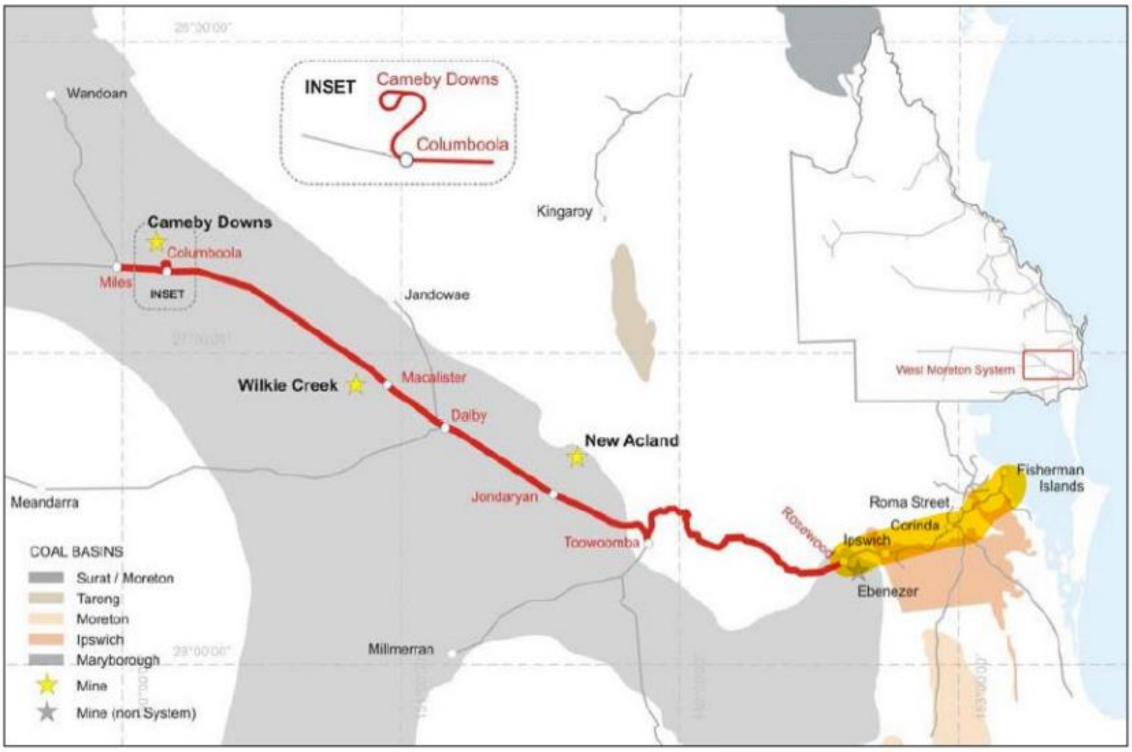
Initial Submission in response to QR's AU3 Access Undertaking

2 February 2024

1 Introduction

This submission is provided in relation to Queensland Rail's (***QR***) 2025 draft access undertaking (***DAU3***) on behalf of Yancoal Australia Limited (***Yancoal***) in its capacity as operator of the Cameby Downs mine, located on QR's West Moreton rail network (shown below):[1]



Yancoal thanks the QCA for the opportunity to comment on DAU3.

Yancoal also wishes to acknowledge that, consistent with QR's submissions[2]:

(a) QR has engaged in consultation with Yancoal prior to submission of DAU3; and

(b) has submitted a draft amending access undertaking that reflects QR's stated intention of only making incremental changes to the current approved undertaking (***AU2***) – such that while Yancoal has suggested changes to some of what QR has proposed, that approach has certainly narrowed the extent of non-tariff related issues which are likely to be in contention in the regulatory process.

Yancoal's key concerns relate to the proposed West Moreton network reference tariff.

The rail access charges for the West Moreton network already represent a disproportionately high component of Cameby Down's costs relative to the rail access charges for other mines Yancoal operating in central Queensland and the Hunter Valley.[3]

Principally due to high supply chain costs, Cameby Downs remains a fairly marginal mine that can be profitable across the commodity price cycle *if* the rail access charges are set at an affordable level but, even then, will be loss making for those periods of lower thermal coal prices. Consequently, an undertaking that provides an efficient and affordable tariff for the West Moreton rail network is critical to Cameby Downs' continued operation.

[1] West Moreton System map extracted from QR, Queensland Rail's Draft Access Undertaking 3 Explanatory Document (***Explanatory Document***), November 2023, 5
[2] QR, Explanatory Document, November 2023, 3.
[3] See also QR, Draft Decision Queensland Rail's 2020 Draft Access Undertaking, April 2019, 62 (noting that was based on a lower pre-AU2 tariff).

2 Executive Summary

Yancoal submits that the QCA should refuse to approve DAU3 as submitted, principally on the basis of the inappropriately high West Moreton network reference tariff proposed.

Yancoal considers that the tariff proposed is inappropriate for reasons including:

(a) The inflated beta used in the bottom-up estimate of the weighted average cost of capital (***WACC***) which does not reflect the reduction in systematic risk which will be faced by QR relative to the AU2 term, particularly given the reduction in commercial risk levels which have occurred since AU2 and reduction in regulatory risks which would result from QR's proposed amendments in DAU3;

(b) an unjustified 'top-down' uplift to the WACC;

(c) doubts as to the prudency of the high costs of capital expenditure and operation and maintenance costs, given the limited disclosure provided and high-level nature of the justifications provided; and

(d) the resulting tariff being set at a level that is inefficient and unaffordable and giving rise to volume risks for the West Moreton network.

In relation to the wording of the undertaking, the principal changes Yancoal considers are required for DAU3 to be appropriate relate to increasing the rigour in how capital expenditure is spent and charged for, given the very high value capital expenditure program being proposed. In particular, Yancoal submits that DAU3 should incorporate:

(e) an independent assessment of capacity for the West Moreton network, to ensure that expenditure actually delivers the required capacity;

(f) a requirement to seek customer approval for material capital expenditure projects; and

(g) an annual reconciliation of approved capital expenditure against the QCA approved capital indicator, to ensure that users are not being charged for capital expenditure that is not incurred.

3 Approach – Focus Confined to the Key Issues

While AU2 is not perfect from Yancoal's perspective, Yancoal supports QR's more 'incremental' approach to DAU3 and has determined to take a similar approach to QR in its submissions. Accordingly, these submissions focus on the most material issues by exception, rather than seeking to correct each existing issue in AU2 that Yancoal considers somewhat non-optimal.

As noted above, Yancoal's greatest concern is the West Moreton reference tariff.

In particular, Yancoal has concerns in respect of:

(a) the inflated beta utilised in the underlying 'bottom-up' calculation methodology for the weighted average cost of capital (the ***WACC***);

(b) the purported application of a 'top-down' uplift to the WACC;

(c) efficiency and prudency of the proposed capital expenditure program, and operation and maintenance costs;

(d) lack of clarity as to the proposed methodology and timing for recovery of loss capitalisation that occurred during the term of AU2; and

(e) overall affordability for West Moreton coal producers, and the concern that a tariff of the level proposed by QR creates real volume risks for the West Moreton network.

4 West Moreton Reference Tariff

4.1 Tariff is not affordable

Material increase from previous 'affordability' tariff threshold

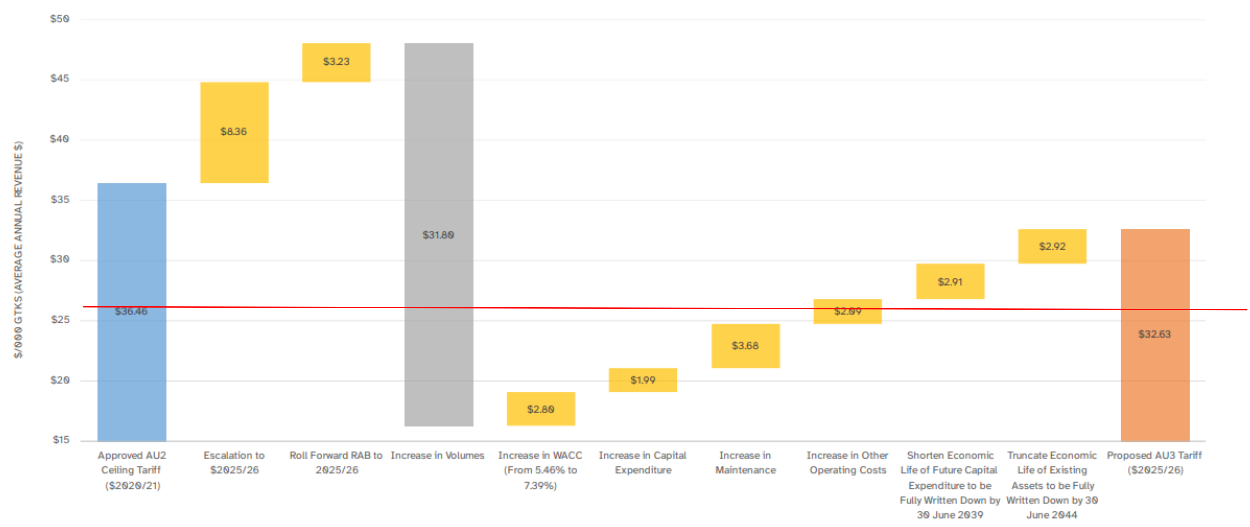
Yancoal has very serious concerns with the proposed reference tariff outcome of $32.63/'000 gtk ($2025/26), which represents a significant (approximately 23.5%) increase on the prevailing 'affordability based' AU2 reference tariff (initially approved as $21.50/'000 gtk in $FY21 and escalated to $26.42/'000 gtk in $FY26).[4]

As the QCA would recall, the AU2 reference tariffs were ultimately set having regard to the tariff that was considered (by the QCA) to be affordable for West Moreton coal producers[5] (with the difference between the reference tariff and the building blocks based 'ceiling tariff' capitalised with the hope of recovery once volumes recovered).

At the time it was anticipated that, in a high-volume scenario, the building blocks based 'ceiling tariff' would drop significantly (due to economies of scale and high fixed costs being socialised across a much greater volume) such that it would fall below the affordability-based limit and the reference tariff could revert to a more conventional building blocks basis.

However, as shown in the graph below[6] factors such as the higher proposed WACC, extensive capital expenditure program, higher operation and maintenance costs, and QR's accelerated depreciation proposal have resulted in a similar building blocks tariff which is materially higher tariff than the previously assessed affordability tariff (even accounting for escalation to FY$26 - see red line added to the graph below), even under a 9.6 Mtpa high volume forecast.

Figure 17: Indicative West Moreton System Reference Tariff Movements from AU2 Tariff



While the forecast volumes may have changed, Cameby Downs' profitability and break-even point remains basically the same as it was at the time of the AU2 decision.

Accordingly, Yancoal submits that it should be a major source of concern when the tariff now proposed is significantly more than the previous reference tariffs set having regard to the maximum tariff that would be affordable before mines would cease operating.

[4] See QR, *Explanatory Document*, 37 for the current and proposed tariff.
[5] QCA, *Decision Queensland Rail's 2020 draft access undertaking*, February 2020 (***AU2 Final Decision***), 14.
[6] QR, *Explanatory Document*, 5 (edited to reflect affordability tariff).

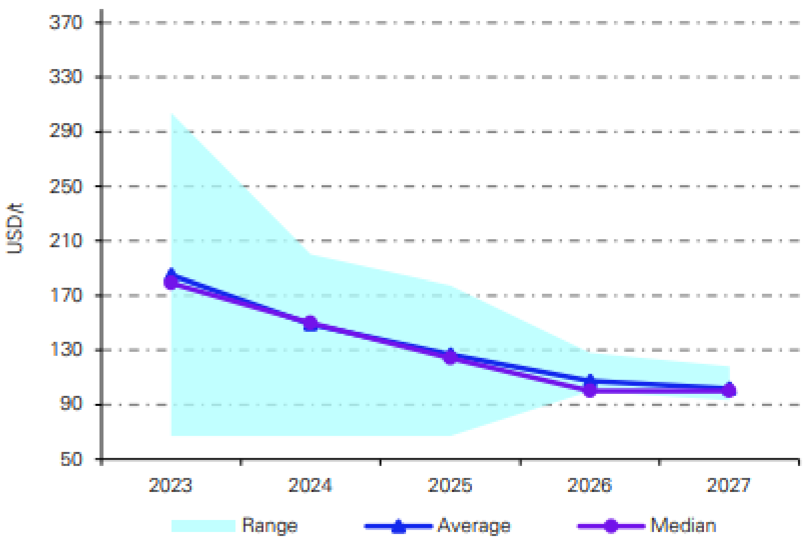
Each element of the building block methodology used to calculate the reference tariff should obviously be scrutinised (with Yancoal's submissions on a number of key elements set out further below). However, once that process has occurred, Yancoal submits there needs to be a second step where the QCA determines whether the tariff still needs to be capped below the level the building blocks methodology would suggest to maintain affordability and therefore maintain the volumes required to keep the West Moreton system operating. Yancoal considers that would clearly be required and appropriate.

Thermal coal prices and exchange rate

The affordability concern raised above, is heightened by the fact that thermal coal pricing outlook is anticipated to be more subdued and pessimistic than during the AU2 term (an issue exacerbated by the anticipated strengthening of the A$ in which producers' costs are mostly denominated, against the US$, in which producers revenue are most denominated, across the same period).

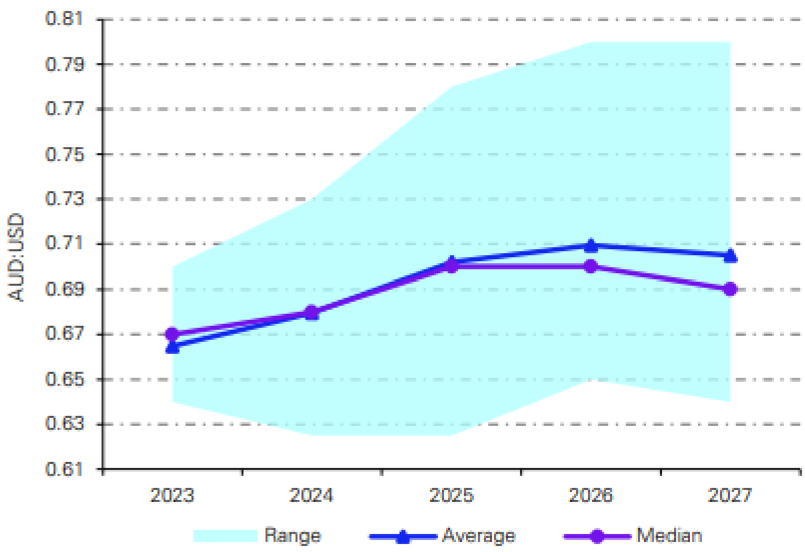
For example, see KPMG's forecast of Newcastle benchmark thermal coal prices and A$:US$ exchange rate for the next few years below:[7]

Newcastle benchmark thermal coal pricing projection



[7] KPMG, *Coal price and FX market forecasts*, September/October 2023, 3-4.

A$:US$ exchange rate projection



That suggests to Yancoal, that there is a material risk that:

(a) if the QCA was to approve a reference tariff at the headline level sought by QR that one or more of the West Moreton producers will cease production during the DAU3 terms; and

(b) if QR then sought to socialise that same revenue expectation to the remaining producers using the volume trigger at that point, it will result in an even higher tariff that in turn is likely to result in a further producer or producers ceasing production (creating a vicious cycle of declining volumes).

Tariff will further increase during the term

Those concerns are also exacerbated because, the headline tariff described in QR's submissions is really the very minimum tariff outcome that QR is seeking.

In particular, it appears from QR's submissions that the tariff could be increased beyond the headline rate presented in the submissions through:

(a) loss capitalisation (where the method for 'repayment' of capitalised losses from the AU2 period, which the QR submissions do not provide clarity on, would presumably be an addition to the tariff unless wholly recovered in the AU2 term);

(b) the volume trigger which allows a reopening of the tariff if the contracted capacity falls below 7.5 Mtpa (where it seems that QR would intend to socialise the same revenue expectations across a reduced tonnage); and/or

(c) the trailing average cost of debt (assuming it also includes an assumption of annual debt tranche refinancing per the QCA's rate of return review – which admittedly is not clear from QR's submissions) including more years in a higher rate environment as the term of DAU3 progresses.

Yancoal considers that these issues make it clear that an affordability-based limit on tariffs will need to apply during the DAU3 term.

Affordability and relevant considerations under the QCA Act

Yancoal acknowledges that there are competing considerations, but submits that many of the factors required to be considered under section 138(2) of the *Queensland Competition Authority Act 1997* (Qld) (***QCA Act***) weigh in favour of adopting an affordable tariff including:

(d) the object of Part 5 of the QCA Act – given an unaffordable tariff will result in risks of stranding investment in, and inefficient use of, the West Moreton network (s 138(2)(a) and 69E QCA Act);

(e) the legitimate business interests of the owner/operator of the service – as sustaining the projected high volume is critical for enabling the required investment and providing a return on and of that capital (s 138(2)(b) QCA Act);

(f) the public interest in the line remaining viable and in the royalties, employment and economic contributions provided by the West Moreton coal producers continuing (s 138(2)(d) QCA Act);

(g) the interests of persons who may seek access to the service (s 138(2)(e) QCA Act); and

(h) otherwise, being clearly a relevant consideration (s 138(2)(h) QCA Act).

Yancoal appreciates that a factor the QCA is to have regard to is that pricing should generate expected revenue that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (s 138(2)(g); s 168A(a) QCA Act). However, Yancoal submits:

(i) that principle does not support QR's proposed tariff in any case (which is based on costs which are not clearly efficient and include a return at a rate higher than that which would be commensurate with the risks actually borne by QR in respect of providing access to the West Moreton system; and

(j) there is nothing in the QCA Act which provides for that factor to have precedence over the other factors the QCA is required to have regard to under section 138(2) QCA Act where they favour a different result being the appropriate outcome.

4.2 Weighted Average Cost of Capital

QR proposes that a WACC of 7.39% be used to calculate the reference tariff, being a sizeable increase of 193 basis points from the 5.46% WACC applied in accordance with the QCA's AU2 final decision.[8]

Yancoal acknowledges that QR has generally proposed to apply the QR specific parameters from the QCA's AU2 final decision and the QCA's rate of return review paper for other parameters (with the time-based parameters being necessarily placeholders to be recalculated based on the QCA methodology being applied at a QCA determined time period).

Yancoal is generally supportive of that being an appropriate approach, subject to a fresh consideration of whether the firm specific parameters should be adjusted from their AU2 levels based on changes in circumstances of the West Moreton network that now exist.

As outlined below there are particular aspects of the QR's calculation of the WACC that Yancoal considers problematic, either because it is not a genuine application of the QCA's previous approach or it is not appropriate due to changes in the circumstances of the West Moreton network and the resulting materially lesser commercial and regulatory risk QR will bear during the DAU3 period.

In that regard, Yancoal notes, as the QCA has always acknowledged in its previous decisions, that it is not bound by past decision. Rather, the appropriateness of each undertaking or tariff has to be considered on its own merits.[9]

[8] QR, *Explanatory Document*, 21.
[9] QCA, *Final Report – Rate of Return Review, Version 2, July 2023* (***Rate of Return Review Final Report***), 18; s 138(2) QCA Act.

4.3 Estimating the Asset Beta

(a) Inappropriate to simply maintain the AU2 equity beta

The QR submissions (and Houston Kemp report) approach the estimation of beta on the basis that it is appropriate to maintain the equity beta from the AU2 decision.[10] As a result, QR proposed an unchanged equity beta (of 0.71), which is then used to back solve an asset beta of 0.48.

That is clearly inconsistent with the economic first principles for how a bottom-up estimate of a WACC is calculated. Rather the asset beta should be estimated first, and then the levered equity beta is derived from it.

The asset beta of an entity is a relative measure of the underlying risk of the entity relative to the risk of the market as a whole, i.e., the systematic risk. So, the key issue should be a consideration of the systematic risks actually borne by QR in proving access to the West Moreton users during the DAU3 regulator period. It necessarily follows that where the systematic risks faced by QR in doing so have materially changed between the AU2 assessment and the DAU3 term, the asset beta should also undergo a corresponding change.

(b) Changes to the risks faced by QR for the West Moreton network

In the AU2 process, the QCA concluded that the West Moreton network's exposure to systematic risk (and therefore its asset beta) was greater than for regulated energy and water businesses but less than for toll roads.[11]

Yancoal acknowledges that is likely to remain a useful reference point. However, since the AU2 decisions there have been material reductions in the systematic risk faced by QR in respect of the West Moreton network. In particular:

(i) the New Acland Stage 3 mining lease and related water licence has been approved and mining and production volumes are ramping up, which was highly uncertain at the time of the AU2 approval;

(ii) the New Wilkie mine has reopened and railed coal, whereas Peabody's previous Wilkie Creek operations were on care and maintenance with no evident prospect of that changing at the time of the AU2 decision;

(iii) QR is forecasting the West Moreton network being fully utilised with 9.6 Mtpa of contracted coal capacity for the majority of the DAU3 term, contrasted with the 2.1 Mtpa ultimately approved as an appropriate forecast for AU2; and

(iv) volumes have recovered fast enough that indication from QR are that its previous capitalised losses are likely to be largely recovered during the AU2 period.

In addition, QR is proposing to further reduce the systematic risks faced by the West Moreton network through significant regulatory changes that are clearly designed to immunise it from the remaining volume risk (and that were not part of AU2), including:

(v) accelerated depreciated profiles for both existing and future capital expenditure (i.e., providing a return of capital before assets are physically expired) based on an estimated weighted average mine life; and

(vi) volume based trigger for re-opening reference tariffs during the term.

As a result of that material decrease in QR's systematic risk, Yancoal submits the estimate of the asset beta should be materially reduced, and the closest comparators reconsidered.

[10] QR, *Explanatory Document*, 22; Houston Kemp, *Queensland Rail's Weighted Average Cost of Capital*, August 2023, 9.
[11] QCA, AU2 Final Decision, 29

(c) How reduction in risk changes relative position to comparators

In terms of comparators, Yancoal accepts that there is more demand uncertainty for West Moreton rail access rights than faced by water and electricity providers, such that they should continue to be seen as the lower bound for an appropriate estimate.

However, Yancoal considers the new amendments bring the West Moreton network significantly closer to being relatively immune from volume risk and therefore more closely akin to the inelastic demand and guaranteed revenue outcomes that water and electricity comparators face.

Whereas, toll roads have none of those types of volume risk protections. They also do not have the benefits that QR has of:

(a) material volumes being contracted on a 100% take or pay basis, typically over the medium-longer term;

(b) customers transporting bulk commodities that are not economic to transport by other routes (i.e., road) and often with material sunk costs in rail load outs and connections – such that they are captive to the West Moreton network.

Rather, in stark contrast, toll roads are exposed to commuters making a decision on using the toll road on a per trip basis.

As a result, Yancoal submits that QR's asset beta should now be significantly closer to the regulated electricity and water comparators (which Houston Kemp assesses as having an asset beta of 0.39) than the toll roads.

As such, Yancoal considers an asset beta no higher than the very low 0.4's would be appropriate, with the equity beta appropriately levered from that outcome, and the bottom-up estimate of the WACC re-calculated accordingly.

4.4 WACC 'Top-down' uplift

(a) QR's proposed uplift not consistent with QCA approach

QR's proposed West Moreton reference tariffs are based on a WACC after a 'top-down' adjustment, calculated as the difference between a US BBB-rated corporate bond and a US BB-rated bond – being a difference of 150 basis points.[12]

Yancoal's understanding of the QCA's current approach to WACC assessment[13] is that the QCA will:

(i) consider whether the proposed WACC estimate is reasonable;

(ii) if the QCA considers the WACC value may not be reasonable, determine a WACC value through:

(A) undertaking a bottom-up estimation; and

(B) then potentially applying a 'top-down' adjustment if the bottom-up estimation is not considered reasonable.

QR's submission that it should receive a top-down adjustment consistent with the QCA's AU2 decision[14] is inconsistent with that approach, as it effectively assumes a top-down adjustment is justified due to its inclusion in AU2 tariffs without any robust assessment of the appropriateness and reasonableness of the bottom-up estimate proposed for DAU3.

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[12] QCA, *Explanatory Document*, 22-24.
[13] QCA, *Rate of Return Review Final Report*, 14.
[14] QR, *Explanatory Document*, 24.

(b) **No justification for a 'top-down' uplift**

Yancoal considers it is clear from the AU2 Final Decision that the assessment of whether a 'top-down' adjustment is appropriate necessarily requires a comparison to other regulated comparator entities[15] (which does not appear to have been done by either QR or Houston Kemp to support the proposed DAU3 uplift). Yancoal submits this is necessarily required before any 'top-down' adjustment could be considered.

Yancoal also reiterates the points made in the QCA's own AU2 Final Decision that the Aurizon Network WACC is difficult to compare given it is commercially agreed as a result of the introduction of performance targets and independent capacity assessments which do not apply to QR.[16] Similarly, the tariffs approved by the ACCC in respect of ARTC's Hunter Valley Coal Network were commercially agreed as part of a broader package (with no agreed individual parameters providing the foundation for such an agreement).

Yancoal considers that regulated water infrastructure and electricity network providers are the closest comparator businesses.

QR's only justification for a top-down adjustment is simply that it *'still faces the same volume uncertainty on the West Moreton line that it still faced in the AU2'*.[17] While there may still be some degree of volume risk, provided the tariff is set at an appropriate level, it is evidently significantly reduced from that borne by QR during the AU2 term. In particular, as noted above:

(i) the New Acland Stage 3 mining lease and related water licence have been approved and mining and production volumes are ramping up, which was highly uncertain at the time of the AU2 approval;

(ii) the New Wilkie mine has reopened and railed coal, whereas Peabody's previous Wilkie Creek operations were on care and maintenance for the entirety of AU2 with no evident prospect of that changing;

(iii) QR is forecasting the line being fully utilised with 9.6 Mtpa of contracted coal capacity for the majority of the DAU3 term, contrasted with the 2.1 Mtpa ultimately approved as an appropriate forecast for AU2;

(iv) QR indications are that QR's previous capitalised losses are likely to be largely recovered during the AU2 period; and

(v) QR has proposed very significant regulatory changes (beyond those include in AU2) that are clearly designed to immunise it from the volume risk including:

    (A) accelerated depreciated based on weighted average mine life; and

    (B) volume based trigger for re-opening reference tariffs during the term.

Yancoal submits that demonstrably provides a materially lower risk profile, such that a top-down adjustment is clearly not justifiable on that basis and should not be included in the calculation of estimated WACC or the DAU3 reference tariff.

Finally, Yancoal also submits that implicitly the reason for the top-down adjustment being provided in the AU2 decision was the lower prevailing rate environment at the time of the AU2 decision such that where point in time estimation methodologies were being used to derive the bottom-up estimates of the cost of debt and cost of equity (rather than a 10 year trailing average), the QCA was concerned that the bottom-up WACC calculation may have been understated relative to the risks borne by QR as a long term infrastructure provider. That is not the position

[15] QCA, *AU2 Final Decision*, 51
[16] QCA, *AU2, Final Decision*, 53
[17] QR, *Explanatory Document,* 24.

now, where the assessment is occurring in a higher rate environment. QR itself acknowledges that the largest driver of the increase in WACC is the 219 basis point increase in the estimated risk-free rate.[18]

4.5 Accelerated Depreciation

QR proposes to shorten the economic lives to a maximum of 19 years for existing assets and 14 years from the commencement of the DAU term for new assets, so that all assets would be fully written down by 30 June 2044.

Yancoal understands that part of the rationale for this particular time frame is to achieve what QR considers a more equitable distribution of costs between each West Moreton network miner.[19] However, Yancoal is troubled by the impact this has on the overall tariff in that period.

Yancoal is not convinced that accelerated depreciation is appropriate, at least in respect of existing assets where:

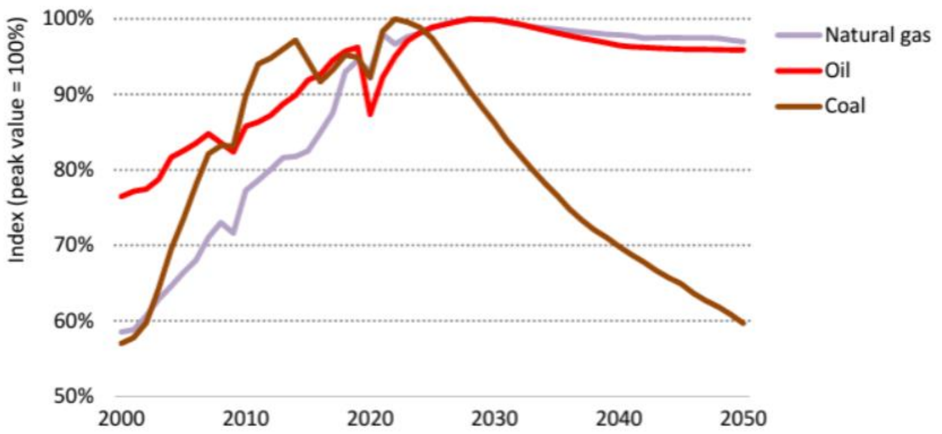
(a) QR made investment decisions under the understanding that those assets would be depreciated over their longer expected physical life; and

(b) The high capital expenditure QR proposes is required to enable the network to handle its notional existing capacity, suggests that that prior investment has not held its value (and would be significantly reduced if assessed on a depreciated optimised replacement cost basis).

If QR is now saying that the economic life of those assets will be significantly shorter than anticipated, the QCA should be optimising part of the existing asset base to reflect that (as discussed in section 4.8 below).

Yancoal also submits that QR overstates the stranding risks relating to the energy transition. The International Energy Agency's net zero by 2050 scenario (which QR relies on to say all mines could have exited by 2050)[20] is significantly more aggressive in terms of reductions to thermal coal demand than all likely scenarios. For example, in the IEA's STEPS (Stated Policies Scenarios) where government's honour their states climate, environmental and energy efficiency policies, coal consumption only falls just below 60% of its peak by 2050 as shown below:[21]

Figure 1.1 ▷ **Fossil fuel consumption by fuel in the STEPS, 2000-2050**



[18] QR, *Explanatory Document*, 21
[19] QR, *Explanatory Document*, 33.
[20] QR, *Explanatory Document*, 32.
[21] The five best charts from the IEA's World Energy Outlook 2023 (marketindex.com.au)

The West Moreton mines predominantly produce thermal coal for export, such that Australia's anticipated path to a domestic energy transition is not as relevant as what is occurring in Australia's export markets. Yancoal notes IEA analysis[22] that 2022 was the highest global coal consumption because, despite falling demand in almost all advanced economies, that was outweighed by growth in demand in China, India, Indonesia and the Philippines (which together represent more than 70% of global demand). The economic reality is that thermal coal will continue to be exported from jurisdictions like Australia past the point where QR is seeking to have completely written off the West Moreton network.

Yancoal submits that if the QCA was minded to accept QR's accelerated depreciation proposal in whole or in part:

(a) as discussed in section 0, the accelerated depreciation is designed to reduce or prevent QR's potential exposure to stranding risk – such that acceptance of this approach should lead to a reduction in the asset and equity beta used in calculating a WACC estimate;

(b) as discussed in section 4.8, it should give rise to additional scrutiny as to whether large capital expenditure programs with a physical life well beyond the economic life being sought by QR are truly prudent (or alternatively demonstrate that the existing asset base needs to be optimised/reduced to an appropriate level that better reflects the nature and value of the current network as a result of the previous investments);

(c) the QCA should scrutinise whether QR's tariff modelling also reflects shortening the tax lives of these assets to reflect the shorter regulatory depreciation period – as if not the lesser depreciation being modelled for tax purposes will result in a lesser deduction and higher tax costs being modelled that would be efficient, and QR's estimated tax costs should be lowered accordingly; and

(d) given that the new capital projects QR is proposing to invest in will have significantly longer physical lives than the economic life that QR is proposing, and that they will then presumably be useable and of benefit to non-coal users (livestock, grain and passenger), Yancoal suggests that the depreciation should be to a residual value rather than to the point of being completely depreciated over the accelerated depreciation period.

4.6 Volume forecasts

Yancoal was intending to support the proposed volume forecasts, and considers they were an appropriate projection at the time of QR's submission of DAU3.

Yancoal notes the recent announcement of New Wilkie being under voluntary administration, but given the administrator's stated intention to continue operation in the interim and the limited information which is currently publicly available as to causes or likely future outcomes, considers it would be premature to determine that the volume forecast should be reduced on that basis.

Rather than providing a definitive view at this stage, Yancoal considers that the QCA should:

(a) keep a watching brief on the prospects of New Wilkie continuing as the DAU3 process progresses before making a decision on the appropriate volume forecast;

(b) ideally require QR to submit revised costings (i.e., capital expenditure program, operating costs and maintenance) and tariff proposals for a lower volume 'without New Wilkie' scenario if the QCA considers there are real prospects of that occurring; and

(c) provide stakeholders with an opportunity to comment on that alternative lower volume costings and tariff proposal if the QCA is considering a lower volume forecast.

[22] Coal - IEA

However, while Yancoal considers it is too early to determine whether a lower volume forecast is appropriate:

(d) New Wilkie's situation should emphasise that there is a material risk that a non-affordable tariff gives rise to a 'death spiral' where a mine becomes unprofitable, damaging the economies of scale on the system and potentially leading to a further mine closing – such that affordability is critically important and is likely to provide a ceiling on what can constitute an appropriate tariff irrespective of the volume forecast; and

(e) if there is some uncertainty as to New Wilkie's position that suggests that a more cautious lens should be applied in analysing the level of capital expenditure that is prudent at this point in time.

4.7 Volume trigger

QR submits that it has included triggers permitting QR to seek a reference tariff reset during the DAU3 term each time a contract is up for renewal if it is not renewed.[23]

However, on review, the drafting provided in clause 3.2 of Schedule D appears to be enlivened whenever contracted volumes fall below 7.5 Mtpa for any reason – not just non-renewal (such that it would apply equally to early termination due to insolvency events or breach).

It is, in effect, seeking to immunise QR from any volume risk irrespective of cause.

If the QCA is minded to accept such a 're-opening':

(a) as discussed in more detail in section 0, the volume trigger is designed to reduce or prevent QR's potential exposure to stranding risk – such that acceptance of this approach should lead to a reduction in the asset and equity beta used in calculating a WACC estimate

(b) to make the volume trigger more balanced it should also be re-triggered after any initial trigger for contracted volumes falling below 7.5 Mtpa, where volume returns to above 7.5 Mtpa or the tonnage otherwise increases by at a material amount such as 1 Mtpa (such that West Moreton customers obtain any reduction in the tariff that should result from socialisation across the returned larger volume);

(c) Yancoal is supportive of the trigger being treated as an initial undertaking notice being provided, as that places the QCA in the position to mandate an appropriate change and does not involve a mechanistic approach of simply socialising the same revenue over a lesser volume. Yancoal would strongly oppose such a mechanistic approach, as that would be guaranteed to make the tariff completely unaffordable for the remaining producers; and

(d) Yancoal considers that QR would need to materially change its proposed capital expenditure program and cost profile in the circumstances where the volume trigger applied – but considers the proposed process is wide enough to consider those issues without providing further amendments.

4.8 Capital expenditure

Yancoal is concerned with the high level of capital expenditure ($325.2 million across the term of DAU3) that QR has proposed, and the impact of such costs on the proposed reference tariff.

(a) **Insufficient information to be satisfied of prudency**

[23] QR, *Explanatory Document*, 30.

It considers that insufficient information has been provided for West Moreton network coal producers to be able to properly comment on whether the individual projects that form part of the capital expenditure proposal are prudent and efficient.

A large proportion of the individual project costings are redacted, and for the most part, the justifications provided for the capital expenditure program are high level and generalised, rather than capital project-specific or clearly linked to specific expected benefits and timing when they would be delivered.

In addition, users have no way through the limited reporting provided under the undertaking to verify QR's assessment of the Overall Track Condition Index for the West Moreton network in the way they can in the central Queensland coal region network.

Yancoal therefore submits that it is critical the QCA engages a consultant to carefully review the prudency of QR's capex proposal, and that QR is compelled to provide that consultant (and the QCA) with sufficient information to allow that to be an informed review.

At a high level, Yancoal is currently sceptical as to whether capex of the level proposed by QR is prudent given:

(i) QR's submissions indicate that the current major issues with the network are 30mm rainfall events causing closures of the Toowoomba range, heat restrictions on light track/black soil sections and 60 kph speed limits imposed on loaded trains. However, it is not clear how most of the individual capital expenditure projects proposed specifically go to resolving these issues;

(ii) there is a clear tension between the assertion that very significant capital expenditure is prudent and QR's repeated submissions referencing the volume risk it considers it faces as a key justification for the their approach to key aspects of the reference tariff such as beta, the 'top-down' uplift, accelerated depreciation profile and the volume trigger for re-opening tariffs (giving Yancoal the distinct impression that the only reason QR considers the capital expenditure is prudent is that it has passed all the risk of overinvestment onto the users); and

(iii) as discussed in section 4.6 of this submission, New Wilkie recently entering administration (which only occurred after QR's submission) should presumably cause some potential re-thinking as to what constitutes a prudent capital expenditure program, at least until there is greater certainty that New Wilkie will continue production longer term; and

(iv) there are some limitations to the AECOM review[24] which supports QR's claims to prudency – both as to number of projects sampled (9 of 20), the 'medium level of documentation quality' to support some of the prudency assessments made, and redactions, which make it somewhat difficult for users to take much comfort from.

(b) **Optimisation should be considered**

Further, as discussed in section 4.5 of this submission, Yancoal notes that the very significant capital expenditure spend, justified largely based on the inadequate state of the current rail infrastructure, should give rise to serious questions about whether the existing regulatory asset base should be materially optimised downwards.

Yancoal considers that demand for West Moreton access will deteriorate materially in the future if regulated prices are based on an unoptimized asset value (such that, even under the current wording of Schedule E, clause 1.2(b), optimisation of the asset base should be justifiable).

[24] AECOM, *Review of Queensland Rail' West Moreton Capital Investment Plan for DAU3*, 3 November 2023

Given:

(i) a proposed capital program of $346.9 million (in $FY2025-26) is required in order to transport 9.6 Mtpa (for a system that was able to transport production from each of the 3 relevant mines not that long ago); and

(ii) the QR maintenance expenditure submissions suggests that 40% of the existing track assets and approximately 30% of structures and signally assets are in poor condition,[25]

it seems likely that some parts of the existing asset base should be written down.

Yancoal submits that the consultant the QCA engages should also be tasked with considering the appropriateness of optimisation closely.

(c) **Additional protections should be added to the undertaking**

If the QCA was minded to approve the high value capital expenditure indicator proposed, Yancoal submits that:

(i) users need greater protection through the annual roll-forward / reconciliation process than has previously been provided – in particular:

(A) there should be a clear obligation on QR to consult and seek to reach consensus with customers on the capital expenditure program for each year or at least material capital expenditure projects, so that the capital program is able to adapt to changes, including in volume outlook;

(B) more scrutiny being applied to material capital expenditure projects which are not endorsed by West Moreton network users following such consultation and supported by a robust business case that demonstrates it is the best approach from a range of options;

(C) users should be more protected against any material under-spend against the capital indicator after a tariff has been approved on the basis of the indicator – through an annual reconciliation and adjustment of the allowable revenue requirement (and underlying tariffs) where there is an material underspend of capital expenditure (so that reductions in capex follow through more quickly to lower pricing rather than having to wait for the next regulatory period);

(D) potentially including in that adjustment mechanism, the ability for QR to submit that it should be able to retain a proportion of the under-spend that is achieved through efficiency and cost savings rather than a reduction in the scope of work undertaking; and

(ii) users need protection against investment not actually translating to delivery of the required capacity and operational improvements, through an independent capacity assessment, akin to what occurs in relation to Aurizon Network's systems, as discussed in section 5.4 of this submission.

Yancoal notes that its comments about the need for customer support and a need for a more robust business case above reflect the QCA's expectations as described in its Climate change expenditure guideline, including the QCA's preference for regulated businesses and customers to reach an agreed capital investment strategy (consistent with the QCA's comments that its overall

[25] QR, *DAU3 Maintenance Expenditure Submission – West Moreton*, 10 November 2003, 10.

assessment framework for climate expenditure is broadly the same as for other types of spending approval).[26]

4.9 Maintenance Costs

As with capital expenditure, Yancoal has concerns with the level of disclosure provided limiting the extent of comments it can really make on the proposed maintenance allowance, such that an informed reviewed by a QCA engaged consultant is critically required.

Both the QR submissions and the related AEOCOM report in support of QR's submissions are extensively redacted at a project level.

Yancoal's initial reaction is that the high capex budget being proposed, and suggested benefits in terms of providing more robust ability to deliver 9.6 Mtpa of throughput, should result in a more material reduction in maintenance.

It is also concerned with QR suggestions that it will require a 98% increase in employee billed hours on the Jondaryan to Rosewood section due to needing to fit maintenance works within allowable possession windows (with the figure showing that redacted from QR's submissions and no evident scheduling model to support this proposal).[27]

While it is acknowledged that QR's submission do suggest they have taken a reduction in maintenance costs arising from the proposal capital program into account – Yancoal has no way of verifying whether they have taken into account the true extent of these cost reductions.

4.10 Operating Costs

As with capital expenditure, Yancoal has concerns with the level of disclosure provided limiting the extent of comments it can really make on the proposed operating costs allowance, such that an informed reviewed by a QCA engaged consultant is critically required.

At a high level, Yancoal is currently sceptical as to whether the level of operating costs proposed by QR is prudent given:

(a) SYSTRA's analysis during the AU2 process resulted in the QCA approving a 21% reduced allowance for corporate overheads/on-costs from what QR proposed,[28] such that using the 2021/22 financial year actual costs for QR as a baseline is not appropriate – and this area in particular should be scrutinised carefully in terms of efficiency;

(b) Yancoal submits a better starting point would be the QCA approved overhead allowance in the AU2 process, escalated for CPI to reflect changes in costs since that approval;

(c) operating costs proposed by QR have increased by 89%, when you would expect (particularly given the QR submissions and SYSTRA findings in the AU2 process about the very high extent of fixed costs on the West Moreton network) greater economies of scale to be being delivered at the higher volumes forecast;

(d) there continues to be a relatively high proportion of overhead costs (currently 19%)[29];

(e) it is not clear that other multi-user networks referred to as benchmarks by QR are good comparators when you would anticipate greater operating costs in the more complex environment in which those larger networks with significantly greater volumes, numbers of users and operators and complexity operate; and

[26] QCA, *Guideline Climate change related spending*, September 2023, 8-11.
[27] QR, *Explanatory Document*, 40-41.
[28] QCA, *AU2 Final Decision*, 67
[29] QR, *Explanatory Document*, 47.

(f) where a material proportion of the complications of the network are really attributable to the passenger network and services, and developments to service future passenger demand (like accommodating cross river rail possessions) Yancoal considers that there are likely to be operating costs included in QR's proposals that should be underwritten by funding for passenger services instead of by West Moreton coal customers.

4.11 Loss capitalisation

QR's submission indicates that the DAU3 wording and reference tariff do not reflect a proposed approach on loss capitalisation.[30] Rather QR has indicated that it will prepare a separate draft amending access undertaking in relation to the application of loss capitalisation in the remaining period of AU2 (as the 4.1 Mtpa volume trigger for commencing repayment of the loss capitalisation will occur prior to DAU3 commencement), which is yet to be submitted.

As a result, QR's submissions do not provide any transparency to users as to how the DAU3 proposed reference tariff would be impacted by loss capitalisation (but presumably it would be higher than the tariff proposed to the extent loss capitalisation is still being recovered in the DAU3 period – such that the QCA's consideration of affordability will be critical for how loss capitalisation should operate in both the AU2 and DAU3 terms).

Yancoal considers that it is imperative that QR propose an approach on loss capitalisation recovery as soon as possible so that the QCA can properly assess the aggregate resulting tariff that reflects what QR are seeking for access holders to pay and take that into account in assessing affordability.

As discussed further in section 5.1 below, Yancoal has concerns with the partial deletion of loss capitalisation provisions in Schedule D

5 Access Undertaking Drafting Amendments[31]

5.1 Loss capitalisation (drafting in schedule D)

It is extremely difficult to make informed submissions on QR's proposed amendments to this section (Schedule D, clause 8). QR's submissions note that it is making separate submissions regarding the loss capitalisation volume trigger in AU2 and has not dealt with loss capitalisation recovery in AU3.[32]

From Yancoal's perspective, the partial deletion proposed by QR is clearly inappropriate.

Presumably either:

(a) the entire loss capitalisation account will have been repaid during AU2 – such that the loss capitalisation provisions should not form part of and should be entirely deleted from DAU3; or

(b) there is a remaining loss capitalisation account value to be recovered during the period of AU3 – such that that loss capitalisation provision should provide for the methodology of recovery provided for by the QCA (which would presumably follow the AU2 outcome, subject to affordability issues where it may apply in addition to a much higher DAU3 tariff).

In either case, seeking to partially retain the provisions as QR's drafted amendments proposed is clearly not appropriate and strongly opposed by Yancoal.

[30] QR, *Explanatory Document*, 55
[31] To seek to minimise the complexity for QR and the QCA in reviewing detailed drafting, Yancoal has consulted with New Hope in relation to the drafting amendments proposed in relation to the Access Undertaking and Standard Access Agreement, such that much of their drafting proposals are anticipated to be aligned.
[32] QR, *Explanatory Document*, 55.

Yancoal will provide substantive submissions on loss capitalisation following QR's AU2 submissions (which it anticipates will need to also address affordability issues).

5.2 Volume Trigger for Review of Reference Tariff

QR submits that it has included triggers permitting QR to seek a reference tariff reset during the DAU3 term each time a contract is up for renewal if it is not renewed.[33]

However, as discussed in section 4.7 of this submission above, the drafting provided in clause 3.2 of Schedule D appears to be enlivened whenever contracted volumes fall below 7.5 Mtpa for any reason – not just non-renewal (such that it would apply to early termination due to insolvency events or breach). Yancoal's principal concern with this proposal is ensuring that if such a protection against volume risk is built into DAU3, that reduction in systematic risks is taken into account in estimating the appropriate WACC.

In a drafting sense, Yancoal submits that if the QCA is minded to accept the inclusion of a volume-based review:

(a) it should be made more balanced and account for any material increase in contracted volume that occur after the volume trigger has initially applied due to a fall in volume – to account for matters like a mine placed on care and maintenance then also being reopened later during the term; and

(b) QR should be expressly required to provide a new capital expenditure program, and operating cost and maintenance cost allowances.

Accordingly, Yancoal proposes the following amendments:

3.2 Review of Reference Tariff

(a) If at any point Queensland Rail, based on its contracted volumes, reasonably believes the annual aggregate contracted coal tonnages for Tariff Train Services (excluding Ad Hoc Train Services and Additional Train Services as defined in the Standard Access Agreement) for a Year during the Term will<u>:</u>

<u>(i)</u> be below 7.5 million tonnes<u>; or</u>

*<u>(ii) where **clause 3.2(a)(i)** has previously applied, either return to being equal to or greater than 7.5 million tonnes or otherwise increase by more than 1 million tonnes from the forecast adopted when this clause 3.2 was last applied),</u>*

then Queensland Rail must undertake a review of the Reference Tariff and submit a draft amending access undertaking to the QCA setting out the outcomes of that review (including of any consultation with stakeholders) and Queensland Rail's proposed amendments.

(b) …

*<u>(c) Queensland Rail must provide, in support of any draft access undertaking submitted under **clause 3.2(a)**, a revised capital expenditure, operating cost and maintenance cost proposal, together with justification for the changes proposed.</u>*

~~(c)~~<u>(d)</u> …

5.3 Other amendments

QR has made a number of other amendments across the terms of DAU3.

[33] QR, *Explanatory Document*, 30.

Yancoal has summarised its comments in Schedule 1 on the other material amendments QR has proposed to the access undertaking wording.

5.4 Yancoal suggested amendments: Independent capacity assessment

The actual deliverable capacity of the West Moreton network is somewhat uncertain given that for the last period it has only been railing approximately 2.1 Mtpa from Cameby Downs. Yet, the current circumstances of the West Moreton network have included speed restrictions on loaded trains, and numerous possessions for matters relating to the passenger network / Cross-River Rail.

QR has proposed an extensive capital expenditure program on the basis that it considers it is required to deliver the 9.6 Mtpa contracted capacity. Yet QR has proposed no regulatory controls or protections for users to determine whether 9.6 Mtpa of capacity is ever actually available and delivered.

As noted in Schedule 1 below, it has in fact sought to reduce the reporting obligations which might otherwise provide some transparency as to whether the capacity is actually delivered in reality.

Given the magnitude of the capital expenditure that QR is proposing, Yancoal considers it should be difficult for the QCA to be satisfied that such capital expenditure is prudent unless there is an ex-post independent assessment of whether that capacity has, in fact, been delivered (and an obligation on QR to rectify the capacity deficit without further cost to coal producers if the capacity has not been delivered and demand remains or with an optimisation of the investment if rectifying the shortfall in capacity is not justified).

There is a working example of this type of regime as the QCA has considered such a system appropriate in the context of the Aurizon Central Queensland Coal Region rail network access undertaking (UT5). In addition, it is shown to be practically able to identify shortfalls where they occur, i.e., the independent expert's capacity assessment and reporting has subsequently revealed a material shortfall in capacity provided in the Goonyella, Newlands and Blackwater systems.

Yancoal submits that the need for such a system is actually more pressing (in respect of West Moreton system – Port of Brisbane services only) as:

(a) QR has less developed capacity modelling techniques relative to Aurizon Network (and appears to be unable to accurately assess the impact on pathing of other infrastructure projects being developed in the Metropolitan system);

(b) the smaller number of producers utilising the West Moreton system mean that any shortfall of capacity impacts very significantly on individual West Moreton producers (relative to the Aurizon Network system with a much larger volume of users such that the shortfall is likely to be spread more broadly);

(c) QR is incurring significant capital expenditure (and seeking material increases in reference tariffs) on the basis of delivering capacity, such that it that is not actually being delivered, there needs to be a system to either require QR to rectify the capacity shortfall (without additional costs to users) or optimise the regulatory asset base as the capital expenditure was clearly not prudent if the capacity was not actually delivered; and

(d) The non-coal services on the West Moreton and Metropolitan line (grain, livestock, passenger) are quite seasonal in nature – and QR's contracting on the basis of annual pathing without transparency of such seasonal impacts – makes capacity assessment difficult.

Consequently, Yancoal submits that drafting akin to that in clause 7A of Aurizon Network's UT5 is introduced. However, Yancoal would accept some further limitations to seek to ensure costs are not unnecessarily incurred, with less frequent assessments than the annual process provided for in UT5.

5.5 Yancoal suggested amendments: More robust annual capital expenditure process

As discussed in section 4.8, Yancoal considers that if QR is to proceed with such an intensive capital expenditure program, more rigour needs to be included in the forward of the asset base.

First, Yancoal notes that consistent with clause 2.1(f) of Schedule E, the Capital Indicator does not imply acceptance by the QCA of that level of capital expenditure into the regulatory asset base. However, it is conscious that often appears to be how matters have largely progressed in practice.

Given the disproportionately high value of capital expenditure now being proposed, Yancoal submits that:

(a) an obligation to provide details of capital expenditure projects to West Moreton system users is included in DAU3, with voting from participants as to whether they endorse particular projects (akin to clause 4 of the Schedule E of UT5 – but with changes to the voting regime so that endorsement is not simply a decision for the highest tonnage user given there are only 3 users of the network) that will:

   (i) assist in ensuring that only prudent investments are made;

   (ii) allow proper taking into account of changes to the above rail costs of projects/proposals (which users pay and QR is not exposed to); and

   (iii) allow more fit for purpose capital expenditure planning that is responsive to the issue the network is experiencing, actual volumes (which given the 3 users network may be 'lumpier' in terms of changes from forecast than in other network) and the trade-offs that are involved in the various possible means of addressing such issues;

(b) the outcomes of that customer voting to be required to be taken into account in the QCA assessing prudency under clauses 3-5 of Schedule E (acknowledging that a rejection by customers would need to be relevant but not determinative, with the QCA remaining the ultimate arbiter of prudency); and

(c) an annual capital expenditure reconciliation (akin to that in clause 5 of Schedule E of UT5 is included in DAU3) to address underspend vs the capital indicator, and providing for a more responsive adjustment to tariffs where that occurs in place of the Capital Expenditure Carryover Account (that currently exists in clause 7 of Schedule E of DAU3) – otherwise there is real potential for users to be paying an inflated tariff during the entirety of the DAU3 period, with the affordability and therefore volume risks that creates, with relief for the lower than proposed capital expenditure only being experienced in the next term. The Capital Expenditure Carryover Account would then only apply in the last two years during the term.

Please refer to the proposed amendments in Schedule 2.

5.6 Yancoal suggested amendment: Stronger renewal rights

It appears the only change QR has made to the renewal provisions under section 2.10 is to limit renewal to only applying to access rights which were granted prior to the commencement date of AU3. Yancoal does not have a particular comment on that change – noting it does not apply to remove any rights from Yancoal.

However, Yancoal feels that it should have stronger renewal rights than provided for in DAU3. In particular, existing users will assume the burden of repaying the AU2 loss capitalisation and, if QR's proposals regarding accelerated depreciation are accepted, are likely to be providing QR with the vast majority of its return on and of capital. Yancoal has also itself borne the brunt of a significant tariff while being the only coal producer with notable tonnage remaining on the West Moreton network during the AU2 term.

It is difficult to see why a future user, who will not have underwritten the existence and continued maintenance and operation of the West Moreton network, should have the same renewal rights as those who have.

Where existing users have borne the economic burden of the continued operation of the network, they should have the ability to continue to have access for as long as is supported by their mine life (rather than having to make a one-off guess at remaining mine life at the point of renewal – which is the practical impact of the current AU2/DAU3 approach)

Similarly, it would be an inefficient outcome for society and the State for an existing user's mine with remaining economic mine life to be replaced on the network by a new user's project, thereby effective sterilising resources which can be extracted without significant new capital investment.

Accordingly, Yancoal submits that 2.10(c)(i) and (iii) should be deleted, such that existing users continue to have renewal rights irrespective of whether they have exercised such renewal rights before.

6 Standard Access Agreement Drafting Amendments

QR is proposing only two material amendments to the standard access agreement.

In both cases, Yancoal has no material concerns with QR's stated rationale for the proposed amendment, but has suggest refinements or alternative drafting in Schedule 3 that are required for the amendments to be appropriate.

7 Conclusion

For the reasons set out above, Yancoal submits that the QCA should refuse to approve the DAU3 as submitted, principally on the basis of the inappropriately high West Moreton network reference tariff proposed.

Yancoal considers that the tariff proposed is inappropriate for reasons including:

(a) The inflated beta used in the bottom-up estimate of the WACC which does not reflect the reduction in systematic risk which will be faced by QR relative to the AU2 term, particularly given the reduction in regulatory risks which would result from QR's proposed amendments;

(b) an unjustified 'top-down' uplift to the WACC; and

(c) the resulting tariff being set at a level that is inefficient and unaffordable and gives rise to volume risks for the West Moreton network.

Yancoal is also sceptical of the prudency of the high costs of capital expenditure operation and maintenance given the limited disclosure provided and high-level nature of the justifications provided.

While a lesser issue, in relation to the wording of the undertaking and the standard access agreement, Yancoal considers some refinements are required to make the wording appropriate. If a high value capital expenditure program is ultimately approved as prudent, Yancoal submits that greater in-term rigour should be applied to capital expenditure projects through:

(e) the introduction of an independent assessment of capacity for the West Moreton network, to ensure that expenditure actually delivers the required capacity;

(f) a requirement to seek customer approval for material capital expenditure projects; and

(f) an annual reconciliation of approved capital expenditure against the QCA approved capital indicator, to ensure that users are not being charged for capital expenditure that is not incurred.

As always, please do not hesitate to contact Mike Dodd of Yancoal Australia Limited on [redacted] if you have any queries in relation to this submission.

Schedule 1 – Other Access Undertaking Amendments

Clause	Issue	Yancoal comments
2.6	Alternate Access Applications	No substantive concerns. Yancoal agrees the drafting changes do not substantively alter the outcome of this clause. The remaining reference to 'Competing Access Seeker' in 2.6(c)(iv) should presumably be amended to 'Alternate Access Holder'
2.9	Queuing	No substantive concerns. Yancoal agrees with QR's assessment that the drafting changes do not substantively alter the outcome of this clause. Yancoal suggests the following minor amendments are made: • 2.9.2(a) – 'tsk' should be amended to 'task' • 2.9.2(b) – 'collective' should be 'collectively' • 2.9.5(b)(vi) – delete 'comply' • Cross referencing needs to be updated to accommodate the changes made
2.10	Renewals	See detailed submissions in section 5.6 of this submission above.
2.11.1	Access Rights granted under Access Agreements	No concerns. Wording unchanged from the previous clause 2.9.1 and has just moved position in the access undertaking.
5.1.1	Quarterly report – timing and sign off	No material concerns. Yancoal does not really understand is why it takes so long to provide such reporting. Nevertheless, in the interests of regulatory attention being focused on material items, the delayed timing for production of the report or change in QR personnel responsible for sign-off can be accepted.
5.1.2	Quarterly report – content	Yancoal opposes the proposed deletions of: • the reporting requirements regarding the number of times a decision was made to deviate from a Daily Train Plan if it is reasonably necessary to do so to remedy, mitigate or avoid the operation of network congestion; and • the reporting requirements on ad hoc possession start times, end times, number and duration. Where the network is anticipated to become more congested during the period of AU3 (than perhaps it has ever been), it would seem to Yancoal that reporting obligations of this nature are needed more than ever to provide transparency as to whether QR is actually able to provide the capacity which has been contracted and which has been used as the basis for QR's significant capex, or is not delivering the capacity due to possessions and variations.

Clause	Issue	Yancoal comments
		Yancoal continues to consider that KPIs that need to be reported against to provide transparency about delivery and performance and allow benchmarking with similar rail networks. It anticipates that will be something raised by a haulage operator's submissions. It is not obvious to Yancoal that ad hoc possessions only have a minor effect on delays as QR suggests. Yancoal's concerns in this regard, could potentially be dealt with in an alternative way – i.e., introduction of an independent capacity assessment as discussed in section 5.4 of this submission.
6.3*	New declaration	No concerns with the proposed deletion, as the existing declaration in respect of the parts of the QR rail network that remain declared extends beyond the anticipated term of AU3
7	Definitions	• Yancoal considers that in the revised definition of Network 'the use of which is' should be amended to 'the use of which is, or forms part of,' – to put beyond any doubt that infrastructure can form part of the Network even it is only part of the infrastructure needed for provision of the declared service. • The weighted average cost of capital referenced in the definition of WACC is inappropriately high. For Yancoal's further detailed submissions relevant to this point, please see sections 4.2 to 4.4of this submission.
Sch D, 3.1(e)	Reference tariff	The weighted average cost of capital referenced in the definition of WACC is inappropriately high. For further detailed submissions relevant to this point, please see section 4.2 to 4.4 of this submission.
Sch D, 3.2	Review of Reference Tariff	See Yancoal's submissions on this in section 5.2 of this submission above.
Sch D, 4(f)	Ceiling Revenue Limit	Yancoal considers the proposed Ceiling Revenue Limits is inappropriate for the same reasons it opposes the proposed Reference Tariff which is based on those Ceiling Revenue Limits.
Sch D, 8	Loss Capitalisation	See Yancoal's submissions on the drafting amendments to this schedule in section 5.1 of this submission above. .
Sch E	Maintaining the Regulatory Asset Base	See Schedule 2
Sch F	Network Management Principles	Yancoal opposes the deletion of the disputes regime which prevents a possession (other than an Emergency or Urgent Possession) proceeding if it is the subject of an unresolved bona fide dispute.

Clause	Issue	Yancoal comments
		Yancoal notes QR's suggestion that this regime is not included in the regulatory arrangements for other systems. Yancoal, however, considers this remains appropriate – taking into account that the West Moreton system is a unique system which currently has only three users, rather than the multi-user systems with numerous operators (such that possessions are more likely to have a material impact on an individual user). Yancoal also notes that the West Moreton network has also been beset by possessions in recent times, and where QR is proposing very significant capital expenditure, partly to remove the need for such possessions, a protection of this nature seems appropriate to continue. If QR considers the dispute regime is preventing appropriate possessions proceedings or imposing additional cost, it seems to Yancoal that would be more appropriately managed through reduced time frames for commencing disputes and for disputes to be resolved rather than removal of the dispute process. Yancoal also suggests the following minor amendments are made: • in section 3(f) of this Schedule where the reference to 'Network Controller' was deleted it should presumably be replaced with Network Control Officer as has occurred in other clauses; and • in section 3(i) of this Schedule the reference to 'Network Controller's' should be deleted (as Network Control Officer has been added to replace it) • Yancoal does not oppose the other QR proposed amendments in Schedule F
Sch G	Operating Requirements Manual (***ORM***)	Yancoal defers to the views of operators on the on the changes to the ORM, particularly Aurizon Operations as the only current operator on the West Moreton system. From the perspective of a coal producer / user of the QR access service there is not anything that is evidently materially problematic in the changes proposed to this schedule.

** Clause reference is to a clause in AU2 which has now been deleted.*

Schedule 2 – Capital Expenditure Related Amendments to Schedule E

Schedule E – Maintaining the Regulatory Asset Base

…

Approval of capital expenditure

2.1 Requirements for acceptance of capital expenditure into the Regulatory Asset Base

(a) The QCA will accept capital expenditure into a Regulatory Asset Base if that capital expenditure:

(i) is or has been accepted by the West Moreton Users in accordance with **clause 2.3** (where a project will be considered as having been accepted if the project as delivered does not vary materially in scope, standard or cost from the project as accepted by West Moreton Users) or is or has been accepted by the QCA as:

(A) prudent in scope in accordance with **clause 3**;

(B) prudent in the standard of works in accordance with **clause 4**; and

(C) prudent in cost in accordance with **clause 5**; and

….

2.2 Assessing prudency of capital expenditure

For the purposes of **clauses 3, 4** and **5**:

(a) the QCA:

(i) in assessing whether capital expenditure is prudent:

(A) ….

(B) must consider any non-acceptance by West Moreton Users of the relevant capital expenditure project and any reasoning provided by each West Moreton User for their vote for acceptance or non-acceptance; and

~~(B)~~(C) may, as it considers necessary

…

2.3 Seeking customer acceptance of capital expenditure

(a) Queensland Rail must seek acceptance by the West Moreton Users under this **clause 2.3** for:

(i) any capital expenditure project within the West Moreton System anticipated to cost $[*] million or more (other than any capital expenditure incurred in response to an emergency) whether that cost is to be incurred in a single year, or over multiple years; or

(ii) any capital expenditure project that has previously been accepted by West Moreton Users under this **clause 2.3** and either:

(A) has undergone a material change to the scope, standard or costs; or

(B) is to be commenced more than 2 years after the date that capital expenditure project was previously accepted.

(b) In order to seek acceptance by the West Moreton Users of a capital expenditure project, Queensland Rail must at least 3 months prior to any funds (other than study costs) being committed to a capital expenditure project of the type described in clause 2.3(a):

(i) make available to West Moreton Users information on the relevant capital expenditure project which is material for assessing the prudency in the scope, standard of works and cost of the capital expenditure project, to a similar level of detail intended to be provided to the QCA when seeking acceptance of prudency (provided that Queensland Rail may require a West Moreton User to sign a confidentiality agreement on reasonable terms prior to providing it with any commercially sensitive information under this **clause 2.3**).

(ii) schedule a meeting with the West Moreton Users to discuss the capital expenditure project; and

(c) Queensland Rail is permitted to seek acceptance of multiple capital expenditure projects at the same time (and combine the information provided and meeting held for the purposes of **clause 2.3(b)** for each project), but where that occurs each such capital expenditure project will be voted on separately.

(d) During the Voting Period:

(i) Queensland Rail must use reasonable endeavours to provide further information and engage in discussions with West Moreton Users where reasonably requested by a West Moreton User; and

(ii) each West Moreton User is to notify Queensland Rail of whether they accept or do not accept as prudent the capital expenditure project (and any failure to notify either such vote with the Voting Period, will result in that West Moreton User being deemed to have accepted the capital expenditure project as prudent).

(e) If a West Moreton User votes:

(i) to not accept a capital expenditure project as prudent, it must provide its reasons for the vote so that the QCA may understand its reasons;

(ii) to accept a capital expenditure project as prudent, it may, but is not required to, provide any reasons for its decision.

(f) The capital expenditure project will be considered to be accepted as prudent by the West Moreton Users for the purposes of **clause 2.1(a)(i)** if it is approved or deemed approved by a majority in number of West Moreton Users which in aggregate hold 60% of the votes.

(g) On a vote occurring under this **clause 2.3**, each West Moreton User has the number of votes equal to the aggregate Train Paths they have contracted on the West Moreton System across the next 5 Years after the Year in which the vote is occurring, subject to also including any Train Paths that are reasonably likely to be renewed or reapplied for before their expiry.

(h) Queensland Rail must notify each of the West Moreton Users of the results of the vote for each capital expenditure project within five (5) Business Days after Queensland Rail has determined those results.

(i) A vote resulting in non-acceptance does not prevent Queensland Rail from:

(i) proceeding with a capital expenditure project prior; and/or

(ii) seeking the QCA's acceptance of the same capital expenditure.

(j) For the purposes of this clause:

(i) **Voting Period** means:

(A) the period specified by Queensland Rail when providing information to West Moreton Users seeking acceptance, which must be at least six weeks after the first information is given; or

(B) such longer period as Queensland Rail and the West Moreton Users agree.

(ii) **West Moreton Users** means each Access Holder that has contracted Access Rights on the West Moreton System, provided that where the Access Holder is an Operator the relevant Customer will be considered the West Moreton User not the Operator.

…

7 Capital Expenditure Reconciliation

(a) Queensland Rail will maintain registers in which it annually records all Approved Capital Expenditure for each Year (including identifying the relevant capital expenditure by project) in relation to the West Moreton System and Metropolitan System.

(b) If at the end of any Year (other than the final two Years of the Term), the total Approved Capital Expenditure for each year of the Undertaking to date (excluding any years in respect of which this clause 7(b) has previously been applied) differs from the total of the Capital Indicator for West Moreton System and Metropolitan System (as applicable) for the corresponding years, the Reference Tariffs for the Year which commences 12 months after the end of the relevant year for which the QCA approved the Approved Capital Expenditure under **clause 2.1** will be adjusted by an amount which reflects the change in 'Allowable Revenue' from which the Reference Tariffs have been calculated by the QCA in the Final Decision dated [*] 2024 which includes:

(i) a return on capital component, calculated as the difference between the return on capital calculated based on the Capital Indicators for the relevant Years and the return on capital that should have applied for the Approved Capital Expenditure for those same Years;

(ii) a depreciation component, calculated as the difference between the depreciation calculated based on the Capital Indicators for the relevant Years and the depreciation that should have applied for the Approved Capital Expenditure for the same Years; and

(iii) a tax depreciation component, calculated as the difference between the tax depreciation calculated based on the Capital Indicators for the relevant Years and the tax depreciation that should have applied for the Approved Capital Expenditure for the same Years,

with the total of those adjustments rolled forward to the Year in which the adjustments will be made at the WACC, and with those components, and the changes to the Reference Tariffs calculated using the modelling parameters and assumptions used to determine the Reference Tariffs by the QCA in the Final Decision dated [*] 2024.

(c) The adjustment process described in **clause 7(b)** of **Schedule E** will not apply if the difference between the total of the Capital Indicators and the Approved Capital Expenditures for the relevant Years is less than [$*] million or if QR can reasonably demonstrate that this difference is likely to reduce to less than [$*] million within 12 months.

(d) For the avoidance of doubt, where **clause 7(b)** has been applied in respect of any Year, the Capital Indicators and total Approved Capital Expenditures in respect of any such Year will be excluded from any subsequent calculations of total Capital Indicators and total Approved Capital Expenditures under **clause 7(b)** and **clause 8**.

~~7~~8 Capital Expenditure Carryover Account

~~(a) Queensland Rail will maintain registers in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project) in relation to the West Moreton System and the Metropolitan System.~~

(~~b~~a) If, at the end of ~~each~~ the last Year of the Term, there are any Years in which:

(i) the Approved Capital Expenditure differs from the relevant Capital Indicator for West Moreton System or the Metropolitan System (as applicable); and

(ii) that Year was not the subject of an adjustment under **cause 7(b)** such that it is excluded for these purposes as provided for in **clause 7(d)**),

the difference will be entered in the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:

(iii) an under recovery of revenue, where the Approved Capital Expenditure exceeds the relevant Capital Indicator; or

(iv~~i~~) an over recovery of revenue, where the Approved Capital Expenditure is less than the relevant Capital Indicator.

(c) The balance recorded in the Capital Expenditure Carryover Account will include:

(i) a return on capital component, calculated as the difference between the return on capital assumed for the relevant Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the WACC;

(ii) a depreciation component, calculated as the difference between the depreciation assumed for the relevant Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and

(iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the relevant Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure, and will be calculated using the modelling parameters and assumptions used to determine the relevant Reference Tariff

(d) The balance in the Capital Expenditure Carryover Account at the end of each Year to which **clause 8(a)** applies will be rolled forward at the WACC.

(e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining:

(i) in relation to the West Moreton System, Reference Tariff; and

(ii) in relation to the Metropolitan System, the Reference Tariff input(s) relating to (in whole or part) the Regulatory Asset Base applicable to the Metropolitan System,

~~relevant to~~ setting Reference Tariffs in the next undertaking ~~on the basis of clearing the Capital Expenditure Carryover Account over the term of that next undertaking with the capital component described in **clause 7(b)** to be included in the Regulatory Asset Base and the cash flow components described in **clause 7(c)** to be taken into account in setting Reference Tariffs~~. In the event there is no next undertaking and the Reference Tariff last applicable under this Undertaking was set at a level such that it would generate Expected Access Revenue equal to the Approved Ceiling Revenue Limit, the portion of the balance in the Capital Expenditure Carryover Account described in **clause 8(b)**~~7(c)~~ will be recovered from, or returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date

Schedule 3 – Standard Access Agreement Amendments

Clause	Issue / Concern	Comments / Proposed Amendments
16.1(b)	Direct insurance requirements for Operator's Associates, agents, consultants, contractors and subcontractors. The concern for producers is that any more onerous insurance requirements might impose additional costs that may be passed on to users through higher haulage costs	Yancoal is not concerned, in principle, with QR's proposal for such entities to directly contract their own insurance rather than the previous requirement to be covered by the Operator's insurance policy.[34] However, the proposed QR amendments appear to extend beyond that stated rationale, by extending the insurance requirement for such entities to types of insurance beyond that covered by the wording of the current standard access agreement (which, on Yancoal's reading, were just the insurances in paragraphs (iv) and (vi) rather than all policies referred to in clause 16). Yancoal also suggests that it might be preferable for the Operator's insurance to be able to cover such entities were that is more economic or efficient (such that the obligation for such entities to obtain separate cover only applies to the extent they are not covered by the Operator's insurance). Finally, Yancoal has some concerns with a reference to needing 'sufficient insurance' creating an uncertain threshold, as sufficiency is really a subjective concept. Yancoal proposes this is replaced with a more objective reasonableness reference instead. Yancoal considers that rail operators (as the entity/entities closest to what these requirements may mean in practice) should be requested to specifically provide submissions on this change). In advance of understanding their view, Yancoal's suggested amendments to the proposed clause 16.1(b) are: *The Operator must ensure that<u>, to the extent not covered in the public liability policy or other appropriate insurance policy of the Operator,</u> each of the Operator's Associates, agents, consultants, contractors and their subcontractors take out and maintain insurance referred to in ~~this~~ clause 16<u>.1(a)(iv) and (vi)</u>, <u>to at least the coverage level specified in paragraph (iv) (as applicable) or otherwise reasonable</u> ~~sufficient~~ to protect the interests of these Associates, agents, consultants, contractors and their subcontractors as the case may be).*
22.1	Broadening of QR rights to assign The concern is that the proposed drafting permits assignments in	Yancoal is not concerned with QR's rationale of being able to assign an access agreement in circumstances where QR ceases to have a right to operate the network.[35] However, the proposed QR amendments appear to go further than that.

[34] QR, *Explanatory Document*, 66.
[35] QR, *Explanatory Document*, 66

Clause	Issue / Concern	Comments / Proposed Amendments
	inappropriate circumstances.	In particular the drafting proposed permits assignments in inappropriate circumstances (such as where the parts of the network for which operatorship have changed are not relevant to the access rights under the agreement or it is merely expected that operatorship has changed but it has not actually changed). Yancoal appreciates that is unlikely to be QR's intention and simply suggests the following amendments to the proposed clause 22.1(a) are: *If Queensland Rail will no longer have~~s~~ ~~or expected to no longer have~~ a right to operate the Network or any part of the Network relevant to providing the Access Rights under this Agreement it ~~may~~will Assign all or part of its rights or obligations under this agreement corresponding to the parts of the Access Rights which Queensland Rail can no longer provide to an Assignee who:* *(i) will have the right to operate the relevant parts of the Network; and* *(ii) has the expertise, the financial resources and other relevant resources to enable it to provide the relevant Access Rights,* *without the prior consent of the other Parties, provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.*