

10th February 2023

Mr. George Passmore

Queensland Competition Authority

Level 27, 145 Ann Street

Brisbane Queensland 4001

Submitted online: <https://www.qca.org.au/submissions/>

Dear George,

Bravus Response to the QCA's Preliminary considerations GAPE and Newlands pricing DAAU dated 15 December 2022

Bravus Mining and Resources Pty Ltd (**Bravus**) welcomes the opportunity to respond to the Queensland Competition Authority Preliminary considerations – GAPE and Newlands Pricing DAAU dated December 2022 (**QCA preliminary considerations**).

Our comments on the QCA's preliminary considerations focusses on two key issues and provides further information for the QCA to consider when making its decision on this DAAU, including:

1. Establishing an acceptable and fair value of deferred NSIE expenditure to be recovered, and
2. Expanding the QCA preliminary considerations on the impact of fee free relinquishments to Newlands access pricing for all classes of access holders

1. Establishing an acceptable and fair value of deferred NSIE expenditure to be recovered.

Bravus is seeking the QCA's views on whether it remains appropriate for the general case to apply for Aurizon Network to recover the full value of the deferred Newlands System Infrastructure Enhancements (**NSIE**). Specifically, if Aurizon Network intentionally preference its commercial objects at the expense of its behavioral obligations under UT5. The extent to which the general case should apply should not be without limit to the adherence to behavioral obligations.

- Bravus asserts that Aurizon Network intentionally deferred the recovery NAPE expenditure recovery as it has been able to earn a higher rate of return through recovering the NAPE expenditure through the GAPE MCR.
- Qcoal supports this position in its most recent submission¹:
“Aurizon Network elected to not submit a DAAU in 2014 when NAPE exports began because it elected to earn a higher rate of return”.
- Aurizon Network has not substantiated why it made its decision to defer NSIE recovery and not submit an equivalent DAAU in 2014 when Drake exports first commenced, nor have they assured the Newlands / GAPE working group that recovery through the NAPE deed could not commence at that time (2014).

¹ Qcoal submission Aurizon Network GAPE and Newlands Pricing Draft Amending Access Undertaking, 2 Nov 2023, page 10, 48)

- The decision to not to commence recovery of NSIE capital in 2014 has discriminated between 2014 access holders at the expense of future access seekers and holders as well as expanding access holders and non-expanding access holders.
- Aurizon Network decision to defer recovery from the NAPE user was made with full knowledge that revenue collected under the GAPE MCR would not form part of its regulated revenue. Bravus notes confidentiality restrictions associated with the GAPE / NAPE deeds prevents full transparency of NSIE expenditure and subsequent deferred value.
- Bravus accepts the QCA’s general case that it is appropriate for Aurizon Network to recover the full value of the deferred NSIE including the capitalisation of foregone returns however we seek clarification around the QCA’s view on the extent to which the total deferred NSIE value of \$147m should be socialised with Newlands system access holders.
- Bravus seeks the QCA’s view whether it agrees with Aurizon Network’s assertion that Newlands access holders should “not be required to contribute more than the depreciated value of the project cost allocations” of \$46.9m².
- Further, whilst the QCA rejected the NAPE system premium as proposed by Aurizon Network with support from the majority of the working group, Bravus would ask the QCA to expand its views on whether it believes a NAPE system premium is appropriate for the NAPE deed holder and whether it is appropriate to set this premium based on the increment of deferred capitalised projects costs above the \$46.9m depreciated value.
- Bravus notes that this premium represents the holding cost of the NAPE expansion assets. Bravus also notes that the NAPE holder alone requested NAPE capacity to be available from the start of the project in 2012. Newlands users were not consulted around the timing of any NSIE installation.

Bravus contends that Aurizon Network should have recovered NSIE expenditure from the NAPE user since 2014 at the time the expansion capacity was available and the associated expansion mine’s had commenced raiing utilising the NSIE assets. The decision by Aurizon Network not to commence recovery of NSIE capital in 2014 was solely for its commercial benefit.

2. Expanding the QCA preliminary considerations on the impact of fee free relinquishments to Newlands access pricing for all classes of access holders

Bravus does not support the inclusion of fee free relinquishment consistent with our submissions on this DAAU as well as our submissions regarding the almost identical fee free relinquishment proposal within Aurizon Network’s concept study DAAU (**concept study DAAU**). This proposal was not supported by the QCA in its draft determination³ for reasons including:

“UT5 enables an access holder to transfer its access rights to an access seeker that would otherwise require an expansion to obtain access rights... UT5 does not prevent relinquishments by affected end users and provides for access holders to relinquish access rights at any time”.

² GAPE and Newlands Pricing Draft Amending Access Undertaking, 2 Sept 2022. p46.

³ Aurizon Network’s concept study DAAU – QCA draft determination, Dec 2022, pp.7, 8.

“Fee-free relinquishments have the potential to increase access charges for remaining access holders”.

“Fee-free relinquishments do not necessarily incentivise access holders to be accurate and transparent about their demand requirements when the scope of an expansion is being considered”.

- The introduction of fee free relinquishments under this DAAU is intended to provide Newlands access holder part compensation in return for moving from forecast to contract pricing. Bravus notes compensation of this nature would only benefit access holders who have deliberately chosen to over contract capacity and are able to manage their take or pay exposure using a lower forecast volume for pricing purposes. This has enabled those access holders to hoard capacity with minimal consequence at the detriment to access seekers such as Bravus. Bravus believes providing compensation through a fee free relinquishment mechanism process discriminates between access holders and seekers and only further encourages this behavior.
- Any relinquishment fee waived by Aurizon Network would ultimately be recovered either through higher access charges or revenue adjustment. This would result in existing users paying more to cover the lost revenue and effectively paying compensation to a competitor.

In addition, Bravus notes in 2016, the QCA noted the limitation of a mechanistic pricing policies in its Wiggins Island Rail Project (WIRP) considerations⁴:

“If an expansion contains substitutable train services, the existing user’s exposure to the volume risk of an expansion may not be adequately addressed under a mechanistic pricing approach. Substitutable train services provide expanding users with the ability to substitute train services from the existing system on to the expansion at the detriment of existing users”.

- Bravus notes a combined Newlands NAPE RAB would create two types of access holders with respect to a future joint Newlands/NAPE system.
 - o Existing users: hold non expansion Newlands contracted capacity; and
 - o Hybrid users: hold both non expansion Newlands contracted capacity as well as NAPE expansion contracted capacity.
- There are clear parallels in this case to the issues of mechanistic pricing policies identified in the WIRP considerations above. The application of contract volume pricing combined with fee free relinquishments would provide the hybrid user the ability to effectively substitute between contracts after the execution of the Expansion contracts to the detriment of existing non-expanding users.
- These amendments if approved would allow a hybrid user to transfer both their expansion costs and their expansion scale risks to existing users by right sizing their Newlands contracted position after the NAPE assets are rolled into the Newlands RAB given the hybrid user’s Newlands contracted capacity and NAPE expansion contracted capacity are fully substitutable.
- By way of example, if the hybrid user held 4Mtpa of Newlands contracted capacity and 4Mtpa of NAPE expansion contracted capacity, this user could by relinquishing only its

⁴ QCA, Final decision Aurizon Network 2014 draft access undertaking Volume III—Pricing & Tariff April 2016.p49

Newlands capacity, effectively fully socialise the NAPE asset value into the Newlands RAB to the detriment of existing users' tariffs. Bravus further notes that a hybrid user under its commercial arrangements with Aurizon Network has to date been successful in having 100% of regulatory and non-regulatory NAPE project costs underwritten by other GAPE project holders since 2012.

Bravus contends the QCA should review its mechanistic support for fee free relinquishments as a way to compensate access holders for moving to contract volume pricing in Newlands.

Bravus notes that should the QCA be minded to continue its support for fee free relinquishments under this or any other DAAU, these should be limited to existing Newlands users only and should not apply to a hybrid user to the extent this has a detrimental impact on existing users' Newlands tariff noting a hybrid user retains the ongoing ability to right size their track access contracts under the UT5's existing capacity relinquishment or the transfer mechanism.

Should you have any questions please do not hesitate to contact myself or Stephen Straughan (M) 0417 061 747 (E) stephen.straughan@bravus.com.au

Sincerely,

Jan Gibbons

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