

Submission in response to Queensland Competition Authority
Draft Decision: QR 2020 Draft Access Undertaking

11 July 2019



NEW HOPE
GROUP

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1 Introduction and Executive Summary

This submission is made on behalf of New Hope Corporation Limited (**New Hope**) in relation to the Queensland Competition Authority's (**QCA**) April 2019 Draft Decision (the **Draft Decision**) on Queensland Rail's (**QR**) 2020 Draft Access Undertaking (the **2020 DAU**).

As the 2nd submission in relation to the QCA's consideration of the 2020 DAU, it should be read together with New Hope's previous submission in the process dated 17 October 2018 (the **Initial New Hope Submission**).

For the reasons set out in this submission below, New Hope supports the QCA's proposal to refuse to approve the 2020 DAU as it continues to consider it is not appropriate, as required by section 138 of the *Queensland Competition Authority Act 1997* (Qld) (**QCA Act**).

However, New Hope does recognise that QR has not sought extensive changes to the terms of the access undertaking and standard access agreement (**SAA**). Accordingly, New Hope's submissions on those issues seek to constructively respond to the individual changes proposed by QR or issues raised in the Draft Decision rather than re-arguing for inclusions which the QCA did not require be included in the current undertaking.

While these submissions address numerous aspects of the 2020 DAU in detail, New Hope's principal concerns in respect of the appropriateness of the 2020 DAU are:

- (a) first and foremost, the West Moreton system coal reference tariffs, for a series of reasons including:
 - (i) an inappropriate allocation of fixed costs to West Moreton coal services, including return on and of the regulatory asset base;
 - (ii) an excessive asset beta that is artificially inflated due to reliance on a set of comparator businesses with materially different systematic risk profiles;
 - (iii) an excessive market risk premium that does not align with established regulatory precedent;
 - (iv) concern as to whether Cameby Downs contributes revenue at least equal to full incremental cost to QR of providing Cameby Downs services; and
 - (v) based on the Systra report, capital, operating and maintenance costs which seem to be well in excess of the prudent and efficient costs for the system.
- (b) the undertaking and access agreement not containing a sufficient regime to incentivise, promote and facilitate QR pursuing operational and productivity improvements; and
- (c) ensuring that the network management principles provide sufficient advance certainty and transparency of possessions so that users of the West Moreton network can efficiently manage their logistics arrangements and marketing contracts.

For ease of reference, the submission is separated into three parts responding to issues concerning the proposed reference tariffs (Part A), the proposed Access Undertaking wording (Part B) and the proposed SAA wording (Part C), and generally seek to reflect the order in which issues were considered in the Draft Decision.

As always, please do not hesitate to contact New Hope if we can be of any further assistance in the QCA's consideration of the 2020 DAU.

Part A – Reference Tariffs

2 West Moreton Reference Tariff

2.1 Queensland Rail's proposal

2.1.1 Tariffs:

New Hope supports the Draft Decision to not approve the proposed West Moreton reference tariffs.

New Hope considers that the tariffs proposed by QR are:

- (a) inappropriate based on any reasonable application of the building blocks pricing methodology given their reliance on:
 - (i) an inappropriate approach to allocation of the regulatory asset base and fixed costs for the West Moreton system to coal services;
 - (ii) an excessive asset beta that is artificially inflated due to reliance on a set of comparator businesses with materially different systematic risk profiles;
 - (iii) an excessive market risk premium that does not align with established regulatory precedent; and
 - (iv) capital, operating and maintenance costs that appear to be well in excess of the prudent and efficient costs for the system, particularly given the current demand outlook for coal services; and
- (b) unsustainable and economically unviable for QR's coal customers.

2.1.2 Form of regulation:

New Hope supports the continuation of the modified price cap form of regulation for the West Moreton and Metropolitan systems.

This form of regulation applied under QR's first access undertaking (**AU1**) and under the regulatory arrangements which preceded QR's ownership of the West Moreton system. While all regulatory arrangements applied to these systems have been modified price cap arrangements, the basis on which tariffs are set, and volume risk is shared, have varied over time. It is appropriate that adjustments are made to reflect prevailing circumstances in each regulatory period, subject to consideration of the impact on stakeholders who have invested on a particular basis, and the preference for regulatory certainty.

The 2020 DAU is being developed at a time of uncertainty, due to the challenges which New Hope has encountered in securing approvals for the development of the New Acland Stage 3 Project. New Hope acknowledges that developing an undertaking which appropriately responds to the full range of possible outcomes for the West Moreton system in the current circumstances will be challenging. Accordingly, New Hope suggests that, with the next undertaking not due to take effect until 1 July 2020, it would be appropriate to conduct a process which defers consideration of this aspect of the undertaking until late in 2019 (but settles all other unrelated aspects). By this time, New Hope expects that the future of New Acland and the volume outlook for the West Moreton system will be clearer.

In this submission, we provide high level comments on the low volume scenario, and on the concept of loss capitalisation, although we do suggest that these matters would best be considered later in this process.

2.2 Regulatory and economic context

2.2.1 West Moreton balance

New Hope supports the QCA's comments regarding the key considerations for the setting of West Moreton reference tariffs and, in having regard to those considerations, the need for balancing the competing interests of QR and the West Moreton coal producers.

2.2.2 Volume uncertainty

New Hope understands the difficulty of developing an appropriate undertaking in the context of the current volume uncertainty. As discussed in Section 2.1 of this submission, we suggest that decisions regarding low volume scenarios are best deferred until late in 2019, when the volume outlook is likely to be clearer.

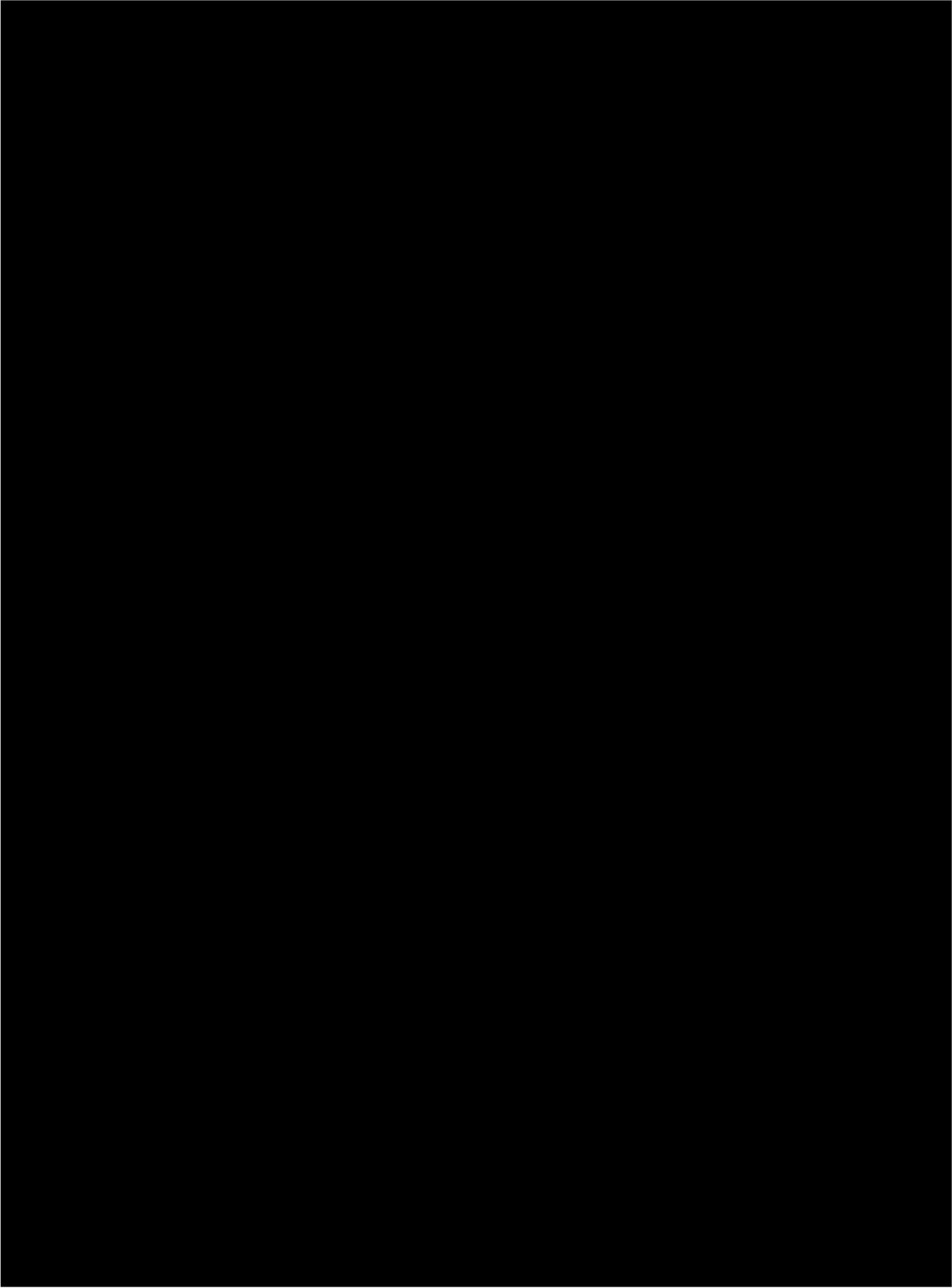
2.2.3 Capacity and underwriting

AU1 adopted an approach in which, following the closure of the Wilkie Creek mine, the remaining mines were required to underwrite the cost of all capacity which had historically been made available for coal customers. As noted in the Draft Decision, this resulted in Yancoal and New Hope underwriting 27% per cent more capacity than they were forecast to use.

New Hope has previously expressed its concerns about coal services being required to underwrite excess capacity purely on the basis that the capacity has previously been used by coal services, given that the relevant capacity is also available to other services and is not reserved for coal services. The West Moreton and Metropolitan systems were also not designed for coal services such that the standard of service received by coal producers continues to be limited by the configuration and condition of the relevant parts of QR's network. However, where there is in-principle acceptance that different approaches to tariff calculation are required in a 'low-volume scenario', we accept the Draft Decision to continue this approach for the tariffs based on a more 'normal' volume forecast.

Accordingly, New Hope support the Draft Decision to maintain the 87-path constraint for the purposes of allocating certain costs to coal services. While we accept QR's assertion that it may no longer be subject to a formal 87-path constraint, we consider that an increase in the path allocation for pricing purposes is premature due to:

- (a) concerns that an informal constraint may continue to exist, given that it is New Hope's understanding that material new contracts being entered into by QR would require approval of QR's shareholding minister; and
- (b) the ongoing impacts of the historical application of the constraint.



2.3 West Moreton tariff approach

2.3.1 Two-part tariff

New Hope accepts the QCA's Draft Decision to approve the two-part tariff structure. We understand that this approach seeks to achieve a balance between a number of competing considerations.

However, we seek clarification of whether the Cameby Downs mine is forecast to contribute sufficient revenue to cover the incremental costs which it adds to the West Moreton system, which include:

- (a) return on, and return of, the portion of the regulatory asset base (**RAB**) relating to assets West of Jondaryan;
- (b) return on, and return of, the portion of the RAB relating to assets East of Jondaryan to the extent that capital expenditure has been incurred which could have been avoided in the absence of the train paths and tonnages originating West of Jondaryan;
- (c) maintenance and operating costs incurred West of Jondaryan; and
- (d) incremental maintenance and operating costs incurred East of Jondaryan.

New Hope considers that the Cameby Downs mine should contribute sufficient revenue to cover, at least, the full incremental cost of the service. Clause 3.2.2 of the 2020 DAU specified a Floor Revenue Limit for each train service, which is based on the incremental costs of the service. While we understand that it is theoretically open to the QCA to approve reference tariffs which are not consistent with the concept of the Floor Revenue Limit, we are not aware of any basis on which this would be considered appropriate in the current circumstances. Setting reference tariffs such that the contribution of a train service falls below the Floor Revenue Limit would represent a subsidy. We therefore request:

- (a) confirmation that Cameby Downs is expected to contribute revenue at least equal to the full incremental cost to QR of providing Cameby Downs services; or
- (b) alternatively, an explanation of why a pricing arrangement which provides a subsidy is considered appropriate by the QCA.

Appendix A shows the incremental costs of Cameby Downs, compared to its contribution of revenue to the West Moreton system. This is based on data extracted from the financial model provided by the QCA. The analysis indicates a revenue shortfall of \$██████ over the term of the undertaking. This does not include any allowance for capital expenditure incurred between Rosewood and Jondaryan during the 2020 DAU term, or in previous periods. Clearly there is a portion of such capital expenditure which could have been avoided if the Cameby tonnages had not been present in the system, and which are therefore incremental costs.

New Hope considers that this issue must be addressed either by:

- (a) establishing a separate Reference Tariff or system premium for Cameby Downs; or
- (b) recovering a greater portion of the revenue requirement through AT₁ (per gtk) and less through AT₂ (per path).

2.3.2 Additional path pricing

Section 2.3.2 of the Draft Decision discusses pricing for additional (ad-hoc) paths, while Section 2.3.4 discusses QR's proposal that an increase in contracted volumes should no longer be considered an endorsed variation event.

From New Hope's perspective, these issues are very much related, and can only be assessed together when:

- (a) the volume forecast which is used to set the tariffs has been settled.
- (b) the anticipated relationship of the chosen volume forecast to contracted capacity is known; and
- (c) the relationship of the volume forecast and the capacity on which fixed costs are allocated has been settled.

For example:

- (a) if the volume forecast is set at, or above, the level of capacity on which cost allocation has been based, then New Hope accepts that an endorsed variation event need not apply where additional tonnes are contracted. In this case, the additional revenue will reflect payment for additional capacity (the cost of which was not reflected in reference tariffs); or
- (b) where coal services are underwriting spare capacity via reference tariffs which are based on a share of capacity which exceeds the volume forecast, an endorsed variation event should apply. In the absence of an endorsed variation event in this case, coal services will pay twice for the additional capacity used whenever actual tonnage exceeds the forecast.

We note that the draft decision appears, on New Hope's reading, to:

- (a) be based on a West Moreton system volume forecast of 8.5 Mtpa (section 2.2.3), although the summary table on page 6 (Section 2) indicates that QR's forecast of 9.1Mtpa was accepted; but
- (b) leave the question of the appropriate volume forecast open for further consideration (section 2.2.3).

If the final reference tariffs are based on a forecast which is below the level of the capacity which is used for cost allocation (i.e. less than 87 paths), then New Hope considers that the endorsed variation event must be maintained.

We do not consider that there is merit in the application of a premium price for ad-hoc services. The size and long-term nature of investments in mining projects, and the potential for rail capacity constraints to arise during the mine life (whether through impacts of the Metropolitan system or government policy decisions to reduce the capacity available for coal service), provide a strong incentive for miners to enter into and retain contracts for below-rail rights which reflect expected production.

A price premium for ad-hoc services will achieve little in terms of incentives for miners, but will add complexity (for example, in the identification of paths between contracted and ad-hoc) and may produce a number of counter-productive incentives and outcomes. For example, a price premium for ad-hoc services will:

- (a) provide a disincentive for QR to expedite the negotiation of access agreements;
- (b) compound the over-recovery of revenue by QR if volume forecasts are ultimately set at a level which is less than the capacity on which cost allocation is based. In this case, where volumes exceed forecasts, customers will be paying twice for the additional capacity, and paying a further premium where the additional path usages are ad-hoc; and
- (c) increase average prices to New Hope more than other users due to New Hope having a less stable production profile over the 2020 DAU term (due to ramp down of its existing operations and anticipated ramp-up of the New Acland Stage 3 Project), which will make

it harder for New Hope to align its contracted positions with anticipated production relative to other users.

Accordingly, New Hope suggests that:

- (a) the endorsed variation event from AU1 should continue unless the volume forecasts used for pricing purposes are equal to, or greater than, the volumes on which cost allocations are based; and
- (b) a price premium for ad-hoc paths is not appropriate.

2.3.3 Take or pay and approved ceiling revenue limit

New Hope accepts the continuation of existing arrangements involving 100% take or pay for the West Moreton reference tariff, and the use of the approved ceiling revenue limit.

2.3.4 Endorsed variation events for volume reset

As we discussed in Section 2.3.2, New Hope accepts that there is no need for an endorsed variation event if volume forecasts used for developing reference tariffs reflect the use of all capacity which has been used in the allocation of costs to coal services.

However, if volume forecasts reflect the use by coal services of less capacity than the level reflected in cost allocation, then an endorsed variation event should apply to avoid double-payment for the excess capacity underwritten by coal producers.

2.4 Other reference tariff matters

2.4.1 Metropolitan tariff

New Hope supports the continuation of the 'proxy' approach to the setting of Metropolitan system tariffs, as proposed by QR, for reasons including simplicity, regulatory certainty and transparency.

2.4.2 Capital expenditure approval process

In relation to the issues discussed in the Draft Decision regarding the capital expenditure approval process:

- (a) *Timing and frequency of submissions:* New Hope prefers the submission of an annual capital expenditure report, as proposed by QR. While, it is accepted that the QCA's proposal for a less frequent process may result in slightly lower administration costs, a more frequent process will provide more timely consideration and feedback on matters such as:
 - (i) the adequacy of consultation undertaken by QR ahead of committing to material capital expenditure; and
 - (ii) the trade-offs between renewal capex and maintenance costs.

A less frequent process will delay the learnings from these reviews, resulting in a slower process of improvement.

- (b) *Statement of reasons:* New Hope supports the Draft Decision, which provides the QCA with appropriate flexibility in providing reasons for decisions made under Schedule E.
- (c) *Prudency criteria:* New Hope supports the Draft Decision, which proposed to reinstate the wording of AU1 regarding the information which the QCA would be required to consider when assessing the prudency of capital expenditure, standard of works and costs.
- (d) *Carryover account:* New Hope agrees with the QCA's suggestion that Clause 7 of Schedule E should be revised. The proposed clause 7(b) suggests that the difference

between Approved Capital Expenditure and the Capital Indicator should be 'entered in the Capital Expenditure Carryover Account', when in fact only the return on, depreciation of, and tax effects of that difference should be entered into the Capital Expenditure Carryover Account; as is correctly described in clause 7(c). We are unsure as to whether it is necessary (as suggested by the QCA) to specify that the difference described in clause 7(b) is to be included in the asset base. Our understanding is that Approved Capital Expenditure is added to the asset base when approved, while the Capital Indicator is not part of the asset base (although is considered part of the asset base for pricing purposes). If this is correct, then the difference between the Capital Indicator and Approved Capital Expenditure would not be added to the asset base.

2.4.3 Adjustment charge approval process

New Hope supports the retention of the existing adjustment charge approval process, as proposed by QR. To the best of our knowledge, the process of obtaining QCA approval for adjustment charges has not been contentious, and has been efficient (and is likely to be more efficient than a process in which each access holder must estimate and potentially dispute its own adjustments charges).

New Hope has a number of concerns regarding the Draft Decision's proposal to remove this process from the undertaking, including:

- (a) several consequential amendments are likely to be required to ensure that the obligations to pay adjustment charges remain effective in the absence of QCA approval; and
- (b) it is not clear to us that Access Holders have access to all of the information which is required to calculate (or verify) adjustment charges. For example, if a change in reference tariffs takes effect on a past date, and there is a requirement to vary take or pay charges which have previously been invoiced, then individual access holders may be unable to calculate their expected adjustments due to the impacts of the approved ceiling revenue limit (as revised).

Given these concerns, New Hope prefers the retention of the process as set out in AU1.

2.4.4 Price differentiation for reference tariffs

New Hope supports the Draft Decision which requires QR to negotiate any variations from reference tariffs, and limits the variation to the amount which reflects the degree to which the cost or risk of a proposed service differs from that of the reference service.

Given the QCA will have determined that the reference tariffs are appropriate – it should be clear that departures need to be negotiated (or determined by the QCA through an access dispute), not unilaterally imposed.

3 Rate of Return

3.1 WACC scope

The QCA Act pricing principles (in section 168A QCA Act) provide that the price of access to a service should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved in providing the service.

This means that the WACC applied to the calculation of reference tariffs for the West Moreton system should reflect the risks involved in providing reference services – i.e. services to coal traffic originating in the West Moreton system only. To the extent that QR faces a different degree of risk in the supply of other services, that should not be reflected in returns recovered from coal customers.

Accordingly, New Hope supports the Draft Decision in relation to the scope of QR's services to be considered in setting the WACC for calculating West Moreton coal reference tariffs, which is consistent with the pricing principles.

3.2 Individual WACC parameters

3.2.1 Asset beta

New Hope accepts the conclusion, based on the QCA's first principles analysis of QR's beta, the consideration of relevant comparators, and the Incenta Economic Consulting (*Incenta*) report, that the appropriate asset beta lies in a range of 0.38 to 0.51.

However, we do not agree that the uncertainty in determining an asset beta is a reason to conclude that "there is merit in estimating an asset beta that is towards the upper bound of the range". Over-estimating the WACC can have consequences (such as incentivising inefficient capital investment) which are at least as undesirable as an underestimation of the WACC. That is particularly the case in the context of the West Moreton system, where the affordability of tariffs for existing and potential customers could impact on the future of mines and the utilisation of the infrastructure.

We understand that the QCA has also sought to have regard to cross-checks when determining the asset beta. However, our understanding is that the most recent asset betas approved for Aurizon Network (0.42) and the ARTC Hunter Valley network (0.45) are towards the lower end to middle of this range, and New Hope considers that appears to have been given insufficient weight in estimating the appropriate asset beta for the purposes of the West Moreton coal reference tariffs. In that regard, New Hope notes, that there are material protections for QR in relation to volume risk, including:

- (a) long term contracts;
- (b) 100% take or pay pricing;
- (c) provision for security;
- (d) reference tariffs set to recover all costs and earn a return commensurate with the risks involved;
- (e) reference tariff resets with each undertaking; and
- (f) coal traffic underwriting capacity it does not use.

These mechanisms provide significantly more protection than for toll roads (which have absolutely no volume risk protection in most cases and compete with entirely free to access roads), which Incenta/the QCA estimate as having an average 0.51 asset beta.

Accordingly, New Hope considers that the appropriate asset beta should be lower than 0.5 and closer to those adopted for Aurizon Network's and ARTC's coal rail networks, which have a more comparable risk profile.

3.2.2 Capital structure and credit rating

New Hope accepts the QCA's conclusions regarding the appropriate capital structure and credit rating.

3.2.3 Risk-free rate

The Draft Decision proposes to adopt a 10-year bond term for the estimation of the risk-free rate, while QR's proposal, consistent with past QCA decisions, was to adopt a four-year bond term.

New Hope understands that the QCA does not bind itself to previous decisions where it considers past decisions are no longer providing appropriate regulatory outcomes. However, the QCA has

not explained why the principle of term matching, which was supported by the QCA based on extensive analysis over many years, is no longer considered appropriate. The QCA refers to the fact that, in the final UT5 decision, the QCA considered that there was merit in “*giving consideration to*” alternative approaches, specifically a 10-year bond term. However, the QCA did not formally adopt a 10-year term in that case.

New Hope notes that if a longer period is utilised for assessing the risk free rate, it is important that is taken into account in assessing the market risk premium as well (as that should result in a higher risk free rate but lower MRP).

3.2.4 Debt-risk premium

New Hope accepts the QCA’s proposed approach to establishing the debt-risk premium.

3.2.5 Market risk premium

New Hope generally accepts the QCA’s draft decision regarding the MRP, but questions the basis on which the QCA’s point estimate of 6.35% is increased to 6.5% by rounding. While we understand that rounding the MRP is the QCA’s “standard approach”, we suggest that this practice should be “considered afresh”.

The MRP point estimate represents the QCA’s best estimate of the MRP. While we understand that any such estimate is not precise and reflects the exercise of judgement, we do not understand how the application of rounding can improve the estimate. Rounding will at times increase and at times decrease the MRP compared to the unrounded number which represented the QCA’s best estimate. There is no reason to suspect that rounding will result in a better estimate, and every reason to suspect that it will result in a worse estimate, due to the random nature of the adjustment. We note that all WACC parameters are established through processes of estimation and judgement which cannot be said to produce a precise result, yet no attempt is made (correctly in our view) to “improve” the estimates for other parameters through similar rounding.

In addition, the AER Rate of Return instrument from December 2018 suggests a MRP of 6.1%, and the ACCC’s decision in relation to ARTC’s Interstate Rail Access Undertaking suggests a MRP of 6.0%. New Hope considers the most credible and recent regulatory precedents therefore also suggest that the QCA’s proposed estimate for the MRP is too high, and should be reduced to the QCA’s point estimate (if not below that).

3.3 Overall WACC

New Hope agrees that a consideration of QR’s overall WACC supports the view that the proposed WACC of 7.47% is not appropriate. The Draft Decision WACC of 6.02% is a better estimate of an appropriate return, but the analysis above indicates the appropriate WACC is actually lower than that proposed in the Draft Decision.

4 Tariff Building Blocks and Price

4.1 Building blocks approach to regulatory pricing

New Hope supports the building blocks approach and two-part tariff, subject to the comments provided in Section 2.3.1 of this submission.

4.2 Volumes

New Hope supports the use of an 8.5 Mtpa forecast for pricing purposes.

However, as was noted in Section 2.1.2 of this submission, this undertaking is being developed at a time of uncertainty regarding future volumes, due to the uncertainty regarding the approval of

the New Acland Stage 3 Project. New Hope suggests that the question of volume forecasts should be reconsidered towards the end of 2019, so that the most up to date information can be taken into account in setting the final reference tariffs.

4.3 Forecast maintenance costs

New Hope supports the consideration of trade-offs between capital expenditure and maintenance costs, and analysis of prudence on a "total cost" basis.

We note that Systra has made a number of recommendations which, in some cases, involve undertaking additional capital expenditure to reduce maintenance requirements (additional formation rebuilds to reduce resurfacing) and, in other cases, defer capital expenditure causing an increase in maintenance requirements (less replacement of timber bridges). New Hope has not attempted to form a definitive view on the appropriateness of these recommendations at this stage. Rather, we propose to review QR's submission, discuss the issues with QR, and provide an opinion as part of the collaborative submission process.

New Hope supports the QCA's proposed approach to the allocation of maintenance costs to coal, based on QR's proposed approach, amended to reflect the 87-train-path constraint.

4.4 Forecast operating costs

New Hope will provide comments on this aspect of the Draft Decision in its collaborative submission, after considering QR's submission and any consultation with QR.

New Hope supports the QCA's proposed approach to the allocation of operating costs to coal, based on QR's proposed approach, amended to reflect the 87-train-path constraint.

4.5 Opening asset base – West Moreton common network asset base

New Hope supports the use of updated information regarding approved and claimed capital expenditure for the asset base roll-forward.

4.6 Forecast capital expenditure

New Hope accepts the Draft Decision to approve the Capital Indicator as proposed by QR, subject to the suggestion that this should be reviewed if the volume forecast is materially revised prior to the approval of the undertaking. Given that variances between Approved Capital Expenditure and the Capital Indicator are dealt with through the Capital Expenditure Carryover Account, it is not critical to develop a precise estimate of future capital expenditure.

However, it is important that Systra's comments regarding the need to develop the capital expenditure budget in the context of an overall asset management strategy, through a "total cost approach" are noted, and that Systra's specific suggestions regarding reduced timber bridge replacement and increased formation repairs are considered.

New Hope will review QR's submission and seek to engage with QR on these matters, and may comment further in a future collaborative submission.

4.7 Coal's share of the common network asset base

New Hope accepts the Draft Decision, which bases coal's share of the common network asset base on an 87-path constraint, for the reasons set out in Section 2.2.3 of this submission.

4.8 Capital expenditure carryover account

New Hope supports the Draft Decision regarding the clearing of the carry-over balance.

4.9 Revenue requirement (building blocks) and reference tariffs

Section 4.9 of the Draft Decision consolidates the conclusions of previous sections. Accordingly, we refer to our comments on each of the corresponding building blocks elements.

5 Revenue Adequacy and Low Volumes

5.1 Balancing interests at low volumes

New Hope agrees that, at low volumes, it will not be possible for coal services to fully underwrite the cost of unused paths. Willingness to pay (or ability to pay) is likely to become a significant factor at reference tariffs which are above the level set out in the Draft Decision. We note the QCA's comparisons with access charges in other systems, which indicates that current tariffs are multiples of the average Goonyella tariff, and are higher than other high-cost systems such as the NSW Upper Hunter Valley. It is also important to note that the very high tariff charged by QR is charged for an inferior service, which causes above-rail costs to be significantly higher than in those other rail networks. Payloads in the West Moreton system are less than 2,000t compared to around 8,000t in the Upper Hunter Valley, and West Moreton services must operate within restricted hours. These considerations are relevant to the willingness and ability to pay of coal producers.

5.2 Low-volume tariff measures

5.2.1 Loss capitalisation

New Hope accepts the QCA's view that asset optimisation may be inappropriate where volumes are expected to recover from a low-volume period within a reasonable timeframe. However, New Hope remains of the view that asset optimisation should be considered where significant surplus capacity is expected to remain in the long term.

Limited loss capitalisation may be a reasonable approach where volumes reduce in the short term and where the repayment of the capitalised loss will not increase tariffs to a level which discourages the entry (or re-entry) of access seekers. As was explained in Section 5.1, New Hope considers that the proposed West Moreton tariff in the Draft Decision is nearing the limits of the 'willingness to pay' of thermal coal producers, in a system which delivers an inferior below rail service (low payloads and restricted operating hours). Therefore, the ability to recover capitalised losses without discouraging the use of the infrastructure, is likely to be extremely limited. The 'limited life' approach discussed by the QCA is one way to limit the growth of the capitalised loss, however, we note that this mechanism will not, in isolation, ensure that the loss does not grow to unsustainable levels.

5.2.2 Loss recovery premiums

Our understanding is that the loss recovery premium discussed in the Draft Decision is effectively a cap on tariff increases to apply in a low-volume scenario. That is, as volumes fall, tariffs may increase by up to 15%, but will not increase further, and will not reduce in the future until any capitalised loss has been extinguished (by repayment or, where losses have a limited life, expiry). New Hope agrees that there are significant benefits in providing certainty regarding the extent to which tariffs will rise in a reduced volume scenario. This will promote investment in mining projects and encourage utilisation of the infrastructure. However, for the reasons set out in Section 5.1 of this submission, we consider that a 15% premium may be such a material increase that it discourages future investment in mines and utilisation of the infrastructure. That is, rather than providing certainty which encourages investment, the premium may serve as clear notice of the risk of an unsustainable cost increase. We would suggest that a lower premium (5-10%) is more appropriate and more likely to provide the intended outcome.

Our comments on the pricing of ad hoc paths are provided in Section 2.3.2.

5.2.3 Low-volume operating, maintenance and capital expenditure allowances

New Hope supports Systra's conclusion that QR's estimates of capital, maintenance and operating costs in the low volume scenario (2.1mt) are excessive. We note that the QCA has not sought to consider this issue in detail in the Draft Decision.

Part B – Access Undertaking

6 Preamble and Application and Scope

An overview of New Hope's positions on the issues relating to the 2020 DAU preamble, application and scope is set out below:

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>
Preamble			
Provides high-level context for Queensland Rail's 2020 DAU	n/a	Appropriate to be approved.	Suggest the Preamble is deleted given the declaration review may result in some of QR's network ceasing to be declared - such that much of the preamble will cease to be appropriate.
Term of the undertaking			
Five-year term – 1 July 2020 to 30 June 2025	1.1	Appropriate to be approved.	Support QR Proposal and Draft Decision.
A shorter term will apply in certain circumstances, for example if the service is no longer declared.		Not appropriate to be approved. Amendments are appropriate to clarify that the undertaking will continue if the service, or part of the service, is declared.	Support Draft Decision and QCA proposed drafting.
Extensions and network connections			
Various provisions relating to the negotiation, development and funding of extensions. There is no standard connection agreement.	1.4 (and others)	Largely appropriate to be approved. However, we consider that clarifying amendments to the definition of 'extension' are appropriate.	Support Draft Decision and QCA proposed drafting.
Master planning provisions			
Regional network master plans for the Mount Isa and West Moreton systems will be developed on request. Queensland Rail is not required to develop a plan if customers do not agree to fund it.	1.5	Not appropriate to be approved. Amendments are appropriate to require Queensland Rail to provide access to the master planning process for all systems, except the North Coast system. We support Queensland Rail's proposed approach of consulting with stakeholders about changes to the process for development master plans and encourage Queensland Rail to submit a revised approach for consideration.	Continue to consider master planning should be conducted by QR as a matter of normal business for major relatively regularly utilised systems (like West Moreton and Metropolitan). However, willing to accept master planning only proceeding if funding is agreed subject to: <ul style="list-style-type: none"> • a new operational and productivity

			<p>improvement process being included; and</p> <ul style="list-style-type: none"> reasonable protections being included around the costs of funding (scope, budget and timeframe and overruns) and input that funding users would have in that process.
Other matters			
Removal of the words 'subject to schedule F', which were in the 2016 undertaking	1.2.1(b)(ii)	May not be appropriate to be approved, because the reasons for removing these words are not clear. The QCA seeks further submissions from Queensland Rail and stakeholders on this issue.	Support that wording not being deleted.

6.1 Preamble

As would be clear from the South West Producers submissions in the declaration review process, New Hope does not agree with QR's description in the preamble in relation to road transport being a competitive alternative for rail transport. New Hope is also conscious that the preamble currently assumes that the undertaking covers the entirety of the QR network, when the likely outcome of the declaration review may well differ from that.

Given the preamble adds nothing of substance to the undertaking and its removal would simplify the 2020 DAU. New Hope suggests its deletion.

6.2 Term of the undertaking

New Hope continues to support the proposed five year term, and supports the QCA's proposed drafting to ensure that the undertaking continues to operate in respect of access to those parts of QR's network that remain declared following a Ministerial decision on the declaration reviews (which resolve the concerns expressed in the Initial New Hope Submission).

New Hope would give consideration to supporting a longer term undertaking (with an interim reference tariff review) at some point in the future, when the undertaking and the future scope of the declaration of QR's systems is more settled, but does not consider it is appropriate at this point.

6.3 Extensions and network connections

New Hope is required to develop a new load out and rail siding for New Acland Stage 3, and therefore shares the concerns expressed by Pacific National regarding the importance of the 2020 DAU (including dispute resolution) covering rail connections.

Accordingly, New Hope supports the QCA's proposed drafting in relation to the definition of 'extension', as being appropriate to ensure that it also covers such connections.

6.4 Master planning provisions

At the date of lodging this submission, New Hope has not been consulted by QR in relation to an alternative approach to master planning as invited by the QCA.

New Hope continues to consider that master planning on the West Moreton system is not a major or onerous burden and is something that should occur without requiring user funding as part of normal business operations for QR, at least in respect of major and regularly utilised systems such as the West Moreton and Metropolitan systems. New Hope submits that if the master planning process was only required to be conducted by QR without user funding for major systems (say West Moreton, Metropolitan, Mount Isa and North Coast Line) and then only if at least a specified proportion of capacity on such systems was contracted, that may provide a more appropriate balance.

In relation to the West Moreton and Metropolitan systems specifically, presumably QR must be engaging with the State about Cross-river Rail and ARTC about Inland Rail, and its long term plans for how to deal with the interactions of the West Moreton and Metropolitan systems with such new infrastructure should presumably form part of some documented master planning – making this a more important issue than for some other more static systems which are likely to experience less changes in the foreseeable future.

However, given the nature of likely demand for the West Moreton system over the term of the 2020 DAU being able to be satisfied by the existing network without capacity expansions, New Hope is willing to accept the position proposed in the Draft Decision (user funding being required for any master planning but with requirements for funding user oversight) provided that:

- (a) the funding user oversight for any such master planning involves:
 - (i) QR being required to prepare a scope, budget and timeframe for the master planning exercise and propose terms for a funding agreement to be entered by users funding the master planning study;
 - (ii) potential funding users having a reasonable opportunity (of at least 30 days) to consult with QR and provide input on the proposed scope, budget, timeframe and funding terms to ensure that any master planning exercise is fit for the funding user's purpose;
 - (iii) QR being required to take potential funding users' input into account before proposing a revised scope, budget, timeframe and funding terms on the basis of which users make a final decision as to whether to agree to funding; and
 - (iv) QR being obliged to provide funding users with reasonable oversight of QR's progress throughout the master planning process; and
- (b) that master planning regime is supplemented with a regime that is focused on the currently more pressing issue of incentivising, promoting and facilitating QR:
 - (i) identifying root causes of inefficiencies and capacity losses; and
 - (ii) pursuing operational and productivity initiatives,as discussed in more detail in section 6.5 below.

6.5 Operational and productivity improvement initiatives

New Hope continues to have concerns that the current regulatory settings do not provide QR with sufficient incentives or requirements to pursue efficiency and productivity improvements.

These improvements are critical to seeking to maintain the competitiveness of the West Moreton coal supply chain, given the high infrastructure costs the supply chain involves relative to other coal supply chains.

New Hope therefore submits that the 2020 DAU should be amended to introduce a new part of QR's access undertaking, for those major systems (like the West Moreton system) where there is

a recognised supply chain group (like the South West User Group), which provides for QR to be obliged to:

- (a) participate in supply chain coordination (in a manner reflective of the supply chain participation provisions of the Aurizon Network draft amending access undertaking that was recently submitted – clause 7A.8.2 and 7A.8.3), including:
 - (i) coordinating maintenance planning between supply chain participants;
 - (ii) the consideration, development and implementation of productivity improvement initiatives and trials with other service providers and participants in the supply chain to improve the efficiency and performance of the supply chain;
 - (iii) conducting studies into mechanisms for improvement in productivity or efficiency (including mechanisms for producing above rail productivity);
 - (iv) investigating operational changes suggested by other supply chain participants; and
 - (v) reporting to the supply chain group on reasons for not pursuing operational and productivity improvements;
- (b) meet with the supply chain group at least monthly to provide an update on system performance, material planned possessions (or issues in the Alignment Calendar) during the next period, and major maintenance and capital works;
- (c) use its reasonable endeavours to identify constraints or 'root causes' of material service cancellations or delays, unplanned outages, or material increases in planned outages;
- (d) report to, and consult with, the supply chain group on possible options for resolving those root causes and seeking to reach a consensus on any feasible options that are worthy of QR study/investigation (including any options suggested by other supply chain participants); and
- (e) in respect of the West Moreton / Metropolitan systems, update the supply chain group on anticipated major developments and impacts in relation to any future development or construction works during the term of 2020 DAU of the Cross-river Rail or Inland Rail projects.

New Hope considers the above to be best practice for an infrastructure provider, and notes that elements of it are already practised by QR.

New Hope's concerns in relation to productivity improvements also arise in relation to the provisions of the SAA regarding negotiating variations for productivity improvements (as discussed in section 12 of this submission).

7 Negotiation Process

An overview of New Hope's positions on the issues relating to the 2020 DAU negotiation process is set out below:

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>
Access requests in different forms			
If Queensland Rail agrees, a request for access rights does not need to be in the form of an access application.	2.1.1(a)	Largely appropriate to be approved. However, amendments are appropriate to clarify that applications in different forms are treated as access applications for the purposes of the undertaking.	Support Draft Decision.

Information exchanged in preliminary stages of negotiations			
Information provided, and discussions held, in the preliminary stages of access negotiations are not binding on the negotiating parties	2.1.2(a), (b)	Appropriate to be approved.	Support Draft Decision, subject to the recommendation that QR be obliged to keep Capacity Information current and accurate also being adopted.
Queensland Rail will keep preliminary information current and accurate	2.1.2(c)	Not appropriate to be approved. Amendments are appropriate to require Queensland Rail to also keep capacity information current and accurate.	Support Draft Decision.
Permitted disclosures in confidentiality agreements			
Confidentiality agreements must permit disclosure of confidential information to certain parties and as required by law	2.2.2(d)	Not appropriate to be approved. Amendments are appropriate to apply the same exceptions to the disclosure of confidential information that apply in cl 2.2.1(b)(ii).	Support Draft Decision.
Contract renewal rights			
Eligible access holders can renew their access rights without joining a queue	2.7.2 and 2.9.3	The proposal, which is considered in conjunction with the renewal pricing arrangements proposed in Part 3 of the 2020 DAU, is not considered appropriate to be approved.	Do not support either the QR proposal or Draft Decision. For at least West Moreton / Metropolitan network coal access services, renewal rights should be inserted in the 2020 DAU reflecting the treatment from the 2016 access undertaking. See further submissions in section 8.3 below.
Other matters			
Access applications be sent to the address nominated on QR's website	2.1.1(a)	Appropriate to be approved.	Support Draft Decision.
An access seeker would be required to promptly advise if it does not intend to proceed with its access application on the basis of the indicative access proposal	2.5.1(b)	Appropriate to be approved. We consider the proposed clause makes it clear that the access seeker only needs to advise Queensland Rail if it does not intend to proceed.	Support Draft Decision.
Changing '2008 undertaking' to 'AU1'	2.8.3(ii)A)	Appropriate to be approved.	Support Draft Decision.

7.1 Access requests in different forms

New Hope supports the QCA's proposal and agrees that it both:

- (a) resolves the concern raised in the New Hope Initial Submission that where QR agreed a different form of access application with an access seeker it would then cease to technically be an access application without amendments to the definition of access application; and
- (b) still allows access applications to be accepted in different forms as QR intended.

7.2 Information exchanged in preliminary stages of negotiations

New Hope supports the QCA's recommendation that QR is required to keep Capacity Information current and accurate (in the same manner as currently applies under clause 2.1.2 in relation to Preliminary Information). This is important, as access seekers and haulage operators make investment and contracting decisions on the basis of QR's capacity assessments and, given the changes that occur in the Metropolitan system that can impact on available capacity for West Moreton services, keeping capacity information current is more important than in more static systems.

While New Hope continues to have concerns with the proposed express acknowledgements that information QR provides is non-binding, it is willing to support accepting those limitations for the term of the 2020 DAU provided the obligation to keep Capacity Information accurate and current is ultimately adopted.

7.3 Permitted disclosures in confidentiality agreements

New Hope supports the QCA Draft Decision to accept QR's extension of permitted disclosures subject to a reciprocal right for access seekers to be permitted to make disclosures to members of their board, senior management and related bodies corporate. In New Hope's experience, disclosures of that nature are a normal and necessary part of receiving approvals for progressing access agreement negotiations and, ultimately, entry into an access agreement.

7.4 Contract renewal rights

As discussed further in section 8.3 below, New Hope is opposed to the limitations QR has proposed on existing access holders having priority for renewing future access, and considers the Draft Decision proposal of only preserving a one-off renewal right presents an unworkable solution that does not achieve the intention of appropriately protecting existing sunk investments.

While New Hope is not opposed to QR's amendments to the negotiation framework provisions, which would have renewal applications proceed outside of the queuing process, it appreciates they were proposed by QR in a manner intrinsically linked to the proposed restrictions, such that New Hope submits the only appropriate outcome is to retain the priority given to renewal access holders that exists under AU1 (at least in relation to reference tariff services).

7.5 Other matters

New Hope supports the Draft Decision in respect of the other matters listed in the table above, none of which it considers are contentious.

8 Pricing Rules

An overview of New Hope's positions on the issues relating to the 2020 DAU pricing rules is set out below:

QR Proposal	Clause	QCA Draft Decision	New Hope Response
Pricing limits rule			
Access charges will be set so that expected revenue does not exceed the ceiling revenue limit and, unless approved by the QCA, fall below the floor revenue limit	3.2	Largely appropriate to be approved. However, amendments are appropriate to clarify the application of the floor revenue limit and the definition of the weighted average cost of capital in the formula to calculate the ceiling revenue limit.	Support Draft Decision proposal that WACC for the floor and ceiling limits should be linked to the regulatory and commercial risks of providing access for the relevant train services in respect of the relevant part of QR's network (i.e. not be linked to the WACC determined for West Moreton / Metropolitan coal reference tariff services).
Price differential rule			
Queensland Rail will have regard to a range of factors when formulating access charges, but will not differentiate between access seekers where the characteristics of the train service are alike and the access seekers operate in the same end market	3.3	Largely appropriate to be approved. However, amendments are appropriate to extend the limitation on price differentiation in cl 3.3(d) to capture access holders and to make consequential amendments, as required.	Support Draft Decision, while noting that the price differentiation rules do not apply to services covered by reference tariffs which are utilised by New Hope.
Contract renewal provisions are available to eligible access holders			
Contract renewal provisions are available to eligible access holders	2.7.2, 2.9.3 and 3.3(h)-(j)	Not appropriate to be approved. Amendments are appropriate to remove automatic renewal rights for new access seekers and expand renewal rights for existing access holders who have made substantial sunk investments. We invite further submissions on an appropriate approach for existing access holders.	Do not support either the QR proposal or Draft Decision. For at least West Moreton / Metropolitan network coal access services, renewal rights should be re-inserted in the 2020 DAU reflecting the treatment provided in AU1.
QCA levy			
Queensland Rail can charge access holders a QCA levy to recover the annual fees it pays to the QCA	3.7	Not appropriate to be approved. Amendments are appropriate to simplify the process, reduce the regulatory burden and improve certainty.	In principle, support the Draft Decision proposal to pre-determine the allocation for the term of the undertaking. However, consider 60% is a more appropriate allocation to West

			<p>Moreton / Metropolitan system services (given the reduction in the QCA's time that should be required to deal with West Moreton coal issues during the 2020 DAU assessment and term).</p> <p>Clause 3.7 of the 2020 DAU should also be amended to exclude from the QCA Levy amounts that the QCA determines were caused by QR adopting unreasonable positions.</p>
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8.1 Pricing limits rule

Consistent with its submissions in respect of the West Moreton reference tariffs above, New Hope supports the Draft Decision proposal that the WACC for the floor and ceiling limits should be linked to the regulatory and commercial risks of providing access for the relevant train services in respect of the relevant part of QR's network (i.e. not be hard coded to be linked to the WACC determined for West Moreton / Metropolitan coal reference tariff services).

The risks involved in the various services QR provides are clearly different, and it is appropriate (as discussed in the pricing portion of these submissions) to determine a WACC that reflects the risks of the service to which the reference tariffs (or, in this context, the services to which the floor or ceiling limits apply).

In relation to the other aspects of the pricing limits rules, New Hope understands that the pricing limits rules have no application to the West Moreton / Metropolitan system access services that are covered by reference tariffs.

However, in principle:

- (a) it understands including transport services contract (TSC) payments in assessment of the floor limit on the basis the TSC payments are effectively revenue received by QR; but
- (b) agrees with the submissions of Aurizon Bulk that the ceiling limits are largely meaningless – as for basically all customers in QR's multi-user systems an access price based on stand-alone costs would be completely uneconomic.

As described in section 2.3.1 of these submissions, the QCA should also have to refer to these limits in setting reference tariffs (Yancoal not paying incremental costs).

8.2 Price differentiation rule

New Hope considers that the Draft Decision's proposed extension of the pricing differentiation rules to access holders is logically appropriate (and where price differentiation is actually more likely to occur).

However, given these rules do not apply to the reference tariff services utilised by New Hope, New Hope has not provided any further commentary.

8.3 Contract renewal rights

At least for reference tariff access services, New Hope considers that the existing priority to renew contracted access rights should be retained in its current form in AU1.

Firstly, based on its last submission in the 2020 DAU process, QR's rationale for removing renewal rights was stated to be a concern that, where rail capacity was constrained, there would be competitive impacts from ongoing renewal rights preventing allocation of capacity to new entrants which placed a higher value on capacity than renewing access holders.

However, given that:

- (a) QR has indicated throughout the QCA's declaration review process that all of its network is underutilised (i.e. none of it is capacity constrained) such that the circumstances that QR is concerned about are highly unlikely to arise during the 2020 DAU; and
- (b) all users of the West Moreton / Metropolitan network for coal access services will pay the reference tariff (such that QR will not gain higher access revenue based on any theoretical higher value that a new entrant places on capacity even if the relevant rail infrastructure was capacity constrained),

QR's justification for removing important renewal rights which promote investment in industries (such as mining), which involve substantial sunk costs and capital investments, is clearly not appropriate.

Secondly, the more limited 'protections' proposed by QR, and the alternative limited 'protections' proposed by the Draft Decision, are practically unworkable and, in the case of the Draft Decision, reliant on unrealistic assumptions about access seekers ability to negotiate appropriate renewal rights.

It is clear that the West Moreton system's ongoing viability is dependent on continued investment by New Hope (and Yancoal) in their existing operations. Mine life extension projects (such as the New Acland Stage 3 Project) will have longer terms than QR's proposed maximum of 5-year renewals, such that longer term renewal rights are critical to promoting and facilitating investment in such extensions.

New Hope considers that a one-off renewal right for the remainder of a project proponent's mine life (as the Draft Decision suggests) is also not a workable solution to protect existing investments, given some of the uncertainties that exist in terms of the likely mine life and the 100% take or pay nature of the West Moreton access arrangements. Such a position would either leave a project proponent at risk of a material 'take or pay tail' through over-estimating its mine life or at risk of not being able to obtain access and therefore having to shut the mine early due to under-estimating its mine life.

In relation to the QCA's proposal for future access seekers, the Draft Decision places a lot of weight on its assumption that access seekers may be best placed to negotiate appropriate contractual provisions, including renewal provisions, with QR at the time of making an initial investment. However:

- (a) New Hope remains highly sceptical that an access seeker would ever be in a bargaining position to negotiate material favourable adjustments of that nature to the standard access agreement – both based on New Hope's own experience of negotiating access terms and QR's evident natural monopoly position;
- (b) New Hope also notes that QR has previously indicated that it considers that negotiating a contract renewal right is inconsistent with the existing access queuing arrangements in the undertaking – and there is therefore no likelihood or guarantee QR would offer renewal rights in the way the QCA seems to assume;

- (c) where reference tariffs (and standard access terms) are applied it is not clear to New Hope why the renewal position of one access seeker/holder should be different from another based on their relative bargaining positions, rather than an equal position forming part of the access undertaking; and
- (d) the suggestion in the Draft Decision that the reference tariff could be adjusted to reflect negotiating renewal provisions is highly concerning – as it simply exposes new access seekers to QR extracting above-reference tariff monopoly rents (i.e. more than a reasonable return) under the guise of compensation for any renewal right which is offered.

If systems became, or were highly likely to become, capacity constrained at some time in the future, QR could of course submit a draft amending access undertaking seeking changes to the renewal regime at that point, and the appropriateness of that could be considered where the rationale for the proposed changes was more relevant.

Based on the above analysis, New Hope considers that the outcomes produced by QR's proposal and the recommendations in the Draft Decision would be inappropriate. Accordingly, it proposes that, at a minimum for reference tariff services (i.e. coal services on the West Moreton/Metropolitan networks), renewal rights should continue to exist in exactly the form provided in AU1 – i.e. a continuing right to renew in priority to new access seekers based on the applicable reference tariff at the time.

8.4 QCA levy

New Hope is willing, in principle, to support specifying up front in the undertaking the principles on how the QCA levy charges should be allocated (rather than that needing to be considered annually by the QCA). It appreciates that, that would involve a reduction in regulatory burden.

However, it has potential concerns with the high proportion of the QCA levy that is proposed by the QCA to be allocated to West Moreton users (67.4%) across the 2020 DAU period.

While New Hope acknowledges that a material proportion of the QCA's analysis relates to setting the appropriate West Moreton coal reference tariff, it understands from the QCA's 2018-19 QCA levy final decision that those proportions were based on the proportions originally used in 2014/15 and 2015/16 when assessing QR's first access undertaking. Yet the proportion of the QCA's time spent on West Moreton coal related issues should have materially decreased since that time.

In particular, QR's first undertaking was the first in which the QCA was called on to determine a 'bottom-up' building blocks-based tariff for coal services the West Moreton network. The QCA's task in respect of the 2020 DAU should be an order of magnitude simpler, given the extensive work undertaken in the previous consideration.

Those concerns are exacerbated given that during the initial part of the 2020 DAU, it is likely that tonnages of the West Moreton users will be lower than was the case when the 67.4% allocation was determined to be reasonable (and noting that the QCA has referred to the volume of services as relevant in setting Mount Isa service's proportion of the QCA levy).

Consequently, New Hope considers it is clear that a reduction in the proportion of the QCA levy allocated to West Moreton coal services would be appropriate.

While New Hope appreciates these matters cannot be determined with precision, a more appropriate allocation that seeks to balance the factors noted above would be approximately 60%.

New Hope also continues to note its concerns that it is unreasonable that the QCA levy results in users paying for costs arising from regulated infrastructure providers making ambit claims in relation to tariffs, either in respect of WACC elements or in inefficient cost proposals.

Accordingly, clause 3.7 of the 2020 DAU should be amended to exclude from the QCA Levy amounts levied by the QCA on QR that the QCA determines were caused by QR adopting unreasonable positions.

9 Operating Requirements

An overview of New Hope's positions on the issues relating to the 2020 DAU operating requirements provisions is set out below:

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>
Operating requirements manual			
Remove the ORM from the access undertaking. Require consultation before amendments are made to the ORM	4.3(c) and Sch G	Not appropriate to be approved. Amendments are appropriate to revise the way the ORM is reviewed and altered.	Support Draft Decision subject to incorporating into the 2020 DAU: <ul style="list-style-type: none"> the same protections as exist in relation to System Rules amendments in the Aurizon Network access undertaking; and a regime for productivity and operational improvements (as discussed in section 6.5 of these submissions).
Network management principles			
Create a new category of possessions called 'Ad hoc planned possessions'	7.1, Sch F	Not appropriate to be approved. It is appropriate to provide further detail on the purpose of ad hoc planned possessions and keep track of all possessions and disruptions in a public document.	Support Draft Decision recommendation of utilising the Western Corridor Alignment Calendar, subject to the Network Management Principles being appropriately amended to make that the key planning document and to oblige QR to regularly update it.
Permit variations to the daily train plan (DTP) on short notice to accommodate special events	Sch F, cl 2.2(f)(i)	Not appropriate to be approved. Amendments are appropriate so Queensland Rail makes reasonable endeavours to consult and promptly updates a public document that keeps track of special events.	
Maintain approach for modifying a master train plan (MTP), save to update to account for ad hoc planned possessions	Sch F, cl 2.1(m)(ii)	Not appropriate to be approved. Amendments are appropriate such that there is certainty regarding an access holder's TSE when modifying a MTP/scheduling an ad hoc planning possession.	Support Draft Decision.

Remove the requirement that a planned possession that is subject to a dispute raised by an access holder be delayed until that dispute is resolved	Sch F, cl 2.4	Not appropriate to be approved. Amendments are appropriate so that access holders and operators are required to raise the dispute at least 60 days before the possession.	Support Draft Decision, subject to a minor wording amendment.
Maintain the Traffic Management Decision Making Matrix from the 2016 access undertaking	Sch F and cl 3(g)	May not be appropriate to approve. We invite comment from stakeholders on the viability of extending on-time windows for freight rail.	Subject to the views of haulage operators, support maintaining the existing matrix in respect of the West Moreton / Metropolitan systems.
Maintain the principles for managing deviations from a DTP	Sch F and cl 3(i)(i)(B)	Appropriate to be approved.	Support Draft Decision, subject to introduction of a regime for productivity and operational improvements (as discussed in section 6.5 of these submissions).
			<p>New Issue</p> <p>Management of Cross River Rail Project</p> <p>New Hope suggests specific provisions should be inserted to address issues relating to the development of Cross-River rail (and the impact closures relating to development of that project will have on West Moreton services).</p>

9.1 Operating requirements manual

New Hope's concerns in relation to QR's proposals in relation to the Operations Requirements Manual (the **ORM**) stem from the fact that:

- (a) the operational matters set out in the ORM have a material impact on QR's assessment of capacity and how QR provides its access service; and
- (b) the requirements of the ORM can impose compliance costs on access holders and rolling stock operators,

such that it is important that changes to the ORM are transparent to access holders and rolling stock operators and such changes are able to be disputed where they are not appropriate.

New Hope has considered the QCA's proposal to remove the ORM from the undertaking but adopt a similar regime to those applied to System Rules amendments in relation to the Aurizon Network (in clauses 7A.2.4-7A.2.6), such that the undertaking contained protections in relation to how the ORM could be amended in the future.

In principle, New Hope is willing to support that concept, as it accepts that some amendments to the ORM may be minor and not justify a draft amending access undertaking being required, provided that:

- (a) the undertaking is also amended to reflect a regime for productivity and operational improvements (as discussed in section 6.5), which would help to resolve any detrimental or unanticipated issues which might arise from operational changes to the ORM; and
- (b) the important protections from the System Rules amendment provisions in the Aurizon Network access undertaking are properly replicated in relation to the QR access provisions in relation to future ORM amendments, particularly including:
 - (i) the requirement for consultation;
 - (ii) the ability for affected persons to make submissions on the proposed amendments;
 - (iii) QCA oversight of proposed amendments; and
 - (iv) the QCA only being able to approve variations if (among other things) the QCA considers it appropriate to do so having regard to the matters listed in section 138(2) – i.e. applying the same test that would apply to approval of access undertaking amendments.

9.2 Network management principles – Ad-hoc planned possessions

New Hope understands (both from the Draft Decision and explanations provided by QR) that QR's rationale for seeking to introduce "ad hoc planned possessions" is that the Master Train Plan (the **MTP**) only contains planned possessions "where such scheduled times remain unchanged from week to week".

QR's response has been to incorporate a new category of possessions to capture possessions which are planned, but do not occur regularly week to week.

An alternative way of doing this would be to require the MTP to also incorporate other planned but not regular possessions, such that the MTP better achieves the outcome described in clause 2.1 of Schedule F of being 'readily convertible to a DTP'.

However, to the extent that the QCA considers it appropriate that the MTP continue to only include all regular weekly events, then New Hope strongly considers that there needs to be a clear alternative way of providing users and haulage operators sufficient transparency and notice of possessions, and providing confidence that DTPs are being properly derived.

For a coal producer, to organise logistics, not just in terms of rail haulage, but also managing stockpile capacity at the coal terminal and ordering and scheduling of vessels, it is critical to have clarity around likely future availability of the rail network it utilises.

Having carefully considered the proposals in the Draft Decision, New Hope agrees with the QCA that the Western Corridor Alignment Calendar (the **Alignment Calendar**) has the potential to provide this in relation to the West Moreton network. However, to achieve that, New Hope considers it would be critical that:

- (a) The Network Management Principles (**NMP**) in Schedule F expressly recognise the existence of the Alignment Calendar and its interaction with the MTP and DTP, such that it is clear to all stakeholders that the Alignment Calendar is now the key document for planning and scheduling purposes. In particular, the NMP would need to make clear that:
 - (i) the Alignment Calendar was developed from the MTP (but containing additional information – see below);

- (ii) the restrictions on modifying the MTP would also apply to modifying the Alignment Calendar; and
 - (iii) the DTP for each day is derived from the Alignment Calendar (rather than the MTP).
- (b) The NMP specifies what must be included in the Alignment Calendar, including:
- (i) everything from the MTP (regular planned possessions and all regular train service);
 - (ii) all non-regular planned possessions (what QR refers to as 'Ad Hoc Planned Possessions' but which New Hope agrees could do with a name more reflective of their intended nature);
 - (iii) all known Special Events (see below);
 - (iv) 'no train' periods arising from the Metropolitan system requirements; and
 - (v) Information on recent changes to the Network (as is currently displayed).
- (c) The Alignment Calendar was updated regularly – with QR having an obligation to
- (i) regularly update it at least monthly; and
 - (ii) update it for Special Events or material changes in planned possessions as soon as practicable after QR becoming aware of such events.

New Hope suspects this approach may not be needed for all QR's systems, but considers it is particularly important for systems which principally involve traffics which also operate through the Metropolitan system.

If that approach was adopted, then New Hope would be willing to support the recognition of the different types of planned possessions.

9.3 Network management principles – Special Events

Consistent with the submissions made above, New Hope is willing to support the introduction of possessions for Special Events involving additional non-regular passenger services if they are included in the Alignment Calendar as soon as practicable after QR becoming aware of them. That is, the appropriate way for accommodating Special Events is through the Alignment Calendar which the DTP is then derived from.

New Hope continues to consider that the two business days initially proposed by QR for variations for Special Events are clearly inappropriate given that many of the examples of events given will be known well in advance. Accordingly, these should be able to be accommodated in the monthly updates for the Alignment Calendar, with at least 3 months' advice notice, similar to all other planned possessions.

9.4 MTP Modification Consultation

New Hope supports the Draft Decision recommendation that Schedule F, clause 2.1(m)(ii) should be amended to make it clear that the MTP (or assuming the approach discussed above is adopted, the Alignment Calendar) will not be varied or an Ad Hoc Planned Possession will not be scheduled without an Access Holder's prior agreement where an Access Holder's Train Service Entitlement may be adversely affected.

As the Draft Decision notes, that is clearly the intent of the provision, and it is appropriate to clarify the possession given that the reference to "within the scope of that Access Holder's Train Service Entitlement" currently creates some doubt as to how the restriction operates (as noted in Aurizon Coal's previous submissions on this point).

9.5 Disputes over Planned Possessions

New Hope continues to consider that it is inappropriate for QR to simply proceed with planned possessions that are disputed given that such variations can result in cancellations, demurrage, take or pay costs and penalties under coal sales contracts.

However, it accepts that, as noted in the Draft Decision where stakeholders have 90 days' notice, it is appropriate to strike a balance between protecting QR's interests (and mitigating the risks of wasted costs due to disruption of planned possessions arising from last minute notice of disputes) and protecting access holders' and haulage operators' interest in ensuring that inappropriate planned possessions do not proceed.

In principle therefore New Hope is supportive of requiring disputes to be filed within 30 days of being notified of the planned possession (through inclusion in the Alignment Calendar assuming the approach discussed above is accepted) – but considers that it is important that the time frame is expressed that way (rather than 60 days before the possession is scheduled to occur), such that access holders' dispute rights are not adversely impacted by any late notification of a planned possession by QR.

New Hope agrees that the reinstated dispute provisions would also need to cover all new types of planned possessions which are introduced to the access undertaking (ad hoc planned possessions and special events to use QR's terminology) in order to achieve the intended outcomes.

9.6 Network control principles

While New Hope would defer to the views of haulage operators on this matter, New Hope is concerned that, as the Draft Decision identifies, a higher degree of accuracy in timing is required for trains travelling on the Metropolitan system.

Consequently, subject to the views of haulage operators, while it is not opposed to a changes to what constitute "On Time" and "Late" services under the Traffic Management Decision Making Matrix more generally, it considers that the existing practice should be maintained for services utilising the West Moreton and Metropolitan networks.

9.7 Train Priority

New Hope is willing to continue to support the retention of the existing Traffic Management Decision Matrix (as proposed by QR and recommended in the Draft Decision), given the requirement for the discretion provided to QR in terms of managing deviations from the DTP is subject to being exercised 'if it is reasonably necessary'.

Again, that support is premised on the basis that it would be appropriate to introduce a productivity and operational improvement regime (as discussed in section 6.5 of this submission), such that if significant disruption was being caused by day of operations variations of this type there would be an avenue to identify and resolve that issue.

9.8 Cross-river Rail

New Hope understands that it is likely that the Cross-river Rail project will be developed during the term of the 2020 DAU, and that during such development QR may seek material closures of parts of the Metropolitan system (that will impact on West Moreton services that require access to the Metropolitan system).

Firstly, any possessions should be treated in the manner proposed for other planned possessions (as discussed in section 9.2 of this submission), including the minimum 3 month advance notice for planned possessions and inclusions in the regular updates of the Alignment Calendar.

Secondly, there should be additional controls in relation to Cross-river Rail related possessions, taking into account that New Hope and other users of QR access services that involve traversing the Metropolitan system will need to make material adjustments to their supply chain given the greater likely significance of these closures. In New Hope's case this will require management of coal sales contracts, freight arrangements, stockpiles at the QBH coal terminal, rail haulage orders and mining/production rates. In that regard, New Hope considers that it would be appropriate for the NMP to provide for each of the following:

- (a) QR to provide periodic updates (at least quarterly until completion of the Cross-river rail development) to Metropolitan system users and rail haulage operators of future anticipated closures and the impacts; and
- (b) Subject to any legal requirements which QR is subject to, a cap on possessions of:
 - (i) in aggregate, no more than two months in any one year;
 - (ii) the longest possession being no longer than 12 days; and
 - (iii) no more than one extended outage, being an outage of ten days or greater, in any rolling 12 month period.

New Hope's prior experience of extended outages is that the supply chain incurs material reputational and economic impacts if outages extend beyond the above parameters.

10 Reporting

An overview of New Hope's positions on the issues relating to the 2020 DAU reporting provisions is set out below:

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>
Quarterly network performance report			
Publish by end of month after each quarter, or as agreed with QCA	5.1.1	Appropriate to be approved.	Support Draft Decision.
Allow 30 minutes' leeway in timing of planned possessions	5.1.2(x)	Not appropriate to be approved. Amendments are appropriate to specify that reporting on planned possessions should be subject to 15 minutes' leeway, and provision information in ranges.	Support Draft Decision (with the intention of reassessing at the next undertaking period whether this threshold was appropriate).
No proposal on reporting on use of ad hoc planned possessions	5.1.2(y)	Queensland Rail should report on ad hoc planned possessions.	To the extent that ad hoc planned possessions are permitted, support Draft Decision.
Specify types of service covered, for example: coal, bulk minerals, freight; exclude metropolitan system	5.1.2(b)	Appropriate to be approved.	Support Draft Decision.
		Invited further submissions on whether urgency or emergency possessions should be reported.	Support number of urgent or emergency possessions being reported.
Annual network performance report			

Format of annual network performance report unchanged	5.2 and 5.3	Not appropriate to be approved. Amendments are appropriate to provide for combined performance reporting with the regulatory accounts.	Support either of QR proposal or Draft Decision position.
Publish within six months after end of each year	5.2.1(a)	Appropriate to be approved.	Support Draft Decision.
Commentary required only for 'material' changes	5.2.2(k)	Not appropriate to be approved. Amendments are appropriate to define 'material' (suggested as greater of \$500,000 or 10% of forecast amount).	Support Draft Decision (with the intention of reassessing at the next undertaking period whether this threshold was appropriate to capture the material variances experienced during the term of 2020 DAU).
Other matters			
Incorrect clause number	5.2.2(i)(vi)	Clause 5.2.2(i)(vi) should be numbered 5.2.2(i)(v)(B).	Support Draft Decision.

10.1 Quarterly network performance report

New Hope remains supportive of QR's proposed timing for the publication of quarterly network performance reports and for reporting to be classified by reference to the types of services covered as proposed by both QR and the Draft Decision.

It also accepts that the intention was not to require reporting for being a minute overtime in relation to planned possessions, and based on the reasoning in the Draft Decision, is willing to support the proposed 15 minute leeway before overruns of planned possession have to be reported. That support is premised on the assumption that the QCA would review at the next undertaking period whether the practical experience during the term of the 2020 DAU was that that 15-minute threshold was set at an appropriate level.

Clearly, to the extent that the concept of 'ad hoc planned possessions' is included in the network management principles (discussed in section 9.2 of these submissions above) then they should be reported on – just as other planned possessions are. If anything, reporting on these more 'ad hoc' possessions is even more important to assist supply chain participants in understanding the impact these possessions are having on capacity and supply chain performance.

Similarly, New Hope considers that reporting at least on the number of urgent or emergency possessions would allow stakeholders to understand whether possessions of that type were increasing in a way which would suggest concerns.

If the proposal for an Alignment Calendar is adopted (discussed in section 9.2 of these submissions above), then New Hope proposed that all material variations from the Alignment Calendar should be reported on.

10.2 Annual network performance report

New Hope is comfortable with QR providing separate annual performance reports and annual financial reports (as QR proposed) or having the right to combine them (as the Draft Decision proposes), and remains supportive of QR's proposed timing for publication of such reports.

New Hope is also willing to support the QCA's proposed materiality thresholds for variances which QR would be required to provide an explanation. That support is premised on the assumption that the QCA would review at the next undertaking period whether the practical experience during the term of the 2020 DAU was that that threshold was set at an appropriate level and resulted in explanations for all material variances.

11 Administrative Provisions

An overview of New Hope's positions on the issues relating to the 2020 DAU administrative provisions is set out below:

<i>QR Proposal</i>	<i>Clause</i>	<i>QCA Draft Decision</i>	<i>New Hope Response</i>
Parties that can access dispute resolution			
Dispute resolution is only available to access seekers	6.1.2	Not appropriate to be approved. Amendments are appropriate to enable other parties (including access holders and train operators) to access the dispute resolution mechanism if they receive the benefit of an obligation in the undertaking.	Support Draft Decision.
Disputes referred to the QCA for resolution			
The QCA must obtain advice from a rail safety expert when arbitrating certain disputes	6.1.4	Not appropriate to be approved. Amendments are appropriate to address identified problems with the workability and clarity of the clause.	Support Draft Decision.
The process for the QCA to resolve disputes may differ depending on the nature of the dispute	6.1.4	Not appropriate to be approved. Amendments are appropriate to provide certainty as to the awarding of costs and the binding nature of the process.	Propose an alternative way of achieving this aim, so as not to create the potential for disputes of this type to be frustrated.
Other matters			
Update the transitional provisions so that references to 'the 2008 Undertaking' become 'AU1'	6.4	Appropriate to be approved.	Support Draft Decision.
Remove a requirement for tariff reports for the West Moreton Network, which covers the period before the undertaking commences.		Appropriate to be approved if the 2020 DAU commences on 1 July 2020. If not, we consider it would be appropriate to include a similar clause to cl 6.4(f) of the 2016 undertaking, updated for the 2016 undertaking. We also consider that this requirement should be extended to include reports for other networks that are provided for under cl 5.2.2(j). In our view, this requirement reduces information asymmetry in negotiating and determining future access charges.	Support Draft Decision.

Cross-referencing errors		<p>The following amendments are appropriate:</p> <ul style="list-style-type: none"> • cl 6.1.2(b) – correct the reference to cl 1.0.1(a) • any further amendments that are required to correct identified typographical or cross-referencing errors. 	Support Draft Decision.
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11.1 Parties that can access dispute resolution

New Hope supports the recommendations in this respect in the Draft Decision, which it understands may be important to ensure there is appropriate dispute resolution rights in respect of obligations under the undertaking for:

- (a) private infrastructure owners seeking to negotiate new connections or rail haulage providers;
- (b) end users or rail haulage providers where the other entity is the access seeker; and
- (c) access holders in relation to issues that are not covered by the terms of access agreements.

New Hope is supportive of this simply being addressed as proposed by the Draft Decision by the dispute resolution provisions being available to any party that receives the benefit of an obligation in the access undertaking.

New Hope anticipates that it will need to develop a new rail spur for the New Acland Stage 3 Project and, to the extent the entity that develops that rail infrastructure differs from the New Hope company that is the access seeker, the QCA's proposed amendment will be important. Similarly, the QCA's proposal would be appropriate for resolving concerns regarding changes to line diagrams that will be a concern to access holders, but not be something covered by the access agreement dispute resolution regime.

11.2 Disputes referred to the QCA for resolution

New Hope:

- (a) supports the Draft Decision in respect of the amendments to clause 6.1.4(b) in relation to safety dispute matters (and agrees with the QCA's assessment that those amendments would be effective in achieving the outcomes supported by QR and other stakeholders while making the position workable);
- (b) but has some concerns about the 'process improvement' requirement proposed in the Draft Decision that parties must reach agreement before the dispute resolution processes can proceed.

In relation to the second issue, New Hope's concern is that, even with the proposed obligations to act reasonably and in good faith, that it will be possible for QR to frustrate access disputes by delaying or not providing agreement or only providing agreement on inappropriate conditions.

New Hope considers the same outcome can still be achieved without that potential by:

- (a) QR agreeing, via the provisions of the undertaking, to be legally bound by QCA determinations for disputes of the type described in clause 6.1.4(a)(ii) and to be subject to QCA costs orders to the extent made in such disputes; and

- (b) having it be a requirement, via the provisions of the undertaking, for any other party to commence or otherwise participate in a dispute under clause 6.1.4(a)(ii) that they confirm to the QCA their agreement to those same matters.

Where the same outcome can be achieved, without the potential for access disputes to be frustrated, New Hope considers that approach would therefore be more appropriate.

11.3 Other matters

New Hope supports all of the Draft Decision in respect of the other matters listed in the table above, none of which are contentious.

Part C – Standard Access Agreement

12 Standard Access Agreement

New Hope received drafting from QR on 9 July 2019. Given the timing of that information, New Hope is not in a position to comment on the specifics of QR's draft proposals. However, we understand it was provided in the spirit of seeking consultation on those matters, such that they will hopefully be able to be addressed in a future submission in the collaboration period.

12.1 Variations for productivity and efficiency improvements

New Hope supports the Draft Decision in respect of the removal of QR's proposed amendment 'for the supply chain'.

Consistent with the submissions made in relation to the undertaking terms needing to do more to facilitating productivity and efficiency improvements, New Hope considers that maximising the scope for productivity and efficiency improvements is to the benefit of the system at large.

In this spirit New Hope contends that QR's proposed drafting 'to all parties' at the end of clause 1.3(a) should also be deleted.

12.2 Operational rights for train operators

New Hope is in favour of simplifying the process for appointing subsequent operators but agrees that QR's proposed drafting inadvertently creates some uncertainty relating to the initial operator.

New Hope suggests that an explicit provision be inserted where the initial operator is appointed by the access holder.

12.3 Liability in relation to performance levels

New Hope supports the Draft Decision but notes that historically the imbalance in negotiating power and delay associated with dispute resolution process has resulted in failure to agree performance levels.

12.4 Security deposits

New Hope supports the Draft Decision in relation to security deposits. New Hope welcomes QR's acceptance in the drafting recently provided, of the security being expressed as a maximum.

12.5 Relinquishment fees

New Hope supports the Draft Decision.

12.6 Requirements to negotiate or consult in good faith

New Hope received drafting from QR on 9 July 2019 offering to reinsert all references to 'good faith' and proposing a definition of 'good faith'. New Hope welcomes the reinsertion of all references to good faith but, given the timing of provision of that information, is not presently in a position to comment on QR's proposed definition. New Hope and QR have agreed to meet during the collaboration period to discuss what constitutes an appropriate good faith definition.

12.7 Other terms of the proposed SAA

New Hope's views on each of the other issues raised in the Draft Decision in respect of the terms of the SAA are summarised below:

QR Proposal	Clause	QCA Draft Decision	New Hope Response
QR proposed to remove the references to subsequent agreements contained in the current SAA to clarify the drafting	4.1(c)(i)	Appropriate to be approved, as it is a minor procedural change relative to the current SAA.	Support Draft Decision.
QR proposed an amendment to the current SAA to clarify that each party to the agreement (including the operator) provides the relevant representations and warranties	4.6(a)	Not appropriate to be approved. An operator must provide representations and warranties under cl. 23, so there is no need to add an additional requirement in clause 4.6(a). Therefore, our draft decision is that amendments are appropriate to reinstate the drafting that applies in cl. 4.6(a) of the current SAA.	Support Draft Decision.
QR proposed amendments to the current SAA to reflect changes to rail safety legislation and clarify that only relevant information is to be provided	5	This proposal, which reflects changes to rail safety legislation, is appropriate to be approved.	Support Draft Decision.
Pacific National argued that the 10 business days timeframe for making payments, as proposed by QR, should be extended to 45 days in line with rail industry practice	6.2(a)	QR's proposed payment timeframe is appropriate to be approved. Pacific National has not justified its suggestion to extend the timeframe to 45 days and we are not aware of evidence to suggest that 10 business days is out of line with industry practice. We also note that a 10-business day timeframe applies in Aurizon Network's current SAA.	Support Draft Decision the 10 business days' timeframe for payment is a long-standing obligation.
Under QR's proposal, the parties are not required to provide notification of actual or likely failures of the access agreement. These requirements are in the current SAA, but QR said the requirements were inappropriate and not customary in commercial contracts.	7.3(f), 8.4(d)	QR's proposal is not appropriate to be approved because it prevents the parties from preparing for likely breaches or mitigating the effects of actual breaches. It does not appropriately balance the interests of QR, access holders and train operators. QR should amend the clauses to reflect the requirements in the current SAA, except that notification should only be required for material breaches or likely breaches (otherwise the obligation is likely to be too onerous).	Support Draft Decision and agree to it being restricted to material breaches or likely breaches.
Aurizon Bulk considered that additional train services and ad hoc train services were similar and should be	8	QR only prescribes take-or-pay provisions for reference tariff services. QR's proposal of allow additional services but not ad hoc services, to offset an access holder's take-or-pay liability is appropriate to be approved.	Support Draft Decision.

QR Proposal	Clause	QCA Draft Decision	New Hope Response
<p>consolidated under one request for extra train services that counts towards an access holder's take or pay obligations.</p> <p>In response to Aurizon Bulk's submission, QR argued that the two services are different and that it did not support the consolidation of the definitions or consider there was a case for ad hoc services to be offset against take-or-pay obligations.</p>		<p>As noted by QR, there are differences between ad hoc and additional services (as those terms are defined in the SAA). An additional service is the same type of service as the contracted service, but an ad hoc service different from the contracted service (for example, it could be a service with a different origin and destination).</p> <p>Under the take-or-pay provisions, the access holder agrees to pay for the paths it has contracted, whether or not those paths are used. We do not consider it appropriate to use revenue from different types of services (i.e. ad hoc services) to reduce an access holder's take or pay liability.</p> <p>Our draft decision to approve QR's proposal appropriately balances the interests of QR and access holders.</p>	
<p>Aurizon Bulk submitted that amendments were appropriate to ensure QR provides additional and ad hoc train services wherever available and evidence to support any rejection of the request</p>	8	<p>QR's proposed is appropriate to be approved. We do not consider that Aurizon Bulk's suggested amendments are appropriate. We consider QR has an incentive to provide additional and ad hoc services to increase its revenue and note Aurizon Bulk's comment that QR has been accommodating and reasonable in practice.</p>	Support Draft Decision.
<p>Pacific National submitted that QR should only be allowed to recover 'reasonable' costs and expenses</p>	8.4(c), 10.2(c), 10.7(a), 11(c)	<p>QR's proposal is not appropriate to be approved. In relation to cl 8.4(c), 10.2(c) and 11(c), it is appropriate to include the caveat proposed by Pacific National to balance the interests of the contracting parties. QR should be able to recover reasonable costs, while access holder should not be liable for costs that are excessive. However, we do not consider it is appropriate to add this caveat to cl 10.7(a), because there are sufficient protections within the clause requiring QR to act reasonably.</p>	Support Draft Decision.
<p>QR proposed to clarify that changes to the interface risk management plan (IRMP) could be made by exchanging written notices. QR considered the amendment would remove an</p>	9.2(d)	<p>QR's proposal is not appropriate to be approved. We accept the intent of QR's proposal to simplify the process of changing the IRMP and consider that the rights of the contracting parties are not affected. However, amendments to cl 9.2(d) are appropriate to clarify the drafting in a manner similar to the following: '(d) For administrative ease,</p>	<p>New Hope supports QR's proposed drafting, the importance of the IRMP is sufficient to warrant notice rather than just written communication.</p>

QR Proposal	Clause	QCA Draft Decision	New Hope Response
unnecessary administrative burden and enable safety issues to be dealt with quickly.		the IRMP may be amended by way of written communication between the duly authorised representatives of the Parties.	
QR proposed a number of amendments to the current SAA to reflect changes to rail safety legislation and the establishment of the Office of the National Rail Safety Regulator	9.3, 9.10, 10.1, 28.1	<p>QR's proposal is not appropriate to be approved. We have reviewed QR's proposal and consider the following amendments are appropriate:</p> <ul style="list-style-type: none"> The definition of 'RNSL' needs to be amended to reflect that the Queensland and South Australian laws are separate acts and to refer to the South Australian National Law The removal of the definition of 'Railway Operator' requires consequential amendments to Schedule 2 where the term 'Railway Operator' is still used 	New Hope supports QR's intention behind making these amendments but agrees with the amendments proposed by the QCA.
Pacific National submitted that amendments should be made to this clause to only enable QR to do anything it considers 'reasonably' necessary	10.2(c)	QR's proposal is not appropriate to be approved. It is appropriate for QR to amend cl 10.2(c) as suggested by Pacific National. Including this caveat is appropriate to guide the actions taken by QR and strikes a reasonable balance between the interests of the contracting parties.	New Hope supports the amendments proposed by Pacific National.
Pacific National argued that the ability to use dispute resolution for disputes about the noise mitigation requirements should be made explicit	10.7	While the general dispute resolution mechanism in cl 19 would apply to disputes in relation to this clause, we do not consider that QR's proposal is appropriate to be approved because it may result in disputes being referred to a court, even though disputes of this nature would be more appropriately dealt with by an expert. QR should include an additional provision to provide that disputes in relation to cl 10.7 are directly referred to an expert for resolution under cl 19.3.	Support Draft Decision.
Pacific National argued that the clause should be clarified to specify that QR is not indemnified in the event that it is negligent. Pacific National also suggested removing cl 12.2(c) and 12.2(d)	12.2	QR's proposal is not appropriate to be approved. This clause applies where the operator's customer is not a party to the SAA and is intended to apply the same limitations on the potential liability of QR as those that apply under cl 13 to the operator's customer. QR's potential liability for negligence is considered in cl 13.	Support Draft Decision.

QR Proposal	Clause	QCA Draft Decision	New Hope Response
		Pacific National has not provided any reasons for deleting cl 12.2(c) and (d) and these clauses are consistent with the intent of cls 12.2(a) and (b).	
QR proposed to amend the current SAA by including cl 15.1 to clarify that cls 15.2(c), 15.3(c), 15.4(a) and 15.5(a) are subject to relevant legislation and regulations regarding the enforcement of contractual provisions relating to insolvency events. QR advised that these changes are necessary to address the ipso facto legislative amendments.	15	QR's proposal is appropriate to be approved given the introduction of the new ipso facto regime. While QR advised that consequential amendments should be made to cl 17.2, which deals with QR's recourse to security, it did not appear to submit any proposed amendments. We will consider proposals in relation to further amendments in response to the draft decision.	Support Draft Decision.
Pacific National considered the clause should be amended to protect the operator from QR terminating the agreement, if the operator is not liable for a failure under the agreement. Pacific National proposed similar wording to cl 15.4(c)	15.2(a)	QR's proposed cls 15.2(a) and 15.3(a) are not appropriate to be approved. It is appropriate for QR to amend cls 15.2(a) and 15.3(a) to reflect the wording in cl 15.4(c). Providing reciprocal rights in relation to the ability to terminate an agreement appropriately balances the interests of QR, access seekers, access holders and train operators.	Support Draft Decision.
Pacific National argued that the operator should be able to terminate the agreement if QR fails to comply with safety related obligations in the agreement (consistent with QR's rights in cl. 15.2)	15.4	QR's proposal is appropriate to be approved. We do not consider that the amendments proposed by Pacific National are necessary, noting that the operator's rights under cl 15.4(c) are likely to address Pacific National's concern.	Support Draft Decision.
Pacific National argues that the clause appears to be incorrectly drafted because insurance claims paid are for liability to QR, not necessarily damage to the network.	16.9	QR's proposal is appropriate to be approved. We do not consider that cl 16.9 implies that all claims are paid in respect of damage to the network. Clause 16.9	Support Draft Decision.

QR Proposal	Clause	QCA Draft Decision	New Hope Response
Pacific National argued that access holders should not be required to pay higher costs if there is a change in taxes, law or credit. This is an example of QR attempting to shift risk on to its customers who are not better placed to manage the risk.	18.2	QR's proposal, which only applies to non-reference-tariff services, is appropriate to be approved. The clause appropriately addresses how adjustments to access charges are to be made when there is a change in costs due to the occurrence of certain events that are outside QR's control. Relevantly, it provides for adjustments that reflect cost decreases, as well as cost increases. While we consider the proposed clause is an appropriate default contract provision, the parties may negotiate variations. Our draft decision appropriately balances QR's legitimate business interests with the interest of access seekers and access holders.	New Hope only uses reference tariff services and as such does not have a position on this issue.
QR proposed to remove this clause, which was included in the current SAA, to reflect the commencement of the Rail Safety National Law (Queensland) and the establishment of the Office of the National Rail Safety Regulator, which has no jurisdiction to resolve disputes	19.4	QR's proposal is not appropriate to be approved having regard to the s 138(2) factors. While the changes to the safety laws mean that the national regulator has no jurisdiction to resolve disputes under the national law, QR should amend its proposal so that disputes relating to safety issues are to be referred to an expert for resolution under cl 19.3. We expect that safety-related disputes would be more appropriately dealt with by an expert than a court.	Support Draft Decision.
QR's proposed dispute resolution mechanism requires the parties to agree to refer a dispute to an expert, unless the SAA explicitly requires a dispute to be referred to an expert	Various	Elsewhere in this chapter, we have identified disputes that may be more appropriately considered by an expert rather than being referred directly to a court (for example disputes in relation to noise mitigation requirements any performance levels). There may be other instances where disputes would be more appropriately, and also potentially more efficiently, dealt with by a relevant expert (such as disputes that relate to technical matters). Under the proposed drafting, these types of disputes would be referred to a court if the parties could not agree on expert review (unless the relevant clause specifically calls for expert review). We consider that such an approach may more appropriately balance the interests of QR, access holders, train operators	New Hope agrees that certain types of disputes are more appropriately resolved via an expert (both due to the likely greater speed with which expert resolution would operate relative to court resolution and because of the benefits of the dispute being resolved by a decision making with specialist expertise in the relevant field). In particular New Hope considers that disputes regarding each of the following should be resolved by an expert unless agreed otherwise:

QR Proposal	Clause	QCA Draft Decision	New Hope Response
		and customers. However, we welcome comments from stakeholders in relation to these matters and particularly as to specific circumstances where disputes may be better referred directly to an expert. Relevant clauses for further consideration by stakeholders may include cls 8.8, 8.9, 8.10, 9.2, 9.6-9.8, 10.1, 11	operational matters (clause 8), interface and safety issues (clause 9), incident, environmental and emergency issues (clause 10), compliance of trains and rolling stock (clause 11).
Pacific National argues that QR should reimburse train operators for take-or-pay charges incurred on the Aurizon Network sections of the North Coast line, when train services are not used on those sections due to a QR cause		In the absence of a reference tariff applying on the North Coast line and given the limited and specific circumstances to which reimbursement may apply, we consider it would be appropriate for these matters to be negotiated between the contracting parties as part of an overall package of risks, costs and entitlements. In our view, this approach appropriately balances the interests of QR, access seekers and access holders.	Support Draft Decision
Various corrections and updates	Various	<p>We consider that it is appropriate for QR to make the following amendments:</p> <ul style="list-style-type: none"> • CI 8.10(b)(i) – add 'to' after the word 'relation' • CI 19.3(b)(i)(B) – the term 'Institute of Chartered Accounts in Australia' is not current and should be changed to 'Chartered Accountants Australia and New Zealand' • CI 28.1 – in the definition of Access Charge Input the reference to cl 0 of schedule 3 should be corrected • Schedule 3 – references to cl 0 should be corrected • Any further amendments required to correct identified typographical or cross-referencing errors <p>It is the interests of all parties that the SSA is workable and free from errors</p>	Support Draft Decision.

12.8 Inland Rail

While New Hope appreciates that there remains significant uncertainty regarding the development, timing, capacity, pricing and alignment of the proposed Inland Rail project, it is concerned that new access agreements entered during the term of the 2020 DAU will potentially be on foot for a term that extends into the period after any such development has been completed.

That gives rise to issues that the SAA does not currently deal with in any way. For example, if the intention was for coal traffics to use Inland Rail for part of transporting West Moreton coal to export ports, the SAA would provide impediments to that by way of:

- (a) having a fixed origin and destination that assume the existing supply chain (utilising the QR West Moreton and Metropolitan networks for the entirety of the route to port); and
- (b) having 100% take or pay liability and significant relinquishment fees – such that there are high costs to a user that has contracted capacity ceasing to use that capacity.

That effectively 'locks' both QR and the contracted access holder into continuing the existing situation.

New Hope suggests that it is very difficult at this stage to definitively provide in advance for how any such issues should be resolved.

However, New Hope considers that it would be appropriate for the existing SAA to contain a mechanism to ensure this issue can be resolved appropriately at the time. To leave the SAA silent on this issue, has the potential to create counterproductive results including access seekers contracting for shorter terms, differential treatment of access holders in terms of their ability to transition to Inland Rail based on the term of the existing access agreements and QR being required to maintain the entirety of their network for limited volumes after one or more users have transitioned to utilising Inland Rail.

Accordingly, New Hope considers that it would be appropriate for the SAA to have an additional clause included in it, which provides for the following to apply where, during the term of the access agreement, Inland Rail is developed in an alignment which connects to the QR network and is suitable for transportation of coal:

- (a) the Access Holder has a right to change the destination to the point of connection with the Inland Rail transport infrastructure;
- (b) QR and the Access Holder are both obliged to discuss in good faith appropriate amendments to the access agreement to facilitate the transition of the services from wholly being provided by the QR network to partly using the QR network and partly using Inland Rail;
- (c) QR is required to act reasonably and provide any services reasonably necessary to coordinate services which access both networks between their origin and destination (including in relation to signalling, day of operations issues, scheduling and planning issues); and
- (d) where the parties are unable to agree such amendments, either party has a right to seek arbitration and a determination of the appropriate terms by the Queensland Competition Authority.

Pricing would continue to be based on the reference tariffs unless the parties otherwise agreed, such that it is likely the pricing of the access undertaking subsequent to the 2020 DAU may need to contemplate a revision of reference tariffs in conjunction with such an event as well. However, New Hope's understanding is that, even on the most optimistic timeframes suggested for Inland Rail's development, access would not be available to West Moreton coal users during the term of the 2020 DAU, such that this is not something which would require amendments to the 2020 DAU other than in respect of the SAA.

