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By online submission via: <http://www.qca.org.au/Submissions>

RE: UT4 Consolidated Draft Decision

Wiggins Island Rail Project ('WIRP') users welcome the opportunity to provide this submission to the Queensland Competition Authority ('QCA') in relation to the QCA's Consolidated Draft Decision ('2015 UT4 CDD') on Aurizon Network's ('AN's') 2014 Draft Access Undertaking ('2014DAU').

We confirm that this submission is sent on behalf of the following WIRP users: Washpool Coal Pty Ltd, Caledon Coal Pty Ltd, Wesfarmers Curragh Pty Ltd, Colton Coal Pty Ltd, Cockatoo Coal Pty Ltd, Yarrabee Coal Company Pty Ltd and Glencore Coal Assets Pty Ltd (collectively, 'WIRP User Group').

EXECUTIVE SUMMARY

The QCA's 2015 UT4 CDD amalgamates both WIRP specific and 2014DAU specific issues. This was not understood to be the intent of either process, as they were both stand-alone, separable and independent matters. As a result, the WIRP User Group is of the view that this unfavourable amalgamation has unfairly complicated the separate specific matters in both cases. On this basis, the WIRP Users find it difficult to isolate their comments directly to WIRP specific matters.

In light of the above the WIRP User Group is of the view that such an amalgamation of separate matters highlights a major process breakdown, and the inconsistent application of various principles being adopted by the QCA – compounding together to result in a considerable degree of regulatory uncertainty.

The below table sets out the key issues contained in this submission:

Issue	Applicability of 2010AU pricing principles
Summary	The WIRP User Group reiterates that the only pricing principles relevant to WIRP train services are those contained within the 2010AU. This is because the 2010AU pricing principles were the only pricing principles that were known, when construction of WIRP commenced and, therefore, were used by the WIRP User Group as the basis for deciding to commit to WIRP. At no point were the UT4 pricing principles (as currently proposed) considered or even anticipated, given the decision to commit to WIRP was made some 12 months prior to AN beginning to draft the UT4 2013DAU and or 18 months prior to its submission to the QCA.

Issue	Reference tariffs for WIRP train services
Summary	<p><u>2008 CRIMP:</u> The WIRP User Group confirms that the 2008 CRIMP endorsement of the WIRP scope remains entirely relevant to the allocation of Blackwater duplication costs to existing Blackwater users. The WIRP User Group does not agree with the QCA's view that in the two-year period following the 2008 CRIMP, "...circumstances and assumptions on which the 2008 CRIMP had been developed significantly changed." In fact, the WIRP User Group contends that succeeding iterations of the CRIMP after 2008, and AN's representations, supported the 2008 endorsed WIRP scope.</p> <p><u>WIRP costs and volumes:</u> The WIRP User Group believes that clear evidence has been provided in its September 2015 submission on the appropriate allocation of costs between new and existing users. Subsequent evidence in AN's Supply Chain Briefing Paper in January 2016 further supports the WIRP User Group's arguments for allocating costs to existing users. As with volume forecasts and capital expenditure claims, the WIRP User Group believes that, due to the complexity and intricacies of the evidence supplied in the September 2015 submission, the QCA should undertake an independent assessment of the technical information presented to it.</p> <p><u>WIRP commercial arrangements:</u> The WIRP User Group notes that the QCA refers to the WIRP commercial arrangements to support its allocation of a portion of the Wiggins Island balloon loop costs to existing, non-WIRP users. However, the WIRP User Group has serious concerns with the QCA's mindedness to utilise the commercially negotiated access conditions as, effectively, a pre-agreement of cost allocations between WIRP and non-WIRP existing users. In that regard, the WIRP User Group submits that:</p> <ul style="list-style-type: none"> • the non-WIRP existing users are not a party to the access conditions and, accordingly, the access conditions cannot be taken to be an agreement as to cost allocations between the WIRP users and the non-WIRP users; • the access conditions are a commercially negotiated arrangement in which concessions were made by the WIRP User Group to ensure WIRP would proceed; • if the WIRP User Group understood the access conditions would influence the QCA's decision on cost allocations, the WIRP User Group may not have reached the same outcome; and • the regulatory process in determining appropriate cost allocations should be conducted independently of the access conditions. <p>At no time during the commercial discussions was it, nor should it have been, contemplated that these arrangements could in any way inform a future regulatory process to determine cost allocations. The WIRP User Group is very concerned that the QCA having regard to the access conditions in determining the cost allocation, not only unfairly influences</p>

	<p>the regulatory process, but also has the strong likelihood for such allocations to be based on inputs which were intended for a completely different and unrelated purpose. In fact, the WIRP User Group argues that in this regard the QCA has gravely misunderstood the purpose of the WIRP commercial arrangements, and acted unreasonably in exercising its functions and powers under the Queensland Competition Authority Act 1997 ('QCA Act').</p>
Issue	Pricing principles
Summary	<p>Whilst seeking simplicity in reference tariff arrangements, the QCA is increasing the complexity of the expansion pricing framework. The WIRP User Group finds this approach highly incongruous, as the QCA supports its decision in both areas with reference to the same sections of the QCA Act (s.69E, s.138(2) and s.168A).</p> <p>The onus of proof for expansion customers and AN provides a disincentive to create potentially economically viable capacity; and in fact serves to restrict competition rather than enhance it by protecting existing customers from the perceived (rather than real) impact of new expansions.</p> <p>It is acknowledged that the QCA Act does not bind the QCA to previous decisions, however it is difficult to appreciate how a decision of a regulator within one period is not used to inform subsequent decisions. Without that, stakeholders operate within an environment void of certainty as there is no regulatory economic reference point. The WIRP User Group is of the view that the QCA should not create ambiguity by not respecting its previous decisions.</p>
Issue	Determination of Reference Tariffs
Summary	<p>The WIRP User Group believes thorough consultation should be undertaken prior to any substantive change to the regulatory framework governing the Central Queensland Coal Network ('CQCN'). Such consultation is one of the main purposes of Part 5 of the QCA Act.</p> <p>The QCA has indicated it is minded to not approve AN's proposed 2014DAU amendments to reference tariff pricing arrangements and defer any fundamental changes to UT5. The QCA has also indicated simplicity and effectiveness as motivations for delaying any substantive changes to reference tariff pricing arrangements, referring to s.69E, s.138(2) and s.168A of the QCA Act.</p> <p>However, as the AN undertaking has become more complex with each iteration the WIRP User Group queries the QCA's stance on why the UT5 process will be any better in dealing with AN's proposals for enhancements to reference tariff arrangements.</p>

	<p>The WIRP User Group is of the view that continuing to delay amendments to Access Undertakings by deferring to subsequent regulatory periods has the real potential to:</p> <ul style="list-style-type: none"> • enhance the complexity of an already convoluted regulatory process even further; and • promote the continuance of regulatory uncertainty with regard to tariffs, hampering investment project decisions.
Issue	Review of the QCA Act
Summary	<p>The WIRP User Group questions whether the QCA Act truly promotes the economic efficient operation of, use of and investment in the CQCN. This is especially true in promoting effective competition in upstream and downstream markets which employ, both directly and indirectly, significant parts of the Queensland work force.</p> <p>Consequently the WIRP User Group advocates for a complete revision of the QCA Act, particularly before the commencement of the reviews for UT5, with particular focus placed upon Part 5, s.69E.</p>

APPLICABILITY OF 2010AU PRICING PRINCIPLES

In regards to the applicability of the 2010AU pricing principles to WIRP train services, the QCA states that [emphasis added]:

*We acknowledge that the 2010 AU provisions were heavily relied upon by Aurizon Network and WIRP users in the lead-up to WIRP. Accordingly, **we accept that the pricing principles approved in the 2010 AU are influential when assessing the WIRP pricing arrangements presented by Aurizon Network in the context of the 2014 DAU. However, this does not necessarily imply that subclause 4.1.2 should be applied mechanistically to WIRP train services, particularly given our comments above that it is the 2014 DAU as proposed by Aurizon Network that we are considering, not the 2010 AU.***¹

The WIRP User Group reiterates that the only pricing principles relevant to the WIRP train services are those in the 2010AU.

The WIRP User Group reiterates these were the only pricing principles that were known or even contemplated when the WIRP User Group committed to the construction of WIRP. The 2010AU pricing principles were relied upon with the utmost degree of confidence that these would continue and were used by the WIRP User Group as the primary basis for its decision making purposes for the proposed regulatory pricing of WIRP. At no point were the 2014DAU pricing principles considered or indeed could be considered, as WIRP was committed to some 12 months prior to AN even beginning to draft its 2013 DAU, and a full 18 months prior to its submission to the QCA.

¹ QCA, 2015c, *Consolidated Draft Decision – Aurizon Network 2014 Draft Access Undertaking Volume 3 – Pricing & Tariffs*, pg. 147, December 2015, available at www.qca.org.au

The QCA has applied this same logic to short-term capacity transfers. Specifically, in deciding whether a short-term transfer fee should be payable throughout the remainder of the 2014DAU, the QCA states [emphasis added]:

*While the weight of our analysis would suggest that a transfer fee is appropriate in all circumstances, we acknowledge that a fee has not applied during the 2014 DAU period for short-term transfers and that to **apply a fee retrospectively during the 2014 DAU period would be complex and would not be in the interests of access holders who have made decisions to transfer on the basis of known arrangements.***²

The QCA's deviation from 2010AU pricing principles seriously threatens the continued expansion of the CQCN. The decision of the QCA to apply UT4 pricing principles to a 2010AU expansion will be taken into account for each future regulatory period, as being a significant factor for producers and financiers in making future investment decisions. At the very least, this approach by the QCA will create uncertainty for all investment decisions, decreasing investment stability within the CQCN.

Further discussion on pricing principles is located towards the end of this submission.

REFERENCE TARIFFS FOR WIRP TRAIN SERVICES

2008 CRIMP

The QCA states that it recognises [emphasis added]:

*...existing users of the Blackwater system endorsed the scope of seven mainline duplications as part of the 2008 CRIMP process. Nevertheless, in the two-year period following the 2008 CRIMP, circumstances and assumptions on which the 2008 CRIMP had been developed significantly changed. For example, **Aurizon Network amended the timing and number of Blackwater duplications required on numerous occasions and within various forums, based on the results of updated analysis and capacity modelling it had undertaken.***³

Whilst the WIRP User Group appreciates circumstances and assumptions have changed since those in 2008, there still remains the fact that elements that were endorsed within the 2008 CRIMP continue to be contained throughout subsequent CRIMP revisions. Particularly, when comparing what was agreed to via within the 2008 CRIMP and what was been altered since that time, the WIRP User Group submits that elements have remained relatively consistent through each iteration. This is outlined within Table 2 below.

² QCA, 2015b, *Consolidated Draft Decision – Aurizon Network 2014 Draft Access Undertaking Volume 2 – Capacity and expansions*, pg. 98, December 2015, available at www.qca.org.au

³ QCA, 2015c, pg. 135

Table 1 - Historical CRIMP Comparison

Element	2008 CRIMP (as endorsed)	2009 CRIMP	2010 CRIMP Stakeholder Forum	2010 CRIMP	QCA CDD Allocation
Duplication works required to meet Blackwater existing capacity	2 duplications	Minimum of 2 duplications	2 duplications (required for existing Blackwater contracts to meet RGTT expansion to 75 Mtpa) [#]	“Additional below rail investment required”	None
Duplication works required for WIRP (Stage 1)	5 duplications	Maximum of 5 duplications	3 duplications	3 duplications	7 duplications

[#]The WIRP User Group notes that an additional 6mtpa of below rail contracts (to 81Mtpa) at RGTT were entered into by AN without requiring specific capacity enhancements or duplications on the Blackwater mainline network.

The above table shows that the requirement for at least two duplications to meet existing Blackwater capacity remained consistent up until the 2010 CRIMP. This also aligns with the commencement of WIRP discussions and is one of the main reasons why WIRP users believed these duplications were required, i.e. to bridge the known “Performance Gap”.

On this basis, the WIRP User Group reiterates that these duplications were required to deliver the pre-WIRP contracted volume. If WIRP had not been committed so close in timing to the requirement to construct the additional 2 duplications, the WIRP User Group maintains that at least 2 of these duplications would have been constructed by AN regardless. These 2 duplications were previously endorsed through the CRIMP process and had the support of the existing Blackwater users at that time to ensure their contractual requirements were able to be achieved. This position remained consistent from 2008 up until the time they were included within the WIRP scope.

In its September 2015 submission, the WIRP User Group put forward a case showing the state of the existing Blackwater network prior to the construction of WIRP, which in our view was not sufficient to deliver the existing contracted capacity on a sustainable or reliable basis. This view is further supported by AN’s own 2010 Stakeholder Forum presentation as part of the 2010 CRIMP consultation (refer Annexure A, pages 11 and 18).

The presentation clearly states that a “Performance Gap” of approximately 10mtpa existed between forecast throughput and contracted volumes. This presentation also supports the WIRP User Group’s position on the decreasing robustness of the network which shows day of operations cancellations steadily increasing over the period 2004/5 to 2008/09. In the 2010 CRIMP, AN still considered that additional below rail investments were required, by way of 2 duplications, to sustainably meet the then existing contracted 75mtpa volume, i.e. ahead of AN further contracting the additional 6mtpa (with no enhancements) to the Blackwater mainline.

The WIRP User Group acknowledges that significant ambiguity has unfortunately stemmed from AN’s mismanagement of the CRIMP process, in turn muddying the waters as to what duplications

should or should not be required for existing train services and WIRP. In addition, the December 2010 Gladstone Coal Exporters Executive ('GCEE') correspondence supports the view that the duplications were required for the existing train services, whereas opponents conversely claim that the December 2010 GCEE correspondence supports their own views. The only fact that seems clear is that ambiguity has bred further ambiguity.

Therefore, whilst the WIRP User Group appreciates that customer endorsement was not provided within subsequent versions of the CRIMP post 2008, or that existing Blackwater customers were not provided with an opportunity to endorse various changes to scope in the two years following the 2008 CRIMP, the 2008 CRIMP vote should remain determinative for elements voted upon within that 2008 CRIMP process to the extent that those elements continued to exist throughout subsequent variations.

In respect of the WIRP duplications, it is clear that no non-WIRP user can avoid using the infrastructure as it is incapable of being practically separated from the network.

The WIRP User Group reiterates that those elements – particularly the duplications associated with WIRP – that were originally endorsed should be allocated to existing Blackwater customers as intended. Furthermore, the WIRP User Group advocates that this stance would not contravene the provisions of either s.69E or s.138(2) of the QCA Act.

If the QCA continues to remain steadfast in its position that subsequent changes have effectively negated the 2008 CRIMP process, as well as stating that such views do not conflict with the Aurizon Network's legitimate business interests as AN can still recover the efficient costs in providing the infrastructure from other users, the WIRP User Group contends that such a position does not fully address the relevant aspects of the QCA Act. The application of these sections extends further than just the legitimate business interests of AN, as both s.138 and s.168A also should allow for the efficient allocation of costs to all relevant access holders and access seekers who utilise the relevant infrastructure.

WIRP Access Conditions

The WIRP User Group continues to maintain that the WIRP Deeds between each of the constituents of the WIRP User Group and AN are commercial agreements designed to provide AN with an additional return, over and above the WACC, in consideration for incentives linked to the overall delivery of the project.

Even though the WIRP User Group agrees with 2015 UT4 CDD 18.2, it does not agree with the apparent inconsistency in approach that the QCA has applied when considering the relevancy of the WIRP scope and allocation of costs to the WIRP User Group.

Specifically, in chapter 18.1 of the 2015 UT4 CDD, the QCA has stated that the 2008 CRIMP wasn't a determinative factor – even though it was supported by the customer endorsement process. However, the QCA considered that the commercial-based WIRP Deeds were relevant, even though both the CRIMP and WIRP Deeds require stakeholder or customer approval respectively.

It has been argued by the QCA that assumptions and economic circumstances have changed since the execution of the WIRP Deeds. To this point the WIRP User Group is pragmatic and recognises that elements of the WIRP Deeds still remain in effect. Nonetheless, the WIRP User Group raises concerns on how the QCA can disregard one process yet utilise another in its line of argument(s).

Finally, the WIRP User Group has serious concerns that any reference is made to the commercial arrangements that form the access conditions as:

- the non-WIRP existing users are not a party to the access conditions and, accordingly, the access conditions cannot be taken to be an agreement as to cost allocations between the WIRP users and the non-WIRP users;
- although the non-WIRP users were entitled to comment on the access conditions as part of their approval by the QCA, the non-WIRP users were not consulted during the negotiation of the arrangements on any element;
- the access conditions are a commercially negotiated arrangement in which numerous concessions were made by the WIRP User Group to ensure WIRP would proceed;
- if the WIRP User Group understood the access conditions would influence the QCA's decision on cost allocations, the WIRP User Group may not have reached the same outcome in negotiating the access conditions;
- the regulatory process in determining appropriate cost allocations should be conducted independently of the access conditions; and
- at no time during the commercial discussions was it, nor should it have been, reasonably contemplated that these arrangements could in any way inform a future regulatory process to determine cost allocations.

WIRP costs and volumes

The QCA stated in the 2015 WIRP Supplementary Draft Decision ('2015 WIRP SDD') that apportionment of expansion costs to existing non-WIRP users may be appropriate if there are clear benefits to existing users based upon evidence provided.

To address much of the ambiguity created by AN's historic inability to provide robust and transparent capacity modelling, the QCA also extended an invitation to stakeholders – including AN – to provide evidence to assist the QCA in determining a suitable allocation of costs between non-WIRP and WIRP users.

Consequently recognising the benefits that detailed, fact-driven evidence would provide, the WIRP User Group firstly consulted with the QCA and then undertook its own detailed, fact-based analysis so as to ascertain whether such benefits have been or could be provided via the construction of duplications and/or enhancements. For instance, in relation to the Blackwater duplications associated with WIRP, the WIRP User Group commissioned experts:

to quantify whether the Blackwater asset duplications do provide benefits to existing customers. Specifically, answers to three main questions were sought including:

- 1Q. *Could the existing users of the Blackwater system be reasonably able to receive operational and/or capacity benefits from the construction of any duplications attributable to the WIRP?*
- 2Q. *What quantum of operational and/or capacity benefits could the existing users of the Blackwater system reasonably expect to receive from the construction of the capital costs attributable to the WIRP?*
- 3Q. *In the absence of WICET, would these benefits have been required by the existing users of the Blackwater system so that tonnages railed since completion of the enhancements continue to be attained with the same level of confidence?⁴*

The WIRP User Group provides this information to the QCA so as to address many of the concerns historically raised by non-WIRP users, such as the limited transparency into the underlying assumptions used by AN in determining the proposed allocation of assets; the lack of clear, reliable evidence; and the inability to assess the overall reasonableness of the proposed allocations.⁵

Presented as a substantial part of its September 2015 submission, the analysis consisted of dynamic capacity based simulation modelling and a comprehensive review of both WIRP scope and cost allocations.

A considerable amount of work was undertaken by experts at significant expense so as to determine whether such benefits have materialised for existing, non-WIRP Users and based upon such evidence – which the WIRP User Group firmly believes is the most comprehensive to date – the WIRP User Group September 2015 submission indicated that:

- a. *Below Rail Transit Times ('BRTT') are significantly improved in both the minimum WIRP (5 duplications) and the full WIRP scope of seven (7) duplications, thus highlighting the benefits of system robustness. This is supported by the increase in available train paths created from this scope, providing higher recovery from unplanned outages and system losses;*
- b. *With a fully duplicated Blackwater system, delivery of track maintenance is less intrusive on supply chain operations as there is a reduction in full system closures;*
- c. *Modelling of the pre-WIRP scenario that includes the 5Mtpa access queue at that time demonstrates benefits to the system in fulfilling an identified 2Mtpa throughput gap.⁶*

The analysis provided that approximately \$149m and \$15m could prudently be allocated to existing users within the Blackwater and Moura system respectively.

Whilst it was not anticipated at the time, AN subsequently released a Supply Chain Briefing Paper in January 2016 (Refer Annexure B). The paper outlined the benefits of the network infrastructure associated with WIRP. Relevant extracts are provided below:

⁴ WIRP User Group, 2015, *WIRP Users: Submission to the QCA – Response to QCA's Supplementary Draft Decision: Reference Tariffs for Wiggins Island Rail Project*, pg. 3, September 2015, available at www.qca.org.au

⁵ WIRP User Group, 2015, pg. 50

⁶ WIRP User Group, 2015, pg. 3

15 and 20 minute pathing

The new infrastructure commissioned through WIRP changes how trains run and reduced the time taken for train crossing. This enables empty coal services to now be scheduled at 15 minute intervals ex Callemondah and loaded coal services to be scheduled at 20 minute intervals ex Bluff.

A significant increase of up to 50% in network paths will be available for planning coal services and asset activity. Congestion within Callemondah and Bluff currently experienced due to 30 minute departure intervals will be reduced. Increasing pathing availability will also provide operators with the opportunity to reduce dwells in yards and in turn translate to a reduction in cycle times. These improvements provide benefits in both high demand as well as cost efficiency driven markets.

Reduction of 30 minutes from cycle time for loaded services

Sustained actual train performance data supports a 30 minute reduction in the schedule trunk path time for loaded coal services. This scheduling change is expected to take effect on 18 January 2016.

This adds to the previously implemented 15 minute reduction to schedule cycle time in Blackwater after the Dingo-Bluff duplications were commissioned.⁷

The WIRP User Group appreciates that the briefing paper was provided to stakeholders after the release of the 2015 UT4 CDD. However as it has now been released, the WIRP User Group believes such evidence adds further confirmation of benefits to existing users, as well as providing unequivocal support of the analysis provided in the September 2015 WIRP User Group submission.

Yet in assessing the evidence provided by the WIRP User Group in the September 2015 submission, the QCA stated within the 2015 UT4 CDD that:

Nevertheless, in its current form, we consider the WIRP users' capacity modelling analysis to be incomplete and inconclusive. Accordingly, we do not consider this analysis provides sufficient evidence to justify the allocation of the costs of the Blackwater duplications to the existing users.

We do not consider that the modelling results provided in WIRP users' submission are sufficiently developed to seek independent expert advice on the validity of the modelling outcomes.⁸

To be clear, the WIRP User Group completely disagrees with the QCA's stance.

⁷ AN, 2016, *Aurizon Network Supply Chain Briefing*, January 2016

⁸ QCA, 2015c, pg. 161

In its September 2015 submission the WIRP User Group provided substantive evidence of the benefits that are associated with the WIRP segments to both existing and new users. Yet even when combined with the additional evidence provided by AN, the QCA continued its stance regarding WIRP costs, stating that:

...there is no clear evidence that existing users have been behaving unreasonably in refusing to pay a proportion of the WIRP costs.⁹

The QCA has applied similar terminology in other areas surrounding the evidence on WIRP. However the WIRP User Group contends that clear evidence has been provided on a number of occasions, indicating that it is entirely appropriate, fair and efficient to allocate a greater quantum of costs to existing non-WIRP users.

The WIRP User Group therefore requests the QCA to indicate how such evidence has not been clear, further than that provided in Table 81 of Volume 3 of the 2015 UT4 CDD. Clear evidence' within legal and regulatory frameworks means that evidence supplied is substantially more probable to be true than not.

The WIRP User Group believes the evidence is clear even on this basis, with extensive analysis supplied which sets out the benefits that can and are being derived by existing users. The recent AN Supply Chain Briefing paper confirms this. Therefore the only question that could remain is the quantum of such benefits. However the WIRP User Group has also addressed this question, with comprehensive analysis to demonstrate that approximately \$149m and \$15m could prudently be allocated to existing users within the Blackwater and Moura system respectively.

When all the evidence is combined and presented, the WIRP User Group queries the QCA at what point does the evidence supplied become clear to the regulator – short of conducting a judicial review? That evidence includes the 2010 AN Stakeholder Forum presentation which acknowledges a “Performance Gap” already pre-existing in the Blackwater system therefore requiring at least two duplications; via the September 2015 submission; and the January 2016 AN Supply Chain Briefing.

Whilst the WIRP User Group understands that evidence must be clear and not contradictory, the WIRP User Group is not aware, and has not been made aware by the QCA, of any evidence that clearly indicates existing non-WIRP users have not or do not benefit from the duplications works undertaken or associated with WIRP.

Yet even if the QCA was able to apply the ‘clear evidence’ test against the analysis provided, the WIRP User Group questions the QCA’s ability to interpret such evidence. In particular, the WIRP User Group questions whether the QCA retains the in-house abilities to understand the intricacies associated with dynamic capacity based simulation modelling. Particularly, dynamic capacity based simulation modelling is simply not driven by spread-sheeting applications that contain a series of inputs and outputs. Rather, dynamic capacity based simulation modelling is highly technical and complex in nature, where the work is derived from significant industry experience and technical

⁹ QCA, 2015c, pg. 159

knowledge by professionals historically and directly involved with WIRP. As detailed within the September 2015 submission:

Capacity analysis and simulation modelling are highly effective means of establishing a baseline capability of a rail system and/or a supply chain.

Effective capacity modelling is a two staged approach, the first being a static or theoretical analysis of the system to establish an indicative view of the capability of the system. From this static analysis a reasonable baseline understanding of system performance and where constraints might exist can be gained and guide further detailed assessment. The second stage of the process is a more detailed analysis through the use of a discrete event capacity simulation model. Both techniques have been used in this case.

Discrete event simulation models have the capability to apply as static inputs or statistical distributions, variable events, conditions or performance data that occur within a dynamic supply chain or operation. This type of modelling allows a reasonable approximation of “real world” conditions to be applied to the scenario producing a more robust system view than the static analysis. Comparison of the two outcomes is useful in quickly validating the performance of the simulation model from which a reasonably accurate view of baseline system performance can be established.

From this baseline, both the positive and negative impacts resulting from incremental changes to elements of the system, such as volume increases, can be established and the level of system enhancements requiring capital investment by the system users can be identified.¹⁰

The expertise and knowledge required to perform such work is not commonplace. In fact, the WIRP User Group understands that the industry experts engaged by them collectively have over 100 years of combined industry experience. It is for these reasons that the QCA requested a meeting with the WIRP User Group representatives and its subject matter experts subsequent to the submission, so as to help it understand the complexities involved with the works presented.

By way of example of such inconsistencies in approach, the QCA retains Energy Economics to assess the validity and reasonableness of volume forecasts supplied to it on a regular basis. This is entirely valid as volumes are contentious and retain their own set of complexities that reflect the underlying intricacies of the CQCN. The same can be said in retaining for CMT Solutions to review AN’s capital expenditure claim.

Equally, the development of WIRP has created its own set of complexities for both existing and new users. Accordingly, it strikes the WIRP User Group as more than troubling that the QCA has decided to not undertake an independent assessment of the technical information presented to it by the WIRP User Group.

¹⁰ WIRP User Group, 2015, pg. 10

Apart from high level commentary and wide-ranging statements as per Table 81 within Volume 3 of the 2015 UT4 CDD, the QCA has not provided a detailed or well supported evidence based assessment of the analysis provided by the WIRP User Group. Also, the QCA has not presented clear rationale of why the existing non-WIRP users would not benefit from the WIRP duplications and enhancements, even though strong evidence shows that there was previously clear intentions to build at least two duplications, and for existing non-WIRP users to benefit from such duplications post construction.

As a consequence of these matters, the WIRP User Group seriously questions whether the QCA has afforded the WIRP User Group with procedural fairness and natural justice. Simply consulting is not sufficient. The QCA must analyse (with the appropriate level of skill) the information provided.

Further, the WIRP User Group queries why the QCA has commented on the slight divergence between AN's and the WIRP User Group's derived benefits that WIRP delivers to existing non-WIRP users. The WIRP User Group wonders if more questions would be asked if total agreement on the benefits were delivered to the QCA and the WIRP regulatory process by two independent parties, each conducting their own analysis. Given information asymmetry surrounding capacity based modelling, the WIRP User Group also believes this issue to be fairly self-explanatory to the QCA and a major reason why the analysis has been undertaken. In addition, the 2015 Submission highlighted such differences:

AN have developed their capacity simulation model over circa 15 years with continual improvement to the operating logic. It is inevitable that there will be subtleties and specifics of the operating logic not available to the modeller in this instance that will produce different values of the outcomes of scenarios, for example a BRTT value. Given this, the direct comparison of outputs between this exercise and the finalisation of WIRP scope by AN is neither practical nor required.¹¹

If the QCA truly believes that it does not have sufficient information to make its decision, the WIRP User Group would have assumed that the QCA identify what information it had been presented with; what information is missing; request any further and or missing information from AN or the WIRP users; then once obtained (or not), provide all such information to an independent expert to provide a technical based assessment of whether benefits do exist for existing non-WIRP users.

The WIRP User Group also finds it deeply troubling that the QCA considers that a portion of the Wiggins Island balloon loop costs only be allocated to existing, non-WIRP users. As stated in both the WIRP SDD and also the 2015 UT4 CDD, the QCA believes that a proportion of this WIRP segment reflects the expected use of such infrastructure by the existing Blackwater train services as reflected in the WIRP commercial arrangements.

The WIRP User Group notes that the QCA references the WIRP commercial arrangements in support of such views. For instance, in assigning a proportion of the balloon loop costs to the existing non-WIRP users in Blackwater, the QCA considered that:

¹¹ WIRP User Group, 2015, pg. 11

...the agreement to access conditions provides clear evidence that the existing train service derives benefits associated with this expansion and is willing to pay for them.¹²

Therefore if such usage is reflected, the WIRP User Group queries why the same approach cannot be utilised for the allocation of duplication and enhancement costs. The current approach being taken by the QCA implies that the QCA is cherry picking arguments from within commercial arrangements to substantiate its views, not fully appreciating the underlying issues involved in this complex environment.

In this regard, the WIRP User Group has serious concerns with the QCA's utilisation of the commercially negotiated access conditions as effectively, a pre-agreement of cost allocations between WIRP and non-WIRP existing users. The agreed regulatory process in determining appropriate cost allocations should be conducted independently of the access conditions as a distinct and separate process. At no time during the commercial discussions was it, nor should it have been, contemplated that these arrangements could in any way inform a future regulatory process to determine cost allocations.

By having regard to the access conditions in determining the cost allocations, the WIRP User Group is very concerned that such an approach, not only unfairly influences the regulatory process, but also has the strong likelihood for such allocations to be based on inputs which were intended for a completely different and unrelated purpose. In fact, the WIRP User Group argues that in this regard the QCA have gravely misunderstood the purpose of the WIRP commercial arrangements, acting unreasonably in exercising its functions and powers under the QCA Act.

The QCA further states within its 2015 UT4 CDD that:

WIRP users later submitted an addendum to clarify certain matters in its original submission on our WIRP draft decision. As part of this addendum, WIRP users provided new information to demonstrate the difference in dynamic capacity modelling results between 'without closures' and 'with closures' scenarios.¹³

It should be noted that no new information was presented within the addendum to the QCA. Rather, the addendum was submitted to the QCA at its request, clarifying what was presented within the September 2015 submission. The WIRP User Group therefore seeks a correction to this incorrect statement by the QCA.

Altogether the WIRP User Group is seriously concerned that due to the subdued nature of current market conditions, the QCA has simply assigned the regulation of WIRP into the 'too-hard' basket, delaying a more certain resolution to the WIRP issue well into the next regulatory period.

When combined with the above concerns, the WIRP User Group does not consider in any way the QCA stance to be an effective interpretation and application of the QCA Act, nor does it promote

¹² QCA, 2015c, pg. 164

¹³ QCA, 2015c, pg. 159

infrastructure investment as required by s.69E or s.138(2)(a) of the QCA Act, nor appropriately considers the interests of both existing and expanding users as required by s.138(2)(e) and (h) the QCA Act.

There are fundamental flaws in how the QCA has applied and is interpreting sections of the QCA Act, resulting in the inefficient regulation of the CQCN that affects all users, be they new or existing. Specifically, the WIRP User Group are being allocated a greater proportion of costs, due to AN's inability to provide clear evidence to the existing users of the benefits they are receiving and will receive from the works undertaken as part of the WIRP.

The WIRP User Group questions why they should be carrying the onus of proof and be effectively penalised as a result of AN failing to act in a prudent way in managing its assets.

It could be argued that the QCA's position leads to a sufficiently harsh outcome so as to prevent competition on the network rather than enhance it, infringing upon the intention of Part 5.

Assessment of WIRP pricing options

In the 2013 Discussion Paper titled *Capacity Expansion and Access Pricing for Rail and Ports*, the QCA indicates that existing users should not experience a material increase in tariffs due to an expansion triggered by access seekers.

QCA analysis within both the 2015 WIRP SDD and 2015 UT4 CDD indicates an increase in the existing reference tariffs once elements of WIRP are socialised into the Blackwater and Moura Regulated Asset Bases ('RAB's). Consequently, the QCA states that these results provide a strong argument against pure socialisation.

The WIRP User Group strongly disagrees with this.

Particularly, in relation to materiality, no strong argument against socialisation has been provided by the QCA analysis. None of the QCA modelled tariff differentials could be considered material. All of the QCA modelled tariff differentials are below the 4.5% revenue smoothing factor utilised by Aurizon Network, previously approved by the QCA for the 2010AU and further proposed within the 2015DAU. The QCA has used the same revenue smoothing factor in its WIRP allowable revenue assessment. As such, if the QCA believes percentage differentials of less than 4.3%¹⁴ are to be considered a strong argument against socialisation, it appears the QCA would be unable to apply a quantum of 4.5% within its own analysis.

PRICING PRINCIPLES

Expansion pricing

At the same time as seeking to decrease perceived complexity of the reference tariffs (although the review is delayed until the next regulatory period) and simplify the capital expenditure process, the

¹⁴ QCA, 2015c, pg. 191

QCA has taken a contradictory stance with regards to the expansion pricing framework, seeking to impose a more complex and multifaceted approval framework.

For instance, in relation to AN's proposed amendments to the pricing arrangements the QCA undertakes a detailed analysis of the QCA Act and focuses upon sections which it believes bear particular relevance. Part of this commentary refers to s.138(2)(d) – Public Interest [emphasis added]:

*We consider it in the public interest that **pricing arrangements are reflective of costs, stable and transparent. If pricing arrangements are unclear, volatile or provide inappropriate signals, investors may be unwilling to invest in the coal mining sector due to uncertainty regarding future cash flows and their ability to generate sufficient return to compensate for the associated greater level of risk.***

*We consider that the **public interest will be served by cost-reflective, stable and transparent pricing arrangements which support the continued efficiency and competitiveness of Queensland's coal industry.***¹⁵

Further commentary reflects upon s.138(2)(e) – Interest of access seekers and access holders [emphasis added]:

*We consider it in the access seekers' interest for **pricing principles to be transparent, fair and certain. Such a framework will inspire confidence in the users of the system. Access seekers need to be confident that they can compete on a level playing field with entities that are related to Aurizon Network. Access seekers' interests are served by pricing arrangements where any unwarranted impacts on customers in terms of risk, cost and take-or-pay effects is minimised.***¹⁶

And additional observation is made with regards to s.138(2)(h) [emphasis added]:

- ***need for transparency and predictability—the pricing arrangements should be transparent, simple and predictable to ensure all stakeholders understand how costs are allocated and access charges derived. Stability and predictability are likely to promote confidence in the regulatory arrangements and economic efficiency by reducing uncertainty associated with long-term investment decisions***
- *market conditions—as the CQCN continues to face globally competitive conditions, a balance has to be struck between preserving individual stakeholders' business interests and promoting the public interest (i.e., ensuring the CQCN's medium- to long-term competitive position in global coal markets).*¹⁷

In light of the above, the QCA seems committed to ensuring transparency, simplicity and predictability remain paramount for all stakeholders of the CQCN.

¹⁵ QCA, 2015c, pg. 3

¹⁶ QCA, 2015c, pg. 3

¹⁷ QCA, 2015c, pg. 5

Accordingly, the WIRP User Group finds the QCA's stated position on pricing principles for the 2014DAU and WIRP to be highly incongruous. The QCA believes it finds its stance consistent with the application of s.138(2)(d), (e) and (h) of the QCA Act, whilst conversely, the QCA believes that increasing the complexity of the expansion pricing framework does not contravene the same provisions.

The WIRP User Group argues this is a further example of the QCA's misapplication of the QCA Act to arrive at contradictory outcomes.

With regards to the expansion pricing framework, AN stated in its 2014DAU that the structure is built upon four key foundation principles, being that:

- 1. The user(s) requiring the expansion should generally pay an access charge that reflects at least the full incremental costs (capital and operating) of providing additional capacity.*
- 2. If new/expanding users face a higher cost than existing users, a zero contribution to common costs from expanding users is generally acceptable.*
- 3. An allocation of expansion costs to existing users may be appropriate where an expansion has clear benefits to those users.*
- 4. Existing users should not experience a material increase in tariffs due to an expansion triggered by access seekers.*

The QCA has indicated it believes the onus is upon Aurizon Network and expansion users to demonstrate that clear benefits to existing users are incorporated with the expansion, in order to justify allocation of expansion costs to existing users. Whilst the WIRP User Group has previously indicated that it understands why the onus should be with AN and expansion users, current evidence – by way of example of the WIRP SDD process – has indicated that reality is far more complicated.

For this reason the WIRP User Group believes the QCA has erred in respect to this point. If an expansion is deemed prudent and incorporated into the CQCN, it should be the role of the QCA to ensure the objective of Part 5 is applied. Specifically, the QCA should be able to request and assess information from all stakeholders impartially, otherwise the use of and investment in expansion infrastructure would not be economically efficient, nor truly promote effective competition in upstream and downstream markets.

The onus should therefore be upon all users, not just those of expansion users, to provide evidence of the benefits, or lack of benefit. As way of example, as per the AN 2010 CRIMP Stakeholder Forum paper, at least two duplications of WIRP were required to plug a "Performance Gap" already identified within the Blackwater system. AN and the existing users should now have the onus to prove those duplications were not required.

That is, the onus should fall onto AN, and existing users, to show that a system does not require upgrades prior to undertaking the expansion itself. While this argument may seem incongruent, it reflects the practical reality of networks that are depreciating assets where capacity shortfalls creep up slowly and are not reflected in models.

In the spirit of the fourth AN principle above, the QCA has indicated on numerous occasions in both the 2014 UT4 IDD and 2015 UT4 CDD that “...existing users should not be exposed to material increases”, or be “...materially negatively impacted”. As noted earlier, at no time has the QCA quantified a materiality threshold.

Obviously materiality thresholds are a critical analysis tool in the decision making process of all stakeholders. Depending upon the underlying asset, intent or element, materiality thresholds can vary. For instance, 2010AU endorses a financial materiality threshold amount of \$1m in additional incremental costs when assessing impacts of Force Majeure events. Threshold applicability to reference tariffs is different, even though AN’s August 2014 drafting of the 2014DAU also specified a materiality threshold quantum also of 5%.

Of note, the QCA IDD refused to accept AN’s proposed 5% materiality threshold within the socialisation test, believing that the threshold was arbitrary, stating that:

...it may be preferable to allow for some level of judgement to be applied in assessing the need for a new expansion tariff.¹⁸

But the WIRP User Group is concerned that the QCA is now applying a subjective judgement without consultation with industry.

Whilst slightly different in application, both Aurizon Network and the QCA have utilised a revenue smoothing factor of 4.5% to lessen tariff volatility throughout a regulatory period. The WIRP User Group concurs with the QCA that to be consistent with Part 5 of the QCA Act, users of the CQCN should be able to rely upon relatively stable access charges to reduce uncertainty, but cannot understand why the QCA has not established a materiality threshold for tariffs for users to reference to assist in establishing certainty.

The WIRP User Group assumes this is why Aurizon Network chose a threshold that closely aligns to the revenue smoothing factor and is commonly accepted in practice. However, without the QCA endorsing an AN materiality threshold quantum, nor providing one of its own, the WIRP User Group questions how certainty and stability can be provided in determining “material increases” or “materially negatively impacted”. Therefore the WIRP User Group believes the QCA has created unnecessary subjectivity and creativity around what is material and immaterial.

That the QCA has not settled on a quantum for the materiality threshold, combined with the QCA’s position that tariffs should not increase materially following an expansion, the QCA has introduced significant uncertainty but provided no reasonable basis for existing, expanding and/or new users of the consequences of expansions upon tariffs. The QCA states it considers that a meaningful materiality threshold:

...is best dealt with on a case-by-case basis and recognise that the onus should be on the expanding users and Aurizon Network to justify the merit of socialisation.

¹⁸ QCA, 2015c, pg. 57

The QCA seems to assume an absence of information asymmetry, an issue that was clearly evident within the WIRP SDD process as well as this CDD. It is therefore the belief of the WIRP User Group that, given such information asymmetry, the QCA must assist all users in obtaining the relevant information so that informed and fair objective arguments can be made and substantiated. Until this is provided, the objective of Part 5 of the QCA Act will not be achieved.

The process for approval of expansion pricing framework

The WIRP User Group agrees that all future expansion pricing frameworks should be submitted in conjunction with concluded feasibility reports associated with the project(s). Further, the WIRP User Group also agrees that following regulatory approval of a pricing framework, a DAAU also be submitted for the approval of any newly proposed and/or varied reference tariffs. The primary driver for such support is the complexities currently being encountered by the WIRP users, non-WIRP users, Aurizon Network and the QCA during the WIRP SDD process.

Enhanced availability of information earlier in the process would have ascertained – if not diluted – many of the issues to which stakeholders are now being exposed to. The WIRP User Group is of the strong view that because of such issues, the QCA Act will potentially be applied incorrectly to the regulatory treatment of WIRP, resulting in WIRP and non-WIRP users being treated unfairly.

The process for establishing expansion pricing arrangements

In the 2015 UT4 CDD, the QCA stated its intention to implement a revised multifaceted process:

Given the limitations of applying a mechanistic pricing approach, and drawing from stakeholder submissions, we consider that the process for establishing the expansion pricing approach should be made sufficiently flexible to be able to account for expansion specific characteristics...

...Given that a consensus pricing approach may not always result in an optimal outcome (or may result in delay), a requirement for Aurizon Network to always achieve a consensus for establishing expansion prices may lead to efficient expansions not being undertaken or being delayed. This is inconsistent with the object of Part 5 of the QCA Act and is not in the interests of expanding users...

...We therefore consider that, in cases where Aurizon Network is unable to achieve a consensus within the specified time (or QCA agrees that a consensus cannot be achieved), then Aurizon Network is able to propose a pricing approach that does not require expansion stakeholders to reach a consensus. This could either take the form of an outcome based on a pre-determined 'mechanistic' methodology that is applied to the expansion (i.e., an endorsed pricing approach) or an outcome that is a bespoke solution to the particular expansion (i.e., a customised pricing approach)...¹⁹

¹⁹ QCA, 2015c, pg. 44

However the WIRP User Group does not agree with the revised multifaceted process proposed by the QCA in place of AN's mechanistic pricing approach. Under the three options now being proposed, the WIRP User Group believes additional complexity and uncertainty would be introduced for all future expansions, especially if no unanimity could be reached through the QCA's preferred option, the consensus pricing approach.

Whilst no approach is without its disadvantages, the mechanistic pricing approach proposed by AN was simple enough to allow users to digest its implications, especially if users were able to identify and source information so as to determine the impact of an expansion upon existing tariffs or newly proposed tariffs. With a fair amount of certainty, users – be they existing or new – could roughly determine the impact of an expansion on their circumstances.

But no certainty of outcome exists with the options proposed by the QCA, especially with the consensus pricing approach. What strikes the WIRP User Group even more is the boldness of the QCA to highlight perceived incentives, referred to as 'Incentive to reach consensus'. Specifically:

...if a consensus cannot be reached between existing and expanding users we will need to consider whether to approve a customised pricing approach or whether to reject the approach and require amendments. The customised pricing approach, or our subsequent proposed amendments, may result in an outcome which is less desirable, for either the expanding users or existing users, than if the users had reached consensus.²⁰

The QCA argues that the rationale for the introduction of the multifaceted process is that:

...for expansions with substitutable train services, a mechanistic approaches does not provide an appropriate level of assurance to existing users that they will not be adversely affected by higher access charges due to the expansion.²¹

Yet rather than introduce additional processes to handle issues such as substitutability, the WIRP User Group queries why the QCA cannot address the substitutability issue directly, working collaboratively with industry via commercial, regulatory mechanisms and/or a combination thereof.

If the consensus pricing approach is applied by all stakeholders, the probability of consensus being reached by all users would – in our view be remote. To even get to this milestone would take considerable deliberation and time. If no agreeable outcome was achieved, to apply a second approach would seem to add considerable time to an already cumbersome and elongated process. All stakeholders would have consumed valuable human and financial resources only to start again.

The WIRP User Group is also concerned with the QCA's view of a fixed-cost take-or-pay approach and not allowing socialisation with existing users. As detailed in Volume 3, the QCA states:

...we consider that a fixed cost take-or-pay approach, based on contracted volumes, remains appropriate for the endorsed expansion pricing approach.

²⁰ QCA, 2015c, pg. 48

²¹ QCA, 2015c, pg. 48

We consider that implementing a fixed cost take-or-pay arrangement makes expanding users bear the costs and risk associated with an expansion, and each user within the expanding group pays its allocated costs. For expansions that involve more than one expanding user, it is likely that the users will have different ramp-up profiles. We consider it is likely to be in the interests of access seekers (within the expanding group) to have a fixed cost take-or-pay arrangement so that any particular expanding user will not bear the volume risks associated with other users' production ramp-up. We consider that a fixed cost take-or-pay arrangement may also assist with socialisation between expanding users, where production ramp-up could otherwise be a barrier. Furthermore, we consider that a fixed cost take-or-pay arrangement allocates risks and costs associated with an expansion in accordance with our expansion pricing principles. As such, we consider our proposed approach is consistent with section 138(2) of the QCA Act and the object of Part 5 of the QCA Act.²²

The proposed fixed-cost take-or-pay approach by the QCA is a more rigorous version of the current take-or-pay arrangements which includes features such as the AT2 to AT4 tariffs as well AT5 if an expansion involves electric infrastructure, all based on contracted volumes; a take-or-pay trigger applied on an individual user level rather than a system level; and no adjustments from capping mechanisms.²³ Based upon this, the QCA further states:

Given that the take-or-pay arrangements for expanding users will be different to those of existing users, we do not consider that it is appropriate to socialise expansions with the existing system. Under the fixed cost take-or-pay arrangement, existing users' reference tariffs and take-or-pay arrangements are based on forecast volumes, whereas expanding users' reference tariffs and take-or-pay arrangements are based on contracted volumes.²⁴

Such a stance is of the highest concern to the WIRP User Group. Specifically, an approach that quarantines expansions from an existing system without assessing the circumstances of the expansion and how the expansion could potentially benefit an existing system does not promote the objective of Part 5, nor s.138(2), nor respect the legislative and regulatory obligation of 'natural justice'. In turn, the WIRP User Group believes this stance fails to provide a true, objective and impartial application of the QCA Act for all stakeholders of the CQC.

Contrary to this and as a further example of the troubling and obscure nature of the QCA Act, the QCA also believes its multifaceted mechanism to fulfil the objects of Part 5 are consistent with s.138(2), even though when assessing the mechanistic expansion pricing approach as proposed by AN within the 2014DAU, the QCA does not believe the same provisions apply to AN.

Regard to prior decisions

In response to the QCA's 2014 Initial Draft Decision ('2014 UT4 IDD') stakeholders argued for regulatory certainty and, whilst the WIRP User Group appreciate that the QCA Act does not bind the

²² QCA, 2015c, pg. 60

²³ QCA, 2015c, pg. 51

²⁴ QCA, 2015c, pg. 60

QCA to previous decisions²⁵, it is difficult to appreciate how a decision of a regulator within one period is not used to inform subsequent decisions. Without that, stakeholders operate within an environment void of certainty as there is no regulatory economic reference point.

The economic regulation of Queensland – particularly the CQC – should be regulated and operated within an environment that balances the need for stability, uniformity and predictability with that of fair-mindedness, flexibility and rationale decision making. While the WIRP User Group respects the position of the QCA in relation to its previous decisions under the QCA Act, the QCA should also look to not create ambiguity by not respecting its previous decisions.

Exceptions can occur where regulatory frameworks are revised, economic conditions change and/or more accurate data can alter previous decisions, but this usually arises only where circumstances are significantly different to those when the previous decision was made.

By way of example, the WIRP User Group recognises that the QCA has indicated that no short-term transfer fee apply within the UT4 period as:

*...access holders have made decisions to transfer on the basis of known arrangements.*²⁶

The same can be said for decisions made by WIRP users in relation to the applicability of 2010AU pricing principles when considering the WIRP expansion throughout the 2010AU regulatory period, or alternatively, that of GAPE and UT2 pricing principles.

DETERMINATION OF REFERENCE TARIFFS

The QCA has refused to accept AN's proposed reference tariff arrangements, recommending AN undertake the following alterations to its 2014DAU for approval:

- remove the proposed rebalancing of the tariff structure and modify the adjustments that were made to address the impact of the increase in AT2 tariffs;
- modify tariffs based upon the appropriate allocation of pricing principles;
- modify selected general reference train service characteristics;
- modify selected reference cap adjustments; and
- limit review events to events that are not foreseeable and not within the control of AN.

Rather than incorporate perceived additional complexity into the CQC reference tariffs as submitted by AN within the 2014DAU, the QCA proposes to defer any material changes to 2010AU pricing structures during UT4 to a customer consultation process as part of the next regulatory review process so as to assess and where suitable, apply substantial changes. The QCA stated that it regarded:

²⁵ QCA, 2015c, pg. 97

²⁶ QCA, 2015b, *Consolidated Draft Decision – Aurizon Network 2014 Draft Access Undertaking Volume 2 – Capacity and expansions*, pg. 98, December 2015, available at www.qca.org.au

...each of the factors in section 138(2), including the object of Part 5 (section 69E) and the pricing principles in section 168A.²⁷

The WIRP User Group believes a thorough and comprehensive consultation process should be undertaken prior to any substantive change to the CQC regulatory framework, as this ultimately promotes the true intent of the QCA Act, particularly Part 5 including s.69E, s.138 and s.168A.

Based upon the regulatory history of the CQC the WIRP User Group believes complexity will increase with UT5. By way of example, Aurizon Holdings in its submission to the 2014 Competition Policy Review (i.e. Harper Review) recently illustrated the impact of such complexity upon AN's own Access Undertaking process, with the undertaking, schedules and associated agreements increasing in length by more than a factor of 8.

Table 2 - Length of Access Undertaking that applies to the CQC²⁸

Element	UT1	UT2	UT3	UT4
Undertaking and Schedules	215 pages	282 pages	282 pages	269 pages
Standard Agreements	n/a	281 pages	315 pages	949 pages
Standard User Funding Agreements	n/a	n/a	n/a	652 pages
Total	215 pages	563 pages	597 pages	1,870 pages

As Aurizon Holdings states:

Regulatory frameworks have also become vastly more complicated than the simple “right to access” concept articulated by the Hilmer Committee. For example, in the case of the access regime which applies to the Central Queensland Coal Network, there has been a steady escalation in the amount of documentation which must be prepared by the regulated business and approved by the regulator.²⁹

Further:

Regulation deals with difficult and contested issues, and is unlikely to ever be simple – but the more complex the framework, the greater the public and private resources that are required to administer it, the greater the risk of error and the extent to which commercial negotiation is supplanted, and the greater the extent to which the regulation constrains dynamic competition. This highlights the need to continually re-evaluate, as stated by Professor Banks, whether the “trade-off between imperfect markets and imperfect regulation” has been appropriately struck.³⁰

²⁷ QCA, 2015c, pg. 1

²⁸ Aurizon Holdings Limited, 2014, *Submission to the Competition Policy Review – Promoting efficiency, productivity and new investment in the Australian rail freight and export infrastructure sectors*, pg. 21, June 2014, available at www.competitionpolicyreview.gov.au

²⁹ Aurizon Holdings Limited, 2014, pg. 20

³⁰ Aurizon Holdings Limited, 2014, pg. 21

The WIRP User Group understands the motives of the QCA on this issue, motives that are underpinned with objectives of simplicity, transparency and effectiveness. It also supports the role of extensive customer consultation where any substantive changes are proposed. However, delaying amendments to Access Undertakings by deferring to subsequent regulatory periods has the potential to:

- enhance the complexity of an already convoluted regulatory process even further; and
- promote the continuance of regulatory uncertainty with regard to tariffs, hampering investment project decisions.

Further commentary on the QCA Act is discussed towards the end of this submission.

REVISION OF THE QCA ACT

The WIRP User Group appreciates the role the QCA plays in the regulation of the CQCN. To date, significant and well-intended work has helped oversee the efficient operation of one of Queensland's largest infrastructure assets.

Yet as the economic and commercial environments evolve, the regulatory framework has not and the WIRP User Group therefore queries the applicability and relevancy of the QCA Act in its current form, particularly the relevance of Part 5 to today's commercial operating environment.

The WIRP User Group believes the regulatory framework and process surrounding the 2014 DAU and the relevant undertaking period to be a prime example of this. In April 2013, AN submitted its 2013DAU, which consisted of some 3,000 pages of schedules, agreements and commentary. Complex and detailed, the submission was received with subdued responses by industry. In response, industry submissions were lengthy. Now in February 2016 a final decision on UT4 is still pending and, with UT5 imminent, this highlights the cumbersome nature of the current regulatory process under which the CQCN is governed.

As a result the WIRP User Group questions whether the QCA Act today truly promotes the economically efficient operation of, use of and investment in the CQCN by which services are provided for, especially promoting effective competition in upstream and downstream markets which employ, both directly and indirectly, significant parts of the Queensland work force.

The unwieldy nature of submissions and the lack of clarity in the QCA Act permit regulatory decisions to be substantiated via oblique references to parts of the Act itself. Despite submissions made, many with substantial amounts of evidence, outcomes via initial, supplementary or final decisions are continually questioned by industry.

There is recourse. Decisions can be reviewed under the *Judicial Review Act 1991*, ultimately a process that requires the Queensland Supreme Court to look at the lawfulness of the decision made by the QCA. In what could be relevant to the UT4 process, the lawfulness of regulatory decisions can be questioned where the QCA:

- has misapplied the true intent of the QCA Act;
- has failed to take into account relevant considerations and information; and/or
- has failed to accord natural justice, also referred to as procedural fairness where the decision making powers have been based upon principles of fairness and reasonableness; and or
- has made a decision that is not justified, that is, irrational.

While judicial review is an important protection for all stakeholders, as a redress for decisions by the QCA, it is lengthy, expensive and inefficient.

For these reasons, the WIRP User Group recommends a complete revision of the QCA Act, particularly before the commencement of the process for UT5, and requests the QCA and the Queensland Government to immediately review the applicability and relevancy of the QCA Act, with particular focus placed upon Part 5.

ANNEXURE A

“2010 Coal Rail Infrastructure Master Plan : Stakeholder Engagement Forum”, 28 April 2010.

Intentionally blank – refer following pages.

2010 Coal Rail Infrastructure Master Plan

Stakeholder Engagement Forum

28th April 2010

2010 CRIMP Chapter Content

Aim: To provide some details of the content of each chapter

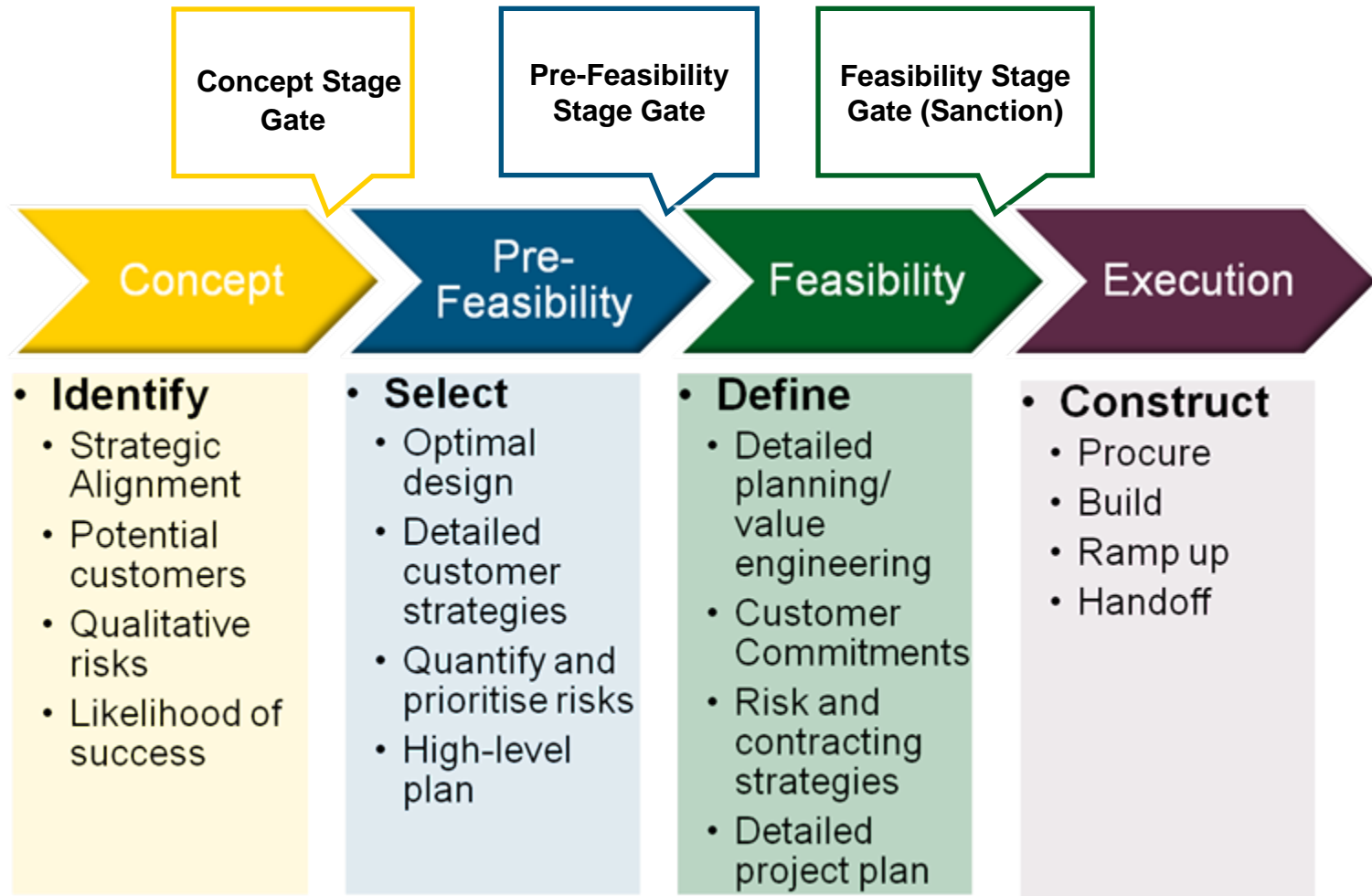
Chapter 2 Purposes, Principles & Process

- Purpose:
 - Outline possible future expansions
 - Identify the projects where investments in rail infrastructure are required
 - Facilitate the regulatory voting process (for Industry endorsement and for scope pre-approval)
- Principles:
 - Underlay the formation/ thinking of the document
- Process:
 - An overall process is undertaken (see following)

Chapter 2: Purposes, Principles & Process

Activities in Process
Develop scope of Master Plan document, content and timelines
Gather data on Queensland and global coal production forecasts
Engage with key stakeholders for feedback on Master Plan scope to date
Compile coal systems' tonnage profiles, in consultation with coal producers
Undertake static and dynamic modelling of system scenarios and / or options
Compile initial draft document; engage with key stakeholders for feedback on draft
Make changes to draft document; circulate document within QR Network for feedback
Hold final engagement forum for presentation of Master Plan to all stakeholders
Receive feedback; make final changes to document
Issue endorsement letters to coal rail users, inviting them to register their vote on the Master Plan (six week period to vote)
Notify the Queensland Competition Authority (QCA) of the responses
Receive QCA notification of projects that have been scope pre-approved. For projects not yet approved, resubmit more detail
Progress scope pre-approved projects through the Stage Gate process (including Board approval, where applicable)..

Chapter 2 Purposes, Principles & Process

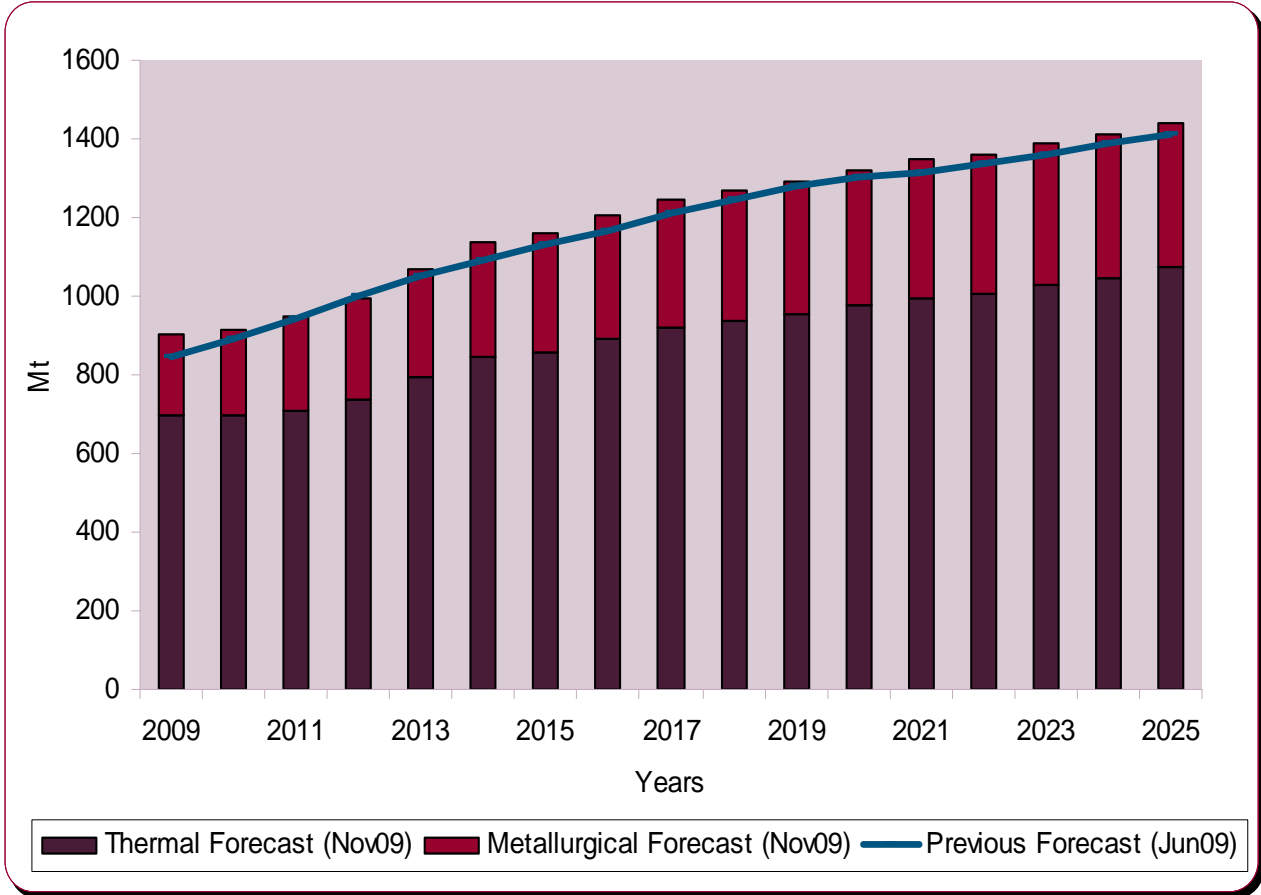


Chapter 3 Master Plan Context

- Coal Supply Chain structure:
 - Participants described
 - Coal Supply Chain planning:
 - Dalrymple Bay Coal Chain
 - Gladstone Export Supply Chain
- Stakeholders
- Previous Coal Rail Infrastructure Master Plans and associated papers

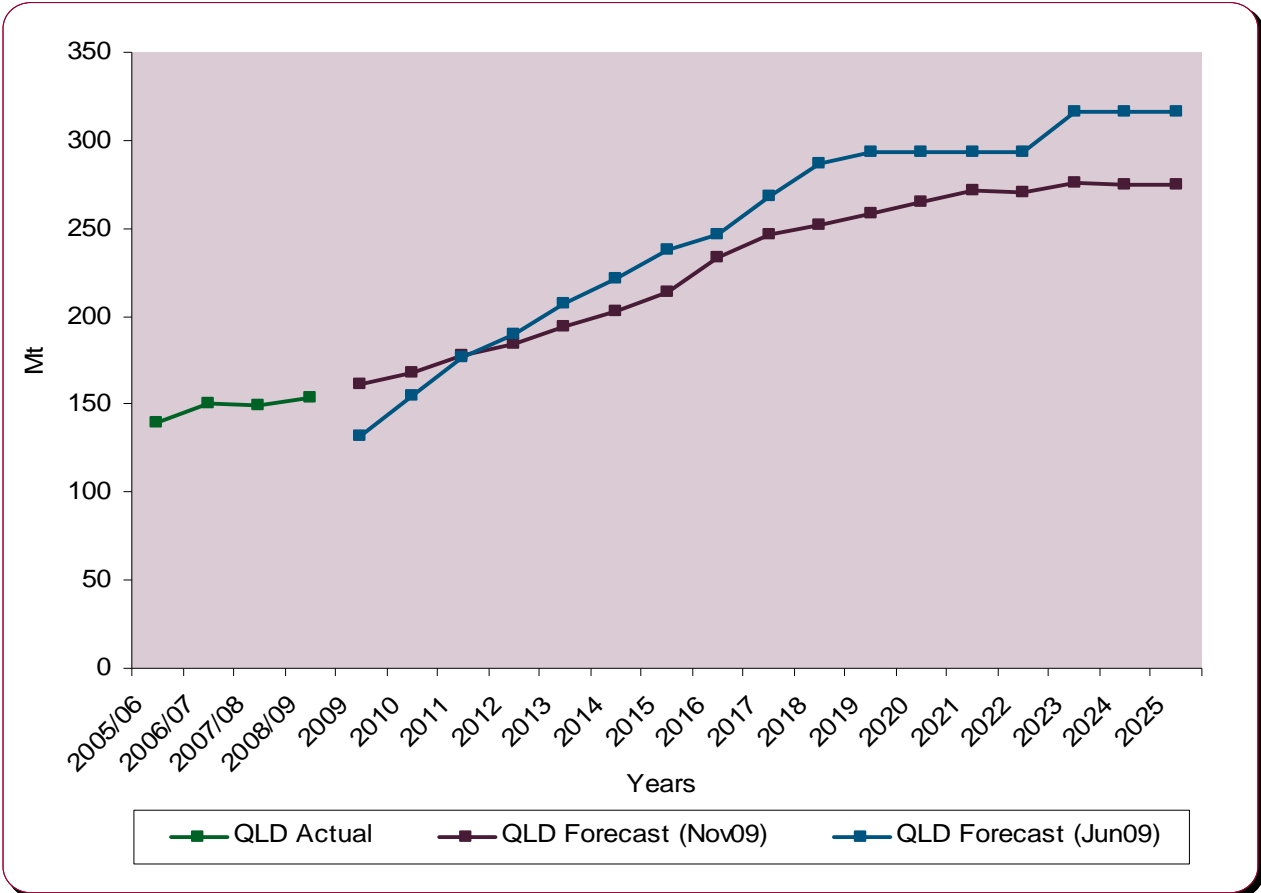
Chapter 3 Master Plan Context

Global Demand Forecast



Chapter 3 Master Plan Context

Queensland Export Forecast



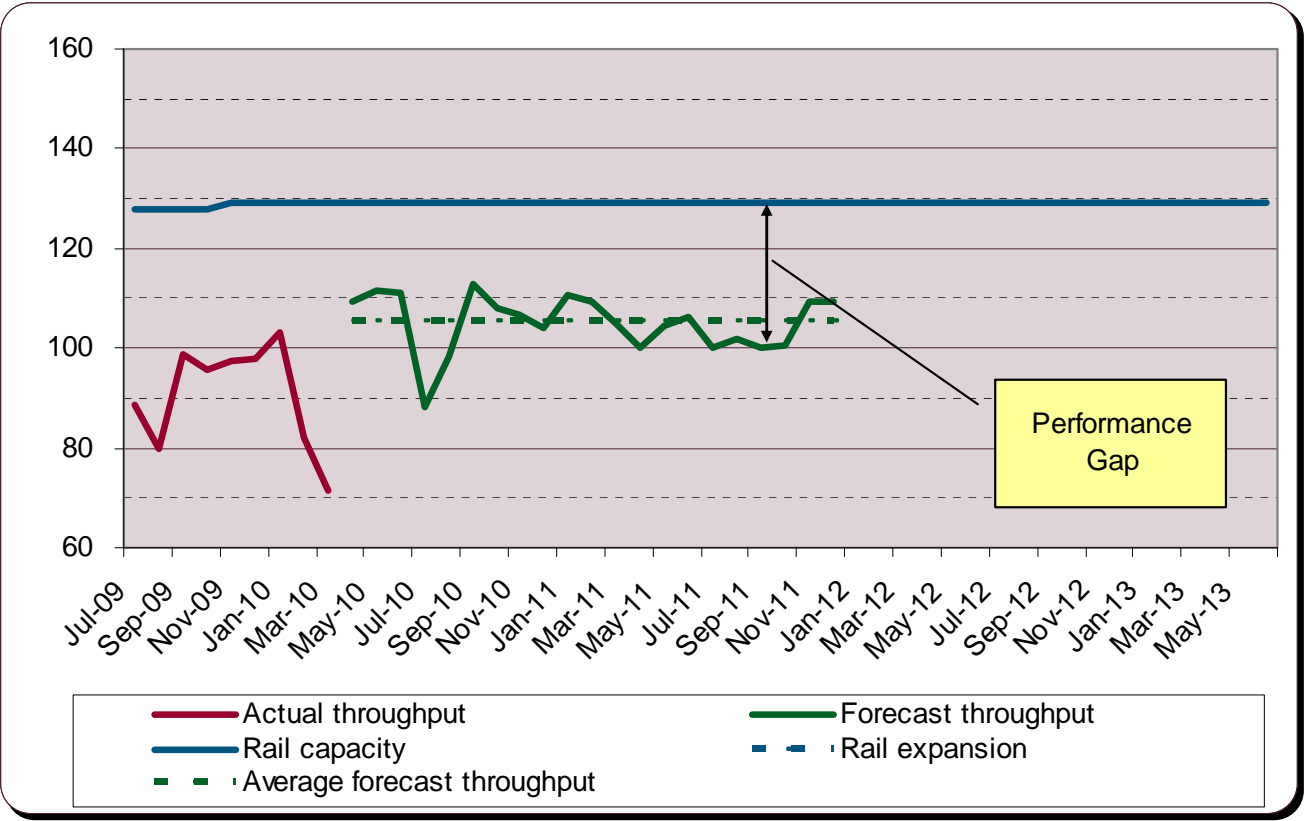
Chapter 4 System Performance

Historic System Throughput

Trunk Rail System	Type	2005/2006	2006/2007	2007/2008	2008/2009
Goonyella	Export	82.4	87.8	82.8	83.6
	Total	82.4	87.8	82.8	83.6
Newlands	Export	11.6	11.2	11.7	14.3
	Total	11.6	11.2	11.7	14.3
Blackwater	Export	39.5	43.6	46.4	48.1
	Domestic	5.7	5.6	6.0	6.0
	Total	45.1	49.1	52.4	54.1
Moura	Export	6.3	7.9	8.1	8.2
	Domestic	3.7	3.9	3.5	3.1
	Total	10.0	11.9	11.6	11.3
Total	Export	139.9	150.4	148.9	154.1
Total		149.2	159.9	158.5	163.2

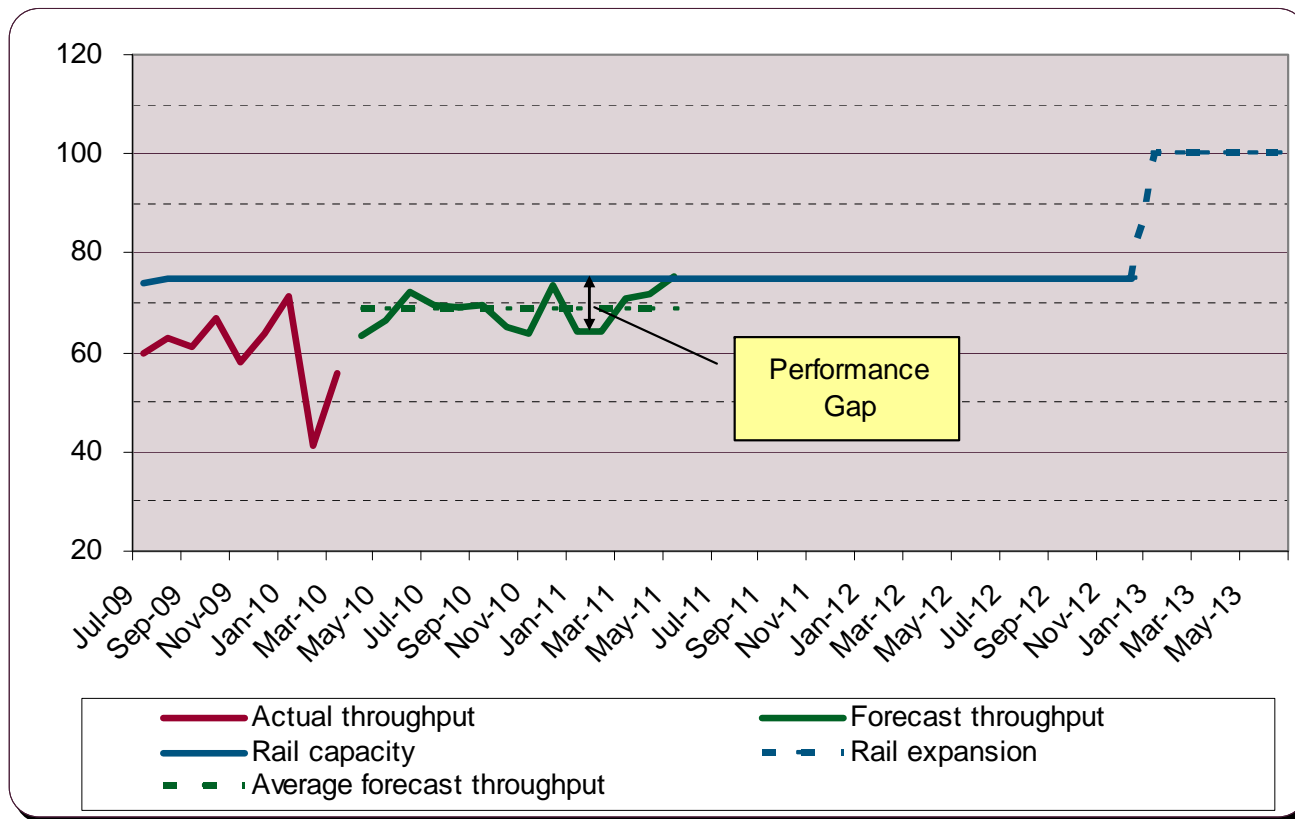
Chapter 4 System Performance

Completed and Current Projects Current System Performance - Goonyella



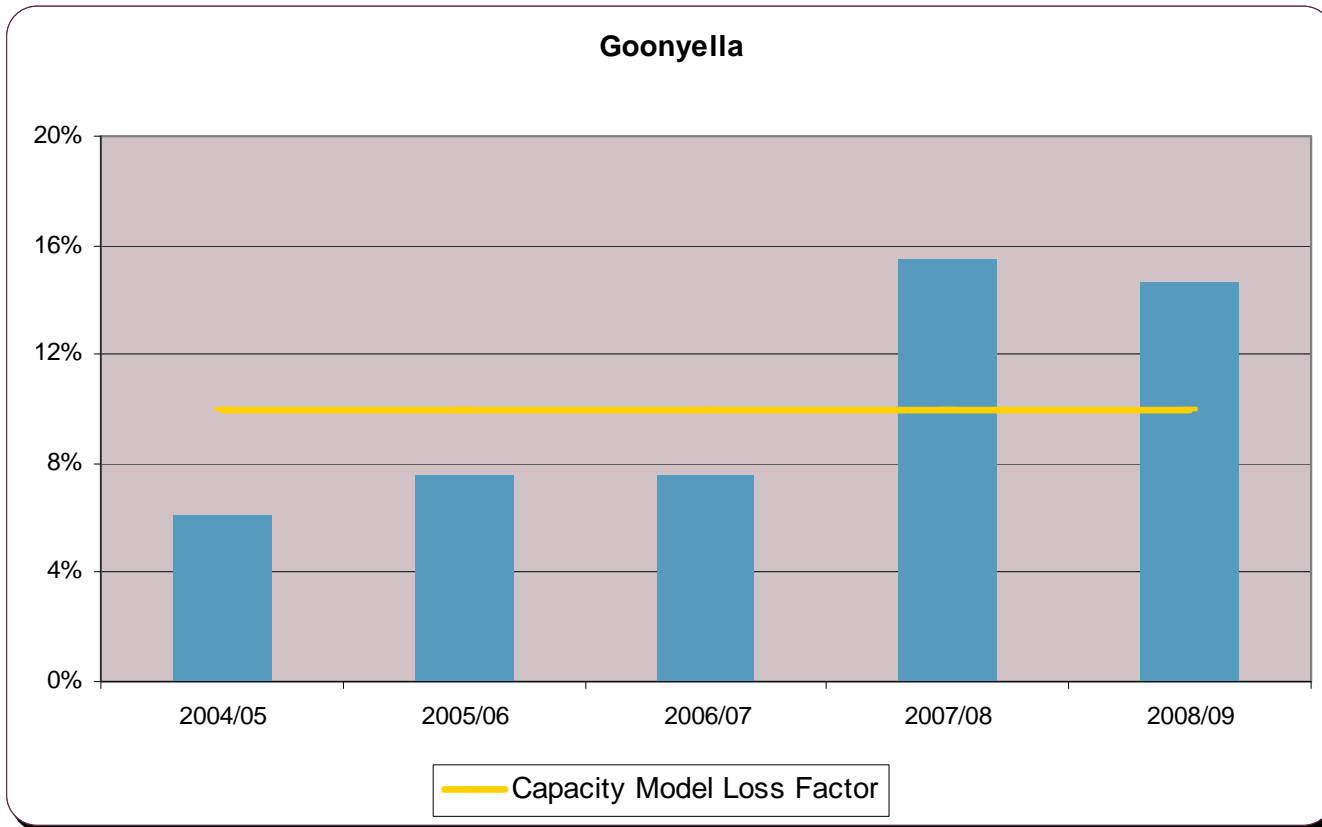
Chapter 4 System Performance

Current System Performance – Blackwater and Moura



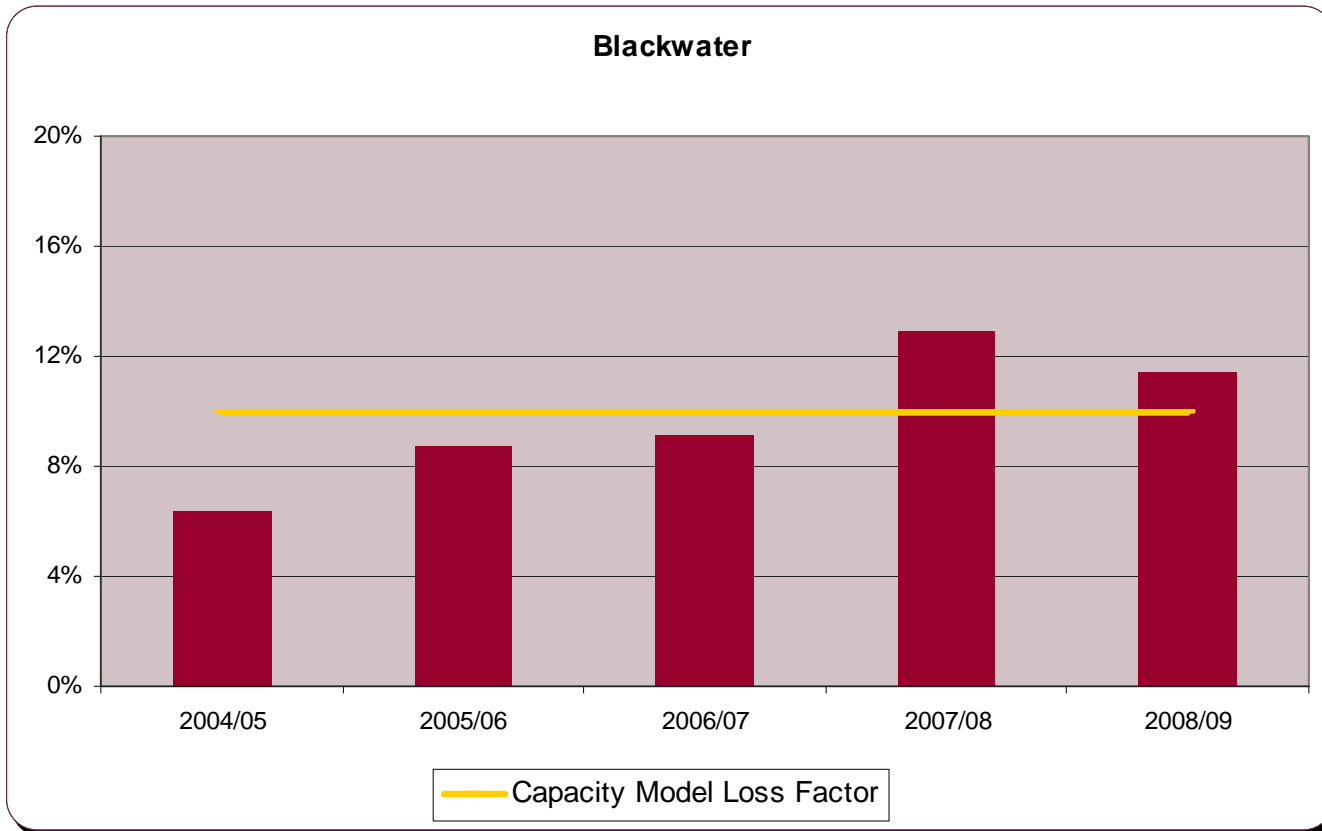
Chapter 4 System Performance

Cancellations (part of unplanned events) graphs



Chapter 4 System Performance

Cancellations (part of unplanned events) graphs



Chapter 5 Proposed System Expansions

- Refer to Endorsement Paper
 - Northern Bowen Basin (NBB) - assumptions and results of modelling for NBB190
 - Southern Bowen Basin (SBB) - assumptions and results of modelling for SBB76
 - Results feed to Chapter 5
- NBB
 - GAP scope defined
 - GAP and Goonyella proposed projects
- SBB
 - Revised operating characteristics
 - Proposal around endorsed Blackwater duplications

Chapter 6 Potential Port Expansion Options

Rail expansions for further incremental expansion
at each export terminal

Terminal	Current Capacity (mtpa)	Next Stage Capacity (mtpa)	Incremental Increase (mtpa)
RG Tanna	69	75	6
Wiggins Island	0	25 - 30	25 - 30
Barney Point *	7	0	-7
Gladstone Exports	76	75 - 80	24 - 29
Dalrymple Bay	85	111	26
Hay Point Services	44	55	11
Abbot Point	50	80	30

Chapter 6 Potential Port Expansion Options

■ Abbot Point to 80 mtpa:

- Increase the reference train length to 2150 metres and to around 10,000 tonnes per train
- Extend passing loops and mine balloon loops as require
- Duplicate sections of the Newlands system
- Duplicate sections of the Goonyella system
- Provide additional queuing and holding facilities at the port and rail servicing yard.

Chapter 6 Potential Port Expansion Options

■ Dalrymple Bay to 111 mtpa:

- Triplication of critical sections (including Connor's Range)
- Reducing the impact of planned and unplanned maintenance
- Further improving the queuing and flow of trains through the multiple unloading loops at the ports
- Duplication of the branch lines as required
- Additional holding roads at Jilalan and Coppabella
- New unloading balloon
- Grade separation of unloading loop entry and exit roads
- Electric control pneumatic braking on the trains and associated signalling system optimisation
- Optimising the length, payload and separation of trains with associated power systems strengthening

Chapter 6 Potential Port Expansion Options

- **RG Tanna to 75 mtpa:**
 - duplication Rocklands to Gracemere
 - duplication Gracemere to Kabra.

Chapter 6 Potential Port Expansion Options

- **Wiggins Island to 30 mtpa:**
 - Duplication Rocklands to Gracemere
 - Duplication Gracemere to Kabra
 - Duplication Walton to Bluff
 - Wiggins Island unloading loop
 - Yard facilities at Rocklands and Aldoga
 - Callemondah feeder station.

Chapter 7 Long Term System Expansion

Potential Port Capacities

Precinct	Coal Terminals	2008/2009 Throughput (mtpa)	Potential Capacity (mtpa)	Trunk Rail System(s)	Potential demand on rail (mtpa)
Abbot Point	Abbot Point	14.7	110	Newlands	110
Sub Total		14.7	110		110
Hay Point	Hay Point	35.8	75	Goonyella	230
	Dalrymple Bay	47.3	155		
	<i>Dudgeon Point (alternative)</i>				
Sub Total		83.1	230		230
Gladstone	RG Tanna	52.4	75		
	Barney Point	3.9	0	Blackwater	110
	Wiggins Island		105	Moura	80
	<i>Balaclava Island (alternative)</i>				
	<i>Fitzroy River Barging (alternative)</i>				
Domestic		10	10		
Sub Total		66.3	190		190
Total		164.1	530		530

Chapter 8 Asset Replacement

Asset Replacement Schedule in the CRIMP

	2010/11	2011/12	2012/13	2013/14	2014/15
Blackwater	14,573,000	22,255,000	50,188,000	54,555,000	50,363,000
Goonyella	18,153,000	27,685,000	48,885,000	46,425,000	49,909,000
Moura	2,400,000	3,200,000	-	3,200,000	-
Newlands	-	-	-	-	-
CQCR Wide	41,977,720	44,350,200	29,637,200	17,380,000	3,700,000
Telecommunications	6,649,000	3,178,000	2,460,400	1,584,000	1,500,000
TOTAL	83,752,720	100,668,200	131,170,600	123,144,000	105,472,000

Note: We have included a short commentary on asset maintenance

Where to From Here

- Further refinement of the content
- Internal sign off on draft CRIMP
- Forward draft CRIMP for comments in approx 2 to 3 weeks



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ANNEXURE B

“Aurizon Network Supply Chain Briefing : Blackwater Coal System Scheduling Improvements”, 11 January 2016.

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Aurizon Network Supply Chain Briefing

Monday 11 January 2016

Blackwater Coal System Scheduling Improvements

Final commissioning of network infrastructure within the Wiggins Island Rail Project has now been completed. Full duplication of the rail network from Callemondah to Rangal, additional holding roads at Kabra and Aldoga, the Yarwun double crossovers and Wiggins Island Rail Spur have provided the planned operational flexibility as well as supporting improved supply chain performance.

With these assets in full operational service, enhancements to train scheduling can now be implemented through the move to 15 and 20 minute network pathing. The new pathing will be implemented from 18 January 2016.

15 and 20 minute pathing

Currently both loaded and empty coal service schedules allow departures ex Callemondah and Bluff every 30 minutes. If a service cannot make a specific departure time, the service is not scheduled to depart until the next available path after a 30 minute interval.

The new infrastructure commissioned through WIRP changes how trains run and reduces the time taken for train crossing. This enables empty coal services to now be scheduled at 15 minute intervals ex Callemondah and loaded coal services to be scheduled at 20 minute intervals ex Bluff.

A significant increase of up to 50% in network paths will be available for planning coal services and asset activity. Congestion within Callemondah and Bluff currently experienced due to 30 minute departure intervals will be reduced. Increasing pathing availability will also provide operators with the opportunity to reduce dwells in yards and in turn translate to a reduction in cycle times. These improvements provide benefits in both high demand as well as cost efficiency driven markets.

Importantly, the implementation of 15/20 minute pathing in the Blackwater system requires changes to the current Train Identification System that applies across CQCEN. The changes are summarised in the next section below.

CQCEN Train Numbering Changes

Increased pathing requires an increase in the number of pathing and train identifiers. As a result, changes have been made to the existing Train Identification System. Rail Operators and other impacted parties were involved in the finalisation of the new Train Identification System. A critical benefit from the change, as well as supporting the increased pathing, is standardisation of identification across CQCEN.

In summation, the key changes are as follows:

- PNC Diesel coal trains will be identified “M” across CQCEN. PNC diesels in Blackwater will no longer use identifier “9”
- AZJ Diesel coal trains will be identified “9” across CQCEN. AZJ diesels in Newlands will no longer use identifier “2”
- AZJ Over-Length Diesel train will be identified “K” across CQCEN.
- AZJ Over-Length Electric train will be identified “T” across CQCEN
- Train service numbers are no longer linked to specific paths

The following table sets out the allocation of the 1st character for train identification for all trains in CQCN.

Operator/Hauling Type	Train Identifier (1 st Character)	System
PNC Diesel hauled coal train	M	CQCN
PNC Electric hauled coal train	U	CQCN
BMA Rail Electric hauled coal train	J	CQCN
AZJ Diesel hauled coal train	9	CQCN
AZJ Electric hauled coal train	E	CQCN
AZJ Over-Length Diesel hauled coal train	K	CQCN
AZJ Over-Length Electric hauled coal train	T	CQCN

Operators will each have 48 numbers (odd numbers 01 to 95) to use per day when requesting trains. Each operator will use their next available train number when they request a new train. Although some trains will have the same sequential number within a day, the 1st character will identify the different Operators and make train numbers unique for that day.

Reduction of 30 minutes from cycle time for loaded services

Sustained actual train performance data supports a 30 minute reduction in the scheduled trunk path time for loaded coal services. This scheduling change is expected to take effect on 18 January 2016.

This adds to the previously implemented 15 minute reduction to scheduled cycle time in Blackwater after the Dingo-Bluff duplications were commissioned.

Section Run Time (SRT) Trial

The completion of WIRP coupled with changes in train length, train payload, locomotive power and driver methodology have provided the opportunity to review the scheduled section run times.

Aurizon Network has worked with both rail operators to identify and agree SRTs that more closely reflect actual performance across Blackwater and Moura.

A trial of new section run times will commence on 18 January and run for a period of 6 months.

During the trial period, scheduled section run times will be aligned to actual train performance and Aurizon Network will analyse agreed KPIs to monitor whether expected improved on time performance is achieved.

Summary of Scheduling Changes

These initiatives are a refinement in the scheduling environment to realise improved supply chain asset utilisation and overall performance to plan. Their implementation will be communicated to Capricornia Supply Chain stakeholders through the CCCSC forums.

We appreciate your ongoing support and engagement.

Regards



Sarah Dixon
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