

**SUBMISSION TO THE QUEENSLAND
COMPETITION AUTHORITY**

**SUBMISSION IN RESPONSE TO THE QCA
CONSOLIDATED DRAFT DECISION ON UT4**

FEBRUARY 2016

1.	Executive summary	3
2.	Legislative framework	6
3.	Retrospectivity of UT4	8
4.	Part 2: Intent and scope	8
5.	Part 3: Ringfencing obligations	13
6.	Part 5: Access to services.....	16
7.	Part 6: Pricing principles	18
8.	Part 7: Capacity Allocation.....	24
9.	Part 7A: Baseline Capacity.....	28
10.	Part 8: Network Development and Expansions	30
11.	Part 9: Connecting Infrastructure	36
12.	Part 10: Reporting Compliance and Audit.....	36
13.	Part 11: Dispute Resolution	39
14.	Miscellaneous outstanding issues	39

1. Executive summary

Anglo American Coal Australia (**Anglo American**) welcomes the opportunity to make submissions to the Queensland Competition Authority (**QCA**) in relation to the Consolidated Draft Decision of the QCA in respect of Aurizon Network's 2014 Draft Access Undertaking (UT4) (**Consolidated Draft Decision**).

The terms capitalised in this submission have the meaning given to them in the Draft Access Undertaking.

Anglo American recognises the significant steps taken by the QCA to ensure there is an appropriate balance of risk under a revenue cap model between Aurizon Network and industry and to improve the transparency of Aurizon Network's operations. Anglo American is supportive of the QCA's Consolidated Draft Decision. In particular, Anglo American recognises, and is strongly supportive of, the following key initiatives of the QCA:

- (a) the reinstatement of unfair differentiation and no-discrimination principles into Part 2, to ensure that the principles apply to the undertaking as a whole (as opposed to applying only to Aurizon Network's ringfencing obligations);
- (b) the reinstatement of many of the key commercial terms governing the negotiation and operation of Access to the Rail Infrastructure from the Access Agreements into the Access Undertakings;
- (c) the reallocation of risk in the Standard Access Agreement to create a more balanced risk profile for Access Holders;
- (d) the reinstatement of the capacity queue mechanism to address competing claims for Access;
- (e) the inclusion of a requirement for a Baseline Capacity Assessment including details of the "Absolute Capacity" and a conditions based assessment of the Rail Infrastructure;
- (f) an enhanced Network Development and Expansion regime;
- (g) an improved Connecting Infrastructure regime;
- (h) strengthened maintenance and performance reporting requirements for Aurizon Network; and
- (i) a broader dispute resolution process.

However, Anglo American considers that there are still key issues that require further prescription or which must be included into the Access Undertaking to ensure that Aurizon

Network operates in a transparent manner and does not take advantage of its market power for services that are not-contestable (or barely contestable) including:

- (a) **(Associated Services)** the inclusion of "Associated Services" to ensure that access to these non-contestable services are provided in accordance with the obligations set out in the Access Undertaking;
- (b) **(Enforceability)** an express acknowledgement by Aurizon Network that a failure to comply with the Access Undertaking, for example, the requirement to provide a Baseline Capacity Assessment or comply with a condition based assessment, will be deemed to be a breach by Aurizon Network and is deemed to adversely affect the users' interests, in order to allow the QCA to require Aurizon Network to comply with the Access Undertaking pursuant to section 158A of the *Queensland Competition Authority Act 1997 (QCA Act)*;
- (c) **(Decision making principles)** the reinstatement of the previous test which required Aurizon Network to make decisions under the Access Undertaking in a manner which is consistent between Access Seekers or Access Holders in the same circumstances, as opposed to the new test which allows Aurizon Network to unfairly differentiate between Access Seekers and Access Holders provided that it does not have a material adverse effect on the ability of one or more of the Access Seekers or Access Holders to compete with other Access Seekers or Access Holders;
- (d) **(Access Rights)** a restriction on Train Operators holding Access Rights in their own right, as this could incentivise Train Operators to engage in anti-competitive conduct including bundling access on the network and at the ports (and increasing unregulated prices) and could also create a secondary unregulated access market;
- (e) **(Flexibility)** the inclusion of additional flexibility for Access Holders in the allocation of train paths, to reflect the actual operating environment conditions, for example, the ability to flex up to +10% (subject to a cap on maximum annual train paths) in any given calendar month with the entitlement used being counted to overall annual contracted capacity, to allow flexibility in railings to meet annual port entitlements and catch up or surge as required;
- (f) **(Alignment)** the ability for Access Holders that have previously held their Access Rights for at least 10 years to be able to renew (with continuing renewal rights preserved) for any future period that aligns with their remaining "exit capability", thereby allowing contractual alignment between the rail network and ports;

- (g) **(Renewals)** remove the requirement for renewing Access Holders to be required to go through the same regulated negotiation process as new Access Seekers, by allowing existing Access Rights to be automatically renewed based upon a defined list of preconditions, which are subject to confirmation by the existing Access Holder, thereby preventing Aurizon Network seeking to renegotiate all terms of a renewing Access Rights application.;
- (h) **(Short Term Transfers)** maximising the flexibility (and therefore the benefit) of the short term transfer mechanism to permit short term transfers where the parties have different Reference Tariffs;
- (i) **(Pricing Principles)** an adjustment to the market risk premium, gamma and beta to better reflect the risk profile of Aurizon Network and prevent an inflated WACC;
- (j) **(Funding Obligations)** the inclusion of a regulated expansion funding process in the Access Undertaking, at least until such time as a workable SUFA regime is agreed, to ensure that Aurizon Network does not engage in economic hold up;
- (k) **(Expansions)** the modification of the expansion regime as follows:
 - (i) the ability for demand assessments to consider alternative options to expansions to ensure that the existing capacity is maximised before additional capacity is added to the network;
 - (ii) claims for existing expansions should be dealt with under UT4;
 - (iii) Aurizon Network should be responsible for funding any Capacity Shortfall where it fails to act as a reasonably prudent operator and any funds used to meet shortfalls should not be rolled into the RAB, otherwise users will be paying twice for the same infrastructure because of a failure of Aurizon Network to comply with its obligations under the Access Undertaking;
 - (iv) the capital expenditure voting process should be expanded to permit any Access Holder to vote in relation to any capital expenditure relating to its Coal System;
- (l) **(Self-insurance)** the inclusion of more prescriptive details in the Access Undertaking around the manner in which matters are funded using self-insurance collected from users;

- (m) **(Dispute Resolution)** the expansion of the dispute resolution process to expressly permit a party to bring a dispute where it is an Access Holder (or Access Rights are held on its behalf by a Rail Operator) and the issue relates to its Coal System;
- (n) **(Confidential Information)** the ability for Aurizon Network and stakeholders to provide Confidential Information to the QCA to assist it to make an informed decision; and
- (o) **(Good faith)** a requirement for Aurizon Network to act reasonably and in good faith when exercising its discretion under the Access Undertaking.

Anglo American notes that the Queensland Resources Council (**QRC**) has also made extensive submissions at all stages of the UT4 process. Anglo American has had the opportunity to review the comments made by the QRC and except to the extent that matters are expressly dealt with in this submission or are otherwise inconsistent with this submission, Anglo American continues to support the comments made by the QRC on behalf of industry.

Anglo American continues to be of the view that the form of regulation imposed on Aurizon Network should be subject to a review for UT5. This review should, amongst other things, consider whether a price cap form of regulation (rather than the current revenue cap form of regulation) is more appropriate now that Aurizon Network has been privatised for a number of years and may also provide a more accurate reflection of a competitive market as it would allow for the sharing of volume risk. Anglo American notes that price cap regulation incentivises regulated entities to increase efficiency and technology advances because any decrease in costs will represent an increase in profit margin. Further, it may also reduce any incentive to overcapitalise on investment into the network.

2. Legislative framework

Anglo American generally supports the approach adopted by the QCA as set out in chapter 2 on the legislative framework.

Anglo American would like to make a comment in respect of the correct interpretation of the word "appropriate" in section 138 of the QCA Act. In addition to the reasons set out by the QCA in its Draft Decision on UT4 (**Draft Decision**), Anglo American believes that it is clear from the face of the QCA Act that the QCA was intended to have the power to require any amendment to the draft Access Undertaking (as long as those amendments are consistent with the QCA Act and are not minor or inconsequential).

Generally speaking, the courts adopt a purposive approach to statutory interpretation.¹ In determining the extent of the powers of the regulator it is necessary to consider the operation of the QCA Act as a whole.² The words of an Act should never be read in isolation but rather in the context of the legislation, including to address the mischief that the legislation was enacted to prevent and to give effect to the remedies intended by the legislation.³

Section 69E sets out the objectives of Part 5 of the QCA Act as including the promotion of the economically efficient operation of, use of and investment in, significant infrastructure.

Section 136 provides that where a voluntary draft Access Undertaking is given to the QCA, the QCA may either approve, or refuse to approve, the draft Access Undertaking. The QCA Act sets out the limitations on this power which are:

- (a) it is "appropriate" having regard to the factors set out in section 138(2);⁴
- (b) it is consistent with any access code;⁵
- (c) it is not inconsistent with a ruling under division 7A;⁶
- (d) it has published the undertaking and invited persons to make submissions, and has considered those submissions;⁷ and
- (e) the QCA may not refuse approval only because the QCA considers a minor and inconsequential amendment should be made to a particular part of the undertaking.⁸ A minor and inconsequential change is defined under the QCA Act as a change that "would have no real effect or consequence in relation to that part of the undertaking and the undertaking as a whole".⁹

Otherwise the power in section 136 to approve, or not approve, a draft Access Undertaking is not limited. In Anglo American's view the fact that section 138(5) of the QCA Act specifically says that the QCA may not refuse approval for a minor and inconsequential amendments means that as long as the amendments required by the QCA are not minor and inconsequential (ie the changes would have a real effect or consequence in relation to a part, or the entirety of, the undertaking) then the statutory regime as a whole envisages that the

¹ *Project Blue Sky Inc v AMA* (1998) 194 CLR 355 at 381 [69]

² *Collector of Customs v Agfa Gevaert Ltd.* (1996) 186 CLR 389 at 397 applying *R v Brown* [1996] 1 AC 543 at 561 per Lord Hoffmann and also *Minister for Immigration & Multicultural Affairs v Khawar* (2002) 210 CLR 1 at 36 [109]

³ *Project Blue Sky Inc v AMA* (1998) 194 CLR 355

⁴ Section 138(2) of the QCA Act.

⁵ Section 138(3)(a) of the QCA Act.

⁶ Section 138(3)(b) of the QCA Act.

⁷ Section 139(3)(c) and (d) of the QCA Act.

⁸ Section 138(5) of the QCA Act.

⁹ Section 138(6) of the QCA Act.

QCA may refuse a draft Access Undertaking if it wishes amendments to be made to the draft Access Undertaking.

3. Retrospectivity of UT4

Anglo American acknowledges that there is only one year to go for UT4 and that the Maximum Allowable Revenue and Reference Tariffs will apply for the balance of UT4. It is noted that Aurizon Network is currently regulated under a voluntary access undertaking (as opposed to a mandatory access undertaking).¹⁰ Anglo American submits that as such Aurizon Network has a duty to ensure it adheres to the process accordingly including acting in a timely and expeditious manner.

In light of the critical nature of the issue, it is important to ensure that the mechanism adopted by the QCA in its draft of clause 2.1 of UT4 works correctly. Anglo American assumes that the mechanism referred to in clause 2.1 is a reference to the calculation of Adjustment Charges under clause 6.1 of Schedule F. If this is correct, then Anglo American believes that the QCA should give some consideration as to whether the wording of clause 6.1(a) fits with the QCA draft clause 2.1. In that, clause 6.1(a) refers to a Reference Tariff which is applicable or effective from a date prior to the approval of the Reference Tariff.

4. Part 2: Intent and scope

4.1 General overview

Anglo American support the QCA's consolidated draft decision and suggested drafting in relation to Part 2: 'Intent and Scope'. In particular, Anglo American is supportive of the following recommendations of the QCA:

- (a) the relocation of the unfair differentiation principles to Part 2, so that like UT3 these principles shall to apply to Aurizon Network's obligations under the Access Undertaking as whole rather than just Aurizon Network's ringfencing obligations in Part 3;
- (b) the relocation of the unfair differentiation provisions from Part 2.2, which set out the objectives of the Access undertaking and is used to interpret Aurizon Network's behaviour under the Access Undertaking, to Part 2.4 which imposes an enforceable obligation on Aurizon Network behaviour under the Access undertaking;
- (c) the extension of the unfair differentiation principles to apply to any decision relating to the provision of Access to a Related Operator, Related Competitor or a Third Party

¹⁰ Section 136 of the QCA Act.

that has commercial arrangements with a Related Operator or Related Competitor.¹¹ For clarity, Anglo American understands that the wording "relating to the provision of Access" is not intended to restrict the prohibition on unfair differentiation in relation to matters that are strictly 'Access' related but all matters that are required for Aurizon Network to provide Access to users in accordance with its obligations under the Access Undertaking, including the provision of Below Rail Services as set out 3.4(c). Anglo American submits that the better approach would be to include a reference to "Below Rail Services" in clause 2.4(b)(ii)(F); and

- (d) the decision to remove the QCA's draft incentive mechanism. As previously identified, Anglo American continues to object to the concept of an 'Incentive Mechanism' in circumstances where Aurizon Network operates under a Revenue Cap model. Anglo American will continue to support its views should Aurizon Network put forward a proposal for an Incentive Mechanism in the future.

4.2 Access and the provision of Below Rail Services

The scope of the Access Undertaking is limited to the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access. The Access Undertaking adds "For clarity, "Access" in this clause 2.5 includes all aspects of access to the service taken to be declared under section 250(1)(a) of the Act". However, section 250(1)(b) of the QCA Act provides that the use of rail transport infrastructure for providing transportation by rail (where that infrastructure is used for operating a railway for which Aurizon Network is the railway manager) is also a declared service.

Further, there does not appear to be a clear obligation on Aurizon Network to provide the Below Rail Services (which may in some instances be interpreted as falling outside the scope of Access). Anglo American notes that the words "Aurizon Network undertakes to supply the Below Rail Services to Access Seekers and Access Holders in accordance with the terms of this Undertaking and to otherwise comply with this Undertaking" were deleted from Part 3.4(c) of the Access Undertaking. This obligation plays a key role in enforcing Aurizon Network to undertake its obligations in relation to the provision of Below Rail Services under the Access Undertaking. Instead, the only obligation on Aurizon Network is that it intends to give effect to the supply of declared services (as per Part 3.4(b) of the Access Undertaking). Anglo American strongly considers that the Undertaking should provide a clear obligation on Aurizon Network to provide the Below Rail Services to users.

¹¹ Part 2.4(b)(ii)(F)

Further, to enforce the Access Undertaking under the QCA Act, section 158A requires that the QCA must establish:

- (a) that it considers a responsible person for the undertaking has breached a term of the undertaking; and
- (b) that a person's interests have been adversely affected by the breach.

In Anglo American's view any breach of the Access Undertaking by Aurizon Network affects the interests of the users, in the sense that the Access Undertaking as a whole is for the protection of users. However, it may be considered difficult to prove that a single incident (such as Aurizon Network not complying with an individual timeframe) may be difficult to prove to adversely affect a person's interests.

Anglo American is strongly of the view that the Access Undertaking must include:

- (a) a clear provision that requires Aurizon Network to undertake to provide "Below Rail Services" (which may otherwise be deemed to fall outside the scope of "Access" as currently drafted in Part 2.5(a)) rather than a mere intention to give effect to the provision of the Below Rail Services; and
- (b) an express acknowledgment by Aurizon Network that a breach of the Access Undertaking adversely affects the interests of Access Holders, Access Seekers and Train Operators as the case may be.

4.3 Sale and supply of electricity

Anglo American strongly supports the QCA's decision to provide a right for parties to utilise the dispute resolution mechanism under Part 11.1 of the Access Undertaking for a dispute arising in relation to the sale and supply of electricity.¹²

Anglo American also supports the QCA's decision to recognise that certain aspects of the sale and supply of electricity form part of the declared service, including:

- (a) overhead electrical power cables and the associated supply infrastructure (such a substations) that support the conveyance of electricity that are associated with the railway's operation and which are owned and operated by Aurizon Network and form part of the transport infrastructure of the Central Queensland Coal Network (**CQCN**); and
- (b) the supply of electricity to operate trains on the Blackwater and Goonyella coal systems.¹³

¹² Part 2.7(c).

Whilst Anglo American welcomes the QCA's clarification, Anglo American maintains the view that the sale and supply of electricity to above rail haulage providers in the systems of the CQCN that are electrified is not presently contestable and requires specific regulation. In its submission to the draft decision on UT4 (**Draft Decision**), Anglo American noted:¹⁴

"In instances where Aurizon Network, by virtue of its position as a natural monopolist, can control or impact upon services associated to the provision of below rail access which are not contestable, or at best are weakly contestable, it is important for the Access Undertaking to regulate those services as well. This generally includes services that Aurizon Network does not permit a third party to operate, or otherwise services that it is so inefficient or uneconomic to obtain from an independent third party, meaning that Aurizon Network is the only viable option for a price. The alternative is that Aurizon Network has incentive to exploit those associated services for anti-competitive prices (realistically, to price only marginally below the price at which it is competitive for independent third parties to enter the market meaning that it will discourage those third parties from doing so) so as to continue to earn monopoly rent even though the main service is appropriately regulated. This allows Aurizon Network to undermine the entire purpose of natural monopoly regulation. Anglo American submits that the sale and supply of electricity is just one of these services that should be regulated by virtue of Aurizon Network's monopoly position, otherwise it will risk Aurizon Network having the scope to abuse its significant market position."

Anglo American maintains the view that the sale and supply of electricity as a whole forms part of the declared service and should be regulated under the Access Undertaking. Further, Aurizon Network should be required (as it is not an electricity retailer) to provide the supply and sale of electricity to users on a cost pass-through basis. Without such a requirement a dispute in respect of electricity charges will have no guidance as to what is appropriate.

4.4 Associated Services

Anglo American supports the QCA's view that where a particular service provided by Aurizon Network is taken to be part of the declared service then it should then be subject to the Access Undertaking. Anglo American also notes the QCA's suggestion that parties should utilise the dispute resolution procedure under the QCA Act or Access Undertaking to determine whether a particular "Associated Service" provided by Aurizon Network falls within the declared service.¹⁵ However, Anglo American is strongly of the view that the Access Undertaking should seek to minimise uncertainty and limit Aurizon Network's ability to exploit its monopolist position in relation to services that are not contestable (or weakly contestable). As previously identified by Anglo American in its submission to the Draft Decision, "Associated Services" should include:

- (a) RIM and train control for spurlines;

¹³ Consolidated Draft Decision, Volume I, Part 3.6.4, p 71.

¹⁴ Anglo American submission to the QCA in response to QCA Draft Decision on UT4, Part 2.2, p. 4.

¹⁵ Consolidated Draft Decision, Volume I, Part 3.8.4, p. 76.

- (b) level and other crossings;
- (c) land leases (leasing corridor land and land owned or leased by Aurizon Network);
- (d) design, scope and standard reviews (for example, where Aurizon Network requires infrastructure to comply with minimum standards);
- (e) rail and related infrastructure relocation;
- (f) Transfer Facilities Licences (**TFLs**); and
- (g) sale and supply of electricity (in addition to the matters captured under Part 2.7 of the Access Undertaking).

In the instance that the Associated Services are not regulated, Aurizon Network may be gaining a double recovery of costs as many of the Associated Services are conducted by Aurizon Network employees, whose employment cost have already been recovered by Aurizon Network through Reference Tariffs. In other instances it is not suitable (or possible) for any person other than Aurizon Network to conduct the Associated Services due to actual or potential impact on the CQCN. This is particularly so in relation to rail relocation as there is no possibility (nor would it be appropriate) for another party to be able to coordinate the removal and relocation of the mainline track, other than with Aurizon Network providing its consent. For example, the relocation of mainline track is an integral part of the operation of the below rail infrastructure. Anglo American considers that relocation services should form part of the declared services and the service fees for relocation services should be subject to similar scope and prudency reviews as general maintenance or capital expenditure.

In relation to Private Infrastructure, Anglo American wishes to reiterate its view that Private Infrastructure falls within the scope of section 250 because:

- (a) balloon loops and spurlines have always fallen within the scope of the Access Undertakings and been subject to regulation and Aurizon Network should not be allowed to engage in the practice in UT4 of forcing users to give Aurizon Network unregulated revenue by pretending they have options for Short Private Infrastructure. The preferred alternative is that balloon loops and spurlines are treated as part of the CQCN and separately funded by the coal producer through Access Conditions or the User Funding Regime; and
- (b) Smaller Private Infrastructure connection projects, where the coal producer effectively must use Aurizon Network to construct the Private Infrastructure and use

Aurizon Network for RIM and train control services, is effectively leased to Aurizon Network and clearly falls within section 250 of the QCA Act.

5. Part 3: Ringfencing obligations

5.1 General overview

Anglo American is supportive of the QCA's Consolidated Draft Decision and suggested drafting in relation to Part 3: 'Ringfencing'. In particular, Anglo American supports the following recommendations of the QCA:

- (a) the removal of the non-discriminatory principles from Part 3;
- (b) the requirement for Aurizon Network to enter details of any employee in a Confidentiality Information Register where that employee takes part in a working group with staff from a Related Operator or Related Competitor in relation to a Supply Chain;
- (c) the requirement for Aurizon Network to notify the QCA prior to sending any staff member on secondment and to include details of that staff member in the Confidential Information Register;
- (d) restrictions on Aurizon Network acting on directions from a Related Operator in respect of the grant or exercise of Access Rights for the benefit of a Related Operator or Third Party without the third party's consent;
- (e) the removal of Sub-paragraph (g) from the definition of Confidential Information, which allowed Aurizon Network to subjectively determine whether "the disclosure of the information by the recipient would no longer be expected to affect the commercial affairs of the owner of the information";
- (f) the proposal for Aurizon Network to submit a structure and definition set for the Confidential Information Register and to submit this information to the QCA within 4 months of the commencement of UT4; and
- (g) the amendments to the definition of "High Risk Personnel".

5.2 Decision making principles

Anglo American strongly objects to the proposed amendment to Part 3.19 "decision making". Under the previous drafting in the QCA's Draft Decision, where a decision under the Access Undertaking will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under the Access Undertaking or a Holder's Access, Aurizon Network was required to make a decision that are consistent between Access Seekers or

Access Holders in the same circumstances. This has now been changed to a requirement for Aurizon Network not to unfairly differentiate between Access Seekers and Access Holders in a way that has a material adverse effect on the ability of one or more of the Access Seekers or Access Holders to compete with other Access Seekers or Access Holders. This significantly lowers the threshold for the type of decision that Aurizon Network is required to take. Further, this test is a general test which applies to Aurizon Network's ability to make a decision generally under the Access Undertaking and therefore this new lower threshold has a very broad application and significantly lowers the extent to which Aurizon Network is required to treat Access Seekers or Access Holders. For example, Aurizon Network could elect to differentiate between Access Seekers despite those Access Seekers having essentially the same circumstances without needing to demonstrate why it has done so, provided that it does not cause a material adverse effect with that Access Seekers ability to compete. Access Holders have traditionally found it difficult to gain the required transparency into Aurizon Network's operations to be able to identify whether there has been any breach of the Access Undertaking. In light of this, it is even more important that Aurizon Network is incentivised to make decisions in accordance with a higher threshold to ensure fair and equitable treatment between Access Holders and Access Seekers. Anglo American strongly considers that the test for decision making should revert to the test as outlined in the Draft Decision.

5.3 Complaints and audit mechanism

Anglo American supports the QCA's decision to permit an Access Seeker, Access Holder, Train Operators or Third Party Access Seeker to lodge a written complaint directly with the QCA to request an audit. However, Anglo American queries whether it is suitable for Aurizon Network to appoint the auditor in an instance where its decision is challenged by the affected party. Anglo American considers that, at the very least, the Access Undertaking should be reinstated to the original position where QCA will appoint the auditor to conduct an audit of Aurizon Network's investigation into the ringfencing complaint. In the instance where the auditor is appointed by Aurizon Network, there may be the potential for a conflict of interest of the auditor (whether real or perceived) in its findings.

5.4 Subcontracting

Anglo American is generally supportive of the extension of the prohibition on delegation by Aurizon Network of its below rail activities to Related Competitors (as well as Related Operators). However, Anglo American notes that the exceptions to the prohibition on subcontracting set out in clause 3.5(a), in particular the ability for Aurizon Network to subcontract for incidents or environmental related services is inappropriate. Anglo American considers that Aurizon Network should be required to provide these services itself as these

services are fundamental to the reliable and safe operation of a railway. Anglo American considers that subcontracting may be appropriate only in limited instances, for example, where subcontracting represents significant costs savings as opposed to retaining the service in-house. In these circumstances, Aurizon Network should be required to engage in a transparent competitive tender process for the subcontracting of any of the above services and any cost savings should be passed through to users.

5.5 Line Diagrams

Anglo American supports the QCA's decision to reinstate the Line Diagrams. Anglo American considers this is a vital mechanism to allow Access Holders, Access Seekers and Train Operators to ensure that assets that are paid for by those interested parties as part of regulated access to the CQCN falls within the correct part of the Aurizon Group.

In addition to this, Anglo American also believes that the QCA should require that the RAB that Aurizon Network earns its revenue from is in line with the final Line Diagrams submitted for UT4. This should also be subject to independent audit of the assets used to calculate the RAB in light of the finalised line diagrams submitted the commencement of UT4.

As previously identified by Anglo American in its submission to the Draft Decision, Aurizon Network's RAB will have been calculated from these asset divisions, and therefore, Anglo American does not believe that this is a large task and should be completed by an independent third party assessor appointed by the QCA and provided with sufficient information by Aurizon Network to complete and provide to the QCA an accurate assessment within six months of the commencement of UT4.

Anglo American believes that this process should be repeated prior to commencement of each undertaking period when the MAR is calculated and reviewed by the third party assessor with updated information provided by Aurizon Network to ensure that any amendments to the Line Diagrams are reflected in the RAB calculations. As this information will be used to determine the RAB and therefore appropriate revenue, Anglo American does not see this annual process as an expensive or time consuming process.

5.6 Drafting issues

Anglo American also raises a number of drafting issues to assist in ensuring consistency and clarity in the terms of UT4, as follows:

- (a) Clause 3.3 requires that Aurizon Network provide a statement of breaches of ringfencing arrangements for the sixth month period from the date of the last declaration until the date prior to the next declaration. However, the reporting

requirement under clause 10.5.2 (which this declaration forms part of) is required annually. This clause should be amended to reflect the term of one year between declarations; and

- (b) In clause 3.8(a)(ii), the QCA has added the words "take whatever steps it can reasonably take to ensure that Related Operators and Related Competitors do not participate in the process for the appointment or supervision of the executive management of Aurizon Network". Anglo American believes that Aurizon Network should be able to ensure that no Related Operators or Related Competitor take place in its own process for appointment or supervision of its executive management. Accordingly, the words "take whatever steps it can reasonably take to" should be deleted.

6. Part 5: Access to services

6.1 General overview

Anglo American supports the QCA's efforts to strike a fairer balance between Aurizon Network and industry in relation to Access and the terms of the Standard Access Agreement. In particular Anglo American supports the following initiatives of the QCA:

- (a) the reinstatement of key provisions from the Access Agreement into the Access Undertaking, including access charges and reference tariff provisions, train operations, capacity management, resumptions, relinquishments and associated fees and the interface environmental management processes;
- (b) the inclusion of incorporation clauses in the Standard Access Agreement to incorporate key concepts from the Access Undertaking, subject to Anglo American's specific comments below in relation to access charges and pricing; and
- (c) the requirement for Aurizon Network to be liable to Access Holders under the Standard Access Agreement where it fails to make infrastructure available to Train Operators to operate Train Services.

6.2 Access Rights

Anglo American strongly objects to the ability for a Train Operator to hold Access Rights in its own right. Anglo American strongly considers that a Train Operator should only be able to hold Access Rights on behalf of, and for the benefit of, an end user.

In the instance that a Train Operator is able to acquire and hold Access Rights in its own right, it could incentivise the Train Operator to engage in anti-competitive conduct. The risk is that the regulated below rail monopoly services are transferred to an above rail duopoly enabling

control of below rail pathing allocation on a daily, weekly or monthly basis through commercial prioritisation of above rail services.

If vertical integration was achieved in ports, there may be incentive for the vertically integrated entity to discriminate in favour of its own above rail operator or its customers, particularly if it holds rail access in its own right. For example, the DBCT 2010 Access Undertaking does not include a general prohibition on discrimination between terms of access between users (or their access holders). Traditionally this has not caused concern for users of DBCT as there has been no incentive to favour any users over others. However, in the event of vertical integration of the ports, the absence of a prohibition on discrimination could create an incentive to engage in anti-competitive conduct. For example, a vertically integrated entity could elect to offer bundled access services to the rail and terminal. Under the current access framework proposed by the QCA for UT4, a service provider will be able to contract for Access Rights in its own right which would enable the service provider to purchase below rail and terminal rights, bundle these rights with above rail services and to sell to coal producers at an unregulated price. Although it would theoretically remain open to the coal producer to seek additional pathing and terminal rights under the access regimes, if the application for those rights trigger an expansion, then the coal producer may not be able to obtain the rights and will be forced to purchase the bundled rights.

To prevent the incentive for Train Operators to engage in this type of anti-competitive conduct, Anglo American strongly submits that Train Operators should only be permitted to hold Access Rights on behalf of an end user and not in their own right.

6.3 Flexibility

Anglo American supports the majority of the QCA's suggestions in relation to the Standard Access Agreement. However, Anglo American continues to be of the view that the Standard Access Agreement provides insufficient flexibility for users to overcome system losses and address requirements for surge in capacity. Users are required to have sufficient port capacity to contract rail track capacity to the port. To overcome the combined consequences of monthly track entitlement allocation and system operational losses in addition to variable production, users are often forced to over contract to ensure that they will have sufficient capacity to meet forecast peak railings. Where contracted capacity is insufficient, users are then forced onto "ad hoc" pathing to address any surge in throughput.

Anglo American considers that it is essential that users are provided with additional flexibility in their railings where the capacity is available. By way of example, the Hunter Valley model essentially allows for the ability to flex up to +10% (subject to a cap on maximum train paths) in any given calendar month with the entitlement used being counted to overall annual

contracted capacity. Such a system gives users flexibility in railings to meet annual port entitlements and catch up or surge as required around monthly TSE's. Provided spare capacity is available on any given day, this would enable users to utilise each others' unused capacity when not peaking at the same time and have it count towards annual contracted entitlement, rather than have to rely on "ad hoc" pathing and potentially contested path processes. This would also facilitate better system utilisation.

Anglo American also reiterates its comments in its submission to the Draft Decision that the Access Agreement still contains a focus on weekly fixed scheduling and monthly entitlement. These rigid scheduling restrictions are detrimental where flexibility is required in order to maximise supply chain efficiency and the delivery of supply chain capacity is to be achieved. This is particularly unfavourable to users, especially those reliant upon cargo assembly ports, by ignoring the related requirements for cargo assembly campaign railing.

6.4 Risk Allocation in Access Agreements

Anglo American supports the QCA's steps to appropriately redistribute risk allocation between users and Aurizon Network. Anglo American notes that the QRC has made some suggested drafting amendments to the allocation of risk in its submission to the Draft Decision to address areas where they considered that users still required additional rights. Anglo American continues to support the QRC's further recommendations in relation to risk allocation.

7. Part 6: Pricing principles

7.1 General overview

Anglo American generally supports the QCA's decisions in relation to Part 6, subject to the comments in below. In particular, Anglo American supports the following decisions of the QCA:

- (a) a risk free rate of 3.21 per cent, with a period of four years so that it is linked to the regulatory period;
- (b) a maximum allowable revenue of \$3.93 billion;
- (c) the use of an approved RAB value to calculate the Maximum Allowable Revenue in all circumstances unless the RAB value is unavailable, in which case the DORC value will be adopted;
- (d) the reinsertion of restrictions on price differentiation for Access Charges between Access Holders and Access Seekers and restrictions on discrimination in favour a

Related Operator, Related Competitor or a Third Party that has commercial arrangements with a Related Competitor;

- (e) the expansion of access conditions to apply to non-standard access agreements and the requirement for Aurizon Network to provide the QCA with a copy of any non-standard access agreement for approval (where there are cost and risk implications). Anglo American continues to agree with the QCA that this increased level of transparency is likely to ensure that Aurizon Network does not obtain any benefit from potential double-dipping where it has agreed protections or returns outside the sphere of the regulation.

However, Anglo American has set out below its concerns in relation to some of the QCA's decisions in relation to the pricing principles.

7.2 Market Risk Premium

Anglo American continues to disagree with the QCA's decision to set a Market Risk Premium (MRP) for Aurizon Network of 6.5%. Anglo American has suggested that this MRP calculation is too high, and a more accurate MRP should be estimated at around 6.0%. Anglo American notes that this is consistent with recent decisions of other regulators. As previously acknowledged by the QCA¹⁶ Australian regulators have consistently applied an estimate of 6.0% for the MRP in Australia. For example, the Economic Regulator of Australia recently applied a MRP of Western Power of 6%. Anglo American considers that there is insufficient evidence to justify the departure from other regulator decisions and to depart from the previous MRP of 6.0%.

The QCA has previously accepted that three of the four alternative market risk premium estimation methods that it relies upon is "biased upward" and that the Cornell method is "unequivocally biased upward". Anglo American continues to be of the view that the biases in the methodologies need to be addressed to better represent the minimal risk adopted by Aurizon Network. This is particularly so, given the minimal risk that Aurizon Network faces under the current revenue cap form of regulation.

Notwithstanding Anglo American's and the QCA's views on the upwards bias in each of the MRP methodologies identified above, Anglo American considers that, as an absolute minimum, the Cornell estimate should be excluded from the calculation of MRP and used only as a cross-check to ensure that the final estimate is not too high.

¹⁶ Queensland Competition Authority; Discussion Paper: The Risk-free Rate and the Market Risk Premium (November 2012), p. 11.

Anglo American has previously made extensive submissions in relation to setting the market risk premium for Aurizon Network.¹⁷ Anglo American continues to support the arguments that it raised in that submission, and asks the QCA to revisit Anglo American's detailed comments.

7.3 Estimation of gamma

Anglo American supports the QCA's Draft MAR Decision to increase the gamma figure from that suggested by Aurizon Network. As identified by Anglo American in its draft decision, Anglo American supports the QCA's estimate of 0.84 for the utilisation rate. However, Anglo American considers that the QCA's distribution rate of 0.56 is inaccurate. Anglo American considers that Lally's recommendation of 1.0 for the utilisation rate is a more accurate reflection of the utilisation rate for Aurizon Network. Anglo American contends that this is because there are extremely few (and possibly no) regulated entities with similar characteristics for the use and distribution of imputation credits as Aurizon Network.

Aurizon Network is a highly diversified business with interests at almost all levels of the supply chain (including mines, rail, rollingstock and ports), across a number of different commodities and in both regulated and unregulated businesses. Anglo American believes that this gives Aurizon Network the potential to obtain a much higher distribution and utilisation of imputation credits, the outcome of which is a significantly higher gamma. Relying on regulatory precedent from decisions by regulators in other States and in relation to businesses that do not resemble Aurizon Network's would only result in an incorrect gamma assumption (like Aurizon Network's 0.25 suggestion) and Anglo American continues to support the QCA's Draft MAR Decision to recalculate gamma based on its own assessment of the criteria.

7.4 Beta

Anglo American continues to hold the view that the equity beta for Aurizon Network remains too high. Further to Anglo American's submission to the Draft Decision and in light of the QCA Consolidated Draft Decision on equity beta, Anglo American makes the following comments:

- (a) In Anglo American's view, the beta applied under UT3 did not accurately reflect the fact that the 'revenue cap' form of regulation with an 'overs and unders account' protected Aurizon Network from volume risk;

¹⁷ Anglo American, Submission to the Queensland Competition Authority: Anglo American submission in relation to the WACC consultation papers and WACC forum (January 2014) p. 5.

- (b) Anglo American supports the QCA's view that US Class 1 railroads and Australian-listed industrial transportation firms are not an appropriate comparable for Aurizon Networks business;
- (c) While the QCA has estimated an equity risk premium rate of 5.2%, Anglo American believes that the appropriate equity risk premium figure is in a range of 4.0-4.5% as Aurizon Network's risk sits just below that of the utilities networks that the AER regulates. Anglo American does not see any reason or empirical evidence supporting the QCA's Draft MAR Decision to set an equity risk premium of 5.2% and supports the QCA reducing this figure in order to reflect the true risk borne by Aurizon Network; and
- (d) Anglo American supports the statements made by both the QRC's economic expert, Castalia, and Anglo American's previously consulted economic expert, Economic Insights and considers that an appropriate asset beta for Aurizon Network is closer to a range of 0.2 - 0.3.

7.5 WACC

For the reasons outlined above, Anglo American considers that the QCA's proposed WACC of 7.17% is too high and does not accurately reflect the level of risk borne by Aurizon Network. Anglo American continues to support the calculations of the QRC as the upper bound of appropriate WACC figures (ie, the QRC's submission of a WACC of 5.65%).

Anglo American has made previous detailed submissions on this issue and would like the QCA to consider the key issues raised in those submission.¹⁸

Further, Anglo American continues to support the transition to an annual regulatory review for the WACC to be applied from 1 July each year. Similar to the Western Australian rail regulatory regime, this would allow for the WACC to be set at the commencement of the regulatory regime and a mechanism to review the WACC annually between formal reviews. Anglo American considers that this would provide more flexibility for the QCA to adjust the WACC as market conditions change. This would reduce the necessity to adopt a higher WACC over the entire regulatory period. Instead a more accurate WACC could be adopted as a minimum at the outset of the regulatory period and the review mechanism can then be used to account for any variations during the regulatory period. This would provide the regulator with a much shorter period in which to forecast, and therefore provide a more accurate WACC for the regulatory period.

¹⁸ Anglo American, Submission to the Queensland Competition Authority: Anglo American submission in relation to the WACC consultation papers and WACC forum (January 2014) p. 14.

7.6 Expansion pricing

Anglo American generally supports the expansion pricing framework proposed by the QCA. Anglo American agrees that Expansion pricing has proved to be a difficult issue to predict and the approach should be considered in each of the circumstances on a "case-by-case" basis. Anglo American also strongly supports the new concept of "Consensus Expansions" and the right for non-Expanding Users to obtain information regarding the pricing proposal for the Expansion and an opportunity to vote on the pricing proposal.

Anglo American strongly supports the view of Aurizon Network and the QCA that users requiring the expansion should generally pay an access charge that reflects at least the full incremental costs for capex and opex required to provide the additional capacity.

Anglo American generally supports the proposition by Aurizon Network and the QCA that existing users should not experience a material increase in tariffs due to an expansion triggered by access seekers. However, Anglo American strongly considers that this principle does not go far enough. Anglo American notes the QCA's views that:

"We [QCA] consider it unreasonable for the economic viability of a mine that is already operating to be materially negatively impacted by an expansion triggered by other users. Otherwise, it would add another level of uncertainty to mine development decisions and would discourage mine development in the CQCN in the long run. It is in the interests of all CQCN users to have a stable profile of access charges over time to reduce uncertainty. This is consistent with the object of Part 5 of the QCA Act, as it provides an environment that is conducive to mine development in the CQCN.

Further, we note that existing users may have an incentive to oppose expansion projects if they perceived expansions as a threat to the commercial viability of their mines. This could lead to efficient expansions not being undertaken, which is inconsistent with the object of Part 5 of the QCA Act."

Anglo American believes that expansion users should bear the incremental costs of the Expansion where those costs increase the Reference Tariffs of existing Access Holders if the Expansion costs were to be "socialised". As identified by the QCA above, the nature of the coal mining industry is that Access Seekers are required to make decisions and investments based on long term contracts and costs and where an Expansion alters those long term costs, for example increasing Reference Tariffs, this is likely to impact those long term investments and any uncertainty created by that could impact adversely on the market as a whole, through decreasing investments or investment potential. Anglo American continues to be of the view that existing Access Holders and users should be required to take cross default risk of potential competitors with a different risk profile and potentially unsustainable returns putting those additional future volumes, which may ordinarily be socialised, also at risk.

As outlined in its submission to the Draft Decision, Anglo American considers that Expansion pricing should operate as follows:

- (a) where an Expansion has the effect of decreasing existing Reference Tariffs, that costs should be socialised into the existing Reference Tariff to create single decreased tariff. Anglo American notes that this is consistent with the "averaging down / incremental up" approach identified by the QCA and supported by Anglo American;
- (b) where an Expansion has a higher Reference Tariff, Expansion users should bear the costs associated with an Expansion to the extent that the Expansion adds no material benefit to existing users;
- (c) where an Expansion has a higher Reference Tariff and is likely to provide a "material benefit" to existing users the cost of the Expansion related to that benefit might be appropriately socialised across all Access Holders (both new and existing). Anglo American considers that Aurizon Network and the expanding users should bear the onus of proving that there has been a clear and definable "material benefit" to existing users, and that existing users should be given the opportunity to comment on the benefits that they might be receiving. Further the determination of any improvements and benefits to existing users should be subject to efficiency and prudence tests, including a reliable user voting process and existing Access Holders should be given the opportunity to audit and make submission in relation to proposed benefit being received (which Anglo American should form part of the Consensus discussions with Expansion Stakeholders);

Anglo American reiterates its views that Common Costs should be dealt with as follows:

- (a) where the Expansion would create a lower Expansion Tariff than the existing Reference Tariff, the Expansion should be effectively socialised into the existing Reference Tariff (as identified above) thereby removing the need to equalise the tariffs through an adjustment to Common Costs; and
- (b) where the Expansion provides a new and higher Tariff than existing Reference Tariffs, a portion of Common Costs (for various fixed services provided by Aurizon Network for train control and other Aurizon Network operations to be used by the expanding user) should be recouped in the new Expansion Tariff.

Anglo American considers that it is appropriate for users of services to contribute to services which are a normal part of accessing the Network. Anglo American continues to consider that the true test of whether the Expansion Tariff for a particular mine haul is able to

accommodate a portion of Common Cost is whether that Expansion Tariff is actually higher on a dollar per net tonne basis than the Reference Tariff of an existing user with the longest haul to that same unloading destination and adjusting for differences in train characteristics.

7.7 Ballast cleaning costs

Anglo American supports the QCA's decision to reduce the ballast cleaning costs on the basis that they are unlikely to reflect efficient costs. Anglo American continues to be of the view that ballast cleaning costs are a capital expenditure in the network and not an operational expenditure as the ballast forms an integral part of the structure of the network. As the QCA is aware ballast cleaning involves the removal and replacement of the ballast and is more properly characterised as a capital replacement cost.

8. Part 7: Capacity Allocation

8.1 General Overview

Anglo American acknowledges the QCA's recommendations aimed at providing a more transparent and balanced capacity allocation regime. In particular Anglo American supports the following initiatives of the QCA:

- (a) the reinstatement of a capacity queue mechanism to deal with competing applications for capacity (subject to Anglo American's comments below);
- (b) the reinstatement of the capacity registers;
- (c) inclusion of force majeure provisions in the Access Undertaking rather than in the Access Agreement;
- (d) the inclusion of the Replacement Mine Concept; and
- (e) the continuation of the resumption regime under UT3 (as opposed to Aurizon Network's strengthened resumption regime).

8.2 Capacity queue mechanism

Anglo American strongly supports the QCA's recommendation to reinstate the capacity queue mechanism for capacity allocations. In principle, Anglo American supports the QCA's decision to:

- (a) require Aurizon Network to notify each access seeker of its place in the queue and any changes in the position in the queue along with the reason for that change;
- (b) remove the right for Aurizon Network to reorder the queue;

- (c) restrict the ability for Aurizon Network to remove an Access Seeker from the queue to the matters set out in clause 7.5.2(c), including:
 - (i) where the application is withdrawn by the Access Seeker or the Negotiation Period has expired;
 - (ii) Aurizon Network determines (acting reasonably and in good faith) not to allocate Available Capacity to the Access Seeker in accordance with clause 7.2.1; and
 - (iii) failure to provide notice as a conditional access holder as required by clause 8.9.3(a)(ii) requesting an access reduction if there is a capacity shortfall.

However, Anglo American notes that clause 7.5.2(c) requires that an Access Seeker will be removed from the queue where the Access Seeker is an Affected Access Holder and makes an election under clause 8.9.3(e)(i). This clause provides for the Affected Access Holder to elect to have their access rights compressed and the access application to be amended accordingly. Clause 8.9.3(e)(ii), however, allows for Access Seeker to elect to fund the Expansion in which case they will be given a priority allocation of capacity in an existing or future process. Anglo American is not clear as to why the party would be removed from the queue in relation to an election made under clause 8.9.3(e)(i). Anglo American queries whether the clause reference intended to apply to limb (ii) of that section.

Anglo American considers that certain aspects of the queue mechanism still require attention. The QCA has inserted a new test to determine when an Access Seeker joins the queue. Under the proposed drafting in clause 4.4 an Access Seeker will join the queue when the Access Seeker provides Aurizon Network with a "properly completed" Access Application. This test replaces the previous test which required that the Applicant provide a "substantially compliant" Access Application. This allows Aurizon Network with discretion to refuse the application where it considers the application does not meet the criteria which will impact on a party's place in the queue. Anglo American considers that the preferred approach would be to revert to the previous test of a "substantially compliant" Access Application.

In addition, Anglo American requires the queuing process to protect applicants from unfair practices or processes that are not transparent to all applicants.

8.3 Alignment

One of the key issues for Access Seekers to obtain capacity on the CQCN is to ensure that it aligns the rail with capacity at the ports. Anglo American considers that the contracting regime for the rail and ports should be aligned to ensure that Access Seekers are able to

ensure their capacity is aligned and that they are not forced to obtain spare capacity on the rail network. This would also promote enhanced efficiency on the rail network where capacity is limited. Anglo American is aware that any new rail infrastructure requires 10 year take-or-pay contracts to protect Aurizon Network's investment in the network and to amortise any debt, however for the brownfield infrastructure, Anglo American considers that any Access Holders that have previously held their access for at least 10 years should be able to renew for any lesser periods, but no more than 5 years being the minimum 'evergreen' renewal right for most port capacity in the CQCN to align with existing "exit capability" commitments, while keeping the renewal "first rights" alive. This will increase regulatory certainty, as well as ensuring that mining companies and investors (who typically make these investments for extended periods of time) can ensure the consistency required for such substantial and long-term investment commitments.

8.4 Renewals

Anglo American opposes the QCA's decision to require that all renewals are required to go through the negotiation process under the Access Agreement. While Anglo American agrees with the QCA's decision that it would be preferable that some elements of Access Agreements are updated to reflect the provisions of the Access Undertaking in force at the time of the renewal, Anglo American remains concerned that Aurizon Network will not be amenable to only renegotiating certain elements of the renewing Access Agreement. Further, Anglo American notes that the QCA has elected not to include a list of elements of a renewing Access Agreement that can be renegotiated. Anglo American believes that if the QCA wishes to enforce provisions that renewing Access Agreements can be renegotiated, it is necessary to provide a list of the only elements that can be renegotiated (or simply the provisions that are to be amended in line with whatever the appropriate Access Undertaking provisions at the time of renewal), otherwise it will be in Aurizon Network's interest to take a broad view and suggest that all elements are open for renegotiation, potentially putting at risk the "first right" concept for renewals.

8.5 Transfers

Anglo American supports the QCA's decision on the transfer regime under UT4. In particular, Anglo American supports:

- (a) the decision to implement a single transfer regime to apply to permanent and short-term transfers;
- (b) that no fee shall be payable for a short term transfer;
- (c) the customer initiated transfers regime;

- (d) inclusion of express time limitations for Aurizon Network to consider a transfer request; and
- (e) the annual review mechanism for the short term transfer regime.

8.6 Short Term Transfers

Anglo American supports the QCA's decision to include a transparent short term transfer regime in the Access Undertaking, as opposed to the terms being included in individual users' Access Agreements. This is essential to ensure the system is clear and transparent and to disincentive the short term transfer mechanism being used to commercially "game" the use of the coal export chain and to mitigate the risk of creating a secondary market. Anglo American also supports the removal of the restrictive timeframes that Aurizon Network sought to impose on a short term transfer (ie no more than 7 business days). Anglo American considers this is essential to maximising efficiency on the network.

Anglo American has repeatedly identified that the short term transfer mechanism is essential to assist coal producers, and more generally the coal export supply chain, to overcome "day of operations" and other system losses as well the natural variations in mining production in order to maximise throughput. It is also important in offsetting the effect of "overs" and "unders" which occur from month to month due to track access being allocated at a monthly capped entitlement (effectively on a "use it or lose it" basis) while port capacity is contracted as an annual entitlement.

To maximise the benefits of a short term transfer mechanism, Anglo American believes that it should provide the ability for users to transfer rail capacity quickly and simply in months where they will not use their contracted entitlement or take a transfer of rail capacity in months where forecast production is higher than monthly entitlement if excess capacity is not being used by others in order to ensure the most efficient use of access rights across the entire supply chain. Importantly, this is critical for users that have export capacity through cargo assembly terminals (such as DBCT) which by the nature of the supply chain are required to peak railings in short periods of time to build cargoes based on vessel turn of arrival. Similarly, this will enable users when undergoing maintenance and not able to use TSE's to transfer to others that require additional capacity. The short term transfer regime should provide users with the required flexibility to gain access to additional paths when required to meet peaking requirements and thereby increase overall network throughput.

Whilst Anglo American is generally supportive of the QCA's short term transfer mechanism, Anglo American considers that the proposed regime is too restrictive as the short term transfer mechanism only permits transfers between contracts with the same Reference Tariff. If the

transfer is for a different Reference Tariff, then a fee will be payable for the transfer. This is likely to dis-incentivise users from utilising the short term transfer mechanism. Anglo American believes that, while other users should not be disadvantaged or impacted by a short term transfer, there should be scope to broaden the application of the short term transfer mechanism to ensure that as much capacity as possible can be transferred to increase the total usage of network capacity and subsequently increase overall efficiency and throughput on the network. Accordingly, Anglo American submits that the only restriction on short term transfers should be a limitation of 3 months. Further, Access Holders should be entitled to apply rolling back-to-back short term transfers provided that Aurizon Network is satisfied that the Access Holders are not engaging in gaming.

Anglo American notes that the QCA has previously acknowledged that gaming is still a risk that could occur under the short term transfer regime. Anglo American considers that the strengthened reporting requirements under UT4 place Aurizon Network in a strong position to be able to detect and monitor any potential gaming behaviours by users, including where users are tempted to game the market by transferring access rights from long haul to short haul train paths. Where Aurizon Network detects this behaviours UT4 should include a regime to permit Aurizon Network to refuse rolling short term transfers.

9. Part 7A: Baseline Capacity

Anglo American strongly supports the QCA's introduction of baseline capacity into the Access Undertaking and the inclusion of a defined term for "Absolute Capacity". Anglo American notes that whilst it is supportive of the QCA's suggested drafting and the requirement for Aurizon Network to provide details of the Absolute Capacity, Anglo American considers it is essential that the QCA should have the ability to enforce Aurizon Network's obligations under the Access Undertaking. This is because Aurizon Network has previously failed to meet its obligations under UT3. For example, Aurizon Network had previously undertaken to conduct a conditions based assessment process at the commencement of UT3, however this was not fulfilled until August 2013. Further, the report delivered did not fulfil the requirement to ensure that both the QCA and industry were provided with a full analysis and understanding of the asset quality at the commencement of UT3. Despite Aurizon Network's failure to comply with this obligation, the QCA was unable to utilise its powers under the QCA Act to enforce the Access Undertaking. This was in part because, in order to enforce the Access Undertaking, the QCA is required under section 158A to demonstrate that a person's interests have been adversely affected by the breach.

Anglo American reiterates its views that a timely and accurate report demonstrating the Baseline Capacity and Absolute Capacity is crucial to promote the efficient use of current

capacity and to determine the need for any future capacity. Therefore, it is essential that there is a clear obligation on Aurizon Network to provide details of the Baseline Capacity and Absolute Capacity and the ability for the QCA to enforce this obligation on Aurizon Network if, like under UT3, it fails to comply with its obligation to provide these details to an adequate standard.

Anglo American strongly believes that the following amendments are required to Part 7A:

- (a) firstly, the obligation on Aurizon Network to provide the details of the Baseline Capacity (including the Absolute Capacity) must be clear and transparent. Anglo American supports the inclusion of these provisions in the Access Undertaking. Currently, clause 7A.4.1(b)(iv) provides that Aurizon Network must provide a waterfall analysis of Capacity, Absolute Capacity, Existing Capacity, Committed Capacity and Available Capacity converted to a monthly and annual number of train paths and tonnage on each Coal System. The clause also provides that Aurizon Network may agree during the consultation with Access Holders, Customers and Supply Chain Groups to report different measures of the capacity metrics set out above. As currently drafted this allows Aurizon Network to change the reporting style and does not provide adequate details of who must agree that the new reporting metrics are suitable. For example, Aurizon Network may agree to a different reporting style with some users and apply that to all users. Anglo American supports the flexibility for Aurizon Network to report to users in a manner that is agreed with users. However, to ensure a clear and transparent minimum reporting requirement on Aurizon Network, any additional reporting style agreed with industry should be "in addition to" the waterfall reporting requirement identified under clause 7A.4.1(b)(iv) with the intention being informed decision making in the interests of efficient capacity allocation;
- (b) secondly, in the instance that Aurizon Network does not adequately comply with its obligations, the QCA should have a clear right to enforce Aurizon Network to comply with the Access Undertaking. Anglo American considers that the Access Undertaking should include an acknowledgement by Aurizon Network in clause 7A.4 that a failure to provide an adequate Baseline Capacity Assessment will adversely affect the users' interests.

Anglo American notes that the QCA must assess and approve the Baseline Capacity Assessment under clause 7A.4.1(c). Anglo American submits that during the assessment process the QCA may wish to consider, amongst other things, the provision of sufficient information for users to understand the requirement for any future enhancements on the

network and the capacity available on the network. For example, the information should be discernible to industry (as opposed to the mere collation of raw data) and should be clear and transparent notwithstanding any necessary information that is redacted. Clearly, disclosure and an understanding of the assumptions is critical to the process. This could be dealt with by appointing an independent auditor with full access to Aurizon Network's model at Network's cost.

Further, Anglo American continues to be of the view that Aurizon Network should be required to provide an unredacted version of the Baseline Capacity Assessment to industry. Anglo American considers that the QCA's proposed disclosure obligations set out in clause 7A4.1(i) and (j) are an improvement on Aurizon Networks proposal, however, Anglo American considers that the information should be able to be provided without breaching any confidential information. The only information that Anglo American considers is confidential information is load point specific information for individual users. Other than that information there is no information which should not be able to be meaningfully disclosed by Aurizon Network, including by aggregating the information by system in a manner which does not detract from the purpose of disclosure of the information. This is able to be done in various supply chains and related forums.

10. Part 8: Network Development and Expansions

10.1 General overview

Anglo American wishes to reiterate its appreciation for the effort and attention that the QCA has applied to the development of the Expansion principles in the Access Undertaking. Anglo American broadly supports the QCA's recommendations and suggested amendments to Part 8. In particular, Anglo American supports the QCA's decision to impose:

- (a) standardising contract framework that is suitable for financiers;
- (b) appropriate investigation and study processes;
- (c) the removal of the defined term for "Legitimate Business Interests" which provided significant discretion to Aurizon Network, and instead assessing Aurizon Network's interests on a case by case basis;
- (d) the removal of the EOI as a relevant factor for consideration in a demand assessment;
- (e) the ability for Access Seekers and the QCA to enforce a funding notification by Aurizon Network;
- (f) the ability of the users to fund the Expansion themselves when they do not like the commercial terms put forward by Aurizon Network;

- (g) the reinsertion of Access Conditions rather than Aurizon Network's proposed commercial terms;
- (h) the referral of any dispute regarding expansions to the main dispute mechanism set out in Part 11 (rather than an expansion specific dispute regime);
- (i) step-in rights for users where Aurizon Network does not enter into a Study Funding Agreement or is delayed in its performance of the Study Funding Agreements;
- (j) step-in rights appear to relate only to studies as opposed to UT3 where they also extended to construction. This right to step in during construction does not appear to have been transferred to UT4. Anglo has submitted that Aurizon is best place to manage construction. However, a step in right should exist to ensure construction can be completed;
- (k) the recommendation for Aurizon Network to put forward a voluntary funding mechanism for expansions;
- (l) additional confidentiality obligation on recipients of Confidential Information including a requirement for the recipient to provide an undertaking to Aurizon Network to keep information confidential and to comply with the ringfencing obligations in the Access Undertaking; and
- (m) the ability to assign a Study Funding Agreement and the automatic transfer of the Provisional Capacity Allocation (**PCA**) (including a pro-rata transfer of PCA commensurate to the percentage interest in the Study Funding Agreement being assigned).

10.2 Risk to existing Access Holders

Anglo American is strongly of the view that existing Access Holders should not be subject to any additional risk as a result of expansion projects for other users on the network. In particular, Anglo American is strongly opposed to any:

- (a) increased Reference Tariffs for its existing mines as a result of increases to the existing RAB for expansion assets, expansion costs or reductions in forecast expansion volumes;
- (b) cross default risk for defaulting (expanding) producers who enter into administration, liquidation or enter into creditor arrangements with Aurizon Network; and
- (c) changes to the either the expected Reference Tariffs for non-expanding producers or the existing (pre-expansion) RAB to include expansion assets or the balance of

expansion costs which are not being recovered by Aurizon Network as a result of the default of an expanding producer, or their administrator's creditor arrangements with Aurizon Network.

Anglo American notes that where there has been either a final default on payment or creditor arrangement entered into by Aurizon Network with producers or their administrators or liquidators, Anglo American believes that the appropriate course of action is for the expansion assets to be either optimised out of the RAB or to be set aside for a future expansion and not charged to existing producers.

10.3 Demand Assessment

Anglo American considers that the benefits of a demand assessment could be maximised by allowing the scope of the demand assessment to extend to consider alternatives to Expansions that could improve efficiency and throughput on the network. Anglo American has previously submitted that the most vital aspect of the Access Undertaking's operation is that it ensures efficient utilisation of the existing assets. The QCA noted this same point in its Draft Decision, stating that "effective use of existing capacity can defer the requirement for capacity expansions."¹⁹ Anglo American considers that the best way to achieve this is for the flexibility for parties to consider alternatives to Expansions where additional capacity can be delivered from the existing infrastructure. For example, Anglo American has long considered that additional capacity can be achieved on the network by improving the flexibility of Aurizon Network's capacity allocation, modelling and train path contracting and consumption before investing in significant capital expenditure.

One of the other key methods by which this can be achieved is through an independent central coordinator. Anglo American has provided its views on this issue later in this submission.

Anglo American also wishes to reiterate its comments that the demand assessments should restrict the areas that Aurizon Network's demand assessment can consider to rail-related issues, avoiding out-loading access at ports and information on the status of coal reserves or resources, both of which are protected by other mechanisms within the Access Undertaking and are not appropriate matters to be decided on a subjective basis by Aurizon Network.

10.4 Aurizon Network's funding obligation

Anglo American strongly objects to the QCA's decision not to impose a mandatory funding obligation on Aurizon Network. As previously submitted Anglo American believes that until a SUFA model is tested and workable, Anglo American does not support the removal of a regulated expansions regime from the Access Undertaking. Even following the

¹⁹ Queensland Competition Authority, Aurizon 2014 Draft Access Undertaking - Draft Decision (January 2015) 347.

implementation of SUFA, there should be some form of expansion principles to address scenarios that do not fit the SUFA model or which require a regulated outcome.

Anglo American continues to believe that because of its natural monopoly position, Aurizon Network's ability to engage in economic hold-up to the detriment of the capacity and efficiency of the CQCN, and subsequently Access Holders and the supply chain, must be constrained. Anglo American believes that this is most appropriately done by ensuring that Aurizon Network is required to expand the CQCN in certain specific and controlled situations, all of which were considered appropriate under UT3 and have proved an invaluable alternative to the ongoing lack of agreement on a workable SUFA. Anglo American continues to submit the comments made in its earlier submissions in the UT4 process regarding the restatement of Aurizon Network's mandatory expansion obligations in the Access Undertaking. Anglo American also notes that regardless of whether any expansion is user-funded or funded by Aurizon Network, ultimately it is a "user pays" system.

10.5 Study Funding Agreements

In its draft decision, Anglo American provided a draft Study Funding Agreement with Anglo American's suggested amendments. Anglo American wishes to reiterate the suggested drafting in Anglo American's draft Study Funding Agreement to the extent that they were not adopted by the QCA, in particular:

- (a) the inclusion of an additional condition in clause 2.7 that a variation has had a material impact on the study;
- (b) the requirement for Aurizon Network to carry out the Rail Study in accordance with good industry practice (amended clause 7.1);
- (c) the approval of the scope of works and target study costs (clause 7.3);
- (d) the restriction on varying the scope of works without approval of the study funding committee and the process for varying the scope of works (clause 8.2);
- (e) the removal of the requirement for a Bank Guarantee (clause 11);
- (f) the right to give a dispute notice where Aurizon Network does not provide reasonable details of the calculation of the Provisional Project Management Fee (clause 12.2);
- (g) the removal of the limitation on Aurizon Networks liability (clause 17.2);
- (h) the removal of the right for Aurizon Network to assign its rights under the Agreement (clause 18.2); and

- (i) the requirement for Aurizon Network not to disclose information under the Study Funding Agreement where it would breach its Ringfencing obligations under the Access Undertaking (clause 19.2(b)).

10.6 Funding a Capacity Shortfall

Anglo American notes that under Part 8.9.4, Aurizon Network must fund any Shortfall Expansion where the Capacity Shortfall was caused (partly or wholly) by the default or negligence of Aurizon Network. Anglo American notes that Aurizon Network should be responsible for funding any Capacity Shortfall as users have already paid for capacity which has been identified by Aurizon Network through the feasibility studies.

As a minimum, the threshold should be lowered so that Aurizon Network must fund any expansion where there is a Capacity Shortfall and it is unable to demonstrate that it did not act as a reasonably prudent operator in conducting the Expansion. Aurizon Network should also be required to consult with Affected Access Holders prior to undertaking any AN Shortfall to determine whether the additional cost of remedying the AN Shortfall is still to the benefit of Affected Access Holders and whether such costs should be rolled into the RAB.

10.7 Standard User Funding Agreement (SUFA)

Anglo American supports the QCA's decision to defer a decision on SUFA until after the commencement of UT4. Anglo American wishes to reiterate its views on SUFA as set out in its previous submissions to the QCA in relation to SUFA and will provide further submission on SUFA following submission by Aurizon Network to the QCA within three months of the approval of the Access Undertaking by the QCA.

10.8 Voting on capital expenditure

Anglo American supports the QCA's decision to expand the scope of the capital expenditure voting process to allow an Interested Participant to request Aurizon Network to promptly seek the QCA's acceptance of a capital expenditure project prior to incurring expenditure on the construction of that project or to require Interested Participant approval for capital expenditure for a project. Anglo American notes that the definition of "Interested Participants" extends to Customers, and Access Holders and Access Seekers without Customers, where:

- (a) the Access Charges (or likely Access Charges) are (or will be) determined by reference to a Reference Tariff and would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base;
or

- (b) the proposed capital expenditure project will impact on the person's contracted Capacity or Train Paths after construction of the proposed Expansion is completed.

Anglo American notes that previous voting processes have not been successful and have not necessarily involved all users whose throughput, Access Rights and Reference Tariffs were going to be impacted by the outcome of the voting process. For example, the Goonyella to Abbot Point Expansion (GAPE) process is an instance where existing users encountered Capacity degradation or increased Reference Tariffs because of decisions made by the expanding users without the input of the existing users in affected systems.

To avoid similar unintended instances, Anglo American submits that the definition of Interested Participants should also extend to any Access Holders where the Expansions relates to their System.

Further, Anglo American notes that clause 4.1(e) of Schedule E permits the following parties to request that Aurizon Network obtain a vote from Interested Participants:

- (a) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
- (b) an Expansion Funder for the Expansion; or
- (c) an Interested Participant,

However, clause 8.7.2(c) (which requires compliance with clause 4 of Schedule E) only contemplates that an Expansion Funder may request that Aurizon Network seek Interested Participant approval for capital expenditure. Anglo American considers that this may cause confusion as to the ability of an Interested Participant to require that Aurizon Network gain Interested Participant approval under clause 4 of Schedule E. Anglo American considers that clause 8.7.2(c) should be amended to reflect the ability for an Interested Participant (as amended in accordance with Anglo American's suggestion above) to request that Aurizon Network obtain Interested Participant approval for capital expenditure.

Anglo American suggests that a robust, pre-expenditure capital approval process such as the ARTC Hunter Valley Rail Capacity Group concept should be implemented instead of some of the post expenditure processes currently within UT3 and the proposed UT4. This would avoid redundant reviews of past scopes, costs and projects, such as the current Aurizon Network capital expenditure claim, by allowing iteration by those underwriting the projects on their merit, scopes and cost.

10.9 Drafting issues

The reference in clause 8.9.3(d) to "clause 8.9.4(ii)" should read "clause 8.9.4(a)(ii)".

11. Part 9: Connecting Infrastructure

Anglo American supports the QCA's decision to reject Aurizon Network's proposal to move key provisions from the Access Undertaking to the Standard Rail Connection Agreement.

Anglo American also supports the QCA's decision to require Aurizon Network to:

- (a) notify the QCA of the connection milestones agreed with the Private Infrastructure Owner (including any agreement to delay milestones); and
- (b) to compensate the private infrastructure owner for all reasonable costs incurred by the private infrastructure owner for any delay in entering into a Rail Connection Agreement, designing, constructing or commissioning any Connecting Infrastructure or any other any other matters agreed with he private infrastructure owner.

12. Part 10: Reporting Compliance and Audit

12.1 Self-insurance

Anglo American agrees with the QCA's position in the Draft Decision that reporting is an extremely important aspect of UT4. Aurizon Network's reporting requirements is the key method by which stakeholders receive valuable information regarding the performance and management of the CQC and compliance by Aurizon Network with the Access Undertaking. Without strict reporting requirements, including requirements for the public availability of information, Anglo American notes that users have very little oversight into these aspects of the Aurizon Network business. As such, Anglo American submits that strict and comprehensive reporting requirements are not only important, but rather are essential to the effective operation of natural monopoly regulation.

Anglo American supports the QCA's decision (and other previous submissions) Anglo American has raised concerns in relation to Aurizon Network's ability to self insure through payments made by users. Anglo American considers that where Aurizon Network does so, it must be required to provide detailed information into how, where, when and why users' self-insurance costs have been spent. Anglo American welcomes the QCA's decision to require Aurizon Network to disclose information on its self-insurance arrangements as part of its separate financial statements under Part 3 'ringfencing arrangements'. However, Anglo American considers that the disclosure obligations do not go far enough and should also require Aurizon Network to disclose:

- (a) details of the insurable events upon which the claims are being made in relation to;

- (b) whether users or the QCA have preapproved spending self-insurance funds on those particular activities; and
- (c) the reasons for making the claim including sufficient details to allow users to understand why the claim was required to be made and evidence that that Aurizon Network had taken all reasonable steps to mitigate its exposure to the risk before relying on self-insurance by users funds.

Anglo American also recommends that Aurizon Network ensures that there is an appropriate level and combination of external insurances, self insurance and/or sinking fund coverage established for each rail corridor and that the coverage (if any) and cost is transparent to and agreed by Aurizon Network customers.

Anglo American has also previously made submissions on alternative methodologies for dealing with flood recovery events other than through 'self insurance' such as capitalising costs and/or including such costs in the maintenance allowance recovery depending upon the nature of the works.

12.2 Maintenance and performance reporting

Anglo American considers that transparency is critical to allow users to have proper visibility over the spending and use of funds provided by users. Anglo American is supportive of the enhanced maintenance and reporting regime proposed by the QCA, including:

- (a) the requirement for Aurizon Network to provide a draft reporting format to the QCA for approval within 6 months of the approval of UT4 and encouragement of stakeholder input into the draft report;
- (b) the inclusion of a quarterly maintenance cost report (in addition to the existing annual maintenance cost report).

12.3 Condition based assessment

Anglo American strongly supports the QCA's decision to impose a requirement for Aurizon Network to appoint an independent assessor to prepare a condition based assessment no later than 6 months prior to the expiration of UT4. Anglo American makes the following comments:

- (a) Anglo American notes that the final condition based assessment under UT3 was not completed and it was almost three years into the UT3 period before the first assessment was completed being August 2013. Anglo American does not believe that this has allowed the QCA or stakeholders to have any overview of the standard of the

network at the time of the commencement of UT3, nor has it allowed the QCA or stakeholders to be assured that Aurizon Network has maintained the CQCEN to the standard that is required (and paid for) under the Access Undertaking. This is an essential assessment for the purposes of ensuring that Aurizon Network efficiently and economically maintains its assets. Without an analysis of the status of the assets at the beginning and the end of the regulatory period, the assessment process is completely undermined as to determining whether Aurizon Network has been complying with asset maintenance standards, or effectively utilising the maintenance funds provided by users. Accordingly, Anglo American considers that it is essential to ensure that Aurizon Network complies with the obligations under Part 10.4.3. Accordingly, Anglo American considers that the Access Undertaking should include an express acknowledgement that a failure to meet its obligations under clause 10.4.3 will be deemed to be a breach by a responsible person and such breach has adversely affected a persons interests;

- (b) Anglo American considers that Aurizon Network should be required to appoint an independent assessor to complete a condition based assessment with 6 months of the commencement of UT4 approval. This is particularly critical given that a conditions based assessment was not completed under UT3 until August 2013 and therefore the users have no way of determining the condition of the infrastructure at the required times during each regulatory reset. Further, a subsequent conditions based assessment should be required by no later than 6 months from the expiration of UT4 and each subsequent undertaking period. Anglo American appreciates that the QCA has a discretion to require a subsequent conditions based assessment, however given the essential nature of the report to the users analysis of Aurizon Network compliance with its obligations under the Access Undertaking the requirement for a conditions based assessment should be imposed prior to each new regulatory period where the maintenance allowance is included as part of the MAR; and
- (c) Finally, Anglo American considers that Aurizon Network should be required to provide an unredacted copy of the report to users. As previously submitted by Anglo American in this submission, the only information which is truly confidential is the load point specific information for individual users. There is no information in relation to the maintenance and condition of the CQCEN rail infrastructure that could possibly be subject to confidentiality. Anglo American submits that in the unlikely event that any Confidential Information is included in the conditions based assessment report that this information should be able to be provided on an aggregated basis in a meaningful way.

13. Part 11: Dispute Resolution

Anglo American acknowledges the extensive work done by the QCA in the Draft Decision to a broader scope to the dispute resolution provisions in the Access Undertaking. As previously identified by Anglo American in its submissions to the Draft Decision, Anglo American has previously been affected by decisions which do not involve all users, however, the outcomes of those decisions have had a detrimental impact on existing users. For example, Anglo American was not able to raise a dispute under the Access Undertaking in relation to various expansions it was not a party to but still a user of a system which subsequently became impacted such as by proposed socialisation of expansion pricing or related capacity losses eg – WIRP & GAPE. Anglo American considers it is essential that an existing Access Holder should be able to bring a dispute where there is a risk that a decision could affect that Access Holder's interests. Anglo American submits that clause 11.1.1 of the Access Undertaking should include a right for an Access Holder to bring a dispute where a decision relates to that Access Holder's Coal System.

14. Miscellaneous outstanding issues

14.1 Acting reasonably and in good faith

Anglo American has repeatedly provided comments on Aurizon Network's various restrictions to act (and make decisions) reasonably, but not necessarily in good faith. Anglo American notes that the QCA has not taken the opportunity in the Consolidated Draft Decision to rectify these issues. Anglo American understands that the QCA Act imposes an obligation on Aurizon Network to act in good faith when it is negotiating Access with users, however it does not provide adequate protection against Aurizon Network's discretionary powers under the Access Undertaking generally, in particular, those matters which fall outside of negotiation of access but which are not contestable.

Anglo American wishes to reiterate its views that because Aurizon Network is a monopoly provider of access to the CQCN it is essential that any discretionary judgment that is granted to Aurizon Network under UT4 needs to be qualified by a requirement to act "reasonably and in good faith". Anglo American notes that the two phrases imply very different legal tests when determining how Aurizon Network has acted, and Anglo American submits that it is important to include a good faith test requiring Aurizon Network to also consider the interests of users as well as itself when exercising its discretionary powers.

14.2 Central coordination

Anglo American previously made a submission in relation to the Draft Decision supporting, in principle, the QCA's preference to move toward centralised coordination of the CQCN and

identifying the benefits that are likely to flow from centralised coordination of the CQCN. Anglo American also identified that any party appointed as a central coordinator must be truly independent in order to avoid the obvious risk of the party acting in its own interests to the extent that party is a stakeholder in the supply chain. Anglo American has previously made submissions to the QCA that Aurizon Network is not the natural coordinator of the CQCN because it is naturally conflicted as a result of its vertical integration in the CQCN network. Anglo American requests that the QCA considers Anglo American's views as outlined in its previous submissions.

Anglo American notes that the QCA has not addressed its views on a central coordinator in its Consolidated Draft Decision. Anglo American continues to support the arguments that it raised in its submission to the Draft Decision, and asks the QCA to revisit Anglo American's detailed comments for consideration for future regulatory periods.

14.3 Review Event process under UT4

Anglo American has previously made submission to the QCA in relation regarding the Review Event process. Anglo American wishes to reiterate its views that the Review Event process is not the most appropriate manner to address what are becoming frequent natural events.

As previously identified, Anglo American understands that the Review Event process is an important framework for protecting Aurizon Network from incurring significant losses where there have been major unforeseen natural disasters which have impacted contracted hauling or have actually severely damaged the CQCN infrastructure. However, Anglo American continues to believe that the Review Mechanism is being used by Aurizon Network as a cost mitigation mechanism to not only pass through claims but at a regulated rate of return whilst preserving approved allowances for capital renewals, maintenance, etc which are already 'banked'.

Anglo American directs the QCA to the recent increases in claims for flooding including the 2013 and 2015 flood claim Review Events. For the reasons outlined in its previous submission, Anglo American considers that the Review Event mechanism is no longer the most appropriate way to deal with these claims. Rather, Anglo American submits that the costs of the repair and construction works should be attributed as replacement capital expenditure in the CQCN and these costs should be optimised into the RAB whilst the value of the damaged or lost assets be removed from the RAB. Anglo American requests that the QCA give further consideration to this issue and Anglo American's comments in the submission to the Draft Decision.

14.4 Confidentiality

Anglo American has previously made submissions to the QCA outlining the importance that the QCA should have access to all information that it requires to make informed decisions on all matters subject to regulation under the Access Undertaking. This is important even where the information itself is subject to confidentiality arrangements. Anglo American considers that this remains necessary for both Aurizon Network and stakeholders to ensure that the complete disclosure is permitted to the QCA. For example, in the recent WIRP socialisation process, a number of stakeholders possessed information that the QCA required in order to make a properly informed decision, however, were unable to present it to the QCA because of existing confidentiality restrictions.

Anglo American understands that it would be appropriate for any documents provided to the QCA under this power to remain confidential to the QCA, rather than a requirement to make the documents public. Anglo American believes this provides a preferable position as opposed to the current position where limited information may be disclosed to the QCA and it is forced to rely on stakeholders or Aurizon Network representations without being able to verify that information.

Anglo American wishes to reiterate its views that QCA's ability to make a fully informed decision in relation to the regulation that it has oversight of is of paramount importance and should be supported in every way possible by the Access Undertaking.

14.5 Escalation

Anglo American has previously raised its concerns about Aurizon Network's calculation of escalation. Traditionally, it appears, Aurizon Network has applied escalation to the end of the regulatory period or financial year, as the case may be, in which the amounts are actually being recovered in, thereby ignoring the benefit of cashflows. Anglo American supports the QCA's view in the Consolidated Draft Decision that an end of year modelling assumption is not appropriate as it results in a revenue bias in favour of the service provider.²⁰ This is consistent with the view of other regulators.

Anglo American supports the QCA's view that the more appropriate method is to escalate the repayment stream to the mid-point of the recovery period (e.g. 31 December of a FY), not the end of a recovery period.

Anglo American also notes that Aurizon Network has predominantly applied the WACC as the escalation factor, this is consistent with it capitalising such costs for insertion into the

²⁰ Consolidated Draft Decision, Volume IV, p. 274.

RAB where it is entitled to earn the WACC return on such capital. Anglo American does, however consider that where the incremental costs are not capital in nature, then these should be escalated/de-escalated at a more appropriate escalator and consistent with that used in calculations for maintenance opex amounts, such as MCI or CPI.