap.pdf>

<sup>52</sup> \$2.6M out of \$26.8M, <https://www.qca.org.au/wp-content/uploads/2019/05/qca-letter-to-dbctm-on-201920-arr-reference-tonnage-tic-and-necap-201819-1.pdf>

<sup>53</sup> \$1.9M out of \$10.0M, <https://www.qca.org.au/wp-content/uploads/2019/05/qca-dbct-revenue-and-tonnage-2018-19.pdf>

<sup>54</sup> \$5.5M out of \$51.9M, [https://www.qca.org.au/wp-content/uploads/2019/06/31967\\_dbct-necap-2017-letter-1250078\\_2.pdf](https://www.qca.org.au/wp-content/uploads/2019/06/31967_dbct-necap-2017-letter-1250078_2.pdf)

<sup>55</sup> Appendix 3: Indirect Cost Analysis, [https://www.qca.org.au/wp-content/uploads/2019/05/8664\\_P-DBCTManagement-Submission-DBCT7XCapExp-1111-1.pdf](https://www.qca.org.au/wp-content/uploads/2019/05/8664_P-DBCTManagement-Submission-DBCT7XCapExp-1111-1.pdf)

<sup>56</sup> GHD Plan, Axiom's Basis of Estimate, p. 10

<sup>57</sup> GHD understands that for the DBCTM 7X expansion project, 5.7% of costs were set aside for PM costs. GHD recognises this cost was low as sufficient investment had been made DBCTM around project definition and needs for a project only a few years out, in

## 3.6 Risk and contingency allowances

The Draft Decision (in reference to Advisian's report) notes that an allowance of 25% was applied to direct costs for risk and contingency in the GHD Estimate. The QCA indicated concern that this assumption was not sufficiently explained<sup>58</sup>.

GHD takes this opportunity to provide more detail on its approach for determining contingency allowances below. In the preparation of the GHD Estimate, the following split of responsibilities occurred:

- Axiom (GHD's subcontractor) estimated disposal, remediation and rehabilitation costs
- GHD estimated decommissioning and demolition costs.

GHD explained this split of responsibilities in the GHD Plan.<sup>59</sup> The GHD Plan also mentioned that Attachment 2 of the GHD Plan<sup>60</sup> could be referred to for the total cost breakdown and associated details.<sup>61</sup> Hence, GHD referred to Attachment 2 for more details, which included some information on contingency allowance selections.<sup>62</sup>

### 3.6.1 Disposal remediation and rehabilitation costs

Axiom developed a Class 4 cost estimate for disposal, remediation and rehabilitation costs<sup>63</sup>

This is based on AACE International Recommended Practice No. 47R-11 - Cost Estimate Classification System – As Applied in The Mining and Mineral Processing Industries. A Class 4 estimate has the following properties:

- 1-15 % maturity level of project definition variables
- End usage is for undertaking an options screening process or for progressing to a feasibility study
- Expected accuracy range (80% confidence interval) of:
  - Low: -15% to -30%
  - High: +20% to 35%.

Axiom applied a 20% contingency allowance to account for the fact it had adopted a Class 4 (as opposed to a more accurate) cost estimate. Axiom said "Contingency has been assessed at 18.7% of all base costs based on the underlying quality of current project definition and pricing sources. A further 1.3% has been added to address project discrete risks to cover for such events as schedule delays and unexpected site conditions."<sup>64</sup>

GHD notes that Axiom's proposed 20% contingency allowance is lower than guidance from TMR. For base estimates characterised by 1%-15% project definition (which a Class 4 estimate is), TMR considers that typical contingency ranges are 40-70%.<sup>65</sup> **Table 3-6** sets out some key information from TMR's manual.

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comparison with GHD's estimate of rehabilitation costs for an obligations materialising more than 30 years from now. Accordingly, 5.7% would not be appropriate to use.

<sup>58</sup> QCA Draft Decision, p. 97

<sup>59</sup> GHD Report, p. 3

<sup>60</sup> *Microsoft Excel* workbook 'DBCT Rehabilitation Cost Estimate'

<sup>61</sup> GHD Report, p. 60, 66, 71, 76, 81, 86, 90, 95 and 102

<sup>62</sup> For example, see rows 1017 and 1018 of 'Capex Details' worksheet; and cell D40 of 'Assumptions – Demolition' worksheet

<sup>63</sup> GHD Report, Appendix A, Axiom's Basis of Estimate, p. 5

<sup>64</sup> GHD Report, Appendix A, Axiom's Basis of Estimate, p. 23

<sup>65</sup> Project Cost Estimating Manual (PCEM) – Seventh Edition, Transport and Main Roads, July 2017, p. 45

**Table 3-6: TMR's level of project definition and typical contingency ranges for base cost estimates**

Base estimate stage	Level of project definition	Typical contingency ranges
Strategic estimate	1% to 15%	40% to 70%
Project proposal estimate	1% to 15%	40% to 70%
Options analysis estimate	N/A	N/A
Business case estimate (P90)	10% to 40%	30% to 40%
Development Phase Stage 1 Design estimate	30% to 65%	20% to 30%
Development Phase Stage 2 Design estimate	40% to 80%	10% to 20%

Therefore, Axiom's contingency allowance is only half that of the lower-bound contingency allowance that TMR considers would be typical. In fact, GHD notes that TMR states that typical contingency ranges for Development Phase 1 (with project definition of much higher than 15%) would be 20%-30%, which is above Axiom's proposed contingency. Against this benchmark, GHD considers that Axiom's proposed 20% contingency allowance is actually understated.

If Axiom had applied a 40%, instead of 20%, contingency allowance, GHD's estimate for disposal, remediation and rehabilitation costs would have been \$133.5m higher. GHD maintains its view that a 20% contingency allowance for these costs is the minimum appropriate level, and may need revision upwards.

### 3.6.2 Decommissioning and demolition costs

GHD applied a 25% contingency factor for decommissioning and demolition costs. This estimate was prepared using actual asset-closure projects that GHD has been involved with in Australia and North America. GHD notes the 7X project had a contingency of 25% of the construction cost (\$126.4m of \$512.5m), the percentage for which was allocated *during* the construction phase, the total costs for which the QCA approved<sup>66</sup>:

*"In August 2006, the [QCA] reviewed and accepted that the scope of the phase 2/3 works was consistent with DBCT's master plan and clause 12.1 of the PSA... The [QCA] notes KBR reviewed DBCT Managements forecasts and considered the baseline construction cost estimate prudent, and the forecasts for variations reasonable" <sup>66</sup>.*

However, as the cost estimate was prepared based on GHD's historical experience, and not via cost estimating professionals (i.e. Axiom), a higher contingency allowance of 25%, instead of 20%, was considered appropriate. That said, the 25% is still considerably lower than the 40%-70% that TMR states is typical in industry for base estimates characterised by 1-15% project definition. Accordingly, GHD considers the application of a 25% contingency is the minimum appropriate level, and may need revision upward.

<sup>66</sup> QCA Decision: DBCT Management Draft Amending Access Undertaking, Dalrymple Bay Coal Terminal Phase 2/3 Expansion – Forecast Costs, p. 15, November 2008.

If GHD had applied a 40%, instead of 25%, contingency allowance, GHD's estimate for decommissioning and demolition costs would have been \$42.1m higher.

### 3.6.3 Advisian's cost-estimating approach

GHD notes that Advisian does not mention what class estimate its cost estimating approach for rehabilitating DBCT yielded. Accordingly, it is difficult to align Advisian's proposed contingency allowances with industry practice such as GHD has used for benchmarking purposes (e.g. AACE International).<sup>67</sup>

Additional benchmarking references were provided by the Australian Government Department of Infrastructure and Regional Development's (**the Department**) *Base Cost Estimation* documentation, which states:

*Additional useful guidance on cost estimation practices, to the extent that they do not contradict the guidance provided by the Department's Cost Estimation Guidance, may be found in individual agency cost estimation guidance or manuals, and in the guidance provided by professional associations e.g. Project Management Institute, Australian Institute of Quantity Surveyors, Royal Institution of Quantity Surveyors, or AACE International.*<sup>68</sup>

GHD observes that the Department's definitions for the *Base Cost Estimation* documentation has been mostly taken from AACE International Practice No. 10S-90: Cost Engineering Terminology.<sup>69</sup> Advisian has not referred to AACE International (or equivalent guidance) for its cost-estimating approach. It is difficult to assess Advisian's determination of contingencies against industry benchmarks and DBCTM's experience at DBCT itself, and GHD's view is that Advisian's contingencies are highly likely to be understated.

GHD considers that Advisian's report should declare what class estimate its estimating approach has achieved, in light of AACE International guidance, so that the QCA can validate the appropriateness of Advisian's approach for determining contingency levels.

### 3.6.4 GHD's other observations

GHD notes that the approach taken by Advisian to assess contingency would be appropriate in a cost estimate risk analysis process. Such a process is a significant undertaking with comprehensive input from all stakeholders, which would occur closer to the time of rehabilitation.

In addition, GHD notes that for road and rail construction projects, the Department states that a 35% contingency<sup>70</sup> and 53% contingency are, respectively, appropriate for a cost estimate to have a 90% confidence level of not being exceeded.<sup>71</sup> In fact, for rail construction projects, the Department states that a 32% contingency allowance is appropriate for a cost estimate to have only a 50% confidence level of not being exceeded. GHD notes that these recommendations were developed by Advisian (formerly Evans and Peck) for the Department, so these levels of contingency should not seem inappropriate.

While road and rail construction projects are different from a terminal rehabilitation project, the contingency percentages provide useful benchmarks, noting they are considerably higher than the 25% (decommissioning and demolition costs) and 20% (disposal, remediation and rehabilitation costs) that GHD

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<sup>67</sup> AACE International Cost Estimate Classification System – as applied in Engineering, Procurement and Construction for the process Industries, available at: [https://web.aacei.org/docs/default-source/toc/toc\\_18r-97.pdf?sfvrsn=8](https://web.aacei.org/docs/default-source/toc/toc_18r-97.pdf?sfvrsn=8)

<sup>68</sup> See page 6 of [https://investment.infrastructure.gov.au/files/cost\\_estimation\\_guidance/Guidance\\_Note\\_2\\_Base\\_Cost\\_Estimation.pdf](https://investment.infrastructure.gov.au/files/cost_estimation_guidance/Guidance_Note_2_Base_Cost_Estimation.pdf)

<sup>69</sup> See page 9 of [https://investment.infrastructure.gov.au/files/cost\\_estimation\\_guidance/Guidance\\_Note\\_2\\_Base\\_Cost\\_Estimation.pdf](https://investment.infrastructure.gov.au/files/cost_estimation_guidance/Guidance_Note_2_Base_Cost_Estimation.pdf)

<sup>70</sup> Using a deterministic (rather than probabilistic) approach for ascertaining contingency

<sup>71</sup> See pages 12 and 14 of [https://investment.infrastructure.gov.au/files/cost\\_estimation\\_guidance/Guidance-Note-3B-Version-1.0.pdf](https://investment.infrastructure.gov.au/files/cost_estimation_guidance/Guidance-Note-3B-Version-1.0.pdf)

adopted. Accordingly, the GHD \$1.22b rehabilitation cost estimate is unlikely to have reached a 90% (or even 50%) confidence level of not being exceeded

If a 40% contingency allowance had been adopted, noting this is the lower bound of TMR's identified contingency percentage range, GHD's cost estimate would have increased by a total of \$175.6m.

In summary, GHD's approach for determining risk and contingency allowances is appropriate (potentially understated), given the relevant benchmarks GHD relied on in shaping these allowances.

# Table of Abbreviations

Abbreviations	Descriptions
ABS	Australian Bureau of Statistics
AU	Access Undertaking
AUD of A\$	Australian Dollars
CBR	California Bearing Ratio
CBS	Capital Breakdown Structure
DAU	Draft Access Undertaking
DBCT	Dalrymple Bay Coal Terminal
DBCTH	DBCT Holdings
DBCTM	DBCT Management
DNRME	Department of Natural Resources, Mines and Energy (QLD)
EP	Environmental Protection
EPC	Engineering, Procurement and Construction
EPCM	Engineering, Procurement and Construction Management
GBRMP	Great Barrier Reef Marine Park
GBRMPA	Great Barrier Reef Marine Park Authority
LIDAR	Light Detection and Ranging
NECAP	Non Expansionary Capital Expenditure
PM	Project Management
PSA	Port Services Agreement
QCA	Queensland Competition Authority
RRP	Rail Receiving Pit
TMR	Department of Transport and Main Roads (QLD)
UOM	Unit of Measurement
User	DBCT user or access holder
VE	Vision Environment
WQIP	Water Quality Improvement Project



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[https://projectsportal.ghd.com/sites/pp07\\_01/respondingtoqcadraft/ProjectDocs/GHD Report - Final \(21 Oct 2020\) - sent to DBCTM.docx](https://projectsportal.ghd.com/sites/pp07_01/respondingtoqcadraft/ProjectDocs/GHD%20Report%20-%20Final%20(21%20Oct%202020)%20-%20sent%20to%20DBCTM.docx)

Rev.No.	Authors	Reviewer		Approved for Issue		
		Name	Signature	Name	Signature	Date
Final	G Finsen A Boden M Kiejda A Hestehauge J Marshall C Chiappazzo	H Devaser		H Devaser		21 Oct 2020



## Appendix 3 DBCTM correspondence with User Group

23 September 2020

**Dalrymple Bay Coal Terminal User Group**

c/- Mark Smith, Chair

Director Infrastructure – Peabody

Dalrymple Bay Coal Terminal Pty Ltd

100 Melbourne Street

South Brisbane QLD 4101

By Email: MSmith2@peabodyenergy.com

CC: john.hedge@allens.com.au

**DBCTM 2019 Draft Access Undertaking – request for feedback on non-pricing issues**

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Dear Mark

As part of DBCT Management's (DBCTM's) June 2020 collaborative submission to the Queensland Competition Authority (QCA), we set out a number proposed amendments to the 2019 DAU which we both agreed would effectively address a number of non-pricing issues that had been previously raised by the User Group.

We also identified a small number of issues where we had not yet found common ground, but that we considered could potentially be resolved with further discussion.

The QCA's Draft Decision acknowledged these issues and encouraged stakeholders to engage in further discussions in an attempt to reach a consensus about a possible way forward.

To assist with these discussions we have set out in the table at Attachment A for each of the unresolved issues:

- the relevant clause reference(s);
- an explanation of the issue as raised by the User Group in its September 2019 Submission;
- DBCTM's response including, where possible, clarifications and potential solutions, and questions for the User Group.

We ask the User Group to review these issues and DBCTM's response and respond to the questions set out in bold in the table. DBCTM will then consider further amendments to the 2019 DAU to address the remaining issues. We found this approach effective when collaborating on the June 2020 submission and we trust this will assist in enabling the User Group to understand DBCTM's current position and provide a response.

In addition to a response to the issues identified in Attachment A, we request that you provide any suggested improvements to the negotiation timeframes set out in the 2019 DAU, that would alleviate any time pressures faced by access seekers while ensuring an effective and efficient negotiation process.

In order to allow time for DBCTM to take into account the User Group's responses in considering any proposed amendments to the 2019 DAU, and to allow for potential clarifying discussions, we request that you provide a response by **Friday 2 October 2020**.

DBCT Management

We look forward to working with the User Group to close out the remaining non-pricing issues. Please let us know if you think it would be useful to set up a call to discuss these issues.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jonathan Blakey', with a long horizontal flourish extending to the right.

Jonathan Blakey  
General Manager- Commercial & Regulation  
**DBCT Management**

Attachment A – issues for feedback

Item	Provision of DAU	User Group issue	DBCTM Response
1.	<p>Schedule A</p> <p>Requirement for users to provide information in relation to the status of environmental approvals for the project.</p>	<p>The User Group has queried the addition to the Renewal form of a requirement to provide information in relation to the status of environmental approvals for the project. The User Group agrees that there is benefit in the queue being more representative of projects that may actually progress. However, the User Group pointed out that the preceding item already requires a description of progress in obtaining 'necessary approvals' and requested clarification from DBCTM as to what additional information it is hoping to receive, noting that in most cases it will not be possible to provide any information that is not already publicly available in relation to such approvals and was not willing to support this change until such clarification is provided.</p>	<p>As explained in DBCTM's June 2020 submission, DBCTM expects to receive reasonable evidence to show that mining operations are likely to commence around the time requested in the access application, and expects it may be appropriate to provide information not in the public domain where appropriate confidentiality protections are in place.</p> <p>However we understand the User Group is of the view that this information would already be provided by the requirement for the Access Seeker to provide information on 'the <b>Error! Reference source not found.</b>'s progress in obtaining the necessary approvals for the Source Mine Project '</p> <p>Given this DBCTM proposes to remove the separate requirement to provide details of the status of the environmental approvals, and clarify that the existing obligation includes environmental approvals.</p> <p><b>Please advise if the User Group is comfortable with this proposed amendment.</b></p> <p><b>If not, please explain why not.</b></p>

Item	Provision of DAU	User Group issue	DBCTM Response
2.	Short Term Available Capacity 5.4(d) – (i)	<p>DBCTM has agreed to alter the timeframes applying to short-term capacity as laid out in DBCTM’s June 2020 Submission.</p> <p>The User Group also identified requested clarification regarding:</p> <ul style="list-style-type: none"> <li>• how short-term capacity would be offered to access seekers in the queue, explaining that the User Group was concerned that capacity could be offered as Short-Term Available Capacity at DBCTM's discretion (even if it was available as long-term renewable capacity); and</li> <li>• how DBCTM would ‘parcel up’ short term available capacity (for example as a bundle, or separately).</li> </ul>	<p>The 2019 DAU introduced the concept of Short-Term Available Capacity, so that certain types of capacity can be allocated more efficiently by shortening the timeframes for the allocation process. It does not alter the way in which DBCTM offers access to capacity at the terminal, including how it is packaged.</p> <p>The concerns raised by the User Group are not completely clear to DBCTM.</p> <p><b>Please confirm that the amendments and clarifications set out in DBCTM’s June 2020 Submission pages, 33-34 address the User Group’s issues.</b></p> <p><b>Alternatively please propose potential amendments to the 2019 DAU which would address its concerns.</b></p> <p>In doing so we ask that the User Group recognises that:</p> <ul style="list-style-type: none"> <li>• it is important that DBCTM retains a degree of flexibility in how it packages capacity such that it can do so efficiently; and</li> <li>• any amendments should be proportionate to the issue that they address. In this respect DBCTM notes that in the upcoming regulatory period there is a maximum available capacity of 1.4mtpa for 2021-22</li> </ul> <p>If it would address the User Group’s concerns DBCTM is comfortable to include an obligation in the 2017 DAU which requires DBCTM to offer renewal rights where it is able to do so, provided the Access Seeker is willing to enter into an access agreement for a term of 10 years or longer.</p>

Item	Provision of DAU	User Group issue	DBCTM Response
3.	5.4(e)(1) - Notifying Access Seeker date for commencement of Access	The User Group supports the concept that the Notifying Access Seeker should not need to nominate a date that is at least 6 months before the access seeker which is then first in the queue – but considers that it should be made clear that the notifying access seeker will be deemed to have sought access from a date earlier than that of the first access seeker if it seeks access commencing within <b>3 months</b> of giving the notice that triggers the notifying access seeker process if for any reason the access seeker that is first in the queue has a date for commencing access that is already in the past	<p>DBCTM is comfortable with the amendment proposed by the User Group, however, considers that a 6 month period would make more sense from a commercial perspective.</p> <p><b>Please confirm that the User Group is comfortable with the 6 month period proposed by DBCTM. If not, please provide the reasons why not.</b></p>
4.	5.4(i)(1) - Position in Queue may be lost by not executing Access Agreement	The DBCT User Group requests that a clarification should be included to confirm that if a Notified Access Seeker responds with a signed Access Agreement in respect of a lower Tonnage, or shorter term than their Access Application, they will retain their place in the Queue in respect of the remaining Tonnage or term applied for.	<p>DBCTM explained in its June 2020 Submission that it was reluctant to make this amendment because it was concerned that the change could create an incentive for access seekers to mount very large access applications to reserve places in the queue for tonnage not contracted for in the first tranche(s).</p> <p><b>Please provide any suggestions as to how this risk could be mitigated if DBCTM were to agree to the User Group’s proposed change.</b></p> <p><b>Please also explain if the User Group considers that the position in the queue should be retained for queued capacity that is not set to commence in the next year, or for all remaining queued capacity.</b></p> <p>DBCTM notes that the latter option could enable an Access Seeker to submit a signed access agreement for a very small tonnage, in order to preserve the queue position of its remaining queued capacity.</p>

Item	Provision of DAU	User Group issue	DBCTM Response
5.	5.4(j) and (k) and 5.4(l)(15)	<p>The User Group has previously noted the insertion of the new clauses 5.4(j) and (k) and (l)(15) but has not commented on those clauses on the basis that that 'the 'TIC should clearly remain regulated by reference tariffs (which would make these provisions unnecessary)'.  The User Group went on to note that '[i]f anything, these provisions demonstrate the real practical difficulties created by the removal of reference tariffs – as they involve parties being forced to sign up to long term take or pay agreements without knowing the price at which they are doing so. That evidently supports the DBCT User Group's submission that the TIC should remain regulated by reference tariffs.'</p>	<p>As explained previously by DBCTM, the provisions referred to by the User Group have been included to ensure that the pricing model without a reference tariff is practically workable, it does not demonstrate that it is not.</p> <p><b>With the benefit of the QCA's Draft Decision that a negotiate / arbitrate pricing model is capable of approval, DBCTM welcomes any feedback from the User Group on how these provisions could be made more practically workable while preserving the intention of the negotiate/arbitrate model.</b></p>
6.	5.8(a)(4) Negotiation Cessation Notice	<p>The User Group proposed that the wording of section 5.8(a)(4) be amended as follows:  "or that the Access Seeker is not willing or able to provide security reasonably requested by DBCT Management in accordance with Section 5.9 <u>by the time that Security is required to be provided in accordance with an Access Agreement</u>"</p>	<p>Section 5.8(a)(4) enables DBCTM to cease negotiations in circumstances where (inter alia) an Access Seeker is not willing or able to provide security reasonably requested by DBCTM in accordance with the AU.</p> <p>The User Group's proposed amendment seeks to limit this ability to cease negotiations to circumstances where the Access Seeker is not willing or able to provide the security <u>by the time that Security is required to be provided in accordance with an Access Agreement</u>.</p> <p>The purpose of this amendment is unclear, and does not seem workable from a practical perspective given that negotiations would occur prior to entering into an Access Agreement. While section 5.9(d) allows for DBCTM to require security (or additional security) under an Access Agreement, this would occur following the conclusion of negotiations.</p> <p><b>Please further explain the intention of this proposed amendment and how it would work from a practical perspective.</b></p>

Item	Provision of DAU	User Group issue	DBCTM Response
7.	8.4 – Providing notice to rail network provider when Access Holder does not renew contract	<p>The User Group has explained that it is only willing to support provision of aggregated information to the rail network provider but not information on individual Users who do not extend or renew in whole or part.</p> <p>The User Group has explained that while it understands the intention of trying to produce greater alignment – the terminal regulatory framework already has measures which seek to address that (by making rail capability part of the access application process and having the capacity available for contracting based on system capacity for example). The User Group considers that the appropriate place for managing the misalignment is the Aurizon Network access undertaking where port capacity should be being demonstrated before rail capacity is contracted.</p>	<p>The provision of aggregated information as proposed by the User Group would hinder DBCTM’s ability to achieve its objective of supply chain alignment and efficiency. DBCTM strongly considers it will produce better outcomes if it is able to identify relevant Access Holders in order to improve the efficiency of the system.</p> <p>DBCTM acknowledges that the Aurizon Network has a role in ensuring alignment of the supply chain, but disagrees that it is inappropriate for DBCTM to seek to improve the efficiency of the process, given the impact that coordination issues has on the efficient utilisation of the terminal.</p> <p><b>Please clearly identify any reasons why it would not be appropriate for DBCTM to provide information regarding the non-renewal of an Access Holder’s contract to the rail network provider.</b></p> <p>DBCTM will then consider possible solutions to any problems identified that will not adversely impact the efficient operation of the terminal.</p>
8.	12.1(h) - Independent expert to consult	The User Group opposes DBCTM’s proposal that where the ILC is the independent expert in respect of a capacity estimation, it would be assumed that the membership of the ILC had been consulted, as necessary for any ILC determination.	<p>DBCTM is prepared to consider reinstating the requirement to consult with all relevant stakeholders.</p> <p><b>Please provide any suggestions as to how the consultation process could be conducted expediently while still ensuring that the relevant parties are adequately consulted.</b></p>

02 October 2020

John Hedge  
Partner  
Allens  
480 Queen Street  
Brisbane QLD 4000

Mark Smith  
Director - Infrastructure  
Peabody Australia  
100 Melbourne Street  
South Brisbane QLD 4101

Dear John and Mark

**Re: DBCT Terminal Infrastructure Charge 1 July 2021 – 30 June 2026**

I refer to your letter of 25 September 2020.

DBCTM has recently commenced the process to discuss pricing for 2021-2026 with users, including the issues raised in your letter of 25 September 2020. DBCTM agrees with the QCA's findings that 'negotiated outcomes may be tailored to reflect the individual preferences of access seekers' and that it considers 'it is appropriate to take into consideration the individual circumstances of the parties involved.' Our engagement with users will cover the issues raised in your letter in the context of the individual circumstances of users and their specific requirements.

As outlined in the 2019 DAU process to date, DBCTM will furnish access seekers with a great deal of information to inform negotiations. DBCTM intends to provide existing users with the same information. This will include the information set out in your letter being:

- (a) the TIC DBCTM is seeking from parties to the existing User Agreements as of 1 July 2021
- (b) the methodology for calculating that initial TIC; and
- (c) the methodology for calculating the TIC across the balance of the period through to 30 June 2026

Accordingly, we do not see the need to undertake a duplicative process covering the same subject matter as suggested in your letter.

However, we welcome constructive engagement from the User Group in relation to the non-pricing issues set out in DBCTM's letter of 23 September 2020, as well as the issues the QCA has raised in its draft determination in respect of remediation, review events and an appropriate depreciation methodology. To this end we hope that collaborative submissions on these issues can be prepared and filed with the QCA by 23 October 2020.

We look forward to the User Group's response to our letter of 23 September 2020. We will also send through our proposed approach to depreciation methodology shortly for your consideration.

Yours sincerely



Jonathan Blakey  
General Manager – Commercial & Regulation  
**DBCT Management**

## Appendix 4 Trading SCB Deregistration



ASIC

Australian Securities & Investments Commission

Australian Company

BROOKFIELD PORT CAPACITY PTY LTD  
ACN 134 741 567

Extracted from ASIC's database at AEST 11:08:20 on 14/08/2020

### Company Summary

Name: BROOKFIELD PORT CAPACITY PTY LTD

ACN: 134 741 567

ABN: 68 134 741 567

Registration Date: 23/04/2009

Next Review Date: 23/04/2021

Former Name(s): A.C.N. 134 741 567 PTY LTD, PRIME INFRASTRUCTURE  
HOLDINGS PTY LTD

Status: Deregistered

Date Deregistered: 09/08/2020

Type: Australian Proprietary Company, Limited By Shares

Regulator: Australian Securities & Investments Commission

Further information relating to this organisation may be purchased from ASIC.

## Appendix 5 Confidential – Executed conditional access agreement

Redacted

## Appendix 6 Mark-up to 2019 DAU

Included separately

## Appendix 7 Mark-up to 2019 SAA

Included separately