Queensland Competition Authority

North Queensland Export Terminal declaration review

Draft recommendation

March 2026

We wish to acknowledge the contribution of the following staff to this report:

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Contents

Executive summary

Draft recommendation

We have made a draft recommendation that the coal handling service provided by the North Queensland Export Terminal not be declared for the purposes of third party access under Part 5 of the *Queensland Competition Authority Act 1997* (QCA Act).

Request to recommend declaration

On 13 June 2025, we received a request from QCoal Pty Ltd and Byerwen Coal Pty Ltd (together referred to as QCoal Users) that we recommend declaration of the coal handling service at the North Queensland Export Terminal (the Terminal).

Section 79 of the QCA Act provides that after receiving a declaration request, we must make a recommendation to the Minister regarding declaration of the relevant service (or part thereof).

We began our investigation on 14 July 2025, and stakeholders were invited to provide submissions on QCoal Users' request. Stakeholders are now invited to comment on this draft recommendation by 15 May 2026. A period for cross-submissions will follow. We will have regard to those comments as we prepare our final recommendation, which we will provide to the Minister.

Further information on our process is set out in Chapter 1.

The access criteria

We are required by the QCA Act to consider the declaration request against the four access criteria in s 76(2):

> (a) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;
>
> (b) that the facility for the service could meet the total foreseeable demand in the market
>
> (i) over the period for which the service would be declared; and
>
> (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service);
>
> c) that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;
>
> (d) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.[1]

We can only recommend declaration when we are satisfied that the request meets all four access criteria.

[1] Sections 76(3)–(5) provide further elaboration on the access criteria.

Draft findings

Our preliminary finding is that it is not appropriate to recommend that the Terminal service be declared for access, as criteria (a) and (d) are not satisfied. This is principally because there is insufficient evidence to form a view that declaration would promote a material increase in competition in a dependent market to the market for the service.

The following summary of our preliminary views on each access criterion should be read in conjunction with the detailed analysis in the main body of this document.

Criterion (a) – increase in competition

We have reviewed markets that are dependent on the Terminal service. We consider that, other than the coal tenements market, key dependent markets are workably competitive now and, given their structure and characteristics, will remain workably competitive in the future irrespective of whether the service is declared. These markets include the coal export markets that are the primary source of profits for the Adani Group's Queensland operations.

In contrast, the market for later-stage coal tenements may not be workably competitive and shows limited evidence of rivalry and competition. We have therefore focused our assessment on the access provider's incentives and ability to exert market power in the market for the service in a way that would affect competition in this particular dependent market.

The Terminal is part of a vertically integrated set of operations conducted by subsidiaries within the Adani Group. The Terminal has substantial spare capacity, which we consider will continue over the proposed declaration period. This spare capacity at the Terminal limits the incentives to restrict third party access.

North Queensland Export Terminal Pty Ltd (NQXT) – the Adani subsidiary that sub-leases the Terminal, which is owned by the Queensland Government – is incentivised to operate the Terminal such as to maximise the profits of the Adani Group by increasing throughput at the Terminal. While NQXT can leverage its market power to provide access to the service to related entities on preferential terms, it does not have a commercial incentive to restrict access or offer terms to third parties, which would compromise the development of tenements that could be a source of future throughput at the Terminal.

Accordingly, we do not consider that NQXT's ability and incentive to exercise its market power to extract profits from miners will lead to outcomes that materially impact competition in the later-stage tenements market as this would not lead to increased Terminal throughput, which is in the interests of the Adani Group. Our view is that any perceived risk of obtaining access to the Terminal is likely to be limited and is, in any event, only one of several factors influencing the competitive environment and investment decisions – alongside coal prices, regulatory approvals, operating costs (including royalties) and financing conditions.

As such, criterion (a) is not satisfied.

Criterion (b) – foreseeable demand at least cost

The Terminal can meet total foreseeable demand over a declaration period of 10 years at least cost compared to 2 or more facilities. As such, criterion (b) is satisfied.

We have assessed the market for the Terminal service primarily by considering both geographic and temporal factors that drive demand. We consider there is demand for the Terminal service from:

- mines that connect directly to the Newlands system, the Goonyella to Abbott Point Extension or the Carmichael rail line (the 'northern mines'). It is not economically feasible for these mines to switch to an alternative coal handling facility
- mines in the Goonyella system that have opted to use the Terminal when capacity has not been available at Dalrymple Bay Terminal (the 'Goonyella NQXT users').

The Terminal has a capacity of 50 million tonnes per annum (mtpa), which exceeds the expected demand of approximately 44 mtpa.

Criterion (c) – significance to the Queensland economy

The Terminal is significant, having regard to both its size and importance to the Queensland economy. As such, criterion (c) is satisfied.

The Terminal handled 34 million tonnes of coal in 2024–25, worth about $7 billion, supporting jobs and economic activity in the parts of the Bowen Basin and Galilee Basin that it serves.

Criterion (d) – public interest

We have considered many factors to decide whether declaration would promote the public interest. On balance, we are not satisfied that declaration is likely to generate overall gains to the community. As such, criterion (d) is not satisfied.

Given we are not satisfied that declaration would promote a material increase in competition in a dependent market, we are not satisfied at this time that there would be investment in facilities in dependent markets as a result of declaration. It is also not evident that declaration would promote investment in the Terminal, given the existence of spare capacity and the apparent lack of any incentives for NQXT to deny access to the Terminal.

There is also insufficient evidence that any reduction in compliance costs borne by users as a result of declaration is likely to be significant – the actual outcome will depend on the form of regulation.

Submissions and confidentiality

Closing date for submissions: 15 May 2026

Public involvement is an important element of our decision-making processes. Therefore, we invite submissions from interested parties concerning our draft recommendation on whether the coal handling service provided by the North Queensland Export Terminal be declared for the purposes of third party access under Part 5 of the *Queensland Competition Authority Act 1997*. Submissions are invited from interested parties by 5 pm Brisbane time on **15 May 2026.** We will offer a further opportunity for stakeholders to comment on those submissions before we prepare a final recommendation.

We will take account of all submissions received within the stated timeframes. Submissions, comments or inquiries regarding this paper should be directed to:

Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Tel 07 3222 0555

www.qca.org.au/submissions
cc ravi.prasad@qca.org.au

Public access to submissions

Subject to any confidentiality constraints, submissions will be available for public inspection at our Brisbane office or on our website at qca.org.au. If you experience any difficulty gaining access to documents, please contact us on 07 3222 0555.

Confidentiality

In the interests of transparency, and to promote informed consultation, we intend to make all submissions publicly available. However, if a person making a submission considers that information in it is confidential, they should claim confidentiality over the relevant information (and state the basis for that claim). We will assess confidentiality claims in accordance with the *Queensland Competition Authority Act 1997*. Among other things, we will assess if disclosure of the relevant information is likely to damage a person's commercial activities, and we will consider the public interest.

Claims for confidentiality should be clearly noted on the front page of a submission, and relevant sections of the submission marked as confidential. The submission should also be provided in both redacted and unredacted versions. In the redacted version, all information claimed as confidential should be removed or hidden. In the unredacted version, all information should be exposed and visible. These measures will make it easier for us to make the remainder of the document publicly available. A confidentiality claim template is available at **qca.org.au/submission-policy.**

The template gives guidance on the type of information that may help us to assess a confidentiality claim. We encourage stakeholders to use this template when making confidentiality claims.

We have also approved a confidentiality regime to provide a framework to facilitate disclosure of information provided to us regarding this project. Further information on the regime is available on our website.

Redaction of material

Some aspects of our analysis in this report reflect confidential material and are therefore redacted. This redacted material is subject to the confidentiality regime that is in place.

1 Introduction

1.1 Background

1.1.1 The Terminal

The North Queensland Export Terminal[2] (the Terminal) is located at the Port of Abbot Point, about 25 km north of Bowen. The Queensland Government owns the terminal through North Queensland Bulk Ports Corporation Limited (NQBP), which leases it to NQXT Holdings Pty Ltd (NQXT Holdings), which in turn sub-leases it to North Queensland Export Terminal Pty Ltd (NQXT).

The Terminal is a dedicated deep-water coal export terminal with a nameplate capacity of 50 million tonnes per annum (mtpa).[3] Contracted 'take or pay' volumes are 40 mtpa,[4] leaving 10 mtpa of uncontracted available capacity. Actual throughput was 34 million tonnes in 2024–25.[5]

Information from NQXT, NQBP and Adani Ports and Special Economic Zone Ltd (Adani Ports, which owns NQXT and NQXT Holdings) indicates that the Terminal uses the following facilities, plant and equipment:

- 2 rail inloading systems (dump stations)
- stockyard capacity of 2 million tonnes, stored in 6 stockpile rows (3 bunds), each more than 1 km long
- 6 stacker-reclaimers
- outloading infrastructure including surge bins and conveyor belts
- 1 trestle jetty, 2.75 km long
- 2 berths and 2 shiploaders.[6]

NQXT said it had plans to increase the Terminal's capacity to 60 mtpa, at a cost of about $300 million.[7] NQXT's owner, Adani Ports, said 'minor modifications' would expand the Terminal's capacity to 60 mtpa, and it could be expanded to 120 mtpa.[8]

1.1.2 The region

The Terminal is one of the 5 main coal export facilities serving mines in northern and central Queensland (Table 1). Three of these facilities – the Terminal, Dalrymple Bay Terminal (DBT) and Hay Point Coal Terminal (HPCT) – serve mines in the northern Bowen Basin (Figure 1).

[2] Formerly called the Abbot Point coal terminal.
[3] North Queensland Export Terminal website, 2026.
[4] Adani Ports and Special Economic Zone Ltd, *APSEZ completes acquisition of NQXT Australia*, media release, 23 December 2025. accessed 24 February 2026.
[5] North Queensland Bulk Ports Corporation, *Throughputs*, NQBP website, 2025, accessed 4 February 2025.
[6] NQXT, sub 5, pp 27, 31, 42–45; Adani Ports, *Acquisition of NQXT Australia*, investor presentation, April 2025, pp 13–16; North Queensland Bulk Ports Corporation (NQBP), *Land Use Plan, Port of Abbot Point*, October 2010; NQXT, *About us*, fact sheet, June 2024; Bravus, *North Queensland Export Terminal,* Bravus website, 2026, accessed 4 March 2026; Abbot Point Operations, *Abbot Point Operations*, fact sheet, August 2024.
[7] NQXT, sub 6, p 82 and sub 8, pp 39–40.
[8] Adani Ports and Logistics, *Adani Ports and SEZ Limited Investor Call*, transcript, 18 April 2025, pp 3-5.

Figure 1: Queensland coal terminals and associated rail systems

Source: Department of State Development, Manufacturing, Infrastructure and Planning.

The majority of the operating coal terminals in Queensland are common-user facilities, which contract to provide access to multiple third-party customers (Table 1).

Table 1: Coal terminals in Queensland

Terminal	Location	Nominal capacity (mtpa)	Contracted capacity status	Access status
NQXT (the Terminal)	Abbot Point	50	Contracted to 40 mtpa[a]	Common-user
DBT	Hay Point	84.2	Fully contracted, with a queue for capacity[b]	Common-user Declared under QCA Act
HPCT	Hay Point	55	Contract status unknown. HPCT serves 5 mines in central Queensland[c]	Not common-user Vertically integrated Closed access[c]
WICET	Gladstone	27	Partially contracted. Spare capacity of 13.1 mtpa[d]	Common-user Open access under an access policy
RG Tanna	Gladstone	75	Contract status unknown, but no evidence received of spare capacity	Common-user
Brisbane	Brisbane	12	Contract status unknown, but 12mtpa capacity is higher than 7.5 mtpa volume forecast	Common-user

a Adani Ports and Logistics, *Adani Ports and SEZ Limited Investor Call*, transcript, 18 April 2025, pp 2-5; Adani Ports and Special Economic Zone Ltd, *APSEZ completes acquisition of NQXT Australia*, media release, 23 December 2025, accessed 24 February 2026. See section 1.1.1 of this report.
b Dalrymple Bay Infrastructure, *2025 Half Year Financial Results – Investor Presentation*, AXS announcement, 25 August 2025, pp 4, 20.
c BHP, *Hay Point Coal Terminal (HPCT)*, BHP website, 2025, accessed 11 November 2025.
d Wiggins Island Coal Export Terminal, *Access*, WICET website, 2025, accessed 25 November 2025.

1.1.3 Adani Group

The Terminal is operated by NQXT under a 99-year lease from the Queensland Government (via NQBP). NQXT is part of the Adani Group. Besides the Terminal, the Adani Group has other operations across the coal supply chain (see Box 1).

Box 1: Adani Group entities in the coal supply chain

In April 2025, Adani Ports announced it was acquiring the Terminal in a related party transaction.[9] The purchase was completed on 23 December 2025.[10] We understand that the following entities are part of the Adani Group's Australian businesses:

- NQXT Holdings – is the tenant of the Terminal under a 99-year lease with NQBP.
- NQXT – sub-leases the Terminal from NQXT Holdings.
- Abbot Point Operations (APO) – manages the day-to-day running of the Terminal under an Operating and Maintenance Contract (OMC) with NQXT.
- Abbot Point Bulkcoal (APB) – provides operator services to APO at the Terminal under a subcontract with APO. Under this OMC subcontract, [redacted].[11]
- NQXT Holdings, NQXT, APO and APB – are owned by Adani Ports.[12]
- Adani Mining Pty Ltd trading as Bravus Mining and Resources (Bravus) – owns and operates the Carmichael coal mine, that exports through the Terminal. Bravus has been producing 12.5 mtpa and has announced this will increase to 16 mtpa over the next 4 years.[13]
- Bowen Rail Company Pty Ltd (BRC) – operates the 189 km Carmichael Rail Network (CRN), which connects the Carmichael mine and the Galilee Basin to the Newlands system in the Central Queensland coal network (CQCN). BRC also operates an above-rail coal haulage service which transports coal from Bravus' Carmichael mine to the Terminal, using both the CRN and Aurizon Network's Newlands system. The nameplate capacity of the CRN is approximately 40 mtpa;[14] however, in its current configuration, CRN's operating capacity is [redacted] mtpa.[15,16]

While the Adani Group and related entities own and operate a range of businesses in the central Queensland coal industry, they all ultimately depend on sales of coal into export markets for their revenue and profitability. They form part of a vertically integrated business that includes mining thermal coal at Carmichael, railing it to the Terminal, and then selling it to overseas customers.

The Terminal and its related businesses, including APO and APB, also provide services to other coal industry customers, either directly or indirectly. These other customers export both coking and thermal coal.

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[9] Adani Ports and Logistics, *APSEZ acquires 50 MTPA capacity NQXT Australia, accelerating path to 1 billion tonnes p.a. by 2030*, media release, 17 April 2025, APL website, n.d.

[10] NQXT, *APSEZ completes acquisition of NQXT Australia*, news, NQXT website, 2026, 24 December 2025.

[11] NQXT, sub 5, paras 90, 96, 137, 209–210 and sub 8, para 37, 58.

[12] It is understood that the majority shareholders of APSEZ are the SB Adani Family Trust and the Adani Family.

[13] Queensland Government, *Investment boost for Central Queensland's resources sector*, media statement, 19 August 2025; Bravus Mining & Resources, *Bravus Mining and Resources commits to major investment to increase mine production in central Queensland*, news release, BMR website, 19 August 2025, accessed 4 March 2026.

[14] Bravus Mining & Resources, *The Carmichael Rail Network*, fact sheet, November 2020.

[15] NQXT, sub 5, para 209 and sub 10, para 13.

[16] It is understood that Bravus and BRC are owned in a common corporate holding structure, in which the Adani Family are majority shareholders.

1.1.4 Types of coal

The coal exported from Queensland, including through the Terminal, is divided into 2 broad categories: coking (metallurgical) and thermal coal.

Coking coal

Coking coals are used for steelmaking. Coking coals are generally classified as having high carbon or energy levels, low moisture content and low impurities such as ash, sulphur and phosphorous. Coking coal grades, in order of quality, include premium hard coking coal, hard coking coal, semi-hard coking coal, semi-soft coking coal and pulverised coal injection (PCI) coal, which is a high-quality thermal coal that can be used in steelmaking. Typically, producers of coke and steel blend coals from various sources to produce coke with desired physical and chemical characteristics. While semi-hard coking coal can replace some hard coking coal in an overall blend, only a proportion of hard coking coal can be displaced without affecting the performance of the blast furnace and the efficiency of steel production.[17]

Thermal coal

Thermal coals are used for electricity generation. Thermal coal quality varies between regions with key quality parameters including specific energy, moisture content, ash, volatile matter and impurities. Most coal-fired power generators have defined coal specifications, which depend on the design of their boilers and flue gas clean-up systems, operating and maintenance philosophy and environmental requirements in their local area. Power station operators are focused on minimising the cost of power sent from their facilities while meeting all applicable regulations. This requires operators to optimise between the purchase cost of the coal and the coal's properties, which impact generation operating costs and waste disposal costs. As a result, power station operators rarely burn a single coal. Typically, 2 to 3 coals are blended before combustion.

Mines that use the Terminal export both coking and thermal coal. The proportions of each type are shown in Table 2. Figure 2 includes sub-types of coking coal, such as PCI.

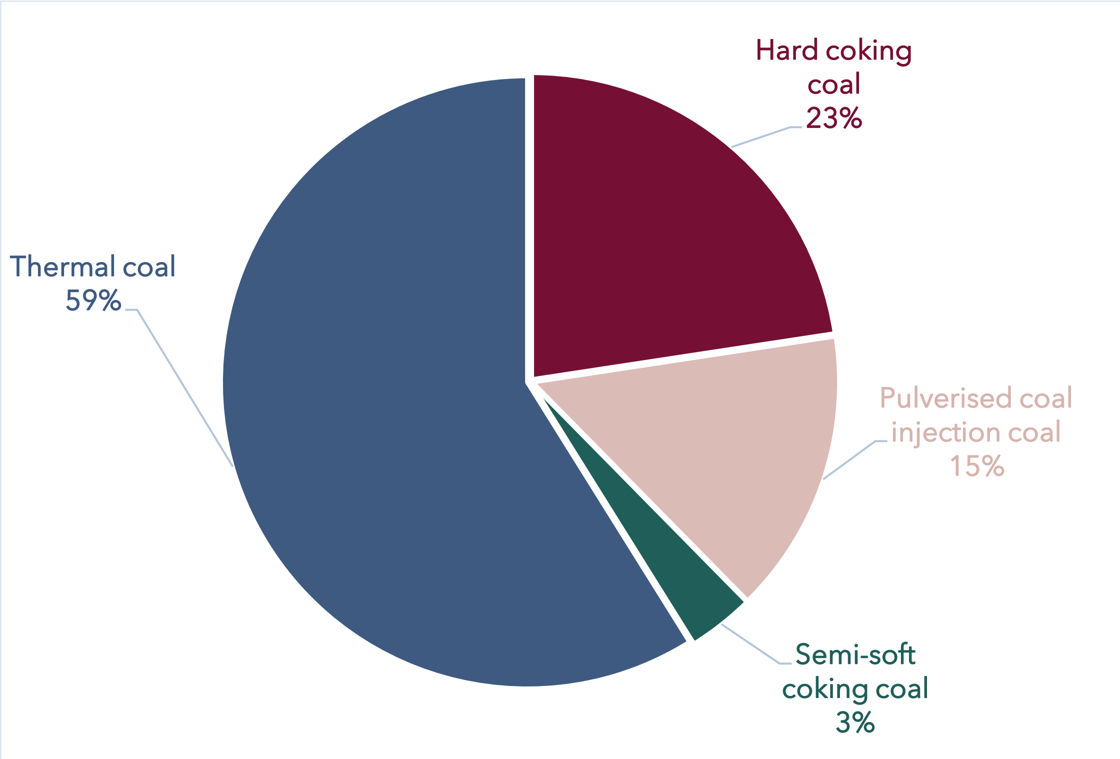
[17] Australian Government, *Coal*, Geoscience Australia website, n.d., accessed 30 September 2025; Whitehaven Coal, *Coal Quality Workshop – Thermal and Coking Coal*, June 2023; World Steel Association, *What is steel?*, WSA website, 2025, accessed 30 September 2025.

Table 2: Saleable coal production by mine, 2024–25

Mine	Coking (tonnes)[a]	Thermal (tonnes)	Thermal (%)
Byerwen	1,569,410	1,734,942	53%
Collinsville	863,206	1,217,996	59%
Drake	291,564	2,522,724	90%
Jax	390,468	1,339,698	77%
Average proportion – Newlands/GAPE			**69%**
Carmichael		12,573,814	100%
Average proportion – Galilee			**100%**
Lake Vermont	7,539,075	1,025,050	12%
Middlemount	2,495,065		0%
Poitrel	4,997,448		0%
Clermont		11,371,232	100%
Average proportion – Goonyella			**45%**
Average proportion overall			**63%**

GAPE: Goonyella to Abbot Point Extension
a Coking coal production figures include both coking and PCI grade coal.
Note: Not all of the production from the Goonyella mines listed is exported via the Terminal.
Source: Queensland Government, *Open Data Portal, Coal production data by mine, coal type and financial year*, coal industry review statistical tables, accessed 18 December 2025 and 13 February 2026.

Figure 2: NQXT export tonnes by coal type, 2024–25

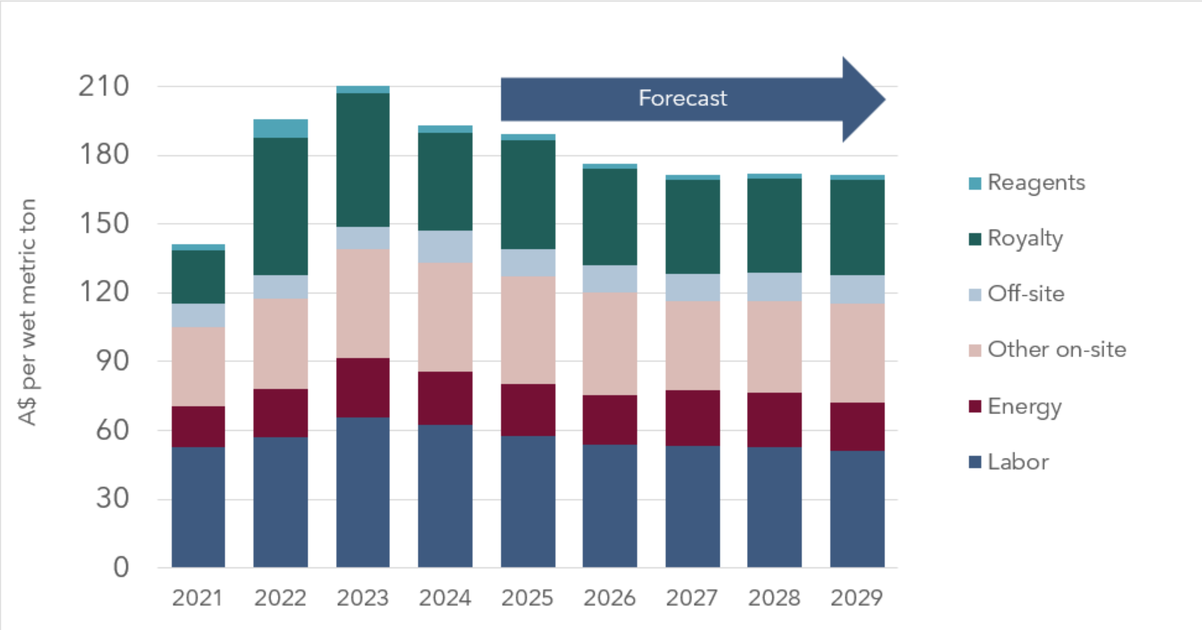


Source: Queensland Government Open Data Portal, accessed 18 December 2025.

1.1.5 Port costs as a share of total costs

Costs at Queensland coal mines are predominantly driven by labour (~27%), royalties (~24%) and energy (~16%), with off-site costs (which are principally rail and port charges) accounting for around 15% of the cost base, according to an analysis by S&P Global Market Intelligence (see Figure 3).[18]

Figure 3: Production cost breakdown for Queensland coal mines (AUD/wmt)



wmt: wet metric tonne
Note: Data as of 25 September 2025. Converted from USD to AUD at prevailing exchange rates.
Source: S&P Global Market Intelligence.

The proportions for each cost category, and the total costs, vary substantially between mines, depending on the types of coal they produce (see Table 3).

For coking coal producers, whose overall costs are typically higher than thermal coal operations, port charges generally account for less than 7% of free on board (FOB) cash costs.[19,20] For example, major coking coal producers in Queensland report that costs are between $131 and $197 per tonne (AUD, excluding royalties).[21]

Thermal coal producers tend to operate at lower cash costs, when compared to metallurgical coal producers, so port charges represent a larger proportion of their FOB cash costs, compared with coking coal. In June 2025, the average total cash cost for Australian thermal coal producers was

[18] A Barich, 'Queensland coal miners grapple with high costs after 2022 royalty hike', *S&P Global*, 2 October 2025, accessed 3 February 2026.

[19] FOB refers to the point where ownership of the coal is transferred to the buyer once the coal has been loaded on board a ship.

[20] This analysis treats port charges as charges levied by NQXT that are related to coal handling. Outside of those charges, NQBP levies additional port charges such as harbour, tonnage and security dues, which equate to approximately $0.50–$0.70 per tonne at NQXT. These charges from NQBP are not included in our estimate of port charges. See North Queensland Bulk Ports Corporation, *Fees and charges*, NQBPC website, n.d., accessed 18 February 2026.

[21] Glencore, *Capital Markets Day*, presentation slides, 3 December 2025; BHP, *Financial results and operational reviews –BHP Operational Review for the quarter ended 30 September 2025*, BHP website, 2025, accessed 18 December 2025; Stanmore, *September 2025 Quarterly Activities Report*, 21 October 2025.

approximately $115 per tonne, excluding royalties. The lowest-cost producers were closer to $77 per tonne.[22] For these low-cost producers, port charges represent roughly 12% of total cash costs.

Table 3: Indicative port cost share for different coal types

	Production cost range (A$)	Port charges' share
Coking coal	$131–$197	5%–7%
Thermal coal	$77–$115*	8%–12%

* $115 is the average cash cost for thermal coal producers. Some producers would have higher costs; therefore, port charges would represent a lower proportion of their costs than shown here.
Note: We have used $9.08 per tonne as the port charge. Our calculation of this estimate is explained in Appendix B.3. The production costs exclude royalties.
Source: QCA calculations.

The costs as a proportion of sale prices vary more substantially over time, given the volatility of coal prices (see Table 4). Over the past 5 years, port charges were about 1% of the peak coking coal price and 8% of the lowest thermal coal price.

Table 4: Coking and thermal coal prices (AUD)

	5-year high	5-year low	Average in 2025
Coking coal	$883	$141	$295
Thermal coal	$681	$108	$163

Note: 1. Actual sale prices will vary from these benchmarks. Different grades of coking coal will trade at discounts (or sometimes a premium) to the prices cited here. In particular, Queensland mines, including some of those that export through the Terminal, are substantial producers of PCI coal, which typically sells at a discount to hard coking coal but a higher price than thermal coal. 2. We have opted to use AUD prices in our illustrations to make comparisons easier.
Source: Prices have been obtained from the Bloomberg Terminal. We used the Newcastle thermal coal price (average of the XW1 future), and the Singapore Exchange coking coal price (average of the IAC1 future), converted to Australian dollars.

1.2 Application process

On 13 June 2025, a request was made by QCoal Pty Ltd and Byerwen Coal Pty Ltd (QCoal Users), seeking declaration of the 'Coal Handling Services at the Abbot Point Coal Export Terminal including the unloading, storing, reclaiming and loading of coal'.[23]

The application described the owners of the service as NQXT Holdings, NQXT and NQBP.[24]

On 18 June 2025, we advised the above parties of the request for the purpose of s 78 of the *Queensland Competition Authority Act 1997* (QCA Act).

On 1 July 2025, we advised stakeholders that we would commence an investigation into the declaration request on 14 July 2025.

[22] Yancoal Australia, *1H 2025 Financial Results Presentation*, ASX release, 19 August 2025. We have used an exchange rate of A$0.65 per US$1 from the Australian Taxation Office (Australian Government, *Rates for financial year ending 30 June 2025*, 3 July 2025, ATO website, n.d., accessed 17 September 2025).
[23] QCoal, sub 1, pp 3-4.
[24] QCoal, sub 1, p 5.

On 14 July 2025, we commenced an investigation into QCoal Users' declaration request.[25] Under s 79 of the QCA Act, we are required to make a recommendation to the Minister on whether to declare the relevant service or part thereof.[26]

We received submissions from 3 stakeholders by the due date of 26 August 2025, followed by further submissions from 4 stakeholders by the due date for further submissions of 21 October 2025. We also received a late submission from NQXT dated 9 November 2025.[27] We also received additional information from stakeholders.

We indicated in our investigation notice that we would provide a draft recommendation before publishing a final report. Our application of statutory assessment criteria and views may change in our final recommendation, which will be informed by submissions responding to this document. This document is not a draft version of a final recommendation and has no force in itself.

1.3 Our approach

Section 76(2) of the QCA Act sets out the access criteria that must be satisfied for us to recommend declaration:

> (a) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;
>
> (b) that the facility for the service could meet the total foreseeable demand in the market
>
> > (i) over the period for which the service would be declared; and
> > (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service);
>
> c) that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;
>
> (d) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.[28]

In considering whether the access criteria are satisfied, we had regard to the declaration request and stakeholders' submissions. We also had regard to our previous declaration reviews,[29] relevant jurisprudence, additional information provided by stakeholders and our own research. Our approach to interpretation of the access criteria is explained in Appendix A.

As with our previous declaration reviews, criterion (b) is considered before criterion (a), as it simplifies the analysis to identify the market for which the relevant service is provided before turning

[25] QCA, *Notice of Investigation: North Queensland Export Terminal*, notice, July 2025.
[26] The relevant Minister is the Minister for Finance, Trade, Employment and Training.
[27] Although this information was provided late, we determined that it was reasonable in all the circumstances to take it into account, in accordance with s 168B of the QCA Act.
[28] Sections 76(3)–(5) provide further elaboration on the access criteria.
[29] Including our previous declaration recommendations of the Aurizon Network service, Queensland Rail service and the DBCT service, at *Declaration reviews*, QCA website, 2026 and the Treasurer's previous declaration decisions (Queensland Government, *Gazette: Extraordinary*, no 31, vol 384, 1 June 2020, pp 203–306).

to the question of dependent markets.[30] Accordingly, this draft recommendation is structured as follows:

- criterion (b) – total foreseeable demand (Chapter 2)
- criterion (a) – material increase in competition (Chapter 3)
- criterion (c) – state significance (Chapter 4)
- criterion (d) – public interest (Chapter 5).
- approach to the statutory criteria (Appendix A)
- cost estimation for criterion (b) (Appendix B)
- tenements analysis (Appendix C)
- list of submissions (Appendix D).

[30] A similar sequence has been used by the National Competition Council on occasion (see NCC, *Application by Virgin Blue for declaration of the airside services at Sydney Airport*, final recommendation, 2003*)* and by the QCA and the Treasurer for the earlier reviews of declared services in Queensland. The Productivity Commission's review of the National Access Regime also considered criterion (b) first.

2 Criterion (b) – meet total foreseeable demand at least cost

Criterion (b) is satisfied

The Terminal can meet total foreseeable demand over a declaration period of 10 years at least cost compared to 2 or more facilities. As such, criterion (b) is satisfied.

We have assessed the market for the Terminal service primarily by considering both geographic and temporal factors that drive demand. We consider there is demand for the Terminal service from:

- mines that connect directly to the Newlands system, Goonyella to Abbott Point Extension (GAPE) or the Carmichael rail line (the 'northern mines'). It is not economically feasible for these mines to switch to an alternative coal handling facility
- mines in the Goonyella system that have opted to use the Terminal when capacity has not been available at DBT (the 'Goonyella NQXT users').

The Terminal has a capacity of 50 mtpa, which exceeds the expected demand of approximately 44 mtpa.

2.1 Introduction

Section 76(2)(b) of the QCA Act is expressed as follows:

> that the facility for the service could meet the total foreseeable demand in the market –
> (i) over the period for which the service would be declared; and
> (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service)

Sections 76(3) and (4) state further:

> (3) For subsection (2)(b), if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.
>
> (4) Without limiting subsection (2)(b), the cost referred to in subsection (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.

The purpose of criterion (b) is to identify facilities that give rise to an enduring lack of competition in related markets for infrastructure services. In doing so, criterion (b) focuses on avoiding the inefficient duplication of facilities that have natural monopoly characteristics.

In this context, criterion (b) requires us to consider whether the facility providing the service (either in existing or expanded form) can satisfy total foreseeable demand in the market for the service at least cost compared to other alternatives.

Our draft assessment of whether criterion (b) is satisfied:

- identifies the service, facility and proposed declaration period (sections 2.2, 2.3 and 2.4)
- identifies the market within which the service is provided (section 2.5)
- establishes whether the facility can satisfy total foreseeable demand in the market for the service over the proposed declaration period (sections 2.6 and 2.7)
- considers whether the facility can satisfy total foreseeable demand at least cost (section 2.8).

2.2 The service

The coal handling service provided to mines using the Terminal is an integrated service that includes unloading coal from trains, storing (stockpiling) coal, reclaiming and loading export cargoes.[31]

NQXT and QCoal Users both said the relevant service is coal handling services at the Terminal.[32] QCoal specified that coal handing includes the unloading, storing, reclaiming and loading of coal.[33]

We consider the service is the coal handling services at the Terminal, including the unloading, storing, reclaiming and loading of coal.

2.3 The facility

The facility that provides the service is the terminal at the Port of Abbot Point, north of the town of Bowen on Queensland's east coast (the Terminal). The owner of this facility is the Queensland Government through NQBP (see also section 1.1.1).

2.4 Period for assessing total foreseeable demand

QCoal Users proposed that the facility be declared for 10 years, from 1 July 2027.[34] NQXT did not propose an alternative declaration period. However, the demand forecasts in its submissions covered the years 2025–30.[35]

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[31] The Terminal's operating model differs from DBT's. Services offered by DBT include coal blending and cargo assembly, which are less available or not used at the Terminal. We understand the Terminal relies on stockpiling, rather than just-in-time delivery and cargo assembly, because it serves fewer mines and handles fewer different blends of coal. Each terminal has a stockyard capacity of about 2 million tonnes, although DBT's nameplate capacity, at 84.2 mtpa, is almost 70% higher than the Terminal's 50 mtpa. See NQXT, sub 5, p 38 and sub 9, pp 12–13; Dalrymple Bay Infrastructure, *Investor Presentation* – *Dalrymple Bay Terminal Site Visit*, ASX announcement, 20 November 2025, p 10; Abbot Point Operations, *Abbot Point Operations*, fact sheet, August 2024.

[32] NQXT, sub 5, p 2 and sub 6, p 24.

[33] QCoal, sub 1, pp 4, 12 and sub 3, pp 1, 21.

[34] QCoal, sub 1, p 2. QCoal provided demand forecasts for a different 10-year period – July 2029 to June 2039. See sub 1, p 19.

[35] NQXT, sub 6, pp 49, 51–52.

In our 2020 review into the possible declaration of the DBT service, we considered 10 years would be appropriate, with a review after that period.[36] We said DBT's owners would have had the option of seeking revocation if circumstances changed.[37]

Accordingly, if the access criteria are satisfied, we consider that 10 years would be an appropriate period for declaration of the service. We have used this timeframe when assessing the total foreseeable demand in the market. We have adopted QCoal Users' proposed starting date of 1 July 2027, as it allows sufficient time to complete this investigation [redacted].

2.5 The market for the service

The general principles of market definition have been established by jurisprudence, most notably in applying competition law provisions such as ss 46 and 50 of the *Competition and Consumer Act 2010* (Cth) (CCA).[38] These principles include that defining a market:

- relates to the particular purpose for which the analysis is being undertaken
- requires detailed examination of the specific facts related to the service and its customers
- should have regard to substitution and the ability for customers to switch between facilities, and the extent to which this imposes an effective competitive constraint on service providers
- should have regard to the 4 dimensions of the market: product, geographic, functional and temporal
- is most commonly done by reference to the supplier's location but may also involve a geographic market based on customer location.

Appendix A sets out the relevant jurisprudence in more detail. This section on defining the market for the Terminal discusses:

- background to the service and its customers (section 2.5.1)
- the legal framework for market definition (section 2.5.2)
- key arguments made by stakeholders (section 2.5.3)
- our approach to defining the market for the service (section 2.5.4)
- applying that approach and assessing whether there is a competitive constraint (sections 2.5.5 and 2.5.6).

2.5.1 Background

Market definition is a structured, fact-specific analytical exercise. Accordingly, it is useful to set out, as in this section, facts regarding the service and the CQCN, which are relevant to identifying an appropriate market definition. General information about the Terminal and related matters is provided in section 1.1.

[36] The Minister declared the DBT (then known as DBCT) service for 10 years, starting 9 September 2020. See Queensland Government, *Gazette: Extraordinary*, no 31, vol 384, 1 June 2020, p 270.
[37] QCA, *Part C: DBCT declaration review*, final recommendation, March 2020, pp 37–41.
[38] The form of criterion (b) that now applies was implemented by way of amendment to the QCA Act in 2018. Similar changes were made across various Australian jurisdictions after they were recommended in 2015 in the final report of the Competition Policy Review (the 'Harper review'). See Appendix A.

Geographical context

In determining the extent to which a coal terminal may serve a particular mine, relevant considerations include:

- the proximity of the terminal to the mine – noting the cost and infrastructure requirements of railing to a particular terminal. No mine located in the CQCN exports material volumes of coal through the Port of Brisbane,[39] and only a handful of mines at the very southern end of the Goonyella system export coal through the terminals at Gladstone[40]
- the access status of the coal terminal – noting that HPCT is not a common-user facility[41]
- the available rail and terminal capacity – noting that long-term contractual arrangements are a typical feature in accessing rail systems and common-user terminals in Queensland.

It is technically possible for some or all customers that might otherwise use the Terminal at Abbot Point to choose to use the southern Bowen Basin terminals at Gladstone (i.e. WICET and RG Tanna), as there are rail lines that connect the 2 locations (see section 1.1). However, our preliminary view is that the Terminal is not in direct competition with the terminals at Gladstone, as:

- the Terminal and the Gladstone terminals are more than 650 kilometres apart, via the CQCN (see Figure 1)
- any mine at the southern end of the Goonyella system or the northern end of the Blackwater system would have both DBT and Gladstone as closer alternatives than the Terminal[42]
- the rail costs for northern mines to ship their coal to Gladstone would be prohibitively high, preventing the Gladstone terminals from providing a meaningful competitive constraint on the Terminal.

Accordingly, in assessing the market for the service in this draft recommendation, we have focused our analysis only on whether the common-user facility at Hay Point (that is, DBT) is a close economic substitute for the Terminal.

Location and associated rail costs

The Terminal is located at Abbott Point. It connects to the Newlands rail system, which is adjacent to the Goonyella system. These two systems are linked by the GAPE infrastructure.

The rail costs for mines to access terminals located in other systems are significantly higher than to access a closer terminal in the rail system in which they are located (see section 1.1.5 and Table 5).

For mines that connect directly to the Newlands system, GAPE and the Carmichael rail line (i.e. the northern mines), the costs of accessing DBT at Hay Point, the closest alternative terminal for northern mines,[43] will typically be significantly higher than accessing the Terminal. The reasons are that:

- the existing rail infrastructure is not set up for hauling south, and the cost of building the necessary infrastructure at the loadouts and in the Goonyella system would be significant

[39] During our investigation, we found evidence of very small volumes of coal from central Queensland being shipped through the Port of Brisbane. As these shipments were not material, we did not investigate them further.

[40] German Creek and Oaky Creek – 2 of the southernmost mines in the Goonyella system – have historically shipped coal through both DBT and Gladstone. Both mines are closer to DBT than to Gladstone.

[41] There are 2 terminals at Hay Point: DBT and Hay Point Coal Terminal (HPCT). See QCA, *Part C: DBCT declaration review*, final recommendation, March 2020, pp 264–69.

[42] From Gregory, the northernmost mine in the Blackwater system, the rail distance is 312 km to DBT, 373 km to the Gladstone terminals, and about 500 km to the Terminal.

[43] For reasons set out in our 2020 recommendation regarding the declaration of the DBT service, we do not consider that HPCT is available for parties other than BHP Billiton-Mitsubishi Alliance (BMA). We have therefore focused our analysis on

- the greater distance to DBT and higher below-rail charges for GAPE would result in significantly higher rail charges. Even if existing infrastructure could be used to haul south, we estimate above- and below-rail costs for railing to DBT would be at least $2 to $7 a tonne more than railing to the Terminal for these mines.[44]

By way of illustration, the QCoal Northern Hub mines (Jax, Drake and Sonoma, railing through the Sonoma rail loop) are the Newlands mines with the highest costs of transport to the Terminal (although the nearby Collinsville mine has similar costs). We estimate the cost for the QCoal Northern Hub mines to rail to the Terminal is approximately $20 per tonne, while the cost to rail to DBT is approximately $26 per tonne (see Table 5). If the QCoal Northern Hub mines switched from the Terminal to DBT, we estimate they would incur additional costs of approximately $6 per tonne.

Similarly, for mines located in the Goonyella system, the costs of hauling to the Terminal are likely to be significantly higher than to DBT, as:

- hauling to the Terminal from Goonyella mines would require the transport of coal north via the GAPE system
- the greater distance to the Terminal and significantly higher rail charges for GAPE would likely result in significantly higher rail charges
- constraints on train length on the GAPE and Newlands systems mean that the maximum load of trains is smaller, reducing scale and increasing rail charges on a per tonne basis.

By way of illustration, the Centurion mine[45] is the closest Goonyella mine to the Newlands system (and therefore most likely to be the Goonyella mine with the lowest transport costs to the Terminal). We estimate the cost for the Centurion mine to rail to the Terminal is $26 per tonne, while the cost to rail to DBT is $18 per tonne. If Centurion switched from DBT to the Terminal, it would incur additional costs of approximately $8 per tonne.[46]

Table 5: Estimated cost to use the Terminal and DBT ($/t)

Mine	Total cost to use the Terminal	Total cost to use DBT	Coal types
Collinsville	20	26	Coking and thermal
QCoal Northern Hub	20	26	Coking and thermal
Carmichael	21	25	Thermal
Byerwen	26	27	Thermal and coking
Centurion	26	18	Coking

Note: 1. The total cost includes estimated below- and above-rail costs, and port charges. Centurion is the only mine in this table that is in the Goonyella system; all others are northern mines. 2. Above-rail costs have been estimated conservatively, such that they do not scale with distance travelled. This means that the relative total cost to rail to the non-preferred (more expensive) port will likely be higher than the estimates provided in the table. 3. Table estimates do not incorporate costs related to infrastructure enhancements that would be required for northern mines to rail to DBT.
Source: QCA calculations.

DBT as a potential alternative to the Terminal. See QCA, *Part C: DBCT declaration review*, final recommendation, March 2020, pp 264–69.

[44] No below-rail reference tariff currently exists for northern mines that would seek to rail to DBT. As such, our estimates are based on several assumptions. Our assumptions and the analysis underpinning our cost estimates are provided in Appendix B.

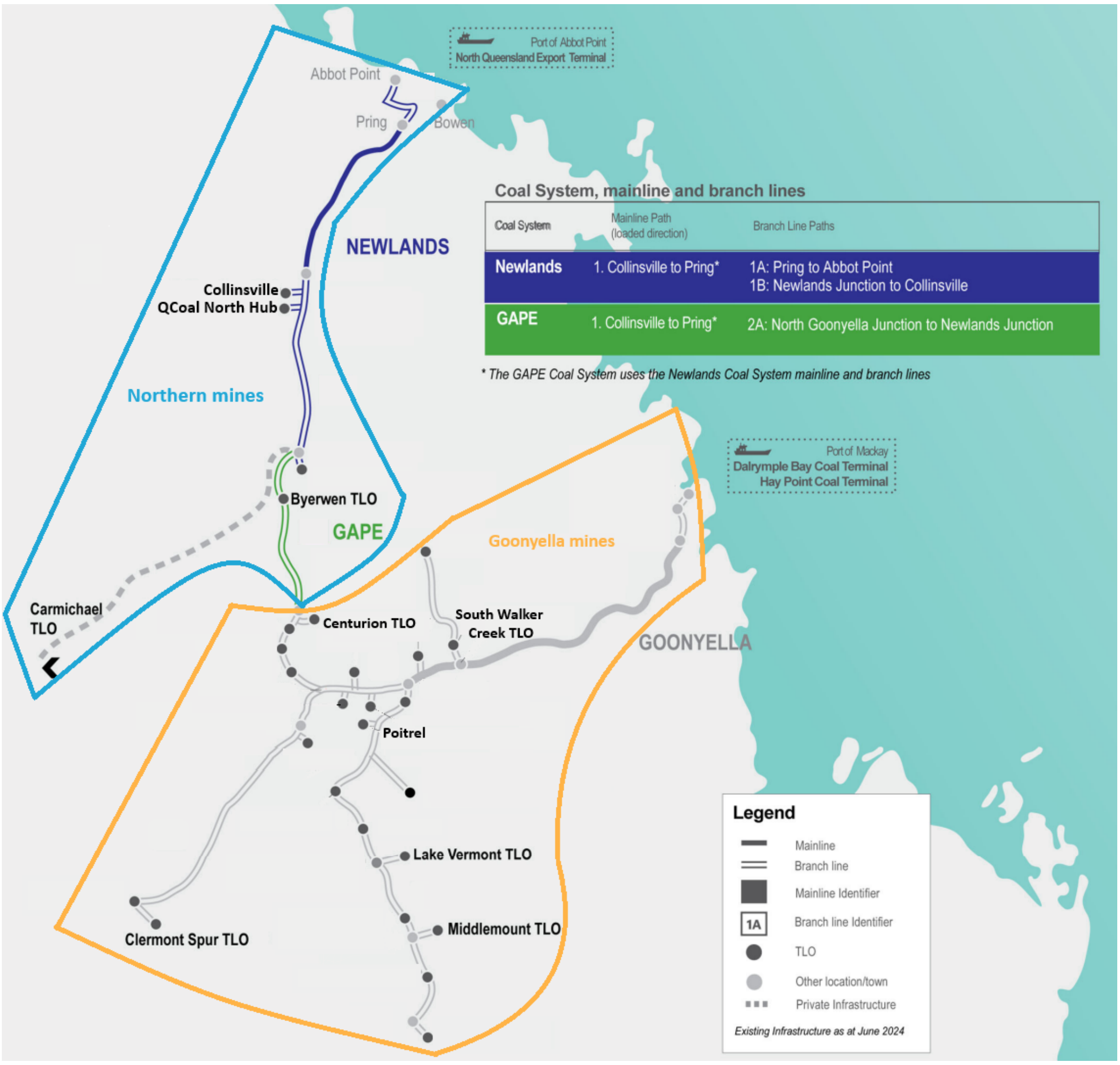
[45] Centurion was formerly known as North Goonyella but is being redeveloped under the new name.

[46] This differential is conservative, as it does not fully reflect the higher above-rail costs for greater distances to port. See Appendix B for more information on how we estimated transport costs.

It costs more to access a terminal in another rail system (see Table 5). Therefore, in circumstances where coal terminal capacity is available, the mines that use particular terminals are highly likely to fall into catchments around each terminal, disregarding contractual commitments.

These catchments reflect the region over which terminals at the different ports will have a natural relative cost advantage. Importantly, given the costs associated with accessing GAPE, there is no overlap between the catchments for the Terminal and DBT (see Figure 4, and section 1.1.5, which shows our estimates of port costs' share of total production costs).

Figure 4: Northern and Goonyella mines



Source: Adapted from Coal Network Capacity Co, ACAR25 Annual capacity assessment report, redacted version, 18 June 2025, p 14.

Point-in-time availability – terminal capacity at DBT

As DBT is the only reasonably available potential alternative for mines near the Terminal, we have assessed whether there is capacity available at DBT and, if so, what effect the availability at DBT has on demand for the service.[47]

[47] QCA, Part C: DBCT declaration review, final recommendation, March 2020, pp 18–33.

Miners typically seek terminal access at a point in time. They secure access through agreements that may be in force for a long time, which in turn may limit the opportunities for alternative terminals to handle that mine's output once a contract is executed. Any relevant competition between terminals is likely to occur when the mine is seeking to contract for capacity, at which point the demand, depending on the circumstances, may be contestable to a degree.

It follows that a miner's total costs of accessing the nearest terminal may differ depending on when the miner seeks to contract for capacity. If capacity at a miner's preferred terminal is not available, it may opt to contract for capacity at the next best alternative, even if it is not a close economic substitute.

Depending on the relative transport costs and the likelihood of capacity becoming available, the use of an alternative supplier does not necessarily mean that it is a close economic substitute for the miners' preferred service, or that the alternative service provides an effective competitive constraint on the preferred service. The commercial reality is that if a terminal service provider knows that a customer cannot access an alternative terminal, it is unlikely to be effectively constrained by the threat of substitution.

In practice, this dynamic is reflected by the fact that some Goonyella mines have contracted for capacity at the Terminal, notwithstanding the significantly higher rail costs of haulage to the Terminal (compared to railing to DBT). As we said in our 2020 review regarding the declaration of the DBT service, Goonyella mines only chose to use the Terminal because of a lack of available capacity at DBT but would otherwise have had a clear preference for DBT.[48]

Accordingly, demand from these Goonyella mines is only likely to exist in the absence of available capacity at DBT. It follows that, in practice, the extent of demand for the service from mines in the Goonyella system during the proposed declaration period is likely to be dynamic and will depend on the availability of capacity at DBT.

Capacity at DBT

DBT's existing capacity of 84.2 mtpa is fully contracted, with customers holding 'evergreen' contracts that give them the option to extend their access rights essentially indefinitely.[49] The 2 potential sources of capacity for a miner seeking new or additional access at DBT are an expansion of the terminal and the transfer of access rights by an existing holder.

Potential 8X expansion of DBT

DBT has been expanded multiple times since it opened in 1983. Most recently, in 2009, the 7X expansion added 25.2 mtpa of capacity.

Dalrymple Bay Infrastructure Ltd (DBI), the operator of DBT, is negotiating with potential customers for the 8X expansion, which would add as much as 14.9 mtpa of capacity, taking the total to 99.1 mtpa. As of November 2025, there was a queue for 29 mtpa of capacity, with potential customers having signed conditional access agreements for 12.9 mtpa.[50]

DBI said the potential 8X expansion was divided into 3 phases, with a total estimated cost of $1.48 billion, based on construction starting on 1 April 2026. DBI noted this cost will likely need to be adjusted to reflect the then applicable costs when the actual start date is known, if the project

[48] QCA, *Part C: DBCT declaration review*, final recommendation, March 2020, pp 18–33. This point is affirmed in DBI, sub 4, pp 5–6.
[49] Dalrymple Bay Infrastructure, *Investor presentation – Dalrymple Bay Terminal Site Visit*, ASX announcement, 20 November 2025, p 6.
[50] Dalrymple Bay Infrastructure, *Investor presentation – Dalrymple Bay Terminal Site Visit*, ASX announcement, 20 November 2025, p 16.

proceeds. Moreover, DBI said construction was subject to commercial negotiations with the customers that had signed conditional access agreements, formal commitment by those access seekers, and DBI's final investment decision.[51]

Transfer and trading

DBT customers are permitted, under their access agreements, to assign some or all of their access rights to a third party, with DBI's consent.[52] [redacted]

In addition, there is potential to release contracted but unused capacity at DBT. Over the past 7 years, throughput at DBT has consistently fallen about 30% short of contracted capacity.[54] DBI is considering capacity pooling mechanisms to optimise use of terminal capacity.[55] This pooling may be a more capital-efficient way of serving demand for capacity at DBT, compared with expanding the facility.

[redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

[51] Dalrymple Bay Infrastructure, *Investor presentation – Dalrymple Bay Terminal Site Visit*, ASX announcement, 20 November 2025, p 16.
[52] Dalrymple Bay Infrastructure, *Investor presentation – Dalrymple Bay Terminal Site Visit*, ASX announcement, 20 November 2025, p 6.
[53] Dalrymple Bay Infrastructure, sub 4, p 6.
[54] Annual throughput has averaged less than 60 mtpa over the past 7 years: NQBP, *Throughputs*, NQBP website, 2026, accessed 19 December 2025.
[55] DBI, *Investor Presentation – 2025 Macquarie Australia Conference*, ASX announcement, 7 May 2025, p 8.
[56] The GAPE deeds were signed by customers located in the Goonyella system who wanted to rail coal to the Terminal. Aurizon Network said these 'specific commercial agreements' with foundation customers underpinned the GAPE project. See Aurizon Network, *Reference Tariff for the GAPE System*, draft amending access undertaking, April 2013, pp 3, 12.
[57] NQXT, sub 5, p 49.
[58] Dalrymple Bay Infrastructure, sub 4, p 6.
[59] Dalrymple Bay Infrastructure, sub 4, p 6.
[60] NQXT, sub 6, p 84.
[61] Dalrymple Bay Infrastructure, sub 4, p 6.

[redacted]

- [redacted]
- while Rio Tinto was selling its Queensland Coal assets between 2013 and 2018, the buyers only wanted to assume a small portion of its access rights at the Terminal and related GAPE obligations and entitlements.[63] In 2016, Rio Tinto said it was no longer likely that it would use the Terminal or the associated rail capacity it had contracted under take-or-pay arrangements. It recorded its related obligations as onerous contracts, resulting in a one-time post-tax charge of $US496 million[64]
- [redacted]
- [redacted]

Goonyella miners that principally use DBT said that even with available capacity at the Terminal, there was no evidence of users switching away from DBT when prices at DBT rose 23% in 2021–22 and 29% in 2022–23.[67] The Goonyella Coal Producers said these increases were 'well beyond anything that is typically considered a SSNIP'.[68]

Based on the history of use of the Terminal and evidence provided to date by stakeholders (including cost estimates and volume forecasts), we consider new Goonyella users are unlikely to sign material long-term contracts for capacity at the Terminal during the proposed declaration period. Our preliminary view is that this demand is more likely to be served by additional capacity that becomes available at DBT due to the 8X expansion, the release of capacity by existing users of DBT, or a combination of both.

[62] The Northern Missing Link is a 68 km rail line that connects the Goonyella and Newlands rail systems in central Queensland. It was one of the main pieces of infrastructure built as part of the GAPE project between 2010 and 2012, at the same time as the Terminal's capacity was increased by 25 mtpa.
[63] In October 2016, Rio Tinto transferred access rights to 9.3 mtpa at the Terminal to Adani Mining Pty (now Bravus Mining Pty), which acquired the capacity for the Carmichael Mine. See QCoal, sub 1, p 6.
[64] See Rio Tinto, *Rio Tinto completes sale of remaining coal assets*, media release, 1 August 2018, accessed 14 January 2026; Dalrymple Bay Coal Terminal User Group, submission to the QCA, *Declaration review regarding Dalrymple Bay Coal Terminal*, 16 July 2018, pp 33–34. Rio Tinto, *Interim Results 2016*, ASX announcement, 3 August 2016, pp 7, 40, 62, accessed 19 January 2026.
[65] NQXT, sub 8, p 25.
[66] WICET, *Access*, WICET website, 2025, accessed 25 November 2025.
[67] We observe that these increases were implemented despite DBT being declared.
[68] Goonyella Coal Producers, sub 13, p 3. A small but sustained non-transitory increase in price, or SSNIP, is a test that is commonly used in defining markets. The SSNIP test is discussed in more detail in sections 2.5.2 to 2.5.4.

2.5.2 Legal framework for market definition

Market definition must be applied having regard to the statutory purpose of the legislation. In *ACCC v Flight Centre*, the High Court noted:

> Identifying a market and defining its dimensions is 'a focusing process', requiring selection of 'what emerges as the clearest picture of the relevant competitive process in the light of commercial reality and the purposes of the law'.[69]

For this investigation relating to the Terminal service, criterion (b) requires a detailed assessment of total foreseeable demand in the relevant market over the proposed declaration period. The intended purpose and operation of criterion (b) is essentially to:

- capture facilities facing an enduring lack of effective competition
- identify demand for the service as well as demand for substitutes
- only capture genuine economic substitutes that impose an effective constraint on the facility – which may be identified by applying the hypothetical monopolist test (HMT).

The HMT – typically implemented by applying a small but significant and non-transitory increase in price (or SSNIP) test – is used to identify the scope of services over which a competitor faces effective competitive constraint, by reference to the availability of close economic substitutes.[70]

The SSNIP test has been widely used by Australian courts and is a key tool the ACCC deploys under its merger guidelines.[71] In the recent decision in *Epic Games Inc v Apple Inc*,[72] the Federal Court reinforced that market definition is informed by substitution and competitive constraints, and that the SSNIP test is an important aid to focus the enquiry. The Court said the idea of the SSNIP test is to find the smallest area (product and geographic) over which the hypothetical monopoly supplier can impose a SSNIP, which then provides the boundaries of the market.[73]

Under this approach, the market is defined as a group of products and a corresponding geographic area within which a hypothetical monopolist would be able to profitably impose a SSNIP. In simple terms, applying the SSNIP test requires considering what would happen if the price for the service for which declaration is sought increased by 5–10%:

- Would buyers of the service switch to another product or service? If so, would the switching be significant, such that the increased revenue from the increase in prices would be offset by substitution to other services?
- Would new suppliers enter the market for the service? If so, would the additional supply be significant?

As such, the proper application of the SSNIP test ought to prevent the market being defined too narrowly to only reflect the demand for the service in question. Where substitution is likely to occur

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[69] *Australian Competition & Consumer Commission v Flight Centre Travel Group Limited* [2016] HCA 49 at [69]. See also ACCC, Guidelines on misuse of market power, August 2018.

[70] A SSNIP is not always applied. For example, the judgements of the Federal Court in *ACCC v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720 and the Full Federal Court in *Australian Competition & Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [2023] FCAFC 16 established a broad market definition for a service whereby customers' willingness to pay will be informed by transport costs to the facility and rejected the application of a SSNIP analysis informed by customers' transport costs. However, this approach reflects the application of a purposive approach to market definition and facts specific to the case. In particular, Jagot J said the two ports in question (Port of Newcastle and the Port of Botany) competed in the same market, as each port would face a degree of competition as they made changes to their service offering; there was factual evidence that the charges at each port were set having regard to prices at the other port; and shipping lines would consider the ports to be close substitutes.

[71] See also Productivity Commission, National Access Regime, inquiry report no 66, October 2013, p 163; ACCC, Merger assessment guidelines, June 2025, pp 15–16; *Australian Competition & Consumer Commission v Metcash Trading Limited* [2011] FCAFC 151 at [247] describing the hypothetical monopolist test.

[72] *Epic Games Inc v Apple Inc* [2025] FCA 900.

[73] *Epic v Apple* at [1319].

in response to such a price increase, the alternative products or services are close substitutes and, hence, are in the same market as the service for which declaration is sought.

2.5.3 Matters raised by stakeholders

Much of the material that we received on criterion (b) in submissions relates to the appropriate way to define the market for the service. In this section, we provide our views on the key arguments put forward by stakeholders in their submissions, namely:

- the approach to natural monopoly proposed by NQXT's expert, CEG Economics (CEG)
- CEG's approach to the HMT
- the approach to Goonyella mines proposed by QCoal Users' expert, HoustonKemp.

Our overall approach to defining the market is discussed in section 2.5.4.

CEG approach to natural monopoly

CEG proposed a broad market definition, which in essence includes any mine that could profitably transact with NQXT if there were no alternative facility.

The CEG approach is grounded on the premise that criterion (b) requires assessing potential demand for the Terminal service if no alternatives are available, consistent with the criterion's role as a natural monopoly test. Specifically, CEG:

- emphasised that the market definition for criterion (b) is distinct from that used in other contexts, such as merger assessments under s 50 of the CCA; instead, it is specifically purposed to test for natural monopoly characteristics by hypothetically assuming the facility in question is the sole supplier
- justified this approach on the basis that market definition for the purposes of criterion (b) should be informed by its role as a natural monopoly test, expressing the view that if the Terminal were a true natural monopoly, its market would not be affected by the existence or expansion of competing terminals
- contended that if competition exists (as evidenced by switching and negotiation between terminals), the market is contestable and is not a natural monopoly.[74]

CEG described how the Hotelling model shows how firms compete when consumers are distributed across a spatial or preference dimension.[75] CEG presented a stylised example of a rail line with 2 firms at either end to show that each firm will tend to attract customers that are close to their facility (owing to lower transportation costs).[76]

In practice, CEG applied the Hotelling model to define the relevant market as encompassing all mines with positive willingness to pay for the service, accounting for coal prices, extraction costs and rail haulage costs.

Each mine's willingness to pay was calculated by CEG based on the FOB value of coal, net of extraction and transport costs (but not the marginal cost of supplying the service or any other costs of accessing the service). CEG then ranked mines from highest to lowest willingness to pay, to form a demand curve for the terminal under the hypothetical monopoly scenario.

[74] NQXT, sub 6, pp 6, 25–28, 62–69.
[75] The Hotelling model explains how firms selling identical products in a linear market choose locations – and later prices – to capture consumers whose choices depend on transportation costs, often resulting in minimal differentiation between competitors. See H Hotelling, 'Stability in Competition', *The Economic Journal*, vol 39, no 153, 1929, pp 41–57.
[76] NQXT, sub 6, p 31.

In practice, this yielded a proposed market, defined by reference to customer location, that includes:

- mines using the Terminal
- mines using rival terminals that would still derive positive surplus from switching to the Terminal if other terminals were unavailable
- any mine where the Terminal's location and cost structure would permit mutually beneficial trade if there were no alternative facilities.

CEG also asserted that because criterion (b) is a test for natural monopoly, demand should be assessed based on a scenario where it was a 'true monopoly'.

We do not consider that the approach proposed by CEG is an appropriate means to defining the market for the purposes of assessing criterion (b).

CEG's suggested 'true monopoly' approach is inconsistent with the intended purpose and operation of criterion (b). The CEG approach differs from the framework for criterion (b) set out by the Productivity Commission in its National Access Regime review. Specifically:

- in recommending the changes to the drafting of the equivalent of criterion (b), the Productivity Commission was clear that the provision was intended to capture facilities facing an enduring lack of effective competition – in contrast to facilities that may face some ineffective constraints insufficient to constrain their market power[77]
- in rejecting a pure natural monopoly test – which only encompassed demand for the service – the Productivity Commission explicitly identified that the market definition exercise was intended to identify demand for the service as well as demand for substitutes[78]
- consistent with the overarching purpose, the Productivity Commission did not consider that substitutes would include purely technical substitutes. Rather, it said the market should only capture genuine economic substitutes[79] that impose an effective constraint on the facility – which may be identified by applying the SSNIP framework.[80]

The CEG approach is at odds with these intentions. Rather than determining the market by reference to close economic substitutes, CEG's approach captures all users for which NQXT is a *technical* substitute and that could profitably ship at the Terminal. The effect of this is to include users whom either DBT or the Terminal could technically supply, but where they do not provide any meaningful or effective competitive constraint – that is, they are not 'genuine substitutes'.

Conventionally, a market is defined as the area of close competition between firms, determined by the availability of close economic substitutes.[81] Products or services are considered part of the same market if customers would switch between them in response to changes in price or quality. This principle provides for market boundaries that reflect actual competitive constraints, not just technical possibilities.

CEG characterises the test as focused on the 'economic test of servicing all potential market demand for the service, not servicing firm specific demand given the prices and strategies of that firm's competitors'. Citing *Queensland Wire,* CEG argues its approach 'is consistent with markets being defined not only on actual exchanges, but on the potential for exchange'.[82]

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[77] Productivity Commission, *National Access Regime*, inquiry report no 66, 2013, p 2.
[78] Productivity Commission, *National Access Regime*, inquiry report no 66, 2013, p 33.
[79] Productivity Commission, *National Access Regime*, inquiry report no 66, 2013, p 163.
[80] Productivity Commission, *National Access Regime*, inquiry report no 66, 2013, p 163.
[81] See *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177, judgment of Deane J at [6].
[82] NQXT, sub 6, p 26.

However, the 'potential for exchange' contemplated in CEG's approach is inconsistent with the concept of potential competition as contemplated in *Queensland Wire*, which was directed expressly at a 'potential for close competition'.[83] Further, the CEG approach is misaligned with commercial reality, as it results in an unrealistic assessment of demand in the market by assuming that there are no economic or technical substitutes for the service. As such, CEG's approach results in a market that is not grounded in reality or focused on the fundamental question of whether NQXT faces effective competition.

Accordingly, we do not consider the approach outlined by CEG is an appropriate basis for defining the market, for the purposes of criterion (b). Rather, we consider the market should be assessed based on actual demand (i.e. anticipated demand over the proposed declaration period from specific identified future customers) rather than theoretical demand for the service. This assessment should have regard to actual and potential substitution and the practical ability for customers to switch between facilities, and the extent to which this imposes an effective competitive constraint on the providers of the service.

CEG's proposed treatment of the HMT

With respect to the *application* of the HMT, CEG submitted that HoustonKemp had erred by estimating firm-specific demand for the Terminal's services rather than market-wide demand. Furthermore, CEG submitted that HoustonKemp's application of the SSNIP is incorrect (i.e. in applying a 5–10% increase to the Terminal's price and assessing the impact that this has on firm-specific demand). CEG stated that the correct way to perform the SSNIP is to consider whether, if both the Terminal and DBT were owned by a hypothetical monopolist, this would result in prices increasing by more than 5–10%. CEG concluded that, as a hypothetical monopolist operating both terminals would be able to raise prices by more than 5–10% from current levels, then the Terminal and DBT must operate in the same market.[84]

Criterion (b) directs us to an assessment of whether the service provided by the Terminal is a natural monopoly. We therefore do not consider it necessary or appropriate to adopt the approach suggested by CEG, of applying the SSNIP on the basis that terminals in addition to the Terminal are owned by a hypothetical monopolist.

CEG further submitted that even if the approach proposed by HoustonKemp were to be used, then applying cost-based prices – that is, a SSNIP analysis performed having regard to incremental costs of unused capacity at the Terminal and additional capacity at DBT – would significantly expand the geographic scope of the market.[85]

We do not consider it appropriate to apply a SSNIP-based analysis using the cost-based prices approach put forward by CEG. We note that there may not always be a strong link between incremental costs and the price that an end user pays. [redacted] Furthermore, CEG's estimate of the incremental cost of additional capacity at DBT of $15.95 per tonne will overstate the price that customers pay if the cost of the 8X expansion is socialised, consistent with our 2021 price ruling.[86] Ultimately, as we are trying

[83] *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177, judgment of Deane J at [7].
[84] NQXT, sub 20, p 15.
[85] NQXT, sub 15, pp 5–6.
[86] QCA, *DBIM's application for a price ruling – the 8X expansion*, determination, November 2021.

to capture the change in demand for the service in response to a SSNIP, it is appropriate that we use estimates of actual prices, rather than estimates of incremental costs.

HoustonKemp's approach to Goonyella mines

HoustonKemp used an approach to defining the market for the service that involved identifying the narrowest possible market, which includes all the northern mines. HoustonKemp then analysed the extent to which the coal handling services at other terminals would be considered close substitutes to the service. HoustonKemp identified that relatively higher costs to access DBT, a lack of rail and port capacity, as well as infrastructure constraints to railing south meant that northern mines would not regard other terminals as a substitute for the coal handling services at the Terminal.[87]

HoustonKemp drew on our approach in the 2020 review of the declaration of the DBT service, where we considered that having mines in the Goonyella system that used terminals other than DBT was not evidence of substitution in response to a SSNIP and that these mines used the Terminal for strategic or commercial purposes. On this basis, HoustonKemp concluded that mines in the Goonyella system were not in the market for the service and that the relevant market for the service was the northern mines.[88]

HoustonKemp's approach to defining the market involved adopting an approach that focuses on customer location and attempts to replicate the approach we adopted as part of the 2020 review regarding the declaration of the DBT service.

However, there are some important distinctions to be drawn when comparing the assessments of criterion (b) for DBT and for the Terminal. Specifically, as part of the DBT review, we observed that only customers in the Goonyella system used DBT. Accordingly, by defining the relevant market as Goonyella system mines, all DBT's customers were included within the market definition.

The DBT customer profile contrasts with the Terminal's customer base, where mines that rail to it are located in both the Newlands and Goonyella systems. This means a purely customer-centric geographic approach that left out Goonyella NQXT users would mean excluding half of the Terminal's current customers – and a substantial portion of its volumes – from the definition of the market.[89]

So, although we used a customer-centric geographic approach to market definition as part of our 2020 review regarding the declaration of the DBT service, it may not be appropriate to do so here. In particular, we consider HoustonKemp's conclusion that no mines in the Goonyella system are in the market for the service is not right, as it is at odds with the known facts about customers using the Terminal. It is appropriate to define the market in a way that recognises there are Goonyella NQXT users.

2.5.4 Approach to defining the market for the service

In determining the appropriate approach to defining the market, we have considered the information and opinions on all these matters that stakeholders have put forward in submissions.

Our approach to market definition has had regard to both our 2020 review of the declaration of the DBT service, and the relevant jurisprudence. However, our approach is also guided by the facts and circumstances specific to the Terminal.

[87] QCoal, sub 3, pp 25–29.
[88] QCoal, sub 3, pp 25–29.
[89] This point was raised by NQXT in its submissions. See NQXT, sub 5, pp 71, 75; sub 19, p 7.

We have applied the HMT, by using a SSNIP test, to define the relevant market for the service. We consider applying the SSNIP test in this review is an appropriate way to assess the extent to which DBT and other terminals impose an effective competitive constraint on the Terminal. Importantly, the SSNIP test does not seek to capture all technical substitutes – it tests whether there are close economic substitutes that impose an effective competitive constraint on the Terminal (see section 2.5.2).

Supplier vs customer location

Typically, the HMT is applied to define geographic markets by reference to regions encompassing a group of *supplier locations*. Geographic markets of this type are ordinarily appropriate when customers receive goods or services at the suppliers' facilities. In practice, this approach requires applying the HMT to a hypothetical profit-maximising firm that is the only supplier of the relevant service at *its* location in the region and assessing the extent of substitution in response to a SSNIP. The approach is agnostic with respect to the location of customers.

However, in circumstances where it is feasible for suppliers to target customers based on their location (e.g. where the terms of access are individually negotiated and there can be price discrimination), defining the market by reference to supplier location may not be an appropriate approach.[90] In these circumstances, it may instead be appropriate to define geographic markets as a region encompassing the *location of a group of customers,* having regard to the economic substitutes available to those customers.[91,92]

While customer location may be an appropriate way to define the relevant market for the purposes of criterion (b) in some circumstances, we do not consider it appropriate for the purposes of this review, having regard to the relevant facts – as it is clear that on the narrowest possible market definition a hypothetical monopolist could profitably impose a SSNIP. Accordingly, the risk that the market is defined too narrowly on the basis that NQXT can price discriminate between users is not relevant in in this case.

Further, defining the market by reference to the supplier location is a more useful tool to enable us to consider how total foreseeable demand in the market may change over time. The supplier location approach enables us to have regard to the commercial reality that users may switch to DBT during the proposed declaration period as capacity becomes available, notwithstanding that DBT is not a close economic substitute for the service (discussed in section 2.5.5).

We have therefore applied the SSNIP test by reference to the location at which the service is supplied – adopting a coal handling service supplied at the Terminal, as the narrowest possible market and starting point for the analysis. This approach defines the relevant market for the service as the market for coal handling services at the Terminal (discussed in section 2.5.5).

Defining the market by reference to the supplier location is a pragmatic way to capture the commercial reality of the options for Goonyella NQXT users. Specifically, the Goonyella system

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90 The customer location approach might be appropriate for the following reasons. First, the SSNIP is applied to all users equally, and the marginal substitution that would render a SSNIP unprofitable would mean those substitutes would constrain the hypothetical monopolist. Second, in circumstances where suppliers are able to price discriminate between users (which may be the case here), marginal customers may switch and therefore make a SSNIP by a hypothetical monopolist unprofitable. Third, this potential for switching at the margins may not necessarily reflect an effective competitive constraint on a hypothetical monopolist, as the ability to price discriminate may mean that the threat of substitution does not constrain pricing for 'captive customers' who would not substitute in response to a SSNIP. Accordingly, broadening the market to include another supplier may not be appropriate.

91 See, for example, US Department of Justice and the Federal Trade Commission, *Merger Guidelines*, June 2023.

92 Such an approach may be relevant in other legislative contexts, e.g. ss 46 and 50 of the CCA, where the legislation is concerned with a potential substantial lessening of competition. See for example *Australian Competition and Consumer Commission v Pacific National Pty Limited (No 2) [2019] FCA 669* at [100]–[116], where the potential for price discrimination to justify defining markets by reference to a subset of end users is discussed.

miners have a distinct preference to use capacity at DBT where available. However, because of capacity constraints at DBT, as well as constraints along the Goonyella rail system, miners have had to seek alternative means to get their coal to port. Indeed, this was the very reason GAPE was built in the first place, after the GAPE deeds were executed (see section 2.5.1).[93]

The supplier location approach enables us to assess demand in the market by reference to demand for the Terminal's services (over the course of the proposed declaration period). This approach appropriately addresses the commercial realities stemming from constrained capacity at DBT as well as how changing availability of capacity at DBT affects the demand for access to the Terminal from mines in the Goonyella system. Furthermore, the approach is consistent with the legislative test of criterion (b), as it accommodates changes in demand over time (consistent with the requirement to forecast total foreseeable demand over the proposed declaration period).

We consider this supplier-location-based approach to the HMT is appropriate for this review as it:

- promotes the purpose of the legislation by identifying the market for the service by reference to the field of supply over which the facility faces an enduring lack of competitive constraint
- accurately identifies the field of rivalry between the Terminal and any other terminals, by reference to the extent to which other terminals are close economic substitutes that impose an effective competitive constraint on NQXT
- is straightforward to apply
- accounts for the commercial reality of the market, by:
  - not being rigid in determining the geographic location of miners, which enables us to build a more accurate and dynamic picture of demand over time, having regard to other factors that may influence miners including transport costs, availability of alternative terminals, capacity constraints, the time at which they are contracting for capacity, and contractual entitlements and commitments
  - reflecting actual demand for the service from customers located in the Goonyella region that have sought capacity at the Terminal due to capacity constraints at DBT
  - taking into account reasonable expansions of capacity at the Terminal, consistent with s 76(3) of the QCA Act, while having regard to the commercial reality of DBT's capacity limitations and the lack of effective competitive constraint between the terminals.

2.5.5 Application: the market for the service

In determining the market for the service, we have had regard to the fact that its current customers extend from the Collinsville mine in the north to the Carmichael mine in the west, South Walker Creek in the east, and the Middlemount mine in the south, across the Newlands and Goonyella rail systems (see Figure 4).

Our analysis began by applying the HMT, including identifying:

- the narrowest definition of the market
- the customers that would be serviced in this market
- the extent of economic substitution that is likely to occur if a hypothetical monopolist imposed a SSNIP on those customers, with respect to their demand for the service[94, 95]

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[93] DBI, sub 4, p 5.

[94] Given the nature of the service, we consider it highly unlikely that supply-side substitution would occur in response to a SSNIP.

[95] We note for completeness that the SSNIP should be applied to a competitive starting price, to avoid the cellophane fallacy. However, in this case, our analysis is not sensitive to the starting price.

- whether such substitution would render the SSNIP unprofitable for the hypothetical monopolist.

Narrowest possible market

We have adopted the supply of coal handling services at the Port of Abbott Point as the narrowest possible definition of the market – in essence, the services currently supplied by the Terminal. That is, we considered the scope of the relevant market by having regard to which users currently access the Terminal's coal handling service or are likely to do so over the term of the proposed declaration period.

Identifying users

It is necessary to identify users of the service in order to apply a SSNIP test. This is likely to include current users of the Terminal and any other miners that are likely to seek access during the proposed declaration period.

We consider mines that currently access the Terminal provide an appropriate starting point for applying the SSNIP test. These mines comprise 2 groups:

- the northern mines, assessed through a SSNIP test
- Goonyella NQXT users, which do not include all the mines in the Goonyella system, as their demand for the service is driven by temporal (time-specific) considerations.

Assessing the degree of substitution in response to a SSNIP

It is unlikely that the users of the Terminal would substitute volumes to an alternative terminal, or service, in response to a SSNIP by a hypothetical monopolist. Specifically:

- for northern mines using the Terminal, the additional rail costs to DBT would significantly outweigh the costs of a SSNIP, and there is a lack of available infrastructure for hauling south via the GAPE (see section 2.5.1). Accordingly, for northern mines, there is no close economic substitute for the Terminal – they are, in effect, captive and potentially subject to market power exercised by NQXT.[96] They are the natural market for the Terminal
- for Goonyella NQXT users – they have previously chosen to use the Terminal, due to the lack of capacity at DBT[97] when existing access agreements were executed. The fact that those users have been using the Terminal, when it would have cost significantly less to access DBT if capacity was available, indicates that those users are unlikely to switch to DBT in response to a SSNIP. Rather, their choice has been for non-SSNIP-related reasons. [redacted]

We observe that Goonyella mines that are not existing users of the Terminal are unlikely to seek access during the proposed declaration period (see section 2.5.1). Evidence is that in recent years, even where access to DBT has been uncertain, potential customers that are not already Goonyella NQXT users have not agreed long-term contracts to haul via the Terminal.[98]

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[96] Our assessment of NQXT's ability and incentive to exercise market power is discussed in Chapter 3.
[97] We concluded in our declaration review in 2020 that BMA's terminal at Hay Point was not available for access. See QCA, *Part C: DBCT declaration review*, final recommendation, March 2020, pp 264–69.
[98] Goonyella Coal Producers, sub 13, pp 2-5; NQXT, sub 5, p 18.

Goonyella Coal Producers said the recent lack of switching in the face of substantial increases in prices at DBT showed the terminals were not close economic substitutes.

> [A] real world application of the SSNIP test has played out in public, and it could not be clearer from the lack of substitution in response that NQXT and DBCT provide coal handling services in different markets.[99]

We distinguish switching to a close economic substitute from switching by Goonyella NQXT users that may occur as capacity becomes available at DBT. However, we recognise the expected demand from Goonyella NQXT users and have included that demand when estimating total foreseeable demand in the market.

We do not see material evidence of rivalry between the 2 ports. For example, it is not evident that the Terminal's then owners (the Queensland Government) competed to attract the Goonyella miners that signed up for the GAPE project in 2010. Rather, the Goonyella NQXT users opted to rail to the Terminal as it was the sole option at the time, given there was no capacity at DBT.

The market for coal handling services (and the associated market for rail services) is episodic. The pattern in central Queensland has been for miners to sign long-term contracts. For major expansions, the facility owners have sought underwriting from the customers to support their investments.[100]

2.5.6 Conclusion on the profitability of a SSNIP

As it is unlikely that there would be any substitution between the Terminal and DBT in response to a SSNIP, it follows that a hypothetical monopolist could *profitably* impose a SSNIP. This applies to both segments of the market because:

- the northern mines have no option to switch to a close economic substitute for the Terminal in any foreseeable circumstances during the proposed declaration period
- the Goonyella NQXT users only have an option to choose an alternative to the Terminal if capacity becomes available at DBT[101] – the SSNIP-related factors will not affect their choice of terminal.

Accordingly, other terminals are unlikely to impose an effective competitive constraint on the market for the service.

2.6 Total foreseeable demand over the relevant period

Stakeholders' forecasts for foreseeable demand over the relevant period differ widely. This is mainly due to differences in interpretation of geographic dimensions of the market for the Terminal service. NQXT estimated that foreseeable demand is at least 150 mtpa, based on a market that extends at least as far south as the Middlemount mine in the Goonyella system.[102] HoustonKemp estimated that foreseeable demand will be between approximately 44 and 48 mtpa, based on a market that includes only the northern mines.[103]

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[99] Goonyella Coal Producers, sub 13, p 4.
[100] NQXT, sub 6, p 12.
[101] Goonyella NQXT users also have the option of railing to the terminals at Gladstone. However, we observe that only WICET has capacity available, and the Goonyella NQXT users do not appear to have chosen this option.
[102] NQXT, sub 5, p 106.
[103] QCoal Users, sub 2, p 35.

As indicated in section 2.5.5, we consider the market for the Terminal service includes the northern mines as well as those mines in the Goonyella system that are unable to rail to DBT because of capacity constraints but would rail to the Terminal instead.

Our assessment of foreseeable demand in the market therefore requires us to consider:

- foreseeable demand from the northern mines
- foreseeable demand in the Goonyella system that is unable to be met by DBT and that would rail to the Terminal instead.

2.6.1 Foreseeable demand from the northern mines

To forecast demand from the northern mines, we first estimated production from these mines over the proposed declaration period. Given our view that these mines are likely to exclusively use the Terminal, mine production is expected to align closely with demand.

In our 2020 declaration review we assumed that throughput (which should over time equal mine production) accounted for approximately 90% of contracted volumes.[104] For this draft recommendation, we have adopted this assumption and have adjusted mine production estimates accordingly to calculate our demand estimates.

We have estimated production from the northern mines over the proposed declaration period having regard to the current production levels at these mines, as well as forecasts by independent industry analysts AME and Wood Mackenzie that were provided by HoustonKemp, and other publicly available information. We have assessed each of the demand forecasts from the northern mines individually, with the exception of QCoal's 'Northern Hub' – the Jax, Sonoma and Drake mines – which we have grouped together. Where relevant, we have also had regard to the current volumes contracted by each mine, noting that most of the northern mines' current contracts are approaching expiry.

Collinsville

According to Queensland Government data, Glencore's Collinsville mine produced approximately 2.1 million tonnes of saleable coal in 2024–25 and 2.7 million tonnes of saleable coal in 2023–24. [redacted] Glencore said that as of the end of 2024, Collinsville had reserves sufficient to support a planned mine life of approximately 12 years, which indicates the mine may operate until at least 2036.[107] [redacted]

[104] This is based on our expectation that mines will contract at a level higher than forecast mine production to allow for some buffer as year-to-year mine production can vary.
[105] QCoal Users, sub 2, pp 64–65.
[106] NQXT, sub 8, p 22.
[107] Glencore, *Resources & Reserves as at 31 December 2024,* operational report, n.d., p 31.

Table 6: Draft forecast of production and demand from the Collinsville mine (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
Production estimate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Demand estimate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

QCoal Northern Hub

QCoal's Northern Hub comprises the Drake, Jax and Sonoma mines. These mines all use the Sonoma train loadout to rail to the Terminal.

In 2024–25 the Drake mine produced approximately 2.8 million tonnes of saleable coal, while the Jax mine produced 1.7 million tonnes. The Sonoma mine has not produced coal since 2020–21.

[redacted]

[redacted]

Table 7: Draft forecast of production and demand from QCoal's Northern Hub (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
Production estimate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Demand estimate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Byerwen

In 2024–25, the Byerwen mine produced approximately 3.3 million tonnes of saleable coal, down from approximately 4.5 million tonnes in 2023–24. [redacted]

The Byerwen mine has approval to produce up to approximately 10 million tonnes of coal a year; however, over its operating history, it has not produced volumes at this level.[110] There is little public information regarding any future developments (including stage 2 of the Byerwen mine) that might

[108] QCoal Users, sub 2, pp 67-68.
[109] QCoal Users, sub 2, pp 65-66.
[110] QCoal Group, *Annual Compliance Report: Byerwen Coal mine 9 December 2023 to 8 December 2024*, p 2.

increase production at Byerwen beyond current levels. [redacted] Therefore, our forecast of the Byerwen mine in this draft recommendation reflects no volumes from Byerwen stage 2.

[redacted]

Table 8: Draft forecast of production and demand from the Byerwen mine (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
Production estimate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Demand estimate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Carmichael

The Carmichael coal mine produced approximately 12.6 million tonnes of saleable coal in 2024–25. In August 2025, the Queensland Government announced that Bravus would be investing $50 million in expansion works over the next 2 years at the Carmichael mine, to increase production to 16 mtpa, pending approvals.[111] Bravus has said separately that in the future, it may be able to ramp up production to 25 to 30 mtpa.[112]

[redacted]

[redacted]

[111] Queensland Government, *Investment boost for Central Queensland's resources sector*, media statement, 19 August 2025; Bravus Mining & Resources, *Bravus Mining and Resources commits to major investment to increase mine production in central Queensland*, news release, BMR website, 19 August 2025, accessed 4 March 2026.
[112] Adani, *Adani Enterprises Limited Q4 FY2022 Earnings Conference Call*, 4 May 2022.
[113] QCoal Users, sub 2, p 63.

Table 9: Draft forecast of production and demand from the Carmichael mine (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
Base case production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Base case demand	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Upper bound production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Upper bound demand	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Additional demand from potential new customers

The opening of any mine north of GAPE within the proposed declaration period is relevant, as demand from such a mine would be in the market for the Terminal service (see section 2.5.4). At this stage, we do not expect any new mine to start producing within the relevant regions over the proposed declaration period. As such, our estimate of foreseeable demand from the northern mines is limited to the existing set of mines.

2.6.2 Foreseeable demand from the Goonyella system

Glencore, Stanmore, Lake Vermont and Middlemount all use the Terminal to export coal. Unlike the northern mines, which solely rail to the Terminal, mines in the Goonyella system that rail to the Terminal also use DBT. For this reason, mine production forecasts for each of the Goonyella users are less relevant. Instead, our assessment of foreseeable demand from the Goonyella system will be largely guided by information relating to the contracting status of Goonyella system users of the Terminal.[114]

Glencore

[redacted]

Table 10: Draft forecast of demand from the Clermont mine (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[114] As we are directly estimating demand from Goonyella users, these estimates do not require any scaling (as has been applied to production forecasts for the northern mines).
[115] DBI, sub 4, p 6.
[116] NQXT, sub 5, p 14.

Stanmore

[redacted]

Table 11: Draft forecast of demand from Stanmore (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Lake Vermont

[redacted]

Table 12: Draft forecast of demand from Lake Vermont (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Middlemount

[redacted]

Table 13: Draft forecast of demand from Middlemount (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

117 NQXT, sub 5, p 14.
118 NQXT, sub 5, p 58.
119 NQXT, sub 5, p 14.
120 NQXT, sub 5, p 60.
121 NQXT, sub 5, p 14.
122 NQXT, sub 5, p 59.

2.6.3 Total foreseeable demand

Our estimate of total foreseeable demand in the market over the proposed declaration period is the summation of demand from the northern mines and the demand from Goonyella NQXT users. Table 14 shows our preliminary estimates.

Table 14: Draft total foreseeable demand in the market (mtpa)

	2027–28	2028–29	2029–30	2030–31	2031–32	2032–33	2033–34	2034–35	2035–36	2036–37
Collinsville	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
QCoal Northern Hub	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Byerwen	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Carmichael (base case)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Carmichael (upper bound)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Glencore	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Stanmore	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Lake Vermont	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Middlemount	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total foreseeable demand (base case)	**40**	**34.3**	**34.3**	**34.3**	**34.3**	**34.3**	**34.3**	**34.3**	**34.3**	**34.3**
Total foreseeable demand (upper bound)	**41.8**	**37.6**	**40.9**	**44.2**	**44.2**	**44.2**	**44.2**	**44.2**	**44.2**	**44.2**

Note: Total foreseeable demand (base case) is the sum of Carmichael (base case) and all other mines/users and does not include Carmichael (upper bound). Total foreseeable demand (upper bound) is the sum of Carmichael (upper bound) and all other mines/users and does not include Carmichael (lower bound).
Source: QCA analysis.

2.7 Meeting total foreseeable demand in the market

We estimate that the maximum demand during the proposed declaration period is approximately 44 mtpa, when we adopt upper bound assumptions. Given that the Terminal's capacity is 50 mtpa, the Terminal will be able to meet total foreseeable demand.

Furthermore, the Terminal has approved plans for expansion to 60 mtpa, with further increments up to 120 mtpa (see section 1.1.1). This means that the Terminal should be able to satisfy demand from a further ramp-up of the Carmichael mine well beyond 25 mtpa, or additional demand from the Goonyella system that is not able to be satisfied by DBT.

Adani and its related parties have said in multiple forums that they are keen to expand the Terminal to 60 mtpa (see section 1.1.1). So, the conservative (upper bound) demand estimate of approximately 44 mtpa, and the higher estimate of port capacity are both under the control of the port owner and its related parties. In any event, when comparing lower bound to lower bound, or upper bound to upper bound, there is ample spare capacity to serve total foreseeable demand.

We therefore consider the Terminal can meet total foreseeable demand in the market over the proposed declaration period under consideration. Even if peak demand over the relevant period exceeds the Terminal's current capacity, we consider it is reasonably possible to expand the Terminal to meet this demand. If such an increase appeared likely, we would have regard to the relevant facility as if it had this expanded capacity (in accordance with s 76(3) of the QCA Act).

2.8 At the least cost compared to 2 or more facilities

Assuming no expansions to the Terminal are required, the Terminal is clearly the least cost way to meet total foreseeable demand compared to any 2 or more facilities, because it avoids the large capital costs of new infrastructure.

But even if expansions are required, the Terminal is likely to remain the least cost option. This is based on a reasonable working assumption (subject to further information) that unit costs of expansion are likely to be similar at each of the Terminal and DBT over time.[123] So, given the relativities of rail costs, the Terminal is still likely to be able to serve total foreseeable demand in the market at the least cost. As DBT is expected to be fully contracted over the proposed declaration period, we have not considered this matter in further detail.

2.9 Conclusion on criterion (b)

After considering stakeholder comments and our analysis, for the purposes of the draft recommendation, we conclude that criterion (b) is satisfied, as the Terminal will be able to meet total foreseeable demand during the proposed declaration period at least cost.

[123] We have relied on statements by parties related to NQXT that the next stage of expansion at the Terminal will be relatively inexpensive (see sections 1.1.1 and 2.3). Different stages of terminal expansions will tend to have varying unit capital costs of incremental capacity. However, given the terminals are using similar technology, we would anticipate that these unit costs would tend to be similar for large increments of capacity.

3 Criterion (a)

Criterion (a) is not satisfied

We have reviewed markets that are dependent on the Terminal service. We consider that, other than the coal tenements market, key dependent markets are workably competitive now and, given their structure and characteristics, will remain workably competitive in the future irrespective of whether the service is declared. These markets include the coal export markets that are the primary source of profits for the Adani Group's Queensland operations.

In contrast, the market for later-stage coal tenements may not be workably competitive and shows limited evidence of rivalry and competition. We have therefore focused our assessment on NQXT's incentives and ability to exert market power in the market for the service in a way that would affect competition in this particular dependent market.

The Terminal is part of a vertically integrated set of operations conducted by subsidiaries within the Adani Group. The Terminal has substantial spare capacity, which we consider will continue over the proposed declaration period. This spare capacity at the Terminal limits the incentives to restrict third party access.

NQXT (the Adani subsidiary that leases the Terminal) is incentivised to operate the Terminal to maximise the profits of the Adani Group by increasing throughput at the Terminal. While NQXT can leverage its market power to provide access to the service to related entities on preferential terms it does not have a commercial incentive to restrict access or offer terms to third parties that would compromise the development of tenements that could be a source of future throughput at the Terminal.

Accordingly, we do not consider that NQXT's ability and incentive to exercise its market power to extract profits from miners will lead to outcomes that materially impact competition in the later-stage tenements market as this would not lead to increased Terminal throughput, which is in the interests of the Adani Group. Our view is that any perceived risk of obtaining access to the Terminal is likely to be limited and is, in any event, only one of several factors influencing the competitive environment and investment decisions – alongside coal prices, regulatory approvals, operating costs (including royalties) and financing conditions.

As such, criterion (a) is not satisfied.

3.1 Introduction

Section 76(2)(a) of the QCA Act is expressed as follows:

> that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service

Criterion (a) requires an assessment of whether access (or increased access) to the service on reasonable terms and conditions as a result of declaration would promote a material increase in competition in a dependent market. Such a market is likely to be part of the same supply chain as the market for the service and be either upstream or downstream to it.[124]

This requires a focus on the relevant dependent markets and their structure, and a forward-looking analysis focused on the effect of access as a result of declaration.

In particular, a service provider may not be able to impact competition in a dependent market that is workably competitive now and is likely to remain so. The Productivity Commission has noted that workable competition requires that firms should be subject to a reasonable degree of competitive constraint from actual or potential competitors, or from customers, as opposed to a theoretical – and unattainable – ideal of perfect competition. The Hilmer Report noted that in markets which are workably competitive:

> charging prices above the level of long run average costs will not be possible over a sustained period, for higher returns will attract new market entrants or lead customers to choose a rival supplier or product.[125]

If a service provider is unable to exercise market power in the dependent market, then declaring the service to provide an enforceable mechanism to determine the terms and conditions of access to the service is unlikely to promote competition in that market. The Tribunal in its *Duke EGP decision*, concluded that whether access will promote competition depends on whether the access provider has market power that could be used to adversely affect competition in dependent markets.[126]

Similarly, in the Pilbara matter, having regard to criterion (a) in Part IIIA of the CCA, the Tribunal said:

> if a dependent market is already effectively competitive, intervention is not called for. That is, we read criterion (a) as having no application to a market which is effectively competitive.[127]

This is because, in such circumstances, access (or increased access) to the service on reasonable terms as a result of declaration is not likely to promote a material increase in competition in that dependent market.

If a dependent market is not workably competitive, this may suggest that the exertion of market power in the market for the service is impacting competition in that dependent market. However, whether a service provider has an incentive and ability to exert market power depends on the circumstances it faces in the market for the service as well as the nature of its relationships with related parties operating in dependent markets.

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[124] QCA, *Applying for declaration or revocation under Part 5 of the QCA Act – handbook for applicants*, March 2022, p 46.
[125] FG Hilmer et al., *National Competition Policy*, Australian Government Publishing Service, Canberra, 1993.
[126] *Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2 at [116]–[124]
[127] *In the matter of Fortescue Metals Group Limited* [2010] ACompT2 at [1068].

3.2 Relevant dependent markets

Stakeholders referred to several dependent markets when making submissions on whether declaration would promote a material impact in competition in markets other than the market for the Terminal service.

These markets are similar to those raised in previous assessments of whether coal handling services should be declared. For example:

- in our 2020 review into the declaration of Aurizon Network, we identified a range of dependent markets including coal tenements and thermal and metallurgical coal markets. The key dependent market that was the focus of our assessment was the above-rail haulage market
- in our 2020 review into the declaration of DBT, the relevant dependent markets considered included the coal tenements market(s), coal export market, coal haulage services market, DBCT secondary capacity trading market, rail access market and other markets (e.g. port services, shipping services, mining services)
- more recently, in the Port of Newcastle matter, the NCC's final recommendation identified 5 functionally distinct dependent markets including the coal export market, the market for mining tenements, markets for provision of infrastructure connected with mining operations, the market for specialist services and the market for shipping services.

In this section we discuss a number of markets suggested by stakeholders that may be impacted by declaration but that upon consideration we have found to be unlikely to be impacted by declaration. In section 3.3, we consider in depth later-stage tenements markets that we consider most likely to be affected by declaration.

3.2.1 Coal export markets

QCoal Users said declaration would promote metallurgical and thermal coal throughput and thereby promote competition in both coal export markets. In contrast, NQXT said both markets are highly competitive and restricting access would not materially impact prices.[128]

QCoal Users said NQXT may restrict metallurgical coal throughput in favour of Bravus' thermal coal, while NQXT said that declaration would not prevent it from prioritising its own anticipated service requirements and that most metallurgical coal suitable for export is closer to other terminals.[129] QCoal Users also said declaration could increase competition if it encouraged thermal coal throughput, while NQXT said commercial incentives favour maximising throughput at the Terminal.[130]

We consider both the thermal and metallurgical coal export markets are workably competitive and *any* restriction of access at the Terminal is unlikely to materially impact competition in these markets. Coal shipped through the Terminal makes up less than 5% of global metallurgical exports and less than 2% of global thermal exports – obviously, when coal mined in the country where it is consumed is added, the shares of total supply are lower. Because the Terminal accounts for a small share of global supply, limiting throughput at the Terminal would not materially affect world prices or change the competitive conditions in these markets.

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[128] QCoal Users, sub 1, p 20 and sub 2, p 45; NQXT, sub 5, pp 8, 86, 96, 97.
[129] QCoal Users, sub 1, p 20, sub 2, pp 45, 47, 50; NQXT, sub 5, pp 8, 40, 87, 96.
[130] QCoal Users sub 2, p 50; NQXT, sub 5, pp 30–31, 38.

In competitive markets, producers usually increase output when expected long-run revenue is above expected long-run cost. Because global seaborne coal supply is spread across a large and diverse set of producers, and given the presence of domestic production, no single producer can shift world prices or restrict supply in a lasting way.

Should NQXT restrict access at the Terminal, it would not lower the cost of producing Carmichael coal, nor would it change global demand or lift the price of coal. However, it may lose revenue from third party users of the Terminal. We therefore consider the Adani Group's present commercial incentive is to maximise throughput at the Terminal to maximise its revenue (discussed further below).

We expect both coal export markets to remain workably competitive irrespective of declaration. Therefore, we do not consider that declaration would promote a material increase in competition in these markets.

3.2.2 Rail markets (below-rail and coal haulage)

In the below-rail market,[131] QCoal Users said that without firm access rights to the Terminal, no new rail line could secure the demand needed to justify investment. NQXT said that new below-rail development in the Galilee is unlikely in any event because the region is commercially unviable and the CRN already has a long-term open-access policy approved by the Queensland Government.[132]

In relation to the above-rail market, QCoal Users and Aurizon Network expressed concern that vertical integration gives NQXT an incentive to set terminal regulations that favour related parties. This vertical integration could allow NQXT to operate the Terminal in ways that disadvantage alternative coal haulage providers, reducing their ability to compete for servicing mines.[133]

NQXT said that BRC, a related party which provides above-rail services, hauls exclusively for Bravus and has no ability or incentive to favour its own services. On the Newlands system, rail pathing is regulated by Aurizon Network under its QCA approved access undertaking, and on the CRN, if third-party users were to seek access, BRC would similarly have no scope or incentive to favour its above-rail service or Bravus.[134]

We consider that below-rail and coal haulage markets operate in a workably competitive manner and it is not evident that this would change in any future without declaration given the rail access policies in place. Below-rail access on the CRN is governed by a long-term access policy, and the development of new below-rail lines does not appear to be commercially viable. In the coal haulage market, multiple established operators (such as Pacific National and Aurizon Operations) are active, and we have not identified evidence of preferential treatment at the Terminal for NQXT's related parties.

Furthermore, we have no evidence that BRC intends to compete with coal haulage operators over the proposed declaration period. It is also not evident that other miners in the Newlands–Galilee catchment are seeking access to the CRN service over the proposed declaration period. As such, we do not consider that declaration would promote a material increase in competition in either the below-rail or coal haulage markets.

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[131] Below-rail refers to the infrastructure for coal miners to move coal from mines to terminals while coal haulage (or above-rail) is the transport of coal by train from coal mines to terminals.

[132] QCoal Users sub 1, p 20, sub 2, p 52; NQXT, sub 5, pp 97–99.

[133] QCoal Users, sub 2, p 55; Aurizon Network, sub 11, p 4.

[134] QCoal Users, sub 2, pp 53–55, sub 16, p 18; Aurizon Network, sub 11, p 4; NQXT, sub 5, pp 100–101, sub 8, p 34, sub 14, p 11.

3.2.3 Port and mining services markets

QCoal Users said shifts in market structure could affect competition in derivative markets such as port operations, coal shipping and mining services. For example, if NQXT favoured its related party's throughput over third-party metallurgical coal, the buyer base for port services could become more concentrated.[135] NQXT said these markets are large, competitive and supplied by global firms, and changes at NQXT could not realistically affect them.[136]

We consider these markets are derivative of coal export or coal tenement activity, and as declaration is not expected to affect competition in those primary markets, it is also unlikely to promote a material increase in competition in the related service markets in the future.

3.2.4 Secondary capacity trading market

QCoal Users said declaration may promote a material increase in competition if it affected users' ability to trade short-term capacity directly with each other.[137] However, NQXT said there is no clear evidence that a secondary capacity market exists. [138] We accept that short-term capacity transfers could form a secondary market, but there is insufficient information on actual or potential trades to assess whether it is a relevant dependent market or whether declaration would promote a material increase in competition.

3.3 Later-stage coal tenements

Stakeholders had divergent views on the structure and boundaries of the later-stage coal tenements market relevant to the Terminal service, as well as the nature and intensity of competition within the market. In this section we discuss the nature of these markets.

3.3.1 Nature and type of coal tenements

A coal tenement is the right issued by the state to carry out prospecting, exploration, resource development or mining activity in respect of a specific piece of land. In Queensland, coal tenements refer to resource authorities under the *Minerals Resources Act 1989* (Qld) that allow mining companies to explore, evaluate and operate coal mines. The Queensland Government grants 3 types of coal tenements:

- exploration permit for coal (EPC) – which allows the tenement holder to prospect, conduct geophysical surveys, conduct drilling, sampling and testing of materials, and use other advanced exploration methods to determine the quantity and quality of coal present
- mineral development licence (MDL) – which allows the tenement holder to conduct geoscientific programs (e.g. drilling, seismic surveys), mining feasibility studies, metallurgical testing and marketing, and environmental, engineering and design studies to evaluate the development potential of the defined resource
- mining lease (ML) – which allows the tenement holder to conduct larger-scale mining operations and other activities associated with mining.

[135] QCoal Users, sub 2, pp 57–58.
[136] NQXT, sub 7, p 46.
[137] QCoal Users sub 2, pp 56-57.
[138] NQXT, sub 5, p 101.

3.3.2 How coal tenements are obtained

New Queensland coal tenements are not available over the counter. The Queensland Government's Queensland Exploration Program identifies areas of land for release through competitive tender.[139] The latest coal tenement release was in 2026, with the Queensland Government releasing 4 parcels across the Bowen and Surat Basins, outside of the Newlands–Galilee catchment.[140] The government also operates a targeted expression of interest process for proponents to nominate areas of land for resources exploration and production to be included in future land releases.[141]

Coal tenements in Queensland can be bought and sold, either directly or by acquiring the entity that holds them. These tenements represent rights to explore or develop coal projects, and the market for them involves trading these rights for exploration, development or resale.

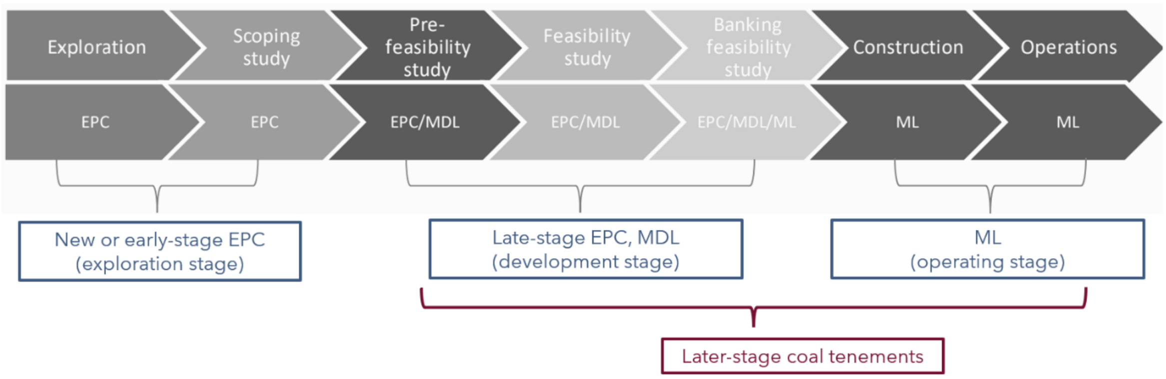
3.3.3 Coal tenement life cycle

An EPC allows a high-risk, speculative activity arising from the possibility that there may be no economic coal in the area covered by the tenement. Generally, once there is a reasonable degree of confidence about the quantity and quality of coal, and that coal deposit has a conceptual economic value, an EPC holder may:

- apply for a MDL to evaluate the commercial feasibility of the project and progress all relevant permits including landholder agreements and an environmental authority, or, if confidence in the coal deposit is sufficiently high, apply for a ML and progress all relevant permits. In either case, the applicant must hold an EPC in respect of that tenement area or have the permission of the EPC holder to apply for a ML, which means a MDL or ML is always associated with an EPC
- at any time, sell the tenement (comprising an EPC, MDL or ML) to another party to develop the project.

The life cycle of a coal tenement would represent the various stages of a coal mining project ranging from exploration through to feasibility studies to commencement of commercial operations (Figure 5). For the purposes of our analysis, we consider the markets for development stage tenements and operating mines together as later-stage coal tenements.

Figure 5: Coal tenements and development stages



[139] We note the Queensland Government's land release review started in 2025 is examining how land is made available for exploration and production activities. See Queensland Government, *2025 Land release review,* Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development website, n.d., accessed 8 January 2026.
[140] Queensland Government, *Exploration Incentives and opportunities, n. d., accessed 9 March 2026*
[141] Queensland Government, *Expressions of interest for exploration*, Business Queensland website, 2025, accessed 9 September 2025.

3.3.4 The scope of the tenements market

QCoal Users said the evidence suggests there are relevant dependent markets for later-stage thermal coal tenements in the Newlands–Galilee catchment and later-stage metallurgical coal tenements in the Newlands system. QCoal Users noted 2 transactions for later-stage tenements:

- Glencore's acquisition of an additional 12.5% share in 2 mineral development licences for coal in the Galilee Basin in 2022
- QCoal's acquisition of Cliffs Australia Coal's share of the Sonoma Mine in the Newlands system in 2013.[142]

The Goonyella Coal Producers noted judicial and regulatory precedents for tenements markets. The Goonyella Coal Producers also said a market is an area of potential rivalry that can exist without transactions and that, by their nature, tenement transactions will happen less frequently than in consumer or retail markets.[143]

NQXT said there is no 'commercially realistic market' for later-stage tenements in the region and there is no evidence that the unregulated characteristics of NQXT have prevented competition for later-stage tenements from emerging.[144] It noted:

- there are limited transactions to date
- exploration activities in Australia compete via the world coal market with exploration activities in other export-orientated coal producing areas
- the Australian Competition Tribunal and NCC both recognised that the tenements market is a derivative of the world coal market. This implies that even a large change in tenement activity could not affect competition in world coal markets[145] and the real barriers to further development in the region are global market conditions, regulatory and financing challenges and rail capacity constraints – not access to the Terminal.[146]

NQXT also said the activities that give rise to later-stage tenements are typically undertaken by producing mines, suggesting that economies of scope between coal production and later-stage tenement activities are strong enough to rule out a functionally separate market.[147]

When we previously considered coal tenements markets in our declaration reviews of DBT and Queensland Rail, we considered both previous transactions and possible future transactions. Using the same framework, we note that 3 transactions for later-stage coal tenements have occurred in the Newlands–Galilee catchment since 2013. Outside of the 2 transactions raised by QCoal Users, we understand that, in 2016, Glencore purchased the remaining 45% minority interests in the Newlands and Collinsville mines from Itochu and Sumitomo.[148]

Turning to the potential for future transactions, our analysis shows that 60% (or 21 of 35) of the EPCs and 50% (4 of 8) of the MDLs within the Newlands–Galilee catchment are held by firms that do not mine coal, and it is unlikely that all of them will become coal miners over the proposed declaration period. Instead, we consider the substantial proportion of tenements held by non-mining firms suggests that some coal tenements, given the right environment, could be sold in the future and be regarded as potential future transactions.[149]

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[142] QCoal, sub 2, pp 24, 31.
[143] Goonyella Coal Producers, sub 13, p 6.
[144] NQXT, sub 5, p 6 and sub 7, p 42.
[145] NQXT, sub 6 , p 8.
[146] NQXT sub 5, p 96.
[147] NQXT, sub 7, p 43.
[148] Glencore, *Preliminary results 2016*, news release, 23 February 2017, p 95.
[149] This is discussed further in Appendix C.

We recognise that the limited transactions to date may support NQXT's view that a commercially realistic market for later-stage tenements in the region does not exist. Our approach to considering the relevance of the size of the market is discussed further in this section.

Nonetheless, we are proceeding on the basis that there is a functionally distinct market for coal tenements. This view is supported by evidence of transactions in coal tenements between unrelated parties and the potential for transactions in the future.

While the market is neither large nor vigorous, we have had regard to implications of both when considering the nature and extent of potential competition effects. We note that evidence of limited transactions to date is not, of itself, determinative of the level of competition in the tenements market. Competition is also affected by matters including the size of actual transactions, the potential for transactions to occur and market concentration.

Coal tenements market definition

Building on our approach outlined above, it is necessary to define the boundaries of the coal tenements market to assess the potential impact of declaration on competitive conditions. We consider it relevant to define the tenement markets in terms of product, geography and functional dimensions.

QCoal Users said the coal tenements market has three functionally distinct markets – exploration stage tenements, development stage tenements and operating mines. QCoal Users' submission analysed operating mines and development stage tenements together as later-stage tenements given the environment for competition is similar[150], but it noted that whether 'operating mines' and 'development stage tenements' are assessed together or separately would not affect their conclusions.[151]

QCoal Users considered the competitive constraints and major risks faced by participants in the markets for development stage tenements and operating mines are similar and include risks associated with the global coal demand and access to NQXT.

NQXT said it is far from clear there is a functionally separate and material market for later-stage tenements. NQXT also said it was not clear that the prospective terms of access to the NQXT would have a meaningful impact on the activities that give rise to tenements, given that decisions around exploration activities are likely to be much more affected by other factors such as conditions in global coal markets, demand outlook and mine approval risk.[152]

The distinction between early and later-stage coal tenements

Early and later-stage coal tenements have observable differences in the level of risk, the nature of the rights being traded and the profile of buyers and sellers.

Later-stage coal tenements include late-stage EPCs, MDLs, and MLs. These tenements typically involve a proven or reasonably well-defined coal deposit. Sellers in this market are companies that choose not to proceed with mining, while buyers are existing or potential coal miners seeking to acquire tenements for development and operation.

At this later stage, the tenement represents a coal mine development opportunity rather than a speculative exploration project. Buyers are generally firms with stronger balance sheets and a

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[150] QCoal Users, sub 1, p 19.
[151] QCoal Users, sub 2, p 27.
[152] NQXT, sub 7, p 9.

capacity for long-term investment, reflecting the lower risk and higher certainty associated with these tenements.

In contrast, early-stage EPCs are granted for areas where the presence of economically recoverable coal is uncertain. These tenements are high-risk and speculative, typically attracting explorers with lower capital bases and a focus on short-term, high-risk activities. The rights traded at this stage are more akin to exploration opportunities rather than development-ready projects.

This distinction is consistent with that of the NCC in the *Pilbara* matter, which stated:

> 7.58 [Further] the product dimension of iron ore tenements is limited to those tenements that contain iron ore in quantities sufficient to be capable of efficient exploitation. The margins of this market may shift over time in response to changes in the price of iron ore and the cost of extraction, including costs relating to the availability of suitable transport.
>
> 7.59 [Finally] the value of an iron ore deposit will depend, in part, on the extent of proving the deposit. It is unlikely that an iron ore deposit would be subject to transactions where the extent and value of that deposit have not been proven, at least to a level where there is a reasonable prospect that the deposit will prove to be economically exploitable …
>
> 7.63 [Accordingly] the Council considers that the product dimension of the market for iron ore tenements may be characterised as 'mineral tenements containing proven iron ore deposits'. This is to be distinguished from a market for exploration services – a transaction does not take place in the market for iron ore tenements until the tenement has been explored and one or more deposits have been identified and proven to a degree.[153]

We are not aware that there has been a contrary approach to the NCC's position in considering the product dimensions or its approach to valuing the deposit. [154]

Market for operating mines

The sellers in the market for operating mines are existing miners who may seek to sell a coal mine for a variety of reasons, ranging from financial distress to changing risk or investment appetite. The buyers would be existing miners or potential miners who would seek to buy an operational asset rather than acquiring development stage tenements which, among other things, have a longer period before the project is operational.

The market for operating mines would be characterised as lower risk relative to both early-stage and late-stage exploration and development. This is because relevant permits would already be in place for an operational mine, the type of coal produced would be known and production volumes and capital and operating costs could be estimated with a higher level of certainty relative to tenements that are yet to be developed into a mine.

A production tenement (ML) can relate to either an existing mine or a mining project that is yet to be constructed, which are two fundamentally different goods. This is because an existing mine has existing mine infrastructure with all relevant permits and infrastructure contracts in place. In contrast, a mining project would be subject to financing and construction risk.

[153] National Competition Council, *Fortescue Metals Group Ltd: Application for declaration of a service provided by the Mt Newman railway line under section 44F(1) of the Trade Practices Act 1974*, final recommendation, 23 March 2006.
[154] The NCC's position that the market for iron ore tenements is confined to proven deposits (and distinct from exploration services) was not altered by the Tribunal or the High Court in *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2012] HCA 36; (2012) 246 CLR 379.

Conclusion on identifying relevant tenements markets

We consider there are 3 functionally distinct markets:

- a market for the supply and acquisition of new or early-stage exploration permits for coal (exploration stage tenements), which represent the rights to identify and prove coal deposits
- a market for the supply and acquisition of later-stage exploration and development tenements for coal (development stage tenements), which represent the rights to develop tenements into a mine
- a market for the supply and acquisition of operating mines.

We consider it appropriate to describe the markets for development stage tenements and operating mines together as later-stage coal tenements (referred to as the coal tenements market). The value of tenements in both markets is, in part, driven by access to the Terminal. Both markets also involve site-specific and substantial sunk costs in developing tenements. For example, development coal tenements require significant expenditure in development drilling, feasibility studies and approvals, while operating mines require major capital expenditure on items such as pits, haul roads and wash plants.

Types of coal in the coal tenements market

The Newlands–Galilee catchment contains both metallurgical and thermal coal. Of NQXT's throughput, 59% is thermal coal and 41% metallurgical coal. Several regulatory precedents have considered the relevance of the type of coal tenement – that is, thermal or metallurgical. In *PNO declaration revocation*, the NCC took a narrow view of the product dimensions of the coal tenements market on the basis that, if declaration of the service at the Port of Newcastle is unlikely to materially promote competition in a narrowly defined tenements market, then it would be unlikely to materially promote competition in a more broadly defined market.[155]

In our final recommendation for the declaration of DBT, we considered that thermal coal and metallurgical coal tenements are in separate product markets given their different end uses, returns and risk profiles over the life of a mining project. '

QCoal Users considered thermal and metallurgical coal tenements separately, given their different return and risk profiles and different end uses. However, QCoal Users noted that many individual tenements in the Newlands system contain both thermal and metallurgical coal and operate mines that produce both types of coal – so it may also be appropriate to define a market for tenements that contain both thermal and metallurgical coal.[156, 157]

NQXT said the market must not be contrived and that no commercially realistic market exists as described by QCoal Users. NQXT considered the QCoal Users' submission does not explain why metallurgical and thermal coal tenements were combined. Given that the northern mines area represents only 2% of Queensland's total metallurgical coal production, NQXT considered it unlikely that a meaningful market for metallurgical coal tenements exists in the region identified by QCoal Users.[158]

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[155] NCC, *Revocation of the declaration of the shipping channel service at the Port of Newcastle*, statement of preliminary views, December 2018, p 52, paras 6.145, 6.148; NCC, *Revocation of the declaration of the shipping channel service at the Port of Newcastle*, recommendation, July 2019, pp 119–20, paras 7.304–7.307.

[156] QCoal Users said that its conclusions on the effects on competition, with and without declaration, do not depend on whether there are separate product markets, or a single product market for tenements containing both thermal and metallurgical coal.

[157] QCoal Users, sub 2, pp 29, 31–37.

[158] NQXT, sub 5, pp 94–95.

Assessing thermal and metallurgical coal markets together

Our task is to assess the impact on competition in thermal and metallurgical coal tenement markets as part of considering whether access on reasonable terms and conditions as a result of declaration would promote a material increase in competition. While these coal types serve distinct functions and belong to separate product markets, we consider it appropriate to assess them together given similar valuation and therefore competition risks.

Tenements in the Newlands system typically contain both thermal and metallurgical coal, and mines operating within the Newlands system produce both types of coal. All operating mines identified in the Newlands–Galilee catchment primarily produce thermal coal. Where a mine also produces metallurgical coal, thermal coal consistently represents the majority of total output – for example, the average proportion of thermal coal was 76% in the 2025 financial year.[159]

We consider that infrastructure access risks, particularly uncertainty around access to the Terminal, are materially similar across both markets. Although the impact of uncertain access may differ in terms of how it affects tenement valuations between coal types, the broader environment for competition is affected in both markets.

We acknowledge that there are caveats to this approach, including differences in market dynamics between thermal and metallurgical coal. The competition impact may be greater on tenements with greater resources of thermal coal, such as those in the Galilee Basin, given their relatively lower product pricing and operating costs.[160]

Ultimately, whether thermal coal and metallurgical coal tenements are assessed together or separately, we reach the same conclusions. We consider that assessing competition effects jointly is appropriate, given tenements in the region typically contain both coal types, there are shared infrastructure dependencies and the nature of investment risks arising from access uncertainty is similar.

Are coal tenements in other systems substitutes?

QCoal Users said that mines tend to operate in a specific rail–port catchment, noting the coal from QCoal and Bravus' operations are drawn from the Newlands–Galilee catchment and handled at the Terminal. Where firms already own such tenements in the system, QCoal Users considered that coal tenements outside of the Newlands–Galilee catchment cannot be close substitutes.[161]

QCoal Users said prospective buyers of thermal coal tenements outside of the Newlands–Galilee catchment can be presumed to have sufficient certainty over access to other export facilities, such as DBT. Such prospective buyers are unlikely to have any degree of certainty in relation to access to the Terminal, were they to consider switching to thermal coal tenements in the northern mines area. It follows that they would be highly unlikely to substitute towards tenements in the Newlands–Galilee catchment if prices for tenements in that area fell.[162]

QCoal Users noted that some tenement holders like Terracom, Glencore and Peabody own tenements in multiple catchments across Queensland. They said this does not necessarily imply that those or other users consider thermal coal tenements in other regions to be close substitutes to

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[159] See earlier analysis on saleable coal production by mine. Sourced from Queensland Government, *Open Data Portal, Coal production data by mine, coal type and financial year*, coal industry review statistical tables, accessed 18 December 2025.
[160] The relative costs are discussed further in section 3.10.3.
[161] QCoal Users, sub 2, p 32.
[162] QCoal Users, sub 2, pp 31–35.

tenements in the Newlands–Galilee catchment but rather may reflect risk diversification – and thus, tenements in multiple catchments may be considered complements.[163]

NQXT said the geographical scope of the coal tenements market, should it exist, is far wider than the NQXT catchment area and extends to the global market. It also said the narrow definition of geographic market is inconsistent with the past position of the Australian Competition Tribunal and NCC that the geographic market is a world market.[164]

QCoal Users considered that any inconsistency with the Australian Competition Tribunal and the NCC can be explained by context, the purpose of the analysis and more evolved reasoning.[165]

Geographic extent of the tenements market

The starting point for establishing the geographic boundary of this market is the Newlands–Galilee catchment. Holders of such tenements are predominantly incumbent users and potential users that typically are established producers or mining enterprises, who acquire coal tenements to develop them into a mining operation.

A key issue is whether acquirers that already have access to coal handling services at the Terminal, or are likely to seek access, would consider tenements outside the Terminal catchment as close substitutes for tenements inside the Terminal catchment.

On occasion, some Goonyella coal miners will seek additional port capacity at NQXT. However, we consider that miners generally operate mines within a specific rail–port catchment. Relevantly, we accept the proposition that mines on the GAPE and Newlands systems (and the tenements and potential mines nearby) have no economic alternative to using the Terminal (section 2.5). If incumbent users are concerned about access to the Terminal, they may look to Goonyella tenements which might give them flexibility between NQXT and DBT. However, those users would need to weigh this flexibility against the potential for capacity constraints at DBT.

In practice, incumbent users are more likely to develop a new mining project in the vicinity of their existing operations and use existing rail infrastructure and port capacity, to avoid take or pay liability on rail contracts and to achieve economies of scale through co-location. As such, incumbent users are likely to face lower operating and capital costs and lower supply chain costs when developing tenements within the Newlands–Galilee catchment than outside of the catchment.[166]

Given these costs, we consider coal tenements within the catchment would be far more attractive to parties with access to infrastructure in the catchment, or parties that have reasonable prospects of being able to negotiate access to rail and port infrastructure in the catchment.

Potential buyers of development stage coal tenements who do not already have access to infrastructure are less likely to consider Newlands–Galilee catchment tenements as substitutes for other systems. Buyers outside of the region would be sufficiently certain of access to export facilities in other regions on reasonable terms, but less certain in relation to access on reasonable terms at the Terminal.

Given the above, coal tenements outside the catchment are unlikely to be close substitutes for tenements within the Newlands–Galilee catchment. Our view is consistent with the *Pilbara* matter, where the NCC's view was that the geographic dimensions of the market for iron ore tenements are

[163] QCoal Users, sub 2, p 32.
[164] NQXT, sub 7, pp 42–43.
[165] QCoal Users, sub 18, p 12.
[166] For further details, see the QCA's analysis in *Part C: DBCT declaration review*, final recommendation, March 2022, p 134.

not determined by the geographic location of tenement owners but by the degree to which tenements in different geographic locations are substitutable. The NCC observed:

> RTIO submits that if there is a market for iron ore tenements, it is global in nature, given that an iron ore producer can theoretically mine ore anywhere in the world.
>
> This argument is supported by the significant levels of international ownership of iron ore projects – the Pilbara operations of RTIO and BHPBIO each involve joint venture partners from Japan, China and/or South Korea. Further, both RTIO and BHPBIO themselves own and operate iron ore projects overseas.
>
> The nature of modern production of mineral commodities is that ownership and operations are likely to be geographically diverse. For example, BHP Billiton is headquartered in Melbourne and yet controls mining operations on every continent (except Antarctica).
>
> However, the geographic dimensions of the market for iron ore tenements are not determined by the geographic location of tenement owners, but by the degree to which tenements in different geographic locations are substitutable. …
>
> Given that most iron ore tenements in the Pilbara are attractive only to parties with access to rail infrastructure in the Pilbara or parties that have reasonable prospects of being able to negotiate access to rail and port infrastructure in the Pilbara, they are substitutable only for other iron ore tenements in the Pilbara. Accordingly, the market for iron ore tenements is Pilbara-wide.[167]

Is the size or materiality of the coal tenements market relevant?

The coal tenements market in the Newlands–Galilee catchment is considerably smaller, relative to the Goonyella or Pilbara tenements markets – only 3 recent transactions have been identified. However, relevant case law suggests there is no minimum requirement for the definition of a market. In *ACCC v Pacific National*, Beach J said:

> [95] Seventh, the definition of a market does not require satisfaction of any size, value or other de minimis threshold. There may be both a wider and a narrower area of rivalry. But if the narrower area itself constitutes a market, then it is power and conduct in that area that is to be examined. So, provided that the identified area of rivalry is not trivial, a market can be identified.[168]

The QCA's declaration handbook for applicants states that the relevant dependent market need not be the most significant market, in which a material impact on competition must be demonstrated.[169] In *DBCT v The Treasurer*, Davis J noted:

> The test is not whether the declaration promotes a material increase in competition throughout the chain of supply or whether the market affected is "material". Once a market is identified, the question is whether the declaration would promote a material increase in competition in that market.[170]

[167] NCC, *Fortescue Metals Group Ltd: Application for declaration of a service provided by the Mt Newman railway line under section 44F(1) of the Trade Practices Act 1974*, final recommendation, March 2006.
[168] Beach J in *Australian Competition and Consumer Commission v Pacific National Pty Limited (No 2)* [2019] FCA 669.
[169] QCA, *Applying for declaration or revocation under Part 5 of the QCA Act – handbook for applicants*, March 2022, p 70.
[170] *DBCT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning (Qld) & Ors* [2021] QSC 335 at [38].

Conclusion on the scope of market for coal tenements

Our view is that the market extends to the supply and acquisition of coal tenements within the Newlands–Galilee catchment:

- miners generally operate mines within a specific rail–port catchment. Incumbent users are more likely to develop a new mining project in the vicinity of their existing operations because of the presence of sunk investments, existing access rights and other approvals.
- given the uncertainty of access on reasonable terms and conditions, buyers from outside of the region are unlikely to substitute to tenements in the catchment if prices for coal tenements fell.
- it is appropriate to assess thermal and metallurgical coal tenements markets within the catchment together. While these coal types serve distinct functions and belong to separate product markets, assessing competition effects jointly is appropriate given the shared infrastructure dependencies and the similar nature of investment risks arising from access uncertainty.

The coal tenements market in the Newlands–Galilee catchment is considerably smaller, relative to the Goonyella or Pilbara tenements markets; however, relevant case law suggests there is no minimum requirement for the definition of a market. Given this conclusion about the scope of the coal tenements market, we now consider the incentives and constraints on NQXT to exercise market power.

3.4 NQXT's incentives

3.4.1 Profit maximisation

The incentives of the service provider in the market for the service are relevant to an assessment of market outcomes in a dependent market in the absence of declaration as they provide a guide to possible future conduct over the proposed declaration period.

QCoal Users' expert, HoustonKemp, said that an incentive to maximise profits does not necessarily align with throughput maximisation, as a service provider with market power may withhold output relative to efficient competitive levels so as to raise prices and its profits.[171]

QCoal Users identified key changes in their commercial environment and said NQXT is incentivised to extract as much economic surplus as it can. They considered that NQXT's conduct demonstrates users' vulnerability to NQXT exercising market power, in the absence of declaration. They highlighted how NQXT's operation of the Terminal has resulted in several costly disputes, including court proceedings and arbitrations under existing user agreements and the terms of NQXT's proposed new standard agreement, which they said provides no details on how the access charge is calculated.[172] QCoal Users submitted that NQXT's ability to exercise market power is not constrained by evergreen contract terms or by any alternative access arrangements.[173]

Aurizon Network submitted that the operator of the Terminal would have the ability and incentive to exercise market power in providing access to its service for users with no competitive alternative, and to operate the Terminal in a manner that optimises the performance of its vertically integrated supply chain to the potential detriment of third parties. Aurizon Network considered that declaration

[171] QCoal Users, sub 18, paras 49–52.
[172] QCoal Users, sub 1, para 33–71; sub 16, para 130.
[173] QCoal Users, sub 1, para 56, 88; sub 2, paras 38–39, 42–46, 95–98, 110–113 and sub 16, para 99.

could promote allocative efficiency by increasing utilisation of the Newland's supply chain and reduce the stranding risk of parts of the CQCN.[174]

NQXT pointed to recent successful contract renewal negotiations and claimed the terms it offered reflect competitive constraints and its strong economic incentives to attract and retain user volumes at the Terminal. NQXT said that it operates in an environment of significant uncertainty and competitive constraints, characterised by global coal market uncertainty, financing risks, underutilisation of the Terminal, competition from DBT, and capacity constraints on the Newlands rail system.[175]

A rational profit-maximising firm with monopoly characteristics such as NQXT will have an incentive to exercise market power, where it can increase profits over the long-run.[176]

However, this may manifest differently depending on the nature of the service and the identity of the service provider. For example:

- for a standalone service provider, profit maximisation will typically be achieved by maximising revenue from users and minimising the costs of providing the service.
- where the service provider is vertically integrated in dependent markets, it may face different incentives, which create additional risks to competition. For example, the service provider may face incentives to use its market power to deny access or disadvantage rivals that compete in dependent markets by restricting access to supress competition and increase profits in those markets, through self-preferencing – including in terms of access or price in the market for the service. In these scenarios, the service provider may forego profits related to delivery of the service, with a view to increasing profits across the broader group by increasing the profits of a related entity.

The Adani Group's objective is to maximise profits. The primary way it does this is by selling coal into a competitive coal export market. Its control of the Terminal through its related entity, NQXT, is primarily for that purpose. However, because of surplus capacity at the Terminal, it supplies the Terminal service to others.[177]

3.4.2 Incentives of a vertically integrated service provider

HoustonKemp considered that vertical integration means that the Adani Group may have:

- the ability and incentive to disadvantage its rivals in the provision of services upstream and downstream of the Terminal
- limited incentive to reduce some costs that are shared among other users.

HoustonKemp said that third party access seekers could be disadvantaged if NQXT:

- raised prices charged at the Terminal or refused to deal with mining rivals
- removed or reduced operational flexibility
- adjusted train scheduling or otherwise preferenced Bravus in coal handling

[174] Aurizon Network, sub 11, pp 1–2, 7–8.
[175] NQXT, sub 5, paras 28–31, 81–106 and sub 14, p 9.
[176] See also criterion (b), Chapter 2, which considers the monopoly characteristics of the coal handling service that give NQXT market power.
[177] The Productivity Commission previously expressed similar views. For example, in its inquiry into the economic regulation of airports, the Commission observed that '[a]irport operators have strong incentives to reach agreements with airlines. The monitored airports are commercial businesses and operators seek to maximise their profitability. They are motivated to … maintain cash flow and minimise uncertainty to underpin airport investment financing [and] grow passenger capacity and throughput to increase aeronautical and non-aeronautical revenue' (Productivity Commission, *Economic Regulation of Airports*, inquiry report no 92, June 2019, p 121).

- refused or frustrated capital investment, expansion and development of the Terminal, thereby precluding access to third parties.[178]

QCoal Users were concerned that they would have to negotiate for access with a vertically integrated competitor who has the ability to favour its related parties (Bravus and BRC) in terms of access to the Terminal and day-to-day operations or even refuse to deal with them. [redacted][179]

HoustonKemp considered that the Adani Group's vertical integration and the potential future expansion of the Carmichael mine would create considerable uncertainty for third party users and that the protections offered are relatively modest and insufficient to alleviate this uncertainty.[180] Aurizon Network was concerned that the Terminal would be operated in a manner that optimises the performance of the Adani Group's vertically integrated supply chain to the detriment of third party users.[181]

NQXT's expert, Incenta, said that the mere existence of vertical relationships does not mean that an incentive to deny access is likely to exist. It said that for an incentive to foreclose in relation to an essential facility, there must be a market that is able to be monopolised via denial of access; the benefits from denial (arising from rents in the final market) must exceed the loss of access revenue; and the owner must be unable to extract any rents available in the final market through its access pricing.

Incenta said that none of these conditions are met for NQXT. Incenta considered that NQXT's incentives are to maximise the short- and long-term prospects of the mines and markets it serves. It said that as there is no benefit to the Adani Group entities from restricting access, the Adani Group's profit-maximising strategy is to maximise the Terminal's profit, which in turn requires the use of the facility to be maximised and for the industry to develop.[182]

NQXT submitted that NQXT, Bravus, BRC and APO each operate separately and independently of each other. [redacted] NQXT believed that concerns about discriminatory conduct are not supported by market evidence or the operational history of the Terminal and [redacted][183]

NQXT has historically operated the Terminal on a multi-user basis and provided access to users under the terms of user agreements. This reflects both its obligations under the existing agreements in place when it acquired the Terminal, as well as its commercial incentive to continue to provide access to third parties (in view of current capacity underutilisation).

[178] QCoal Users, sub 2, paras 35–41, 92–98.
[179] QCoal Users, sub 1, paras 54, 57, 71, 88.; sub 2, para 96.
[180] QCoal Users, sub 2, paras 92–98.
[181] Aurizon Network, sub 11, pp 1–2.
[182] NQXT, sub 7, paras 13–17, 47–49, 121–128.
[183] NQXT, sub 8, para 38, sub 5, p 82, paras 307–311, 401 and sub 14, p 9.

As a vertically integrated service provider, NQXT faces incentives to act in a way that maximises the profits of the broader Adani Group, in providing access to the Terminal.

While [redacted], publicly available information regarding the wider Adani Group indicates a degree of alignment in strategic direction across its Australian entities. On that basis, our preliminary view is that it is reasonable to consider that NQXT may have regard to broader group-level considerations when managing the Terminal, without making any assumption as to the precise ownership or control arrangements that apply within the Group.

That said, pursuant to Australian corporate law, NQXT's directors must make decisions in the best interests solely of NQXT unless expressly authorised to do otherwise, including by NQXT's constitution. The ability of NQXT to make decisions to maximise the profits of the Adani Group is potentially limited by these director duties. Accordingly, our assessment would benefit from submissions on the ability of NQXT's directors to take into account the interests of the broader Adani Group, and the circumstances in which it is not permitted to do so.

The vertical integration of NQXT with other entities in the coal supply chain has the potential to present competition risks in dependent markets due to NQXT's position as the operator of bottleneck infrastructure that sets terms and conditions of access, both from a commercial and operational perspective. Stakeholders have been particularly alert to risks in the coal tenements market, which is discussed in sections 3.9 to 3.12.

Broadly, NQXT will have an incentive to deny access or act in a discriminatory way (including self-preferencing or engaging in foreclosure) where the benefits from denying or restricting access for the Adani Group, as a whole, exceed the loss of access revenue that NQXT itself might incur.

This could occur by NQXT:

- denying access to, or imposing terms which could harm, third party users of the service that compete with Bravus in dependent markets, thereby enabling Bravus to increase its profits in dependent markets, or
- imposing discriminatory contract terms or operational decisions that seek to optimise commercial or operational outcomes for related entities of NQXT, potentially at the expense of third party users of the service.

We consider that the most likely circumstances in which NQXT would face an incentive to refuse or significantly restrict third party access to the Terminal would be if the Terminal is capacity constrained and/or the rail system is capacity constrained.[184] In these circumstances it may be profit maximising to ensure access to the Terminal for Bravus.

However, for the reasons explained below, we consider it unlikely that NQXT would have an incentive to outright refuse or significantly restrict access to access seekers over the proposed declaration period.

No capacity constraint at the Terminal

The current underutilisation of Terminal capacity and the anticipated expiry of legacy agreements [redacted][185] suggest that NQXT has an incentive to contract with customers in order to earn additional revenue, reduce its average costs of operating the Terminal and maximise profitability.

[184] Given our view that the coal export market is competitive (section 3.2.1), NQXT has no incentive (and is unable) to extract rents in the coal export market.
[185] NQXT, sub 5, paras 15–16, 249.

We understand that there is approximately 10 mtpa of uncontracted capacity at present. Our assessment is that surplus capacity will persist at the Terminal for the proposed declaration period (Chapter 2). Therefore, NQXT is incentivised to enter agreements with third party users, particularly as the costs of operating the Terminal are largely fixed. This is not to say they will not charge prices in excess of efficient cost, but they will set prices to maximise revenue, which, given the relatively inelastic demand for the Terminal service, will not significantly reduce demand.

Accordingly, NQXT does not face incentives to refuse access to third party access seekers (unless it's related party would receive a sufficient benefit in a dependent market to offset the associated loss of revenue for NQXT). NQXT's renewal process and the conduct of certain renewing users would seem to support this view.[186]

Newlands system capacity constraints

NQXT submitted that the existing capacity deficit on the Newlands system [redacted][187] QCoal Users said NQXT has both the ability and incentive to hinder or prevent non-Adani users of NQXT from using the Newlands system to make more capacity available for Bravus.[188]

In principle, we consider that the fact the Newlands system is currently capacity-constrained is not an enduring constraint on future development of tenements and mine expansions,[189] as below-rail capacity would likely be developed in response to customer demand (especially for a regulated network such as the CQCN). This constraint may therefore ease over time in response to demand, with market circumstances potentially changing over the course of the proposed declaration period.

We note that despite concerns about below-rail capacity constraints, the Adani Group has recently announced its intention to expand production at its Carmichael mine by a third over the next 4 years, to 16 mtpa.[190]

To the extent that below-rail capacity constraints in the Newlands system persist during the proposed declaration period, this may in fact be a disincentive for NQXT to provide access to third parties at the Terminal. In such circumstances, the exit of third party users would free up Newlands system capacity, which would then be available to service Bravus' additional expected demand. However, we note that the existing rail capacity deficit has not prevented NQXT from entering into new agreements with some renewing users to date.

It is therefore not evident that this presents a material risk to third parties continuing to have access to the service. We welcome stakeholders' comments on this matter.

Incentive to favour related parties

While NQXT may not have a strong incentive to use access to the service to reduce competition in dependent markets, the vertically integrated nature of the Adani Group may still result in incentives to exercise market power for the purposes of preferencing NQXT's related entities which use the Terminal, potentially to the detriment of other users.

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[186] NQXT, sub 5, para 15, 28, 114.
[187] NQXT, sub 5, para 441.
[188] QCoal Users, sub 16, paras 113–117.
[189] A capacity deficit until at least 2030 was assessed by the Coal Network Capacity Co in its 2025 assessment. However, it also noted the potential for a reduction in GAPE demand in 2027-28 and beyond, which provides the potential for significant change in the Newland-GAPE capacity landscape in the short to medium term (Coal Network Capacity Co, *ACAR25: Annual Capacity Assessment Report*, June 2025, pp 19, 23).
[190] Bravus Mining and Resources, *Bravus Mining and Resources commits to major investment to increase mine production in central Queensland*, media release, 19 August 2025.

Having regard to stakeholder submissions, we have identified several possible ways that vertical integration may influence NQXT's conduct, including:

- access terms offered to Bravus compared to third parties
- cost allocation
- terminal operations
- handling of access seeker confidential information.[191]

We consider that NQXT has the ability to promote the interests of the Adani Group by favouring related entities in providing the service through these types of conduct. We also accept that the risk of possible future discriminatory conduct by NQXT increases risk and uncertainty for third party users compared to Adani Group entities.

That said, the ultimate focus of criterion (a) is on the impacts on competition in dependent markets – particularly the coal tenements market. And it is not evident that it would be in NQXT's interests (or in the broader interests of the Adani Group) to favour its related parties to the extent that tenement development would be stymied in circumstances where there continues to be underutilised capacity at the Terminal. Moreover, in the context of the tenements market, potential discriminatory conduct on the part of NQXT would be one of several sources of risk for market participants as they develop tenements.

We welcome stakeholders' comments on this matter.

3.5 Constraints on NQXT's ability to exercise market power in the market for the service

3.5.1 Competitive constraints

The extent of competition, in the form of close substitutes for the service, is a key factor in assessing the future without declaration as it could provide a constraint on the service provider's ability to exercise market power.

QCoal Users submitted that NQXT's ability and incentive to exercise market power is not constrained as it faces no competition from other coal export terminals. They said that mines in the northern Bowen Basin are 'captive' for commercial and structural reasons, including because DBT has no spare capacity, meaning that the QCoal Users (and other users in the northern Bowen Basin) have no ability to switch to an alternative terminal.[192]

In contrast, NQXT submitted that there was substantial evidence of the real-world commercial and competitive constraint that DBT places upon the Terminal, including that a number of mines currently use both terminals.[193] DBI also submitted that DBT and the Terminal are close substitutes for each other.[194]

The Terminal has natural monopoly characteristics (as our assessment of criterion (b) found) — that is, there is an enduring lack of competition in the market for the coal handling service provided by the Terminal. As discussed in Chapter 2, northern mines are effectively captive users of NQXT. Some

[191] QCoal Users, sub 1, paras 54, 57, 71, 88, sub 2, paras 39, 92–98; Aurizon Network, sub 11, pp 1–2; NQXT, sub 5, paras 117, 131–135, 182–185, 312; NQXT, sub 8, paras 39–50, 61–74, 111–114.
[192] QCoal Users, sub 1, para 88 and sub 2, paras 86–88.
[193] NQXT, sub 5, para 99 and sub 8, paras 121–125.
[194] DBI, sub 4, para 6, 13–28.

current users in Goonyella ship to both NQXT and DBT. Although they prefer DBT due to lower cost, they use NQXT at this time given lack of capacity at DBT.

As such, the coal handling services at DBT (or other terminals) are not close economic substitutes for the service provided at the Terminal by NQXT, and a lack of available capacity at DBT limits the extent to which it imposes a constraint on NQXT in any event.

Competition from other coal export terminals therefore does not effectively constrain NQXT's ability to exercise market power over northern mines (and Goonyella mines unable to switch at the time of contract negotiation).

3.5.2 Countervailing market power of users

Where access seekers hold countervailing market power, this may provide an effective constraint on the service provider's ability to exercise market power.

Specifically, substantial countervailing power by access holders may constrain the ability of NQXT to exert market power in negotiations and the terms and conditions of access that are imposed on users without declaration.

QCoal Users submitted that users have little countervailing power because they do not have a credible threat of switching to an alternative terminal. HoustonKemp said this applies to both existing users (who either seek to acquire additional capacity or are at the end of their existing agreements) and new users.[195]

NQXT's submission highlighted competitive constraints and incentives to attract and retain user volumes. [redacted][196]

Countervailing market power exists where there is a credible threat of users switching to another terminal or otherwise ceasing to use the service. It is particularly relevant where the Terminal is not fully contracted, because if a user switches to another terminal, its capacity cannot simply be replaced with demand from another miner that is waiting for access to the Terminal.

The terms of the legacy user agreements do not give existing northern mine users who wish to renew any significant degree of countervailing market power – they are effectively captive users of the Terminal, and the [redacted] does not provide any meaningful mitigation of NQXT's market power (section 3.6.2). As such, these current and potential users have limited countervailing market power.

While NQXT has incentives to maximise throughput from these mines by contracting capacity, given spare capacity at the Terminal, we consider this is insufficient to create a balanced negotiating position. If a miner with no other way to ship its coal cannot secure access, it risks either losing its sunk investment or the significant costs and lead-time associated with inefficiently duplicating the infrastructure.

[195] QCoal Users, sub 1, para 88 and sub 2, paras 86, 89–91.
[196] NQXT, sub 5, para 29, sub 14, p 10, sub 8, para 114.

NQXT can, however, redistribute revenue losses across other users, unlike a mine.[197] This imbalance is particularly relevant to participants in the coal tenements market (sections 3.9–3.12).

The fact that [redacted] is not evidence in itself that the package of terms and conditions does not reflect the exercise of market power, or that countervailing power provides an effective constraint on NQXT's market power. Similarly, the potential refusal by NQXT of one or more user-requested additions or amendments to offered terms and conditions is not in itself evidence of market power.

As noted above, some current users in Goonyella ship through both NQXT and DBT (although DBT is preferred due to lower cost; they use NQXT at this time given lack of capacity at DBT). To the extent that there is a prospect of using DBT for some or all of their tonnages in future, the ability to switch to DBT in future may give these users some degree of countervailing market power in negotiations with NQXT. As NQXT can discriminate in the terms and conditions offered to different users, it can offer more favourable terms to users who may have the ability to switch to DBT in future. While the extent, or indeed presence of market power in respect of these users may change over time, it is still a relevant consideration to the extent that it impacts competition in one or more dependent markets. The ability for NQXT to discriminate in the terms and conditions offered to different users may limit the effectiveness of this constraint to users without a credible threat of switching (although we note that those differential terms and conditions may enhance economic efficiency).

3.5.3 Threat of regulation

The threat of regulation is the risk to an unregulated entity that the exercise of its market power (e.g. by increasing prices beyond an efficient level) may result in regulation.

Where a service provider perceives the threat of regulation as credible, this may constrain the exercise of the service provider's market power, and the terms and conditions of access offered, without declaration.

QCoal Users submitted that the absence of any formalised and binding access policy and principles at the Terminal or other constraints such as evergreen contracts is an indication that NQXT is not constrained by any threat of declaration or regulatory action. They contrasted this absence with actions undertaken by DBI, which executed a deed poll that implemented an access framework to apply in the absence of declaration at DBT. HoustonKemp said that neither the threat of declaration nor liability under s 46 of the CCA is likely to constrain NQXT's exercise of market power, and there is no evidence these threats have constrained NQXT's past conduct – for example, handling charges set by APO and the terminal infrastructure charge (TIC) set by NQXT have been subject to disputes in the Supreme Court of Queensland and at arbitration.[198]

NQXT submitted that the assessment of reasonableness of access terms should be based on the evidence of the terms that apply or have been offered by NQXT in its commercial engagement, and the way in which the Terminal actually operates, noting there has been no evidence of self-preferencing or foreclosure.[199]

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[197] See Productivity Commission, *Economic Regulation of Airports*, inquiry report no 92, June 2019, p 105 (on the countervailing market power of airlines).
[198] QCoal Users, sub 1, para 88, sub 2, paras 86, 99–109.
[199] NQXT, sub 5, paras 22, 25.

As discussed below, we do not consider that the threat of regulation is an effective constraint on the exercise of market power by NQXT for the reasons explained below.

Threat of declaration for third party access

A threat of regulation in the form of declaration for third party access may arise under Part 5 of the QCA Act or Part IIIA of the CCA. The access criteria in s 76 of the QCA Act and s 44CA of the CCA are broadly equivalent, including criterion (a).[200]

In our assessment of the effectiveness of the threat of regulation as a constraint on NQXT's conduct, we have considered the extent it has constrained NQXT's conduct to date. This was a key consideration in our review of the declaration at DBT, where we considered that DBI's actions in entering into a form of deed poll – which included a comprehensive and binding access framework and a price constraint – indicated that the threat of declaration was a factor impacting upon DBI's conduct.[201]

NQXT has not offered any effective and binding access policy or framework applying for third party access to the Terminal, any transparency or commitments around pricing principles or constraints on pricing. This is in contrast to the Adani Group's CRN, for which access is offered under an access policy.[202] Further, with the actual or expected expiry of legacy agreements,[203] NQXT has had the opportunity to set new contract terms for users (with previous terms established by NQBP, a government-owned entity).

While there is some evidence to suggest that the threat of declaration has influenced NQXT's conduct in the provision of access to the service, the extent of this constraint appears to be limited, and it is unlikely to impose a strong constraint in the future without declaration.

The development of internal ringfencing arrangements by the Adani Group in 2017, and the recent update of these arrangements in August 2025 by APO, indicates some responsiveness by NQXT to potential concerns about discriminatory access.[204] In particular, the recent update to the information and security protocol, effected in the context of the QCoal Users' declaration request, suggests that the current threat of declaration under the QCA Act is at least a consideration for NQXT with respect to the matters addressed in the protocol at this point in time.

However, these arrangements are not transparent, and users have a limited ability to monitor compliance or enforce breaches of the protocol. This means that in practice this may not be a sufficiently robust ringfencing regime to provide assurance to third party users. Further, even if these measures were effective, NQXT may still exercise market power in other ways, such as in the level of access charges.

It is not evident that the threat of declaration has been an effective constraint on NQXT's conduct to date, and it is therefore unlikely to impose an effective constraint on NQXT in the future without declaration.

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[200] The exception to this is criterion (c) – under the QCA Act, this refers to the facility being of state significance, whereas under the CCA the equivalent test is national significance.
[201] QCA, *Part C: DBCT declaration review*, final recommendation, March 2020, pp 83–84.
[202] This CRN Access Policy was approved by the State Government in December 2021 (NQXT, sub 10, para 22).
[203] NQXT, sub 8, paras 31, 103.
[204] The information security and ring-fencing protocol documents the separation of the Adani Group's mining, rail and terminal businesses. [redacted] (NQXT, sub 5, p 116, paras 182–185 and sub 8, paras 39, 47, 50).

Other regulatory responses

Misuse of market power protections under section 46 of the CCA

Section 46 prohibits firms with a substantial degree of market power in a market from engaging in conduct that has the purpose, or is likely to have the effect, of substantially lessening competition in that market or any other market in which it supplies or acquires goods or services. The types of conduct that may contravene s 46 are broad and may include a refusal to deal by a firm that is vertically integrated into a dependent market.

However, when Part IIIA of the CCA was amended to add the word 'material' to criterion (a), it was acknowledged that a 'material' promotion of competition was a lower threshold than 'substantial'.[205] As such, the competition effect necessary to satisfy criterion (a) (i.e. promoting a 'material' increase in competition) is a lower hurdle than necessary to establish a contravention of s 46 (i.e. a 'substantial' lessening of competition).

In this context:

- we are not satisfied that the threat of liability under s 46, in the absence of declaration, would of itself result in service providers choosing to offer access to services on reasonable terms and conditions
- we consider that s 46 remains an enforcement tool, rather than an effective mechanism by which terms and conditions of access can be determined and administered on an ex ante basis for all users and prospective users.

Therefore, our preliminary view is that it is likely that a dependent market participant would not consider a threat of regulatory action under s 46 would constrain NQXT from exerting market power in a way that would promote a material increase in competition in any dependent market.

Part 3 of QCA Act

Aside from declaring a service for the purposes of regulation under Part 5 of the QCA Act, it is open for the Minister to declare a monopoly business activity under Part 3 of the Act and make it subject to monopoly prices oversight.

Once a non-government business activity has been declared to be a monopoly business activity (under s 21A of the QCA Act), the Minister may direct us to conduct investigations concerning the business activity. This may take the form of either a pricing practices investigation (under s 23) or a price monitoring investigation (under s 23A). We must report the results of our investigation to the Minister (s 30) and the person carrying on the monopoly business activity (s 31). Within 90 days after receiving the report, the person carrying on the activity must give us a written response to the report, including details of any action that will or may be taken in response to each recommendation contained in the report (s 36B).[206]

However, Part 3 only facilitates the investigation of pricing practices and monitoring of prices – it does not provide the range of statutory protections by which third party access is secured under Part 5. Relevantly, unlike Part 5, it does not provide for arbitration of access disputes or the approval terms and conditions of access under an access undertaking. While regulation under Part 3 may mitigate the effects of potential monopoly pricing in the market for a service, it is not apparent that

[205] For example, Productivity Commission, *Review of the Gas Access Regime*, inquiry report no 31, 2004, p 223. See also QCA, *Declaration reviews: Aurizon Network, Queensland Rail and DBCT*, final recommendations, March 2020, p 23, section 2.4.7.

[206] This is a civil penalty provision, and failure to comply may may incur a maximum penalty of 500 penalty points.

these provisions would constrain the exercise of market power in a way that would promote a material increase in competition in any dependant market.

3.5.4 Other obligations to provide access to third parties

As the coal handling service at NQXT is not declared under either Part 5 of the QCA Act or Part IIIA of the CCA, we have also considered whether there are any other obligations on NQXT with respect to third party access.[207]

Our understanding is that [redacted]. As discussed above (section 3.5.3, NQXT has not established any binding (or voluntary) access framework or policy governing the process for negotiating access or terms of access to the Terminal (for example, pricing principles or price constraints, capacity allocation principles, or dispute resolution). Therefore, without declaration (and outside of user agreements), our understanding is that NQXT has no express obligation, [redacted] legislatively, to negotiate with third party access seekers to reach an agreement to provide access to the service.[208]

3.6 Access without declaration

In assessing the likely nature of access that could apply in the absence of declaration, we have had regard to the context in which access will be negotiated absent declaration, and NQXT's ability and incentives to exercise market power.

We have also had regard to the new form of user access agreement (new standard agreement) developed by NQXT in 2024 which it said would be offered to access seekers and renewing users approaching the end of their initial terms [redacted].[209] While the standard access agreement may provide a useful starting point for discussing the likely terms and conditions of access without declaration, we observe that it is not determinative. Relevantly, there are no restrictions on these parties to make counteroffers relating to these same terms and conditions.

3.6.1 Context in which access will be negotiated

Legacy user agreements

The legacy user agreements were entered into with NQBP, a government-owned corporation, and were later transferred to NQXT in 2011 as part of the Adani Group's lease of the Terminal. Therefore, NQXT has been bound by legacy agreement terms to date, with contract renewal negotiations being its first opportunity to establish new contract terms for incumbent users.

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[207] See NQXT, sub 14, p 11; QCoal Users, sub 2, paras 95-98.

[208] NQXT submitted that, like the legacy agreements, the new standard agreement provides [redacted]. It also said it has established an information security and ringfencing protocol, which includes certain obligations on NQXT and APO regarding open access and non-discrimination. We do not believe these contract terms or the protocol terms represent an overarching obligation to negotiate with third parties to provide access. Also, both the terms of the standard agreement and any voluntary protocol are entirely at NQXT's discretion. We consider these arrangements reflect commitments regarding day-to-day provision of access under an agreement, rather than an overarching obligation to negotiate to provide third party access (NQXT, sub 5, para 258 and sub 8, para 47).

[209] [redacted] (NQXT, sub 5, para 120, sub 8, para 111, 173 and [redacted].

With the legacy user agreements due to expire, [redacted] NQXT is in a position to treat this as a non-negotiable 'take it or leave it' offer should it choose to do so, and the obligation is unlikely to impose a meaningful constraint on the terms and conditions of access offered by NQXT.

This contrasts with the obligation to negotiate in good faith with an access seeker (with recourse to arbitration) under declaration (Part 5 of the QCA Act).

New access seekers

NQXT may also negotiate with new access seekers to provide access, with new access seekers to be offered the new standard agreement terms, similar to renewing legacy users.[212] Importantly though, NQXT has no legal obligation to offer access to new access seekers – it can outright refuse to negotiate and provide access. Further, NQXT can unilaterally offer 'take it or leave it' terms of access. Accordingly, new access seekers that are seeking to develop tenements have no certainty that they will have any ability to negotiate access or the terms of that access.

Imbalance in negotiation power and control without declaration

In terms of the access negotiation process, as discussed above, some users do not have the ability to switch terminals and so have limited countervailing power. This is exacerbated by the information asymmetry that exists between NQXT and third parties. As the owner of the Terminal, NQXT has better information as to the current actual and expected future costs and risks of providing the service – for example, it has greater visibility over input costs, expected future capex and maintenance costs, and expected future demand from all users. Access seekers have no recourse to dispute resolution over the terms of access should the parties be unable to reach agreement, either for renewing users or new access seekers.[213]

In the absence of declaration, third party access seekers are therefore at a disadvantage in the negotiation process, with limited visibility over key matters relevant to the determination of appropriate access charges (particularly cost, price and demand information), limited countervailing market power to influence negotiations, and no ability to refer a dispute to independent arbitration to enable access on reasonable terms if they cannot reach agreement.

That said, given the spare capacity at the Terminal, NQXT would be motivated to reach agreement with both existing users and new access seekers, which would increase terminal usage and revenue.

[210] NQXT, sub 5, paras 7–9, 251 and Annexure F, p 125.
[211] NQXT, sub 8, [redacted].
[212] NQXT, sub 8, para 111.
[213] NQXT said [redacted]. It does not provide for independent arbitration if parties are unable to enter an agreement in the first place (as occurs under declaration) (NQXT, sub 14, p 11).

3.6.2 Terms and conditions of access without declaration

Price terms

The price for access to the service is one of a number of costs for a mine exporting coal through the Terminal.

In 2024, NQXT developed its new form of user agreement ([redacted]), to be offered to access seekers and renewing users approaching the end of their initial terms at this time.[214] [redacted] Significantly, there is no access framework or pricing principles to set guidelines for negotiations or constraints that apply in setting the price.[215]

NQXT submitted that its pricing approach has been informed by its [redacted] It said this negotiation took account of a range of commercial considerations[216] [redacted] Given that this price was offered by NQXT in the context of an ongoing negotiation process, we consider that this is a reasonable basis to conclude that, for the purposes of our assessment, [redacted] per tonne is likely to be the upper bound of prices imposed by NQXT in the future without declaration in the first year of the proposed declaration period.[218]

We understand that QCoal's current TIC under the legacy agreement is [redacted] per tonne in [redacted], and NQXT has offered an access charge of [redacted] per tonne from [redacted].[219] As an indicative comparison, assuming the current legacy TIC of [redacted] per tonne grows by the same average rate as DBI's TIC over the most recent 5 years (8.8% p.a.) and contracted capacity remains constant, we estimate the current TIC would reach approximately [redacted] per tonne in [redacted]. This suggests in real terms, the [redacted] per tonne offered by NQXT to QCoal for an additional term from [redacted] is almost [redacted] the [redacted] equivalent charge under the legacy agreements. However, we recognise that this estimate is not an exact forecast but an indicative estimation and may not reflect the treatment of changes in contracted capacity under QCoal's current access agreement.

However, the mere fact that [redacted] does not mean that the offered price is unreasonable. For clarity, we have not assumed that the legacy agreement price is a competitive price, or one that would apply under declaration.

We recognise that the price in a commercial negotiation between NQXT and access seekers may reflect a range of matters. Nevertheless, in the absence of a competitive constraint, it is likely to exceed the efficient cost of provision. As outlined above, NQXT has an incentive to maximise its

[214] NQXT, sub 8, para 111.
[215] For example, there is no reference to prices being based on efficient costs, returns reflecting commercial risks or that any price discrimination should aid efficiency. In contrast, the CRN Rail Network Access Policy includes pricing principles similar to those in the QCA Act (NQXT, sub 10, Annexure BLI).
[216] NQXT, sub 7, para 70–71 and sub 8, 109, 111–114, 134.
[217] NQXT, sub 5, para 120, sub 8, paras 111–114, 134, sub 14, p 10.
[218] [redacted] It would therefore be open to NQXT to offer a different price to subsequent access seekers in future, subject only to the economic constraints that would apply at that time (i.e. the willingness of parties to reach commercial agreement).
[219] QCoal Users, sub 1, p 7 and [redacted].

profits, which it may do by setting the price as high as is achievable, subject to the user still being willing to execute an agreement (i.e. not exiting the market). In this environment, NQXT faces relatively limited constraint on its ability to exercise market power in setting the price as demand elasticity of the service is likely to be quite low.

The access charge for the coal handling service at DBT provides another reference point for the assessment of overall reasonableness of the NQXT charge. While there are differences between the terminals, including in terms of cost structures, the DBT TIC, established in the context of a regulated regime[220], can be said to indicate a price that reflects a constraint on the exercise of market power by the access provider. In comparison with the NQXT access charge of [redacted] per tonne in [redacted], our estimate of the DBT TIC in [redacted] is between $4 and $5 per tonne, where 2024–25 estimated prices are broadly similar across both terminals.[221,222]

However, it is difficult to draw firm conclusions from a comparison of access charges and unit costs across terminals as it does not reflect the nature of the service offering, the costs of providing the service, land valuations or account for differences in contracted capacity.

If the price offered by NQXT was higher than that under declaration, this may reflect a transfer of rents. However, if the higher price does not alter behaviour or competition in a dependent market, criterion (a) is not satisfied. The impact on competition in tenements markets of NQXT's pricing is addressed in sections 3.9–3.12.

Non-price terms

We have also considered the non-price terms offered by NQXT in its standard user agreement and how they may differ from reasonable terms and conditions as a result of declaration.

While we have not undertaken a detailed assessment of the reasonable terms and conditions of access that would be imposed if the service were declared, as a package, we consider that the new standard agreement includes a number of provisions that may reflect the exercise of market power by NQXT if imposed on users. These include terms and conditions that reflect an imbalance in the rights and obligations of the parties, [redacted], as well as governance and transparency around [redacted][223] That said, as part of commercial negotiations, parties may make counter offers relating to these same terms and conditions. However, NQXT has relatively limited constraints on its ability to exercise market power in negotiating non-price terms. As noted above, NQXT is constrained only by its commercial incentive to enter into agreements – it is able to extract the most favourable terms achievable in the negotiation, subject to the user still being willing to execute an agreement. NQXT's approach to contract renewals is particularly relevant.

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220 The coal handling service at DBT is declared under Part 5 of the QCA Act. The current access charge (TIC) was negotiated directly with users, within the context of the DBT access undertaking, approved by the QCA. Under the access undertaking, there is no reference tariff approved by the QCA; however, parties are able to refer an access dispute to arbitration if they cannot reach agreement.

221 This is based on indication from DBI's published information (Dalrymple Bay Infrastructure, *2025 Half Year Financial Results – Investor Presentation*, ASX announcement, 25 August 2025).

222 Prices are estimated by dividing reported revenues by contracted tonnage. This produces an average price per tonne across all users, inclusive of handling and access charges but does not reflect variations in individual contracts. To date, prices between both terminals appear to be broadly similar. In 2024-25, we estimate a price of $7.94 per tonne for DBT and $8.71 per tonne for NQXT. Similarly, DBT's reported TIC for 2024-25 was $3.59 per tonne, while we estimate NQXT's charge for the same period is around $5 per tonne. (North Queensland Export Terminal Holdings Pty Ltd, *Consolidated Financial Report for the Year ended 31 March 2025*).

223 NQXT, sub 8, [redacted].

Contract renewals

The long-term nature of mining operations means that market participants in the tenements market are likely to be undertaking investments that exceed the typical contract term for access to coal terminal infrastructure. This means mining participants will typically need to renew their agreements. The new standard agreement appears to provide for a [redacted] term (legacy agreements generally have terms of [redacted] years).[224]

The new standard agreement [redacted].[225] There is no certainty that any contract will be renewed, and there is also no meaningful constraint on the terms and conditions offered by NQXT. That said, NQXT is constrained by its commercial incentive to enter into agreements – that is, it is able to extract the most favourable terms achievable in the negotiation, subject to the user still being willing to execute an agreement.

However, despite NQXT's incentives to reach agreement on contract terms, under declaration, a user will have greater certainty of access renewal, given the obligations in Part 5 of the QCA Act regarding the negotiation of access (section 3.7). While declaration does not necessarily entirely remove the risk and uncertainty of access to the Terminal,[226] it does provide assurance to users that terms and conditions of access will be reasonable.

We consider that the [redacted] creates a degree of risk and uncertainty around ongoing access, and the terms of access, over the life of a mining investment, compared to access under declaration.

Conclusion on non-price terms

Whether the non-price terms of access create sufficient additional risk and uncertainty to have a material impact on the environment for competition in dependent markets will depend on NQXT's incentives to reach agreement and their relative importance in investment decision making compared to other factors such as the global coal price, operating and capital costs. However, given the presence of spare capacity at the Terminal, our view is that NQXT is incentivised to maximise throughput and profits and so would seek to renew access agreements.

With regard to NQXT's incentives, if there is spare capacity at the Terminal, NQXT would be incentivised to provide access to renewing users, albeit on terms that may not be consistent with competitive market outcomes. Our preliminary view is that spare capacity at the Terminal will continue to be available over the proposed declaration period, so that a situation where NQXT is incentivised to deny or restrict access for third parties is unlikely to arise. We discuss the competitive impact of this incentive on the coal tenements market in sections 3.9–3.12. In particular, contract renewal is only one of a range of risks that would be borne by a mining investor (for example, risks around coal prices).

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[224] The user agreement offered by NQXT to QCoal [redacted] (NQXT, sub 5, para 236 and sub 8, [redacted]).
[225] NQXT, sub 8, [redacted].
[226] For example, the form of regulation (including if there is an approved reference tariff or an access undertaking in place) and particular terms and conditions of access may change over time.

3.7 Access with declaration

NQXT submitted that it is unclear that the terms of access that would result from declaration would be more favourable to users given that any regulatory process would need to address significant and complex issues, such as determination of an initial regulatory asset base, treatment of depreciation and the rate of return. NQXT's consultant, Incenta, said that the outcome of regulatory pricing approaches is uncertain and may result in higher prices that are unstable over time. NQXT also argued that the benefits of regulation would need to outweigh the costs to be justified. NQXT considered declaration would increase disputes by establishing a 'negotiate–arbitrate' model.[227]

QCoal Users submitted that Incenta had overstated regulatory difficulties. HoustonKemp also said Incenta had substantially mischaracterised the criterion (a) test, which did not require a cost–benefit analysis.[228]

Regulatory framework for declared services

If a service is declared under Part 5 of the QCA Act, it is then subject to a range of regulatory obligations and oversight by the QCA. For example:

- Access providers of declared services have obligations to negotiate in good faith with access seekers to enter into an access agreement. This obligation requires the service provider to make all reasonable efforts to try to satisfy the reasonable requirements of the access seeker, including providing certain information about the service. This must include information about:
  - price, including the way in which it is calculated
  - costs of providing the service, including capital, operation and maintenance costs
  - value of the assets, including the way in which this is calculated
  - spare capacity of the service
  - operation of the facility.

  Information about price, costs and value of assets may be given in the form of a QCA-approved reference tariff. This information provides a basis for access negotiations and minimises the scope for disputes.
- An access provider or access seeker may refer an access dispute to us for mediation or arbitration if the parties cannot reach agreement.[229]
- An access provider or user of a declared service, or a related body corporate of the access provider or user, must not engage in conduct for the purpose of preventing or hindering a user's access to the service under an access agreement. Orders to enforce prohibitions on hindering access and unfair differentiation are directly enforceable by affected persons.[230]
- QCA oversight may include arbitration of disputes about access to the service (including in relation to price and non-price terms) and/or approving an access undertaking for the relevant service (which can set out detailed terms and conditions by which the owner or operator of the service provides access to the service). The type of regulatory measures that might apply should a service be declared would depend on the circumstances in each case.[231]

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227 NQXT, sub 5, para 125–130, sub 7, para 12, 72–90, sub 14, p 1.
228 QCoal Users, sub 16, para 90–106, sub 18, paras 19–38.
229 QCA Act, ss 99, 100, 101, 112.
230 QCA Act, ss, 104, 100(2), 125 or 168(c).
231 There is no obligation on us to approve an access undertaking, and even if an access undertaking is approved there is no obligation on the QCA to include specific terms and conditions, including a reference tariff.

Both in approving an access undertaking or in determining an access dispute, we must have regard to mandatory considerations set out in the QCA Act.[232] These include, among other things, the object of Part 5 of the QCA Act, the legitimate business interests of the access provider, the interests of access seekers, the public interest (including the benefit to the public in having competitive markets) and the pricing principles in the QCA Act.

Reasonable terms and conditions as a result of declaration

Criterion (a) does not require us to form a view on the specific terms and conditions of access that would apply under declaration, or undertake a detailed comparison with terms anticipated in the absence of declaration (see Appendix A).

Rather, the legislative framing of criterion (a) requires us to assume that with declaration access will be provided on reasonable terms and conditions, as informed by the principles and obligations set out in the QCA Act.

Costs and uncertainty regarding outcomes under declaration

The costs of regulation and any uncertainty associated with regulatory pricing is not directly relevant to the assessment of criterion (a). Criterion (a) does not require us to weigh the costs and benefits of declaration – although matters relating to the costs associated with declaration may be a relevant consideration for criterion (d) (promotion of the public interest).

In relation to pricing, the appropriate assumption is that prices would be determined in accordance with the principles specified in Part 5 of the QCA Act. However, it is not necessary for us to form a detailed view on the pricing that would prevail under declaration.

3.8 Conclusion: future with and without declaration

We have considered a range of matters that affect NQXT's ability and incentive to exercise market power in the market for the service and how this might impact the commercial environment with and without declaration in the dependent tenements markets.

Our preliminary view is that NQXT has an incentive to maximise the profits of the Adani Group through increasing Terminal throughput and imposing terms and conditions that are as favourable as possible to it without compromising throughput at the Terminal. We recognise that there is a degree of uncertainty regarding these commercial outcomes, as NQXT is likely to test the limit of users' ability to pay over time. This may include terms and conditions for some mines that are less favourable than reasonable terms and conditions of access as a result of declaration.

NQXT has an ability to favour its related parties in dependent markets through its access terms and operational arrangements. However, its related party, Bravus, faces strong competition in the coal export market. As such, it is not evident that in leveraging its market power in the market for the service, by denying access or harming users of the Terminal that compete with Bravus, NQXT would increase Bravus' profits in the coal export market. Moreover, NQXT is motivated to increase throughput given the fixed costs of operating the Terminal.

That said, we consider that northern mines in particular would be likely to have access on less favourable terms in the absence of declaration, including facing the possible transfer of economic rents to NQXT. They will also face some additional risk and uncertainty of ongoing access to the

[232] QCA Act, s 120 (Matters to be considered by authority in making an access determination) and s 138(2) (Factors affecting approval of a draft access undertaking).

Terminal on reasonable terms over the life of a mine due to the access terms proffered under the NQXT standard agreement ([redacted]).

The existence of less favourable terms (and their associated risks) in the absence of declaration are not of themselves sufficient to satisfy criterion (a). For criterion (a) to be met, we must be satisfied that the reasonable terms and conditions of access due to declaration would promote a material increase in competition in a market other than the market for the service compared to a scenario without declaration, which we now address in relation to the coal tenements market.

3.9 Competition in the coal tenements market without declaration

Having assessed NQXT's incentives, constraints and the likely terms and conditions of access to the Terminal service with and without declaration, our findings suggest that the terms and conditions of access would be more favourable to new and existing users in a future with declaration than without.

The next step is to consider whether access as a result of declaration would promote a material increase in competition in the coal tenements market. The following section considers the state of competition within the coal tenements market in the Newlands–Galilee catchment without declaration, in particular:

- tenement ownership and major projects within the catchment
- conditions in other tenements markets that have previously been considered competitive such as the Pilbara and DBT catchment
- the incentive or otherwise for the Adani Group to procure additional in-catchment tenements
- the relevance of, and potential for, investment hold-up
- avenues to mitigate hold-up and hold-up's effect on valuing and investing in coal tenements.

As part of this assessment, we have drawn upon the extent that participants compete in the tenements market as evidence to inform our analysis on a future without declaration.

3.9.1 Tenement ownership

We have identified a number of parties that have acquired or are seeking mining leases or exploration tenements that are not existing users of the Terminal. [233]

The concentration of tenements held by Terminal users increases with tenements more associated with later-stage development. For example, 31% (11 of 35) of EPCs (or 14% of EPCs by area) are held by current Terminal users. That proportion grows to 38% (3 of 8) of MDLs (or 39% for MDL holders by area), which can be an intermediate or later-stage form of coal tenement.

The ownership composition in the catchment suggests potential for future tenement transactions. Firms that do not mine coal hold 21 of the 35 (60%) EPCs and 4 of the 8 (50%) MDLs within the Newlands–Galilee catchment. Further details on tenement holdings are set out in Appendix C.

[233] We accessed GeoResGlobe throughout August 2025, and some minor changes may have occurred since. See Queensland Government, *GeoResGlobe*, Business Queensland website, 2025.

3.9.2 Major projects within Newlands–Galilee system

Carmichael mine expansion

Carmichael has approvals to mine up to 60 million tonnes of coal per annum. However, there is no definitive information about further expansions beyond 16 million tonnes per annum. The likelihood of expansion at the Carmichael mine is discussed in our assessment in sections 2.6.[234]

Projects identified by the Office of the Chief Economist

The Australian Government Department of Industry, Science and Resources' Office of the Chief Economist conducts an annual review of major resources and energy projects across Australia. The 2025 review identifies 4 publicly announced coal projects that we consider are likely to use the Terminal should they be constructed.

Table 15: Office of the Chief Economist project listing (Queensland coal projects in the Galilee–Newlands system)

Project	Company	Annual estimated new capacity (mt)	Coal type	Cost estimate (A$m)	QCA assessment of latest communication on project
Alpha (mine and rail)	GVK Hancock Coal	30	Thermal	$10,800	Media statement December 2017 continuing to work towards a mining lease
Byerwen Coal project Stage 2	Byerwen Coal	10	Thermal and metallurgical	n/a	Byerwen capacity expanded to 10 mtpa in 2020. In April 2025, Macmahon was awarded a $900 million, 3-year extension at Byerwen from October 2025.[235]
Epsilon (formerly South Galilee)	Alpha Coal Pty Ltd and AMCI (Alpha) Pty Ltd	n/a	Thermal	n/a	Significantly smaller capacity early phase progressed in 2023. Epsilon phase does not propose to access NQXT.
Kevin's Corner	GVK	30	Thermal	$6,000	Media statement December 2017: continuing to work towards a mining lease.

mt: million tonnes; n/a: not available
Note: This analysis has assumed Stanmore's Lancewood project, which borders Peabody's Centurion mine, will have economic incentives to direct tonnes towards DBT and has been excluded from this analysis.
Source: Office of the Chief Economist. *Resources and Energy Major Projects Report*, Australian Government DISR, industry.gov.au, December 2025; GVK Hancock Coal, *About GVK Hancock*, GVK Hancock website, n.d.; METServe, *Progressive Rehabilitation and Closure Plan*, report for AMCI (Alpha) Pty Ltd, 14 June 2023.

[234] Bravus Mining & Resources, *The Carmichael Mine,* fact sheet, BMR website, 2025.
[235] Macmahon, *Macmahon awarded $700m Byerwen Contract and affirms pre-COVID guidance*, ASX announcement, 4 June 2020. At the time of release, the award was subject to finalisation by 30 September 2025. We are not aware of the contract being finalised. See Macmahon, *Macmahon receives notice of award for 3 year, $900m Byerwen extension*, ASC announcement, 10 April 2025.

Projects identified in the list may not progress to construction. According to the Office of the Chief Economist, projects listed (Table 15) are usually early in their development and are typically undergoing feasibility studies to assess commercial aspects of development including engineering designs and construction cost estimates. Therefore, the estimates presented are a reference guide rather than a formal estimate.[236]

The projects identified appear to have not made considerable progress in several years and may be dormant. That said, we are not aware of any information to suggest that the absence of declaration is a reason these projects have not progressed.

Apart from the 3 Galilee projects in Table 15 (Alpha, Epsilon and Kevin's Corner), QCoal's Byerwen mine progressed through to construction after the Adani Group's purchase of the Terminal, with preliminary mining commencing in 2017.[237] However, QCoal's Byerwen mine appears to have signed capacity agreements for the X50 capacity expansion prior to the Adani Group's purchase of the Terminal.[238]

More recently, according to Macmahon, QCoal's mining services contractor, the Byerwen mine may have expanded production capacity to 10 million tonnes in 2020.[239] It may be the case that this expansion is evidence of sufficient certainty of access for tenement market participants. We would welcome further submissions on the matter.

3.9.3 Analysis of competition in the coal tenements market

Both QCoal Users and NQXT pointed to the limited transactions for coal tenements within the region; yet they reached different conclusions on the state of competition in the market without declaration.

QCoal Users said the market is unlikely to be workably competitive, and the limited evidence of new entry or regular transactions is consistent with:

- perceived high risks around entering or expanding amidst a global energy transition and risks in obtaining long-term access to proximate coal terminal infrastructure[240,241]
- the smaller number of potential coal deposits when compared to Goonyella.[242]

NQXT said there is no commercially realistic market for coal tenements, or at best it is extremely limited. Further, NQXT said there is no indication that the regulatory status of the Terminal has constrained competition or investment in tenements.[243]

QCoal Users said it is reasonable to expect that the Adani Group may favour the production of thermal coal from Bravus because it would earn more profit by increasing the amount of that coal that it exports, and this may have an effect on competition in metallurgical tenement markets or coal exports, even if Bravus does not produce metallurgical coal.[244]

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[236] The Office of the Chief Economist notes that projects at this stage may have provisional or outdated cost estimates and will not have received any formal commitment from companies to proceed.
[237] QCoal Group, *Byerwen Coal Project: 2017 Annual report to Coordinator General,* n.d., p 2.
[238] R Nolan, *$1 billion boost to coal exports at Abbot Point*, media statement, Queensland Government, 27 August 2010; Byerwen Coal Pty Ltd, *Initial Advice Statement*, February 2011, p 4.
[239] Macmahon, *Macmahon awarded $700m Byerwen Contract and affirms pre-COVID guidance*, ASX announcement, 4 June 2020.
[240] QCoal Users, sub 2, p 40.
[241] QCoal Users, sub 2, p 41.
[242] QCoal Users, sub 2, p 27.
[243] NQXT, sub 5, pp 94, 96.
[244] QCoal Users, sub 18, p 8.

Goonyella Coal Producers noted the risks of discrimination by the Adani Group had been a factor considered by coal producers when assessing coal projects within the catchment. [245] However, the submission did not include supporting evidence, specific examples, or details of affected projects to substantiate this claim. In the absence of such information, it is not possible to assess the materiality of these concerns. We would welcome further submissions on this matter.

To consider whether declaration would promote a material increase in competition in the coal tenements market, we have considered the future state of competition with and without declaration. As part of this assessment, we have drawn upon evidence on the extent that firms compete and the behaviour observed in the market presently. We consider the current state of competition provides the basis for inferring competition in a future without declaration.

The current state of competition in the Newlands–Galilee catchment is characterised by limited entry by new participants, thin trading and stalled development activity. A lack of activity does not necessarily mean that the market is not competitive and for our forward-looking assessment, we treat activity as supportive evidence. However, our initial view is that there is limited evidence of genuine rivalry between firms and potential entrants in the tenements market [246] and in a future without declaration, we consider this environment likely to continue.

This environment contrasts significantly with tenements markets that have previously been found to have high levels of competition, including the DBT catchment and Pilbara iron ore region.

While the Newlands–Galilee catchment does have a substantial number of tenements held by potential miners that are not Terminal users, transactions and development activity have been minimal. For example, we have been unable to identify recent development activity for the 61% of MDLs by area that are held by 3 non-Terminal users.

Also, several of the projects related to these tenements were announced prior to the Adani Group's ownership of the Terminal and have not progressed materially for some time although there is no evidence to suggest this is due to the change of ownership of the Terminal.

Unlike the *Pilbara* matter, where the Tribunal found it likely that several rail lines would be constructed in the absence of declaration,[247] we do not consider it likely that new terminals will be constructed given total foreseeable demand within the catchment (refer to Chapter 2).

How do market conditions affect tenements activity?

We consider market activity, such as transactions, is an indicator of competition, albeit with shortcomings. Typically, coal tenement transactions and development activity are closely linked to underlying coal market conditions. When coal prices rise, it could be expected that in a competitive market, investors would become more active in acquiring and developing tenements as they seek to capitalise on favourable conditions and higher margins. Conversely, when prices are low, the number of tenement transactions declines as investor appetite wanes. While low activity in the tenements market, of itself, does not equate to weak competition, we consider it supportive of our analysis of a future with and without declaration.

[245] Goonyella Coal Producers, sub 13, p 6.
[246] See. for example, *Application by Chime Communications Pty Ltd (No 3)* [2009] ACompT 4 at [7].
[247] *In the matter of Fortescue Metals Group Limited* [2010] ACompT 2 (summary) at [1129].

During the period of significantly elevated metallurgical coal prices in 2023 and 2024, several coal tenements and operating mines were traded in other Queensland coal catchments, including but not limited to:

- Whitehaven acquiring 100% of the Daunia and Blackwater coal mines in Goonyella and Blackwater catchments from BHP[248]
- Stanmore acquiring South 32's 50% interest in the Eagle Downs project in the Goonyella catchment[249]
- Peabody acquiring a large portion of the Wards Well project from Stanmore in the Goonyella catchment.[250]

Similarly, during the period of elevated thermal coal prices in 2022 and 2023, Sungela acquired 100% of Idemitsu's stake in the Ensham thermal coal mine in the Blackwater catchment.[251]

The Daunia, Blackwater and Ensham transactions involved operating mines. By contrast, the Eagle Downs and Wards Well projects are still at the development stage.

The transactions above are outside of the Newlands–Galilee catchment, and we are not aware of a comparable level of activity involving coal tenements in the Newlands–Galilee region. We would welcome further stakeholder comments on actual and the potential for transactions in the tenements market.

Adani Group's incentives to acquire in-catchment tenements

As noted in section 3.4, the Adani Group's objective is to maximise profits, and it appears that NQXT's primary purpose is to support the sale of its thermal coal into the workably competitive export market. Therefore, a threshold question is whether NQXT has an incentive to use the market for the service to provide an advantage to its related entities in the tenements market.

The Carmichael mine possesses a JORC-compliant resource of over 11 billion tonnes of thermal coal, with a JORC-compliant reserve of over 880 million tonnes.[252] Securing further coal tenements within the Newlands–Galilee system solely to prevent competitors from accessing or developing coal resources would not yield direct commercial benefits to the Adani Group.

The Adani Group's Carmichael mine has approval for up to 60 mtpa and has sufficient reserves under existing tenement holdings to maximise throughput in the Carmichael-to-NQXT supply chain. Therefore, the Adani Group is unlikely to require further tenements to maximise supply chain throughput at current capacity. The existence of substantial reserves reduces the risk of active foreclosure of the tenements market by the Adani Group and diminishes concerns about a dominant player suppressing the market through tenement accumulation.

There is a possibility that the Adani Group's market power could make it more profitable for Bravus to develop a viable tenement within the catchment when compared to a third party miner. However, developing greenfield coal projects typically involves higher costs and greater complexity than expanding existing operations. Therefore, the Adani Group's incentives to acquire additional tenements will likely be limited while brownfield expansion opportunities remain within Carmichael. We do not have evidence to suggest that the Adani Group intends to pursue every available opportunity to expand coal production at Carmichael.

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[248] Whitehaven, *Whitehaven Coal to acquire BMA's Daunia and Blackwater coal mines*, news release, 18 October 2023.
[249] Stanmore, *Annual Report 2023*, p 6.
[250] PR Newswire, *Peabody Announces Completion of Wards Well Acquisition*, news release, 24 April 2024.
[251] Idemitsu, *Idemitsu Kosan announces the sale of its stake in the Ensham Coal Mine*, news release 3 February 2023.
[252] Adani Enterprises, Ltd, *Integrated Annual Report 2024–25*; Bravus Mining & Resources, *The Carmichael Mine*, fact sheet, BMR website, 2026, accessed 9 September 2025.

Adani Group's incentive to maximise Terminal throughput

Earlier in this chapter, we noted that NQXT, as a profit-maximising operator, has an incentive to increase throughput at the Terminal, as higher volumes generate higher revenue for NQXT. In the coal tenements market, this same reasoning suggests that NQXT is incentivised to support future throughput rather than discourage tenement activity, particularly in the context that the coal export market is workably competitive, and we expect it to remain so.

The Terminal is a long-lived asset, and its ongoing viability is linked to the development of new and existing tenements. Accordingly, NQXT has an incentive to support the progression of tenements that are likely to deliver future volumes. Given NQXT's incentives and the evidence (or lack thereof) before us, it is not evident that NQXT's long-term lease of the Terminal has impacted competition to date.

However, stakeholders have raised concerns about potential for investment uncertainty or hold-up in the tenements market.[253] These concerns relate to uncertainty about how NQXT may act in a future without declaration once a tenement developer or miner has committed significant investment to a tenement. While such outcomes may not be consistent with NQXT's incentives to maximise throughput, we have considered this issue for the tenements market.

3.10 The hold-up problem

In this section, we consider whether identified uncertainty around access terms and the potential for market power to be exercised by NQXT may, in a future without declaration, discourage investment and deter efficient market participation in the coal tenements markets. This is referred to as hold-up risk.

While hold-up is possible, we have found no clear evidence that it is influencing decisions in the coal tenements market or causing projects in the Newlands–Galilee catchment to be abandoned or delayed. It also remains unclear whether hold-up is a material factor for market participants, or simply one of many commercial risks typically considered.

We are continuing to assess this matter and welcome further submissions on whether hold-up is a relevant matter in determining whether declaration would lead to a material increase in competition in the tenements markets. In particular, we seek evidence on whether hold-up risk has affected investment decisions or is a consideration for parties looking to invest in the coal tenements market within the Newlands Galilee catchments or indeed in any other mining precincts.

3.10.1 Previous consideration of the hold-up problem

Scenarios where hold-up may be relevant

A transfer of rents may not necessarily impact competition or investment. However, changes in terms and conditions and the certainty of any terms of access may influence whether hurdle rates for

[253] QCoal Users, sub 1, p 20; Goonyella Coal Producers, sub 13, p 6.

investment are satisfied and whether that investment may be held up. [254] The Productivity Commission stated in this regard:

> It is well known in economics that the potential for opportunistic 'hold up' by one party to a contract may lead to inefficient investment. The problem arises when:
>
> > • it is economically efficient for a party to a contract to make a sunk, relationship-specific investment prior to some other party to the contract completing its obligations, and
> >
> > • the contract is incomplete in the sense that it does not cover all possible future situations and leaves scope for dispute or renegotiation when such a situation arises.
>
> Under these circumstances, the party that is able to make the efficient investment may choose not to do so, knowing that some or all of the return on this investment may be seized by other parties to the contract through later renegotiation or dispute. This leads to an economic loss that is borne by the parties to the contract who are faced, for example, with an inefficient production process. In other words, the potential for hold-up leads to an economic loss that is borne, at least in part, by the business that could engage in the hold-up as well as the investor, creating incentives for all the relevant businesses to solve the hold-up problem in advance and encourage efficient investment.[255]

The Productivity Commission has noted that hold-up may sometimes be relevant, but in other instances, 'the concern will simply be that absent regulation, the consumer would be exposed to excessive prices, and the monopolist might live an inefficiently "quiet" life'.[256]

It has also outlined its reservations about the concept of hold-up in its reviews of electricity network regulation, airports and the National Access Regime. For instance, in its airports review, the Productivity Commission said:

> [I]n practice, other factors can reduce the extent to which hold up occurs. In particular, airports and airlines in Australia often mitigate the risk of hold up by using long term contracts. It is also not clear that airlines' relationship specific sunk investments are significant, particularly in the case of low cost carriers, which have lower overheads than full-service airlines and the ability to change routes relatively quickly'. [257]

We consider the relevance of hold-up depends on the specific circumstances. While previous assessments by regulators, including the QCA, offer valuable context, their views should not be interpreted as universally applicable. The potential impact of hold-up must be considered case by case (see Box 2) and supported by evidence.

In 2016, the then ACCC Chair, Rod Sims, highlighted hold-up in relation to coal terminals:

> One needs to understand that, in order to produce or extract a commodity like coal, this requires a major sunk investment in mining equipment and infrastructure. These sunk investments give rise to what are known as 'quasi-rents' which are subject to the threat of hold-up.

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[254] Most notably characterised by D Biggar in 'Is Protecting Sunk Investments by Consumers a Key Rationale for Natural Monopoly Regulation?', *Review of Network Economics*, vol 8, no 2, June 2009, p 129.

[255] S King, *PART IIIB – Why there is no economic case for additional access regulation*, Productivity Commission conference paper, July 2021, p 12.

[256] Productivity Commission, *Electricity Network Regulatory Frameworks*, inquiry report no 62, vol 1, April 2013, p 143.

[257] Productivity Commission, *Electricity Network Regulatory Frameworks, Appendix B: The hold-up problem*, inquiry report no 62, 2013; Productivity Commission, *National Access Regime*, inquiry report no 66, 2013, p 92; Productivity Commission, *Economic Regulation of Airports*, inquiry report no 92, June 2019, p 72.

The threat of expropriation of rents by a monopoly service provider in such a situation would only in extreme circumstances result in a pure transfer. More likely, even the threat of such expropriation can limit future investment and innovation by the upstream firms.

What miner would invest in reducing its extraction costs if it knew that the lower extraction costs would simply be met by higher port charges? More generally, what miner would invest in its mines knowing that the benefits of that investment could be expropriated by a monopoly somewhere else in the supply chain?[258]

[258] ACCC, *Ports: What measure of regulation keynote address*, transcript of a speech by R Sims at the Ports Australia Conference, Melbourne, 20 October 2016, ACCC website, n.d. accessed 16 September 2025.

Box 2: Regulators' perspectives on hold-up

Access regulators have held different views about the relevance and potential impact of hold-up depending on the circumstances. The NCC and the Australian Competition Tribunal did not accept the presence of hold-up in the context of the application of declaration and revocation of declaration matters for the Port of Newcastle. The ACCC recognised the issue of hold-up in the context of ports regulation.

In Queensland, the QCA's and the Treasurer's consideration of hold-up has depended on the context.

Aurizon Network service

Both the QCA and the Treasurer considered that in the absence of declaration, market participants in the above-rail haulage market would would face uncertainties relating to price and non-price access terms at the time of market entry or contract renewal, as Aurizon Network would be relatively unconstrained in its ability to exercise market power. The QCA and the Minister therefore formed the view that market participants would be deterred from making the investments in the first place. The QCA said:

> Where efficient high value firms are discouraged from entering or continuing to participate in the market, there would likely be a material adverse impact on competition.

Queensland Rail service

The QCA and the Treasurer formed a similar view on the Queensland Rail service, even though Queensland Rail had spare capacity. For example, the Treasurer said:

> [T]he potential for hold-up can also explain why regulation may still be necessary for firms that do not even earn a normal rate of return (for example, due to excess network capacity).

DBT service

The QCA considered the relevance of hold-up for mines that would use the DBT service (given DBI's potential pricing behaviour once any declaration expired). However, the QCA considered that DBI's actions to constrain its ability to increase prices demonstrated that the threat of declaration was sufficient to constrain DBI's conduct beyond 2030.

However, the Treasurer was not persuaded that the threat of declaration was a significant constraint on DBI.

> In my view, given the significant sunk costs involved in acquiring and developing a mine, the uncertainty for New Users as to the pricing that will apply after 2030 is likely to give rise to concerns on the part of those New Users about the risk of hold-up.

Source: NCC, *Revocation of the declaration of the shipping channel services at the Port of Newcastle*, recommendation, 2019; NCC, *Application for declaration of certain services in relation to the Port of Newcastle*, recommendation, 2020; *Application by New South Wales Minerals Council (No 3)* [2021] ACompT 4 at [248]–[261]; ACCC, *Ports: What measure of regulation keynote address*, transcript of a speech by R Sims at the Ports Australia Conference, Melbourne, 20 October 2016, ACCC website, n.d. accessed 16 September 2025; QCA, *Part A: Aurizon Network declaration review*, final recommendation, March 2020, pp 31–32; Queensland Government, *Gazette: Extraordinary*, no 31, vol 384, 1 June 2020, paras 4.3.21, 4.7.52–4.7.54.

3.10.2 Could hold-up occur in the coal tenements market in the Newlands–Galilee catchment?

Coal mines are typically long-life projects spanning beyond the 10-year term of a typical access agreement. Renewal of access agreements brings inherent uncertainty around future terms and conditions. Beyond this, operators face broader challenges, including increased operating costs, regulatory shifts, market volatility and increasing scrutiny of social licence.

A potential new entrant in the Newlands–Galilee catchment, having incurred development costs, appears to face the prospect that NQXT may have the ability and incentive to exercise market power in setting access prices and other terms and conditions of access at the time of contract renewal (and thereby prevent or hinder access).

As set out in section 3.6, in a future without declaration, Terminal users are likely to obtain access on less favourable terms and face a greater prospect that economic rents are transferred to NQXT. We also found that [redacted] introduces additional risk and uncertainty regarding the continuity and terms of access over the life of a mining investment, relative to a future with declaration.

Without certainty of access, tenement investors may not be willing to undertake any transactions, which could reduce competition within the coal tenements market. However, while NQXT may extract additional rents in a future without declaration, given spare capacity at the Terminal and NQXT's incentives to maximise throughput, we do not consider NQXT is incentivised to increase prices or include terms to the extent that such actions would restrict tenement market development.

Could natural protections mitigate hold-up?

There are 2 natural protections to hold-up. Firstly, there may be user bargaining power at the time of initial contracting to negotiate renewal rights or longer-term contracts. Incentives and countervailing powers are discussed in sections 3.4 and 3.5.

Secondly, there may be some countervailing incentive for monopolies to unilaterally 'solve' hold-up to avoid stranding their assets. In particular, given the spare capacity at the Terminal that is likely to persist over the proposed declaration period, it is not evident that NQXT would be motivated to engage in conduct that may give rise to hold-up. NQXT is likely incentivised to support the development of the tenements market, given it represents the source of future throughput. That is, NQXT is incentivised to set prices with a view to maximising its expected profits over the life of the lease, which means it must consider how short-term attempts to extract economic rents through price increases could undermine future investment.

NQXT's incentives may further limit the extent of hold-up. If NQXT were to raise access charges to levels that dampen tenement development and exports, it could undermine the Adani Group's long-term profitability. Because the coal export market is workably competitive, miners in the Newlands–Galilee catchment face global competition from other coal-producing regions. Pricing access above what is required to recover long-run costs would erode the catchment's cost competitiveness, deter future tenement investment and reduce throughput at the Terminal.

However, these observations are grounded in current conditions. Potential users or participants in the tenements market are likely to be considering long-lived investments that extend beyond a typical access agreement term, and available capacity and incentives may change in the future.

Could contracting mitigate hold-up?

Long-term contracting, where terms match the coal tenement or mine lives may be one option to mitigate the hold-up risk. However, such contracts are unlikely to be an effective solution in practice. A long-term contract could not account for every possible contingency, and it may not be efficient to contract in this way. It may also not be possible or efficient for development stage tenement holders to contract given they may still be undertaking feasibility studies to understand the merits of the project.

In this context, we note that NQXT's standard access contract does not seek to match contract duration with mine life but rather provides for parties negotiate a renewal of the contract in the period leading up to its expiry. However, we also note that it is open for tenement holders to negotiate alternative terms and that NQXT would have an incentive to renew contracts and to mitigate any uncertainty for the tenement holder ex ante. This is because NQXT has an incentive to promote the development of tenements, or to encourage the continued operation of mines, that rely on NQXT as this will provide promote Terminal throughput.

More broadly, access costs may be just as uncertain as other major, inputs such as labour and energy costs. It is likely, because of the long-lived nature of the asset, that there will be several uncertainties that cannot be adequately anticipated or measured at the time of an investment (and that uncertainty will not be resolved until after the investment is made). This possibility suggests that a contract should be sufficiently flexible so that adjustments can occur.

3.10.3 Implications of hold-up risk for tenement pricing and market structure

Factors relevant to the decision to invest or develop coal tenements

Infrastructure access and hold-up risks are only some of a range of factors influencing tenement value and investment decisions – alongside matters like commodity prices, operating and mine construction costs, regulatory approvals, financing conditions, ESG and broader market dynamics. Tenements have been developed in the absence of declaration and parties may well have proceeded on the basis that some uncertainty would remain regarding the renewal of legacy contracts.

Terminal charges represent a relatively small share of a coal producer's total cash costs and any inefficient component of that charge, should it exist, would be a smaller proportion again. Within the catchment area, total supply chain costs are estimated at approximately A$20–A$26 per tonne, of which around A$9 per tonne relates to Terminal costs.[259] This indicates that while Terminal charges are material, they are not the dominant component of overall transportation costs. Further, the evidence before us suggests a A$9 per tonne Terminal charge represents between 5% and 12% of a mine's total cash costs (see section 1.1).

Beyond operating costs, mine construction costs will also drive investment decisions and on a per-tonne basis, those costs may be similar to or higher than Terminal charges. Indicative analysis from the International Energy Agency suggests that in 2025, capital costs for Australian coal producers were around $15 per tonne for thermal coal and around $23 per tonne for hard coking coal.[260] In a future without declaration, we do not expect Terminal charges to become a dominant

[259] Outside of Terminal charges, NQBP levies additional port charges such as harbour, tonnage and security dues which equate to approximately $0.50–$0.70 per tonne. See North Queensland Bulk Ports Corporation, *Fees and charges*, NQBPC website, n.d., accessed 18 February 2026.
[260] International Energy Agency, *Coal 2025: Analysis and forecast to 2030*, 2025, pp 94–95.

component of overall transportation or total cash costs. As discussed in section 3.6.2 (Pricing Terms), NQXT had offered an access charge of [redacted] to renewing users under new standard agreements, which may be regarded as an upper bound estimate of the access charge.[261]

Given Terminal charges are small relative to other major cost drivers (such as labour or energy), we consider that uncertainty for tenement market investors is more likely to arise from other major cost drivers and coal-price volatility. Although it remains possible that NQXT could set Terminal charges at levels that influence investment decisions in the tenements market, our analysis in section 3.4 suggests that NQXT's commercial incentives are aligned toward securing additional contracted capacity, which limits the likelihood of charges being set in a way that would materially distort upstream investment.

We consider that in a future without declaration, the prospect of higher Terminal charges could reduce the expected net present value of tenements, which may narrow the pool of participants willing to bid. However, we expect that the reduction in tenement values, and the narrowing of market participants would be minor. This is because a higher Terminal charge represents only a small fraction of total costs, and only one of a large range of factors that inform tenement valuation.

We welcome further submissions on this matter.

3.10.4 Conclusion on competition within the Newlands–Galilee tenements market without declaration

Our preliminary view is that the Newlands–Galilee tenements markets currently do not have high levels of competition, and they may not either in a future without declaration. Unlike the tenement conditions seen in the DBT and Pilbara tenement markets, the Newlands–Galilee catchment has seen minimal activity and transactions, despite occasions of elevated coal prices. A significant portion of tenements are held by non-mining firms, yet few have progressed to development or sale.

We note that the limited transactions to date are not, by themselves, determinative of the level of competition in the tenements market, and competition is also affected by matters including the size of actual transactions, the potential for future transactions and market concentration. However, in the absence of further information, we have formed the initial view that the market for tenements may not have high levels of competition in a future without declaration.

In this context, there is a theoretical prospect (as yet unsupported by evidence) that the environment for competition has been affected by uncertainty of terms and conditions of Terminal access. However, we consider factors like labour and other operating costs, commodity prices, regulatory approvals, capital costs, financing conditions, ESG and broader market dynamics also influence tenement value and investment decisions and may be significant drivers of the competitive environment.

That is, the fact that a dependent market is not workably competitive does not, of itself, suggest declaration on reasonable terms and conditions will improve competition. The owner of the service may have incentives to promote access, or access to the service may be just one of a myriad of factors affecting competition.

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[261] QCoal Users, sub 1, [redacted].

In weighing the arguments, the likelihood of hold-up due to access concerns, if it exists at all, cannot be established. As such, and in the absence of substantial evidence or submissions from potential or existing market participants that hold-up risk is a relevant consideration, we must preliminarily conclude that hold-up is not a relevant concern.

3.11 Whether access as a result of declaration would promote a material increase in competition

On a forward-looking basis, our analysis in section 3.6 suggests more favourable terms for third party users in a future with declaration. In this section, we consider whether those differences would promote a material increase in competition in the market for coal tenements. Our approach to interpretation of promoting a material increase in competition is included in Appendix A.

Impact of declaration on the Newlands–Galilee coal tenements market

QCoal Users said:

- criterion (a) is concerned with whether a material increase in competition would be promoted and is not a cost-benefit analysis at large.[262] *DBCT v The Treasurer* made clear that criterion (a) is not concerned with proving whether commercial outcomes would necessarily be different absent declaration but rather whether declaration would promote a material increase in competition (whether or not such increase occurs or is likely to occur).[263] In this context, it is not the price for access, but certainty of access, that is material to whether competition is promoted in a dependent market[264]
- third parties might otherwise be unwilling to undertake 'any transactions' and that declaration would likely increase competition[265]
- the declaration effect would likely be similar in the operating mines and development stage tenements markets.[266]

Goonyella Coal Producers said declaration will promote a material increase in competition for various tenement markets in the Newlands–Galilee catchment. Goonyella Coal Producers said vertical integration provides the Adani Group with a material advantage as a buyer in the tenements markets in the absence of ring-fencing and other regulatory controls. Other potential buyers effectively must discount their valuation and proposed purchase price due to facing risks that the Adani Group does not face.[267]

NQXT disagreed that declaration of the Terminal would promote a material increase in competition in any market for coal tenements in the northern mining area.[268]

Declaration and NQXT incentives

In a future with declaration, access terms and conditions for both existing and new users of the Terminal will be governed by Part 5 of the QCA Act. This legislative framework provides protections that ensure access will be provided on reasonable terms and conditions.

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[262] QCoal Users, sub 16, p 17.
[263] QCoal Users, sub 16, p 9.
[264] QCoal Users, sub 16, p 17
[265] QCoal Users, sub 1, p 20.
[266] QCoal Users, sub 2, p 27.
[267] Goonyella Coal Producers, sub 13, pp 1, 6.
[268] NQXT, sub 5, p 96.

Declaration will reduce uncertainty around access to the Terminal. When the service is declared, tenement holders and prospective buyers can assess investments with greater confidence given the protections available under Part 5 of the QCA Act. Existing holders may be better positioned to sell, while new entrants could invest with greater confidence that access will not be prevented or hindered and can be procured on reasonable terms and conditions.

However, irrespective of declaration, NQXT has an incentive to maximise Terminal throughput given the spare capacity that will prevail over the proposed declaration period and investment hold-up is not in NQXT's interests. In light of NQXT's commercial incentives, it is unlikely that the Adani Group or NQXT would act in a manner such that competition would by stymied in a future without declaration.

Our view on whether declaration would materially impact on competition in the tenements market rests on whether, in its absence, hold-up is likely to affect decision making. There is a prospect that hold-up may be sufficiently material to discourage market entry and alter the competitive environment. However, to date, there is limited evidence to support this proposition, and we do not consider NQXT is incentivised to create conditions that lead to hold up.

Terminal charges may be lower in a future with declaration than without. On the evidence before us, however, we do not consider that in a future without declaration Terminal charges will reach levels that would affect competition in the coal tenement markets. Renewing users have been offered [redacted], which we regard as an upper bound.[269] Even if access costs rise after existing agreements expire, they are unlikely to be high enough to materially impact competition given the incentives facing NQXT to maximise throughout.

In a future with declaration, there is also the prospect that there may be greater certainty of access renewal for a mine. However, declaration does not, of itself, provide renewals certainty, only that terms and conditions of access will be reasonable. And upon expiry of an access undertaking (if there is one), there is no certainty that the subsequent access undertaking will retain the same approach to renewals.

Infrastructure access and hold-up risk are among the many factors influencing the competitive environment – alongside labour and other operating costs, commodity prices, regulatory approvals, capital costs, financing conditions, ESG and broader market dynamics. Based on the information available to date, we are not satisfied that declaration would promote a material increase in competition in the tenements markets, but we welcome submissions on the matter.[270]

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[269] QCoal Users, sub 1, [redacted].

[270] Given the several uncertainties regarding risks for tenement market participants, we consider the risk of regulatory failure may be heightened. We discuss this matter further in Chapter 5 (criterion (d)).

3.12 Conclusion on tenements markets

We can only recommend declaration if we are positively satisfied that declaration would promote a material increase in competition.[271, 272] On the basis of the evidence before us, it is not possible to form a view as to whether declaration will promote a material increase in competition in the coal tenements markets. Therefore, we cannot conclude that criterion (a) is satisfied for the purposes of the draft recommendation.

- While it is possible that hold-up could affect investment decision making in the coal tenements market, we do not have sufficient evidence to suggest that hold-up risk is a relevant consideration for participants or that specific projects in the Newlands–Galilee catchment have been abandoned, deferred or delayed as a result of a real or perceived risk of hold-up.
- NQXT's and the Adani Group's commercial incentives are to secure additional contracted capacity. Therefore, it is unlikely that declaration would lead to a material increase in competition.
- Infrastructure access and hold-up risk are among the several factors influencing the competitive environment and investment decisions – alongside matters like commodity prices, regulatory approvals, operating costs, financing conditions, ESG and broader market dynamics.
- Even if hold-up was affecting investment decisions, it is not clear that declaration would promote a material increase in competition sufficient to satisfy criterion (a).

We will consider further submissions on this matter.

[271] In its decision on the NSWMC application, the Tribunal said that the ordinary meaning of the word 'promote' is to support, encourage, facilitate or further, and that this ordinary meaning is consistent with the use of the word in its statutory context. The Tribunal also said that 'would' in criterion (a) should be construed in accordance with its ordinary meaning. This requires the decision-maker to be satisfied that if the service is declared and access given on reasonable terms and conditions, a material increase in competition will be promoted by that access. In the NSWMC matter though, the Tribunal considered that the same ultimate conclusion on criterion (a) must be reached whether the word 'would' is interpreted as the conditional tense of 'will' (which requires it to be satisfied on the balance of probabilities) or is interpreted as including a 'significant finite probability'. See *Application by New South Wales Minerals Council (No 3)* [2021] ACompT4 at [134], [142]–[143].

[272] The Australian Competition Tribunal also noted the lack of evidence, in some respects, to support the proposition that criterion (a) was not satisfied *in Application by New South Wales Minerals Council (No 3)* [2021] ACompT 4 at [8], [72], [115], [175] ,[232], [251].

4 Criterion (c) – state significance

Criterion (c) is satisfied

The Terminal is significant, having regard to both its size and importance to the Queensland economy. As such, criterion (c) is satisfied.

The Terminal handled 34 million tonnes of coal in 2024–25, worth about $7 billion, supporting jobs and economic activity in the parts of the Bowen basin and Galilee basin that it serves.

4.1 Introduction

Section 76(2)(c) of the QCA Act is expressed as follows:

> that the facility for the service is significant, having regard to its size or its importance to the Queensland economy.

The purpose of criterion (c) is to ensure that only facilities that play a significant role within the state economy fall within the scope of Part 5.

4.2 Size and importance to the Queensland economy

4.2.1 Stakeholder views

QCoal Users said NQXT satisfied criterion (c) having regard to both its size and importance.[273] NQXT also acknowledged that criterion (c) was satisfied.[274]

4.2.2 Analysis

We consider that NQXT is significant, having regard to its size and its importance to the Queensland economy.[275]

[273] QCoal Users, sub 1, para 93 and sub 3, para 254.
[274] NQXT sub 4, p 108.
[275] NQXT sub 4, p 108.

Size

NQXT is substantial in size, with a nameplate capacity of 50 mtpa, a stockyard that can hold 2 million tonnes of coal, a single trestle jetty and a conveyor connecting to 2 berths and 2 ship-loaders (see also Section 1.1).[276]

Importance

We accept that the Terminal is important to the Queensland economy. In this regard, NQXT and related Adani Group entities have said the following:

- 'North Queensland Export Terminal (NQXT) is a critical export gateway for producers in resource-rich Queensland, Australia … and is a critical infrastructure asset supporting Australia's significant resource industry.'[277]
- 'The *Queensland Sustainable Ports Development Act of 2015* (SPDA) declared the Port of Abbot Point as both a Strategic Port and a Priority Port Development Area (PPDA). A Strategic Port is considered by the State of Queensland to be an essential component of the national and state transport network and supply chain.'[278]
- '[A]ctivity at the Port of Abbot Point contributed almost $10 billion dollars to the Queensland economy each year and supported more than 8,000 jobs across the mining, construction, transport and wholesale trade industries.'[279]

We also note that the Terminal handled 34 million tonnes of coal with a value of about $7 billion in 2024–25 – this accounted for about 15% of Queensland's coal exports.[280]

We also accept the views of QCoal Users that the Terminal makes a substantial contribution to royalties and employment, with 180 local employees, and thousands more workers in businesses that depend on the Terminal.[281]

4.2.3 Conclusion on criterion (c)

Given the Terminal's physical size and capacity, as well as its contribution to Queensland's coal exports, royalties and employment, our draft recommendation is that the facility for the coal handling service at the Terminal satisfies criterion (c).

[276] QCoal Users, sub 3, para 254. See also NQBP, *Land Use Plan, Port of Abbot Point*, October 2010, p 7.
[277] Adani Ports and Logistics, *APSEZ acquires 50 MTPA capacity NQXT Australia, accelerating path to 1 billion tonnes p.a. by 2030*, media release, 17 April 2025, Adani Ports and Logistics website, n.d., accessed 27 February 2026.
[278] North Queensland Export Terminal, *Who we are*, NQXT website 2026, accessed 27 February 2026.
[279] NQXT, *Report shows North Queensland Export Terminal powers Queensland's prosperity*, media release 24 March 2025.
[280] QCoal Users, sub 4, para 258. See also North Queensland Bulk Ports Corporation, *Throughputs*, NQBPC website, 2026, accessed 19 December 2025.
[281] Bravus, *Abbot Point Operations*, Bravus website, 2025, accessed 12 August 2025.

5 Criterion (d) – promote the public interest

Criterion (d) is not satisfied

We have considered many factors to decide whether declaration would promote the public interest. On balance, we are not satisfied that declaration is likely to generate overall gains to the community. As such, criterion (d) is not satisfied.

Given we are not satisfied that declaration would promote a material increase in competition in a dependent market, we are not satisfied at this time that there would be investment in facilities in dependent markets as a result of declaration. It is also not evident that declaration would promote investment in the Terminal, given the existence of spare capacity and the apparent lack of any incentives for NQXT to deny access to the Terminal.

There is also insufficient evidence that any reduction in compliance costs borne by users as a result of declaration is likely to be significant – the actual outcome will depend on the form of regulation.

5.1 Introduction

Section 76(2)(d) of the QCA Act is expressed as follows:

> that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.

Section 76(5) of the QCA Act further states:

> In considering the access criterion mentioned in subsection (2)(d), the authority and the Minister must have regard to the following matters –
> (a) if the facility for the service extends outside Queensland[282] –
> (i) whether access to the service provided outside Queensland by means of the facility is regulated by another jurisdiction; and
> (ii) the desirability of consistency in regulating access to the service;
> (b) the effect that declaring the service would have on investment in –
> (i) facilities; and
> (ii) markets that depend on access to the service;
> (c) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared;
> (d) any other matter the authority or Minister considers relevant.

[282] As the Terminal does not extend outside Queensland, we have not considered s 76(5)(a) any further.

Criterion (d) requires satisfaction of a positive test – that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration, would promote the public interest.

NQXT submitted that the public interest test must be affirmatively satisfied and, as such, criterion (d) 'places an onus on the QCoal Users' to positively demonstrate:

- declaration of the Terminal would result in improved terms and conditions of access, compared to a future without declaration
- such an improvement in the terms of access would clearly and unambiguously promote the public interest.[283]

While we do not necessarily accept NQXT's characterisation, we note that in assessing whether criterion (d) is met, we must be satisfied that, on balance, declaration is likely to generate overall gains to the community (compared to the scenario of no declaration). This in turn requires considering the likely behaviours of market participants in a future with and without declaration, which are highly uncertain. A degree of judgement must therefore be applied in making this assessment, having regard to the information that stakeholders presented.

Criterion (d) requires the decision-maker to have regard to all relevant benefits and costs of declaration. The matters we can have regard to are very broad.[284]

This chapter addresses each of the matters we are required to have regard to under s 76(5) of the QCA Act, as well as other matters we consider relevant to the assessment of criterion (d). These matters include investment impacts and the costs of regulation to the service provider.

5.2 Investment in facilities

We have considered investment in the Terminal as well as other facilities that may be affected by declaration of the service. In considering the impact on investment in other facilities, we have assessed investment in rail infrastructure (network and haulage facilities). Efficient investment in mine infrastructure is discussed as part of investment in markets that depend on access to the service (section 5.3).

We consider that declaring the service would not lead to an overall increase in incentives to invest in facilities. It is not evident that declaration would increase incentives to invest in the Terminal, nor the rail network and haulage infrastructure, given our view that declaration will not increase investment in tenement development.

5.2.1 Investment in the Terminal

In considering whether declaration would promote investment in the Terminal, we had regard to incentives to invest, the risk of regulatory error and the possibility of investment delays.

Incentives to invest

QCoal Users submitted that declaration would promote investment in the Terminal, as the vertical integration of NQXT and its incentive to preference related entities over third parties limit NQXT's

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[283] NQXT, sub 5, pp 109–110.

[284] See also *The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2012] HCA 36, in which the High Court considered, among other things, the scope of the public interest test in Part IIIA of the CCA (when the test was still formulated as a negative). The High Court said that the matters that can be considered are 'unconfined except in so far as the subject matter and the scope and purpose of the statutory enactments may enable the Court to pronounce given reasons to be definitely extraneous to any objects the legislature could have had in view' (at [42]).

incentive to invest in improving the ongoing operation of the Terminal.[285] QCoal Users said that the QCA Act can 'require the access provider to extend, or permit the extension of, the facility'.[286]

DBI submitted that declaration and regulatory intervention can inhibit innovation and reduce incentives to invest. Alternatively, regulatory intervention and related regulatory processes could delay investment.[287]

NQXT said imposing regulation would discourage investment in private infrastructure.

> For the Queensland Government to impose declaration on private infrastructure under Part 5 of the QCA Act for the first time ever in this context would send powerful and adverse signals regarding regulatory and sovereign risk for prospective investors in Queensland infrastructure.[288]

QCoal Users said it was misleading to suggest declaration would signal regulatory and sovereign risk. They said that access regimes have been part of Queensland's legal framework since 1997 and are already successfully applied to other infrastructure services, like DBT. Rather than deterring investment, these regimes provide assurance against market power abuse, allowing infrastructure owners to maintain ownership and earn fair returns.[289]

QCoal Users said NQXT's broader opposition to access regimes contradicts the intent and provisions of the governing legislation. Beyond pricing concerns, access regimes also ensure proper facility maintenance, which is essential for reliability and user confidence.[290]

Goonyella Coal Producers submitted that there is no evidence that regulation would have prevented the Adani Group's investments.[291] They said the project faces rail capacity and demand challenges unrelated to regulatory status.[292]

We do not consider that declaration would increase NQXT's incentive to expand or enhance the Terminal, compared to a scenario without declaration, given that spare capacity at the Terminal is expected to exist over the proposed declaration period. Further, it is unlikely that NQXT would have a strong incentive to use its market power to disadvantage competitors of its Adani Group affiliates in dependent markets – as the spare capacity at the Terminal incentivises it to increase throughput.

Also, denying access or harming competitors in dependent markets is unlikely to benefit the Adani Group, given that Bravus faces high levels of competition in the export thermal coal market and is unlikely to acquire additional coal tenements in the foreseeable future. As such, it is unlikely that NQXT has an incentive to:

- restrict the supply of coal not owned by the Adani Group
- displace the use of the Terminal by other users to enable Terminal capacity to be used by its vertically related Carmichael mine.

NQXT's incentives may be different if capacity constraints emerge at the Terminal or in rail infrastructure connecting to the Terminal over the proposed declaration period. In this event, NQXT may have an incentive to expand the Terminal, if users are willing to pay for this. However, it is reasonable to assume that NQXT's priority – having regard to the interests of the broader Adani Group – would be to ensure Bravus' demand for capacity can be accommodated. In this situation,

[285] QCoal Users, sub 3, para 276.
[286] QCoal Users, sub 3, para 276.
[287] DBI, sub 4, paras 34–35.
[288] NQXT, sub 5, para 528.
[289] QCoal Users, sub 16, paras 190, 192–193.
[290] QCoal Users, sub 16, para 191–192, 195.
[291] Goonyella Coal Producers, sub 13, p 8.
[292] Goonyella Coal Producers, sub 13, p 7.

NQXT may also have an incentive to deny access to third parties as an alternative to expanding the Terminal unless it felt that it could charge third parties a price above average incremental cost

Ultimately, however, NQXT's future incentives and actions will depend on the circumstances at that time, and it would always be open for a party to seek declaration in the event capacity constraints do materialise. In any case, we do not expect such a scenario to arise during the period for which declaration is sought, given the expectation that excess capacity at the Terminal will continue to exist throughout that period.

More broadly, we do not accept that regulation will reduce incentives to invest in facilities. In particular, Part 5 of the QCA Act requires us to have regard to a range of factors including the rights of the regulated entity, access holders and access seekers.[293] We are also required to have regard to the pricing principles, one of which is that the access price should generate expected revenue for the service that is at least enough to meet the efficient costs for providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved.[294]

Regulatory error

NQXT submitted that access regulation can lead to returns being truncated and to regulatory error.[295]

Declaration of the coal handling service at the Terminal would mean access regulation under Part 5 of the QCA Act. Part 5 follows a negotiate–arbitrate model, in which the primary responsibility is on the access provider and access seeker to negotiate and agree price and non-price terms.

While we accept there is a possibility of regulatory error under declaration,[296] the scope for regulatory error depends on the nature of the regulatory regime. Relevantly, the potential for regulatory error in Part 5 is not mitigated by a merit review process.

That said, Part 5 provides controls on the QCA's arbitral determinations and approval of access undertakings. These require us to have regard to the rights of the regulated entity, access holders and access seekers. In relation to approval of access undertakings, the QCA Act imposes obligations on us to:

- consult on any draft access undertaking (s 138(3)(c))
- consider any submissions received within the timeframe for submissions (s 138(3)(d))
- have regard to the legitimate business interests of the regulated entity (s 138(2)(b))
- have regard to the pricing principles, including that the price should generate expected revenue for the service that is at least enough to meet the efficient costs for providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved (ss 138(2)(g), 168A(a)).

In addition, during access undertaking approval processes, we typically release draft decisions and consultation papers and, where appropriate, facilitate cross-submissions that allow parties to comment on the submissions of other stakeholders.

[293] For example, ss 120 (b) and (c) in relation to arbitral determinations, and ss 138(2)(b),(c) and (e) for approved access undertakings.
[294] Section 168A(a).
[295] NQXT sub 5, para 522.
[296] See Productivity Commission, *National Access Regime*, inquiry report no 66, October 2013, p 103.

We consider that the comprehensive nature of this consultation process helps to mitigate the risk of regulatory error. Moreover, the regulated entity can seek an amendment of an approved access undertaking at any time (s 142).[297]

Inevitably there is uncertainty about the outcomes of our future decision-making, as there is with all business conditions. Businesses form expectations and make decisions based on expected outcomes. If the business expects that our errors are as likely to be as much in their favour as not (e.g. we may over- or underestimate the true cost of capital), then there should be no impact on decision-making. If, however, they have a perception of bias on our part, this may impact investment decisions. If stakeholders have concerns about bias in our processes, we would welcome submissions on this.

Investment delays

We do not consider that there is an increased likelihood of investment delays under declaration compared to a future without declaration. Under either scenario, the risk of disputes and delays will remain. Further, we have not been provided with any evidence that declaration would result in investment delays.

Investment in rail network and haulage infrastructure

QCoal Users said that declaration would allow for the entry by new users into the Galilee Basin and promote increased investment in the market for below-rail services in the Newlands system.[298] They also said declaration would promote investment in rail infrastructure by removing uncertainty over access to the Terminal.[299]

Aurizon Network submitted that it is likely to be in the public interest to have the coal handling and export services at the Terminal declared, in circumstances where the Terminal is owned and operated by entities that are related to the owner of a mining company that competes with other mining companies needing to access the Terminal. This also applies to a rail haulage company that could compete with other rail haulage providers delivering coal to that terminal.[300]

The coal supply chain is integrated so that investments across the supply chain are likely to be aligned over time, where possible. Given our preliminary view that declaration would not lead to an increase in investment in the coal tenements market, it follows that declaration of the NQXT service is unlikely to promote investment in the corresponding rail network and haulage infrastructure compared to a future without declaration. This is because investment in rail network and haulage infrastructure will ultimately follow demand for such services (see also section 3.4.2).

5.3 Investment in markets that depend on access to the service

QCoal Users submitted that as declaration would promote competition in the coal tenements market, it would promote investment in these markets.[301] QCoal Users said the access regime is designed to function effectively regardless of market demand certainty, and that when demand is

[297] See also, QCA, *Part C: DBCT Declaration review*, final recommendation, 2020, p 227.
[298] QCoal Users, sub 3, paras 282–283.
[299] QCoal Users, sub 1, p 22.
[300] Aurizon Network, sub 11, p 9.
[301] QCoal Users, sub 3, paras 286–287.

uncertain, it becomes even more critical for users to have reliable access on fair terms to support continued operations.[302]

Goonyella Coal Producers submitted that there were several efficiency benefits from declaration including:

- more efficient pricing, which would avoid monopoly-pricing-induced deadweight loss
- investment certainty for users nearing the end of access agreements
- reduced information asymmetry, which would enable better decision-making in dependent markets
- protection against anticompetitive behaviour, which vertical integration incentivises.[303]

In contrast, NQXT said the operation of the Terminal as an unregulated facility has delivered significant benefits to the coal sector. It said the current renewal cycle provides evidence of commercial flexibility with an unregulated approach.[304]

Our view is that the impact of declaration on investment in dependent markets depends, in part, on the extent to which declaration would impact competition in those markets. This is because the ability to effectively compete in a market underpins investment incentives and investor confidence. Moreover, the more competition is promoted in a dependent market, the greater the likely positive impact on investment.

However, our conclusion on criterion (a) (Chapter 3) is that declaration of the service would not promote a material increase in competition in dependent markets. As such, it is not evident that declaration would therefore also promote an increase in investment in the relevant dependent markets. Relevantly, we consider that it has not been established that any risks faced by tenement owners in the absence of declaration are materially different to a range of other risks that must be considered when making investment decisions.

5.4 Administrative and compliance costs incurred by the provider of the service

We are not satisfied that the administrative and compliance costs that would be incurred by NQXT as a result of declaration would be materially different than the costs incurred in a future without declaration. We have formed this view having regard to:

- costs likely to be incurred by NQXT in complying with the regulatory regime
- coordination costs from dealing with multiple users.

5.4.1 Costs incurred by NQXT in complying with the regulatory regime

QCoal Users submitted that:

- to the extent that provisions in the QCA Act counteract NQXT's incentive to exercise market power and favour its related entities, declaration may reduce the likelihood of costly disputes and therefore reduce the administrative and compliance costs incurred by NQXT[305]

[302] QCoal Users, sub 16, paras 188, 191.
[303] Goonyella Coal Producers, sub 13, p 8.
[304] NQXT, sub 5, para 516.
[305] QCoal Users, sub 3, para 302.

- both QCoal Users and the Adani Group have incurred significant legal and administrative costs in relation to the existing contractual relations, including through multiple arbitrations and court proceedings. As such, compliance costs associated with administering access requirements 'are likely to be insignificant' compared to what has been incurred to date (in an unregulated environment).[306]

NQXT submitted that the operation of the Terminal as an unregulated facility has provided significant commercial flexibility, as can be demonstrated by the current renewal cycle.[307] NQXT said declaration would impose significant and unnecessary direct costs and inflexibility on NQXT and the industry because hypothetical future regulation was likely to be characterised by:

- a tendency for common access terms
- limiting scope to develop and agree alternative or flexible service offerings
- a common TIC and handling charge
- the tariff generally being subject to periodic review and revision through either arbitration or an access undertaking.[308]

DBI submitted that declaration would likely impose unnecessary costs and inflexibility and could introduce significant regulatory risk.[309] DBI submitted that it had previously supplied evidence of its regulatory costs of $46.7 million over an 8-year period, but its regulatory costs have significantly reduced under the lighter-handed negotiate–arbitrate form of regulation under its 2021 approved access undertaking. DBI said:

> Since this reduction in the degree of economic regulation, the regulatory costs passed through to customers over the past 3 years have averaged less than $0.1m per annum.[310]

Goonyella Coal Producers disagreed with DBI's statement that lighter regulation benefits all stakeholders, citing that DBT users now pay nearly 30% more than they would under an approved reference tariff. Goonyella Coal Producers said this inflated pricing benefits only DBI, not coal producers or the public. The supposed flexibility of light-handed regulation does not offset the cost burden on users, especially when service quality remains unchanged. Goonyella Coal Producers said a significant value transfer to a monopoly provider is not considered a public benefit.[311]

Goonyella Coal Producers said the current issue is whether the Terminal's coal handling service should be declared – not the form of regulation. Declaration would only trigger the lightest form of regulation (negotiate–arbitrate), without requiring undertakings or reference tariffs. Therefore, cost considerations should focus solely on this minimal regulatory burden, not broader assumptions about regulation.[312]

In the absence of declaration, we note that NQXT would incur administration and compliance costs in operating the multi-user terminal. These costs relate to negotiating with access seekers, entering into and complying with contracts and resolving any disputes that arise under those contracts. Without declaration, there is no recourse to arbitration for access seekers should the parties be unable to reach agreement in the first place.

[306] QCoal Users, sub 1, p 22.
[307] NQXT, sub 5, pp 110–111.
[308] NQXT, sub 4, p 112.
[309] DBI, sub 12, p. 1.
[310] DBI, sub 4, para 33.
[311] Goonyella Coal Producers, sub 13, p 7.
[312] Goonyella Coal Producers, sub 13, p 7.

Indeed, QCoal Users noted that NQXT and users have engaged in lengthy dispute resolution processes to date, including multiple arbitrations in respect of the access charge.[313]

We consider that declaration aids and facilitates effective negotiation, thereby potentially reducing the scope for disputes, by creating an obligation on the access provider to negotiate in good faith to reach an agreement and to provide certain information to access seekers as part of negotiations (such as price, cost and capacity information). Further, it is open for the parties to have disputes arbitrated by us under declaration – where we are required to have regard to the range of factors that consider the rights of the regulated entity, access holders and access seekers in making an access determination.[314]

It is not evident that NQXT would face higher or lower costs if the service was regulated, as it would still have to incur compliance and administration costs arising from dealing and contracting with multiple users.

Moreover, the nature of the regulatory regime can vary greatly under declaration, including:

- whether or not we require an access undertaking be implemented
- if an access undertaking is implemented, the particular terms and conditions (including whether a reference tariff is approved).

On balance, we are not satisfied that declaration would result in higher costs for NQXT.

Separately, we do not consider the previous court proceedings related to the service necessarily provide an insight into whether legal proceedings would decrease under declaration to an extent that it will impact on the public interest. This is because while declaration may reduce the scope for disputes, it does not preclude parties engaging in legal proceedings (in relation to matters that fall both inside and outside the scope of the QCA Act).

5.4.2 Coordination costs from dealing with multiple users

QCoal Users submitted that declaration would not materially change the cost of coordinating with multiple users or complying with a 'contractual versus regulatory regime'.[315]

NQXT has incurred costs in operating the Terminal as a multi-user facility, and it is not evident that these costs would materially change following declaration. These include costs associated with operating the Terminal, contracting with access seekers and managing coordination across the supply chain, such as for train scheduling and vessel loading.

We do not consider that the coordination costs incurred by NQXT under declaration would be materially different from the costs that it would still incur in managing a multi-user terminal if the service was not declared.

5.5 Other relevant matters

5.5.1 Costs incurred by access seekers and access holders

QCoal Users said:

> NQXT's strong incentives to favour its related party operations is likely to complicate access negotiations, as users seek to identify the various ways in which

[313] Specifically, the arbitrations in 2018 and 2022. See QCoal, sub 1, pp 6–8.
[314] QCA Act, s 120.
[315] QCoal Users, sub 3, para 303.

> NQXT might favour its own operations and then strike terms that prevent such behaviour … If NQXT is declared, the QCA Act would prevent a vertically integrated services provider from providing access to itself on more favourable terms and afford the QCA power to investigate such matters.[316]

In this context, QCoal Users submitted that declaration would enliven a range of provisions in the QCA Act, which they said would reduce the cost of access, namely:

- the obligations on the access provider and access seeker to negotiate in good faith (s 100(1))
- the obligations on the access provider to provide information relevant to the costs of access (s 101(2))
- prohibitions on the access provider preventing and hindering access to the service (s 104).

QCoal Users said declaration would reduce the costs to access seekers if the regulatory framework involved a reference tariff that reduced the 'likelihood of further protracted, costly disputes'.[317]

We note that declaration can aid and facilitate negotiations. Declaration also has the potential to reduce costs for access seekers and holders to the extent that NQXT, as part of the Adani Group, seeks to maximise profits by engaging in related party conduct. This is because declaration provides access seekers and access holders with some protections against preferential arrangements and anti-competitive conduct, should such concerns materialise in future and fall within the scope of the QCA Act.

There is a potential role for us in monitoring approved access undertakings and enforcing compliance depending on the structure of the undertaking and access agreements. This is likely to be of particular benefit to access holders and access seekers who may be at a disadvantage in negotiations.

However, we consider there is insufficient evidence to support a conclusion that reductions in compliance costs borne by access seekers and access holders as a result of declaration are likely to be significant. It would also depend on the form of regulation.

Relevantly, declaration does not of itself provide any certainty about terms and conditions of access. It provides a route to dispute resolution and the potential that the QCA may require an access undertaking. To some extent, this replaces commercial uncertainty with regulatory uncertainty.

In practice, a number of the existing processes would still apply under declaration, including:

- negotiation of individual agreements with access seekers
- ongoing compliance with user agreement terms
- scope for resolution of any disputes that may arise under user agreements.

Any regulatory fee payable by NQXT under declaration could also be passed onto users, as occurs for the DBT arrangements.

Ultimately, the nature of the costs and benefits under declaration will, to some extent, depend on the nature of the regulatory regime that is implemented.

5.5.2 Other considerations

QCoal Users submitted that declaration of the service would mitigate the risk that the vertical integration of NQXT could lead to increased third party exports of thermal coal – which in turn would score relatively poorly against environmental, social and governance criteria in comparison to

[316] QCoal Users, sub 3, para 318.
[317] QCoal Users, sub 3, para 313.

metallurgical coal produced. QCoal Users also said that to the extent that thermal coal was prioritised through the Terminal, it could result in lower royalty payments, as there are higher royalties payable on metallurgical coal compared to thermal coal.[318]

QCoal Users also said that to the extent that northern mines paid a higher access charge, it would result in lower royalty payments to the State given the way royalties are calculated.[319]

Further, QCoal Users said declaration would promote general economic efficiency throughout the coal supply chain.[320]

We do not find the arguments submitted by QCoal Users compelling. We consider that NQXT is motivated to increase throughput through the Terminal, since spare capacity is likely to persist over the period for which declaration is sought. In this situation, it is not evident that NQXT will seek to prioritise the handling of thermal coal of its related party. Rather, NQXT is likely to seek that any coal, metallurgical or thermal, be handled at the Terminal. In such circumstances, it is not evident that declaration will lead to a change in the volume or proportion of thermal coal (relative to metallurgical coal) handled by the Terminal.

We also consider that any impact on royalties is difficult to quantify, as while access charges may be lower under declaration, the difference between any access charge with and without declaration cannot be established with any precision. It is also not evident that NQXT is motivated to prioritise thermal coal given spare capacity at the Terminal.

Furthermore, we have not been provided with evidence to suggest that declaration would promote economic efficiency to a significant extent or otherwise result in improvements to the coal supply chain. It is not in NQXT's interests to prevent or stymie supply chain improvements, as such improvements are likely to facilitate the reduction in excess capacity at the Terminal.

Generally, we also consider there may be a public interest in restraining the exercise of market power in the market for the service, including where it impacts allocative efficiency.[321] This overlaps with a number of the other matters mentioned above, including costs imposed by NQXT for access to the Terminal, and constraints and conditions that might discourage investment in related markets.

However, the same general consideration applies as for those various other matters – as long as there is spare capacity at the Terminal and an ability and willingness by NQXT and its related entities to expand the Terminal, the incentive is to attract customers to the Terminal. This will limit the exercise of market power by NQXT to the extent that such exercise of market power would impact competition in dependent markets.

As noted (see section 3.4.3), aside from declaring a service under Part 5 of the QCA Act, it is also open to the Minister to declare a monopoly business activity under Part 3 of the Act and make it subject to monopoly prices oversight. Such oversight may be beneficial in providing greater transparency to the impacts of any potential exercise of market power in the market for the service. We welcome submissions from stakeholders as to whether a more 'light-handed' form of regulation, such as prices oversight, could provide a public benefit in these circumstances.

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318 QCoal, sub 1, pp 5, 22 and sub 3, p 51, p. 53.
319 QCcoal, sub 3, pp 50–51.
320 QCoal, sub 1, pp 5.
321 See also Productivity Commission, *National Access Regime*, inquiry report no 66, October 2013, p 7.

5.5.3 Conclusion on criterion (d)

Our view is that declaration is unlikely to affect NQXT's incentives to invest in the Terminal. Moreover, declaration is unlikely to have a positive impact on the incentives to invest in the rail network and haulage facilities that service the Terminal or other dependent markets.

We are also not satisfied that the administrative and compliance costs that would be incurred by NQXT as a result of declaration would be materially different to the costs incurred in a future without declaration.

There is also insufficient evidence that any reduction in compliance costs borne by users as a result of declaration would be significant.

Having weighed all of the costs and benefits, our preliminary view is that declaration is unlikely to generate overall gains to the community. As such, we are not satisfied that access (or increased access) to the service provided by the Terminal, on reasonable terms and conditions, as a result of declaration, would promote the public interest.

Appendix A: QCA approach to the statutory criteria

A.1 The access criteria

Declaration of a service under Part 5 of the *Queensland Competition Act 1997* (QCA Act) gives rise to rights and obligations in relation to the negotiation of the terms of access to the declared service. These rights and obligations are contained within the QCA Act, access undertakings for the declared service (as approved by us under Part 5, division 7 of the QCA Act), and our determinations in relation to access disputes (under Part 5, division 5 of the QCA Act).

Section 76[322] sets out the access criteria we must apply in making the required recommendation to the Minister (Box 3).

Box 3: Section 76 – access criteria

1. This section sets out the matters (the ***access criteria***) about which–
   a. the authority is required to be satisfied for recommending that a service be declared by the Minister; and
   b. the Minister is required to be satisfied for declaring a service.
2. The access criteria are as follows–
   a. that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;
   b. that the facility for the service could meet the total foreseeable demand in the market–
      i. over the period for which the service would be declared; and
      ii. at the least cost compared to any 2 or more facilities (which could include the facility for the service);
   c. that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;
   d. that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.
3. For subsection (2)(b), if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.
4. Without limiting subsection (2)(b), the cost referred to in subsection (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.

[322] Unless otherwise stated, statutory references are to the QCA Act.

5. In considering the access criterion mentioned in subsection (2)(d), the authority and the Minister must have regard to the following matters—
   a. if the facility for the service extends outside Queensland—
      i. whether access to the service provided outside Queensland by means of the facility is regulated by another jurisdiction; and
      ii. the desirability of consistency in regulating access to the service
   b. the effect that declaring the service would have on investment in—
      i. facilities; and
      ii. markets that depend on access to the service;
   c. the administrative and compliance costs that would be incurred by the provider of the service if the service were declared;
   d. any other matter the authority or Minister considers relevant.

Required recommendations

We are required to make a recommendation pursuant to s 79, which states:

> After receiving a request, the authority must recommend to the Minister that—
> (a) the service be declared; or
> (b) part of the service, that is itself a service, be declared; or
> (c) the service not be declared.

Section 80 sets out factors affecting our recommendation. Relevantly, we:

- must recommend that 'the service be declared' if we are satisfied about all of the access criteria for the service (s 80(1))
- must recommend that 'the service not be declared' if we are not satisfied about all of the access criteria for the service (s 80(2))
- may recommend that 'part of the service, that is itself a service, be declared' if we are satisfied about all of the access criteria for the part of the service (s 80(5)).

Under s 81, our power to conduct an investigation for making a recommendation under s 79 is about 'the service', the meaning of which is explained further in section A.3.

Period of declaration

If we recommend that the service, or part of the service, be declared, we must also recommend the period for which that declaration should operate.[323] We consider that potentially relevant factors to forming a view on the period of declaration may include:

- the importance of long-term certainty to service providers who may have made (or may need to make) significant investments in infrastructure facilities, and to access seekers who may make significant investments as part of gaining access to a declared facility
- the duration of time for which users may seek access to the facility
- the certainty of demand forecasts over the foreseeable period for assessing demand
- the foreseeable timing of potential changes in the market environment

[323] Section 79(4).

- the need for periodic reviews of declaration arrangements.[324]

The period for which a service is to be declared must be a period over which each of the access criteria are satisfied. The QCA Act does not necessarily require us to recommend declaration of a service over the longest period in which each of the access criteria may be satisfied. We may, having regard to the matters listed above or other considerations, determine that a shorter period of declaration would be appropriate – for example, if there was a high degree of uncertainty about forecasts in later years.

A.2 Structure of approach

In this appendix, we explain our approach to assessing each access criterion as follows:[325]

Relevant statutory provisions → Outline of our assessment approach → Criterion-specific matters of interpretation

Criterion (b) is considered first, before criterion (a), as it simplifies the analysis to identify the market in which the relevant service is provided before turning to the question of dependent markets. This is followed by a consideration of the other criteria.

A.3 Criterion (b): Meet total foreseeable demand at least cost

Statutory provision

This provision, referred to as 'criterion (b)', is set out in s 76(2)(b):

> that the facility for the service could meet the total foreseeable demand in the market–
>
> (i) over the period for which the service would be declared; and
>
> (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service)

Sections 76(3) and (4) further state:

> (3) For subsection (2)(b), if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.
>
> (4) Without limiting subsection (2)(b), the cost referred to in subsection (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.

Purpose of criterion (b)

The current form of the test for criterion (b) was introduced by amendments to the QCA Act to reflect recommendations of the Productivity Commission, following its review of the National Access

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[324] Refer also to NCC, *Declaration of Services: A guide to declaration under Part IIIA of the Competition and Consumer Act 2010* (Cth), version 6, April 2018, p 47.

[325] Our general approach to assessment of the access criteria is also set out in QCA, *Applying for declaration or evocation under Part 5 of the QCA Act – handbook for applicants*, March 2022 (QCA handbook).

Regime and subsequent amendments to analogous provisions of the *Competition and Consumer Act 2010* (Cth) (CCA).[326] The central economic issue that the amendments were intended to address was an enduring lack of effective competition, particularly in markets where infrastructure services are provided under natural monopoly conditions.[327]

Importantly, the amendments were intended to refocus the assessment on whether the facility is a natural monopoly, taking into account both the demand for the service and demand for any substitute services offered by facilities within the relevant market.[328]

Approach to criterion (b)

We have applied the following broad approach to assessing whether criterion (b) is satisfied:

- identify the relevant service
- identify the facility used to provide the service (and define its features including existing capacity)
- identify the market in which the service is provided
- identify or consider total foreseeable demand in the market
- identify whether the facility for the service (expanded where relevant) could meet total foreseeable demand, and over what period
- identify the cost of any two or more facilities to meet total foreseeable demand
- consider whether the facility for the service (expanded where relevant) could meet total foreseeable demand in the market over the relevant period at the least cost compared to any two or more facilities (which could include the facility for the service).

The criterion is satisfied only if the answer to the last point above is affirmative. The longest period that a service could be declared is the period for which we are satisfied the facility for the service could meet total foreseeable demand in the market at least cost. In determining this period, we have also had regard to the factors set out in section A.1 ('Period of declaration).

The service

The starting point to the interpretation of criterion (b) is identification of the relevant service.

For Part 5 of the QCA Act, 'service' is defined in s 72 as follows:

> (1) ***Service*** is a service provided, or to be provided, by means of a facility and includes, for example—
>
> (a) the use of a facility (including, for example, a road or railway line); and
> (b) the transporting of people; and
> (c) the handling or transporting of goods or other things; and
> (d) a communications service or similar service.
>
> (2) However, ***service*** does not include—
>
> (a) the supply of goods (except to the extent the supply is an integral, but subsidiary, part of the service); or
> (b) the use of intellectual property or a production process (except to the extent the use is an integral, but subsidiary, part of the service); or
> (c) a service—

[326] Pursuant to the *Queensland Competition Authority Amendment Act 2018* (Qld).
[327] Productivity Commission, *National Access Regime*, inquiry report, October 2013, p 19.
[328] Productivity Commission, *National Access Regime,* inquiry report, October 2013, p 19.

(i) provided, or to be provided, by means of a facility for which a decision of the Australian Competition and Consumer Commission, approving a competitive tender process under the *Competition and Consumer Act 2010* (Cwlth), section 44PA, is in force; and

(ii) that was stated under section 44PA(2) of that Act in the application for the approval.

(3) Subsections (1) and (2) apply only for this part.

Under s 72, a 'service' is a service provided, or to be provided, by means of a facility. While a service is distinct from a facility, the service for which declaration is sought must relate to the use of a facility, or part thereof. For example, a service can be the handling of coal at a port facility by the terminal operator.[329]

While we interpret the scope of the service described in a request for recommendation of declaration, we do not redefine or expand the scope of the service for which declaration is sought. In *Rio Tinto Limited v The Australian Competition Tribunal*, the Full Court of the Federal Court said:

> It is for the Council, the designated Minister and the Tribunal, on review, to interpret the definition of the service. However, it is not for the Council, or the designated Minister, or the Tribunal, to redefine or expand the scope of the "particular service" which is the subject of the application to the Council...
>
> This is not to say that there must be a slavish attachment to the words of the application. A "literal or pedantic adherence" to the description of the service is not required, provided that the substance and essential nature of the service is not altered ...[330]

Issues relating to the definition of the relevant service are discussed in section 2.2 of the draft recommendation.

The facility

The application of criterion (b) requires identification of the relevant facility for the service, and the definition of its material features, including existing capacity.

A 'facility' is defined in s 70(1) as follows:

(1) *Facility* includes—

(a) rail transport infrastructure; and
(b) port infrastructure; and
(c) electricity, petroleum, gas or GHG stream transmission and distribution infrastructure; and
(d) water and sewerage infrastructure, including treatment and distribution infrastructure.

Also, s 73 provides:

> In this part [Part 5 of the QCA Act], a reference to a facility in association with a reference to a service or part of a service is a reference to the facility used, or to be used, to provide the service or part of the service.

[329] Section 250(1)(c) describes such a service in relation to the Dalrymple Bay Coal Terminal (DBT).
[330] [2008] FCAFC 6 at [58]–[59].

In *Re Sydney International Airport*, the Australian Competition Tribunal said that:

> a facility for the purposes of [the CCA] is a physical asset (or set of assets) essential for service provision and which also exhibits the features of a natural monopoly. An asset or group of assets with this characteristic is termed a bottleneck.[331]

The facility is the minimum physical asset or assets by which the service is provided. Assets which are not necessary to use the service will be outside the minimum bundle of assets that comprise the facility.

In determining the minimum bundle of assets, an issue to consider is the degree of interconnectivity between the various assets of the facility.[332] The question when considering interconnectivity is therefore whether the relevant service is able to be produced by a discrete asset or set of assets at the facility, or whether the service is only able to be produced by an integrated set of assets at the facility. Assets that are not necessary to provide the service for which declaration is sought are outside the scope of the review process.

It is for an applicant to specify the service that is provided by a facility and to which access is sought.

Issues relating to the description of the facility (referred to as 'the Terminal', where appropriate) are discussed further in section 2.3 of the draft recommendation.

The market

Identifying the relevant market for the service is central to consideration of criterion (b).

It is necessary for us to consider whether the Terminal could meet total foreseeable demand 'in the market' on the terms specified. We consider this is the market in which the service proposed for declaration is provided.

The concept of a 'market' is defined in s 71 as follows:

> (1) A ***market*** is a market in Australia or a foreign country.
>
> (2) If ***market*** is used in relation to goods or services, it includes a market for–
>
> (a) the goods or services; and
>
> (b) other goods or services that are able to be substituted for, or are otherwise competitive with, the goods or services mentioned in paragraph (a).

Legal framework for market definition

The current statutory text of criterion (b) of the Queensland access regime and National Access Regime is relatively new and the approach to defining a market for the purposes of criterion (b) has not been considered by the courts in any detail.

However, there are a range of authorities, in other contexts (e.g. under ss 46 and 50 of the CCA) that provide well-established general principles for identifying the relevant market definition, which may

331 [2000] ACompT 1 at [82]. See also *Re Services Sydney Pty Limited* [2005] ACompT 7 at [13].

332 NCC, *Application by Services Sydney for Declaration of Sewage Transmission and Interconnection services provided by Sydney Water*, draft recommendation, 2004, p 16, para 4.18.

inform the definition of the market for the purposes of criterion (b). In particular, it is well-established that defining the market:

- typically describes the area of actual or potential close competition or rivalry between firms in respect of particular goods or services and their substitutes[333]
- is a purposive exercise, to be informed by the conduct at issue and the statutory terms governing the contravention[334]
- requires a detailed examination of the facts specific to the matter and the economic evidence[335]
- involves value judgements about which there is some room for legitimate differences of opinion.[336]

Relevance of economic substitution

Substitution is the cornerstone of market definition. The principle is set out in *Re Queensland Cooperative Milling Association Ltd* (QCMA), where the market is described as the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive.[337]

The concept was further developed in *Boral Besser Masonry Ltd v ACCC*, where the High Court considered the boundaries of the market considering substitutability. The High Court stated that substitution must be readily available and not purely theoretical.[338] *Queensland Wire* recognised interchangeability of use and high cross-elasticity as hallmarks of the relevant market.

In *Arnotts Ltd v Trade Practices Commission*, the Federal Court clarified that substitutability is a matter of degree; the fact that some consumers may switch between products does not mean those products are in the same market. The market is defined by substantial, not occasional, competitive constraints.[339]

Therefore, identifying strong substitutes, both actual and potential, is crucial to defining the relevant market.

A market is typically defined by reference to its product and geographic dimensions, and, where relevant, its functional dimension. Markets may also have a temporal dimension – because competition may not be uniform across time.[340] The temporal dimension evaluates the changing nature of markets over time and imposes a timeframe that considers the substitution possibilities with respect to identified competitors.[341] This raises the question: is the competitive constraint the same at all times, or is it materially different in specific periods? If it is materially different, it may be necessary to define separate temporal markets. For example, in the case of switching or lock-in periods, if customers cannot move for a set period (e.g. multi-year service contracts), the competitive constraint is mostly felt at the start and at renewal. The market is therefore concentrated in renewal windows.

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[333] *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* [1989] HCA 6 at [187]-[188] (Mason CJ and Wilson J), [195]-[196] (Deane J) and [198]-[200] (Dawson J); *ACCC v Australia and New Zealand Banking Group Ltd* [2015] FCAFC 103 at [133].
[334] For example, *Air New Zealand Ltd v ACCC* [2017] HCA 21 at [87] (Gordon J, with whom Nettle J agreed).
[335] For example, *ACCC v Pacific National* (No 2) [2019] FCA 699 at [84].
[336] For example, the observations of Kiefel and Gageler JJ in *ACCC v Flight Centre Travel Group Ltd* [2016] HCA 49 at [69] and [70].
[337] (1976) 8 ALR 481 at p 22.
[338] (2003) 215 CLR 374 at [252].
[339] (1990) 24 FCR 313 at 332.
[340] *Australian Competition and Consumer Commission v Metcash Trading Limited* [2011] FCA 967 at [156].
[341] *Re AGL Cooper Basin Natural Gas Supply Arrangement* (1997) ATPR 41-593; *Duke Eastern Gas Pipeline* (2001) 162 FLR 1; SG Corones, *Competition Law in Australia*, 5th ed, Lawbook Co, Sydney, 2010, pp 98–101.

Substitution possibilities are influenced by a range of factors, including economic considerations (such as the cost of switching to alternative services); regulatory or legislative frameworks; and geographic and operational constraints (e.g. transportation costs or long-term contracts that may limit substitutability between otherwise similar services).

Evidence of users switching between facilities may demonstrate that facilities are substitutes. However, it is also necessary to understand why users switch. Generally, products will be substitutable only where switching occurs (or would occur) as a result of incentives driven by price factors or by non-price factors such as quality.

Service characteristics

Market definition is a fact-specific exercise. Accordingly, in our analysis, we set out relevant facts regarding the Terminal service and the rail network which the Terminal connect to the relevant mines (namely the CQCN), which are relevant to the identification of an appropriate market definition.

In economics, goods and services are typically defined by their characteristics or the nature of their use, location and point in time of availability, which are also the criteria customers use for choosing them.[342] In the context of this review:

- physical characteristics are likely to include the nature of the specific coal handling service, the quality of service provided and specific capabilities of the Terminal (such as specific blending capabilities)
- location of the Terminal and the miner are both relevant factors and will have implications for above- and below-rail costs for miners to transport their coal to a terminal
- point-in-time availability is impacted by the availability of terminal capacity at the point in which the miner is seeking to enter into an access agreement.

Market dimensions

Markets are typically defined by reference to 4 dimensions:

- product/service – the products and/or services that are substitutable enough that they can be said to be traded in a single market
- geographic – the area within which substitution in demand or supply is sufficient for the product(s)/service(s) traded at different locations to be considered to be in the same market
- functional – the area within which substitution in demand or supply is sufficient for the product(s)/service(s) traded at different locations to be considered to be in the same market[343]
- temporal – markets change over time, and the issue is over what period of time do you consider the possibility of substitutes that might constrain the exercise of market power by a firm.[344]

We explain the facts relevant to market definition with respect to these factors in section 2.5.1 of the draft recommendation.

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[342] OECD, *Market Definition*, Series roundtables on competition policy, no 130, Competition Committee, 2012.
[343] See QCA, *Applying for declaration or revocation under Part 5 of the QCA Act – handbook for applicants*, March 2022, pp 28–29.
[344] See A Bruce, *Australian Competition Law*, 3rd edn, pp 53–54.

Total foreseeable demand in the market

Having identified the scope of the market, we consider it appropriate to identify the customers in that market, their foreseeable demand, and the period over which their demand can be foreseen. Ultimately, what is 'foreseeable' is a matter of judgement for us, having regard to the information before us and our confidence in the forecasts that are produced.

There are various factors that we may consider in forming a view on the period for assessing total foreseeable demand. These may include the extent of spare capacity at a facility, the importance of long-term certainty to service providers, and the operation of existing contracts.[345]

In considering total foreseeable demand, the year of anticipated peak demand is relevant, as that level of demand must be satisfied by the facility. Where demand is expected to increase over time, total market demand will be estimated until the end of the proposed declaration period.

To identify whether the Terminal can meet total foreseeable demand in the market, we have regard to the capacity of the Terminal. If the Terminal has spare capacity, the assessment is about whether it can meet total foreseeable demand at least cost in existing form. However, s 76(3) provides that if the facility for the service is currently at capacity and it is reasonably possible to expand that capacity, we may have regard to the facility as if it had that expanded capacity. This provision is concerned with a facility that is at capacity and clarifies that such a facility can still be declared if it is reasonably possible for the facility to be expanded and the matters in s 76(2)(b) are otherwise satisfied.

Issues relating to total foreseeable demand in the market are discussed further in section 2.6 of the draft recommendation.

At the least cost

Where the Terminal is assessed to meet the total foreseeable demand in the market for the service, the central issue is whether the Terminal could do so 'at the least cost' compared to any two or more facilities.[346]

The QCA Act discusses how 'at the least cost' is to be determined only in s 76(4):

> Without limiting s (2)(b), the cost referred to in s (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.

This section of the QCA Act does not limit the costs that may be considered in undertaking the assessment required by criterion (b). However, it does state, for the avoidance of doubt, that the costs of meeting demand using the Terminal include the costs of having multiple users and the costs that would be incurred if the service were declared. We consider that this includes the administrative and compliance costs of regulation. Whether similar costs would also be relevant in

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[345] The further matters we may consider are described in the QCA handbook, p 35.

[346] Criterion (b) was amended by the *Queensland Competition Authority Amendment Act 2018* (Qld), which was intended to reflect the amendments introduced to Part IIIA of the CCA (see Explanatory Notes, Queensland Competition Authority Amendment Bill 2018 (Qld), p 2). The amendments to Part IIIA of the CCA were introduced by the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* (Cth). The Explanatory Memorandum to the Commonwealth amending Act indicated the intention of the new criterion (b) is intended to refocus the test to a 'natural monopoly' test instead of a 'private profitability' test (see Explanatory Memorandum, Competition and Consumer Amendment (Competition Policy Review) Bill 2017 (Cth), p 98).
The so-called 'private profitability test' was the approach adopted by the High Court of Australia to the previous criterion (b) – that is, 'that it would be uneconomical for anyone to develop another facility to provide the service' (see *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal and Ors (2012)* 246 CLR 379).
Our approach to this criterion is to focus on the text of the statute, rather than assume that Parliament intended to adopt one of the approaches previously taken in applying criterion (b) in its earlier form.

assessing the cost of meeting foreseeable demand using any two or more facilities, would depend on the facilities being considered.

We consider 'cost', for the purpose of s 76(2)(b), is to be construed widely, so as to capture all costs of meeting total foreseeable demand in the market for the service provided by the Terminal or using two or more facilities.

This issue is discussed further in section 2.8.

Any 2 or more facilities

Section 76(2)(b) requires us to consider whether the Terminal could meet total foreseeable demand in the market over the period for which the service would be declared and at the least cost compared to any 2 or more facilities (which could include the Terminal).

The QCA Act does not provide any guidance on the term 'any 2 or more facilities'. Hence, the relevant comparisons could include comparing:

- the Terminal with the Terminal and another yet-to-be constructed (duplicate) facility – this would occur where there is no other facility that provides a service in the relevant market
- the Terminal (expanded) with 2 or more alternative facilities
- the Terminal (expanded) with the Terminal and one or more alternative facilities.

The comparisons above could include the Terminal or alternative facilities in either the existing or an expanded form.

A.4 Criterion (a): Access as a result of declaration would promote a material increase in competition in at least one market

The statutory provision

This provision, referred to as 'criterion (a)', is set out in s 76(2)(a):

> that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service

Purpose of criterion (a)

The focus is on the effect of declaration in dependent markets, rather than merely assessing whether access (or increased access) would promote competition.

Approach to criterion (a)

We have applied the following approach to criterion (a):

- Identify the market for the service.
- Identify the relevant dependent (upstream or downstream) markets.
- Confirm that the relevant dependent market is separate from the market for the service.
- Consider whether access (or increased access) to the service, on reasonable terms and conditions, as a result of declaration, would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service.

The criterion is satisfied only if the answer to the last point above is affirmative.

This assessment requires us to compare the likely future environment for competition in dependent markets, both with and without declaration. In doing so, we consider the ability and incentive of the service provider (NQXT) to exert market power in the absence of declaration and evidence of the services provider's commercial conduct to date.[347]

In considering the implications of declaration on competition in dependent markets we consider whether dependent markets are already workably competitive, without declaration.[348] If the dependent markets are already competitive and there are factors that otherwise would constrain the potential exercise of market power by NQXT in those dependent markets, it is generally the case that there will be no material impact on competition as a result of declaration.

Access (or increased access), on reasonable terms and conditions, as a result of a declaration of the service

Criterion (a) requires consideration of the relevant impact of 'access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service'.

The words 'on reasonable terms and conditions, as a result of a declaration of the service' were introduced into criterion (a) by the *Queensland Competition Authority Amendment Act 2018* (Qld). This amendment is consistent with the amendment to the equivalent criterion under Part IIIA of the CCA, introduced by the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* (Cth).

The explanatory memorandum to the Commonwealth amending Act describes in some detail how criterion (a) in Part IIIA is intended to operate as a result of these amendments:

> [12.19] The amendments require the Council and the Minister to consider whether access (or increased access) on reasonable terms and conditions as a result of declaration would promote a material increase in competition in a market other than the market for the service. That is, the amendments focus the test on the effect of declaration, rather than merely assessing whether access (or increased access) would promote competition.
>
> [12.20] This requires a comparison of two future scenarios: one in which the service is declared and more access is available on reasonable terms and conditions, and one in which no additional access is granted. That is a comparison of either: no access without declaration compared with some access as a result of declaration; or some access without declaration to additional access as a result of declaration. In comparing these two scenarios, it must be the case that it is the declaration resulting in access (or increased access) on reasonable terms and conditions that promotes the material increase in competition.
>
> [12.21] What are reasonable terms and conditions is not defined in the legislation. This is an objective test that may involve consideration of market conditions. It does not require that the Council or Minister come to a view on the outcomes of a Part IIIA negotiation or arbitration. The requirement that access is on reasonable terms and conditions is intended to minimise the detriment to competition in dependent markets that may otherwise be caused by the exploitation of monopoly power.

[347] The exertion of market power is in the market for the service, which may or may not have an impact on competition in a dependent market.

[348] The NCC has described workable (or effective) competition as 'the degree of competition required for prices to be driven towards economic costs and for resources to be allocated efficiently at least in the long term. In a workable or effective competitive environment no one seller or group of sellers has significant market power' (NCC, *Declaration of Services: A guide to declaration under Part IIIA of the Competition and Consumer Act 2010*, version 6, April 2018, p 32, para 3.24).

> Reasonable terms and conditions include those necessary to protect the legitimate interests of the owner of the facility.[349]

The approach outlined in the explanatory memorandum is similar to the approach the Australian Competition Tribunal took in the *Sydney Airport* decision. In applying an earlier form of criterion (a), the Tribunal in that case stated:

> the task of the Tribunal is to compare:
> - the opportunities and environment for competition in the dependent market if the Airside Service is declared; with
> - the opportunities and environment for competition in the dependent market if the Airside Service is not declared.[350]

The Tribunal's interpretation was replaced by the Full Federal Court on appeal, which found criterion (a) called for an enquiry into the effect of access (or increased access), not the effect of declaration under Part IIIA.[351] However, it is clear that the amendments to criterion (a) were intended to refocus the enquiry not merely on the effect of access, but rather on the effect of access *as a result of declaration*.

Access on reasonable terms and conditions as a result of declaration

Criterion (a) does not require us to form a view on the specific terms and conditions of access that would apply under declaration, or undertake a detailed, clause-by-clause, comparison with terms that would be imposed in the absence of declaration.

The matter that must be assessed is whether that outcome, which is to be assumed, will promote a material increase in competition. The enquiry necessarily focusses on the future market and commercial circumstances without declaration (in particular, whether access is likely to be available and the likely terms of access) in order to assess whether access as a result of declaration would promote a material increase in competition.[352]

The inclusion of the words 'on reasonable terms and conditions' in criterion (a) does not require us to embark on an analysis of the terms that can be expected under declaration, or a detailed comparison with terms anticipated in the absence of declaration.

Rather, the legislative text of criterion (a) requires us to assume that with declaration access will be provided on reasonable terms and conditions.

In *New South Wales Minerals Council*, the Australian Competition Tribunal stated:

> The assumption inherent in the language of criterion (a) is that declaration will result in access to the relevant service on reasonable terms and conditions. The phrase "on reasonable terms and conditions" is not defined in the Act.
>
> ....
>
> While experience shows that access as a result of declaration may involve considerable disputation with resulting delays and cost, criterion (a) requires the decision maker to assume that declaration will result in access on reasonable terms and conditions. In relation to price terms, the appropriate assumption is that prices would be determined in accordance with the principles specified in Division 3 of

[349] Explanatory Memorandum, Competition and Consumer Amendment (Competition Policy Review) *Bill* 2017 (Cth) at [12.19]–[12.21].
[350] *Re Virgin Blue Airlines Pty Limited* [2005] ACompT 5 at [153].
[351] *Sydney Airport Corporation Limited v Australian Competition Tribunal* [2006] FCAFC 146 at [82]–[83].
[352] *Application by New South Wales Minerals Council (No 3)* [2021] ACompT 4 at [147]–[148].

Part IIIA (specifically, s 44X) and would provide the facility owner with a normal expected rate of return.

….

For those reasons, the Tribunal has had no regard to arguments concerning the uncertainty of future access terms and conditions as a result of declaration. The Tribunal makes the assumption that such access terms and conditions will be determined and will be reasonable.[353]

The Productivity Commission similarly expressed the view that it would not be necessary for decision-makers to come to a view on the outcomes of negotiation or arbitration under Part IIIA of the CCA; it would be sufficient for them to assume that access may occur on reasonable terms and conditions.[354]

The reasonable terms and conditions of access as a result of declaration are informed by the principles and obligations set out in the QCA Act and include those necessary to protect the legitimate interests of the owner of the facility.[355]

Access without declaration

In assessing whether access (or increased access) to the service on reasonable terms and conditions as a result of declaration would promote a material increase in competition, it is necessary to assess whether access is likely to be available without declaration and the commercial terms of such access.

The Australian Competition Tribunal, in explaining the approach to criterion (a), under the National Access Regime explained:

> The criterion necessitates a forward looking analysis focussed on the effect of access as a result of declaration. The necessary comparator is the commercial environment without declaration. An important consideration in applying the criterion is whether access will be, or is likely to be, available without declaration and the commercial features of such access including the nature and scope of access, the terms and conditions of access and any capacity limitations to access. The existing availability of access will be relevant to assessing the likely future availability of access. However, due consideration must also be given to the prospect of future changes in the commercial, regulatory and economic circumstances that might alter the incentives, and likely behaviour, of the service provider.[356]

If access is provided without declaration, it is necessary to consider the nature of that access. The comparison of the 'without declaration' scenario with that of access on reasonable terms as a result of declaration focuses specifically on the effect of declaration.

The assessment of the terms and conditions of access without declaration may be informed by an assessment of the service provider's ability and incentive to exercise market power in setting the terms of access to the service, including the commercial, regulatory and economic factors that may afford or constrain the exercise of market power.

[353] *New South Wales Minerals Council* at [146]–[148]. Note that s 44X of the CCA refers to the matters that the ACCC must take into account in making a determination (a provision that is broadly equivalent to s 120 of the QCA Act).
[354] Productivity Commission, *National Access Regime*, inquiry report no 66, 2013, p 172.
[355] QCA Act, ss 120(1)(b) and 138(2)(b). See also Explanatory Memorandum, Competition and Consumer Amendment (Competition Policy Review) Bill 2017 (Cth) at [12.19]–[12.21].
[356] *New South Wales Minerals Council* at [51(c).

Ability and incentive to exercise market power

In assessing a 'future with and without' declaration, we consider whether the access provider (NQXT) has the ability and incentive to exercise market power, to set terms and conditions of access in a manner that would negatively impact the competitive conditions in dependent markets without declaration. [357]

This requires an examination of all commercial, regulatory and economic factors bearing upon NQXT as supplier of the service and the extent to which those factors constrain NQXT's commercial decisions.

Market power is the ability of a firm to behave in a market for a sustained period, unconstrained to some degree by the conduct of actual or potential competitors, customers or suppliers:

> [M]arket power exists where a firm has the ability profitably to raise prices over a period of time, or to behave analogously for example by restricting output or limiting consumer choice.[358]

The ACCC has described market power as follows:

> Market power comes from a lack of effective competitive constraint. A firm with market power is able to act with a degree of freedom from competitors, potential competitors, suppliers and customers. The most observable manifestation of market power is the ability of a firm to profitably sustain prices above competitive levels. Substantial market power may also enable a firm to raise barriers to entry, profitably reduce the quality of goods or services or slow innovation.[359]

The High Court noted the following definition of market power in *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd*:

> Market power can be defined as the ability of a firm to raise prices above the supply cost without rivals taking away customers in due time, supply cost being the minimum cost an efficient firm would incur in producing the product ...[360]

The economic problem posed by the ability and incentive of a service provider to exercise market power that is addressed by the third-party access regime is explained in the CCA amendment explanatory memorandum:

> A provider may have the ability and incentive to deny access to a service, or restrict output and charge monopoly prices, where there is a lack of effective competition in markets for that service. This can reduce economic efficiency where access to the service is required for third parties to compete effectively in dependent (upstream or downstream) markets. As a consequence, transactions that would enhance community wellbeing may not proceed.[361]

There are a number of ways the use of market power in the provision of the service for which declaration is sought by a service provider may adversely affect competition in a dependent market. For example:

- a service provider with a vertically related affiliate may engage in behaviour designed to leverage its market power into a dependent market to advantage the competitive position of its affiliate

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[357] NCC, *Declaration of Services, A guide to declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth)*, version 6, April 2018, p 34, para 3.32.
[358] R Whish and D Bailey, *Competition Law*, 7th ed, Oxford University Press, 2012, p 42.
[359] ACCC, *Guidelines on misuse of market power*, August 2018, p 6.
[360] *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* [1989] HCA 6; (1989) 167 CLR 177 (8 February 1989) at [17].
[361] Explanatory memorandum, CCA Amendment Bill 2017 at [12.4].

- where a service provider charges monopoly prices for the provision of the service, those monopoly prices may suppress demand or restrict entry or participation in a dependent market
- explicit or implicit price collusion in a dependent market may be facilitated by using a service provider's market power. For example, a service provider's actions may prevent new market entry that would lead to the breakdown of a collusive arrangement or understanding or a service provider's market power might be used to 'discipline' a market participant that sought to operate independently.[362]

The absence of such characteristics may suggest that there is no economic problem for declaration to address, as it may indicate that the relevant firm will not act in a manner that will adversely affect competition in a dependent market.

In applying criterion (a), and considering the terms and conditions of access without declaration, we consider if, in the absence of declaration, there are any effective constraints that might affect NQXT's ability and incentive to exercise market power (e.g. by it restricting access, unreasonably increasing its access price, or otherwise imposing unreasonable terms and conditions of access), which could impact competition.[363] Effective constraints might include, for example, market characteristics or the existence of any contractual or regulatory constraints.

This assessment of whether NQXT has an ability and incentive to exercise market power may require consideration of a range of factors, including whether NQXT has an incentive to provide access on reasonable terms or not, whether there are any close substitutes for the service, and whether any other form of economic regulation is in place.[364]

We have therefore considered the extent to which NQXT would have the ability and incentive to exert market power such that, in the absence of declaration, it could restrict access or unreasonably increase its access price, and the implications that this would have for the terms and conditions of access and competition in dependent markets.[365]

A future with and without declaration

We have applied criterion (a) using a 'future with and without' approach. This approach involves comparing a scenario in which there is no declaration with a scenario in which there is access (or increased access) on reasonable terms as a result of declaration. This requires us to form a view on the likely future conditions in both of these scenarios.

If, in a scenario without declaration, we find there would still be access on reasonable terms for a reason other than declaration (e.g. because of constraints imposed by competition or some other regulatory regime), such that there would be no material increase in competition in a dependent market as a result of declaration, it would follow that criterion (a) is not satisfied.[366] The focus therefore is on the specific impacts that declaration would have in dependent markets.

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[362] NCC, *Declaration of Services, A guide to declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth),* version 6, April 2018, pp 33–34, para 3.30.

[363] This approach to criterion (a) is consistent with the test set out in *Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2 at [116]-[124].

[364] The further matters we may consider are described in the QCA handbook, p 52.

[365] For example, NCC, *Declaration of Services, A guide to declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth)*, April 2018 edn, pp 33–34, paras 3.26–3.32; *Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2 at [117].

[366] From NCC, *Declaration of Services, A guide to declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth),* version 6, April 2018, para 3.24: As provided in the objects of Part IIIA (s 44AA of the CCA), the reference to 'competition' in criterion (a) is a reference to workable or effective competition (rather than any theoretical concept of perfect competition. 'Workable or effective competition' refers to the degree of competition required for prices to be driven towards economic costs and for resources to be allocated efficiently at least in the long term. In a workable or effective competitive environment no one seller or group of sellers has significant market power. The subject matter of the

Would promote a material increase in competition in a dependent market

For criterion (a) to be satisfied, we must be satisfied that access (or increased access) on reasonable terms and conditions due to declaration would promote a material increase in competition in at least one dependent market compared to a scenario without declaration.

Dependent markets

Criterion (a) requires that the requisite access would promote a material increase in competition in at least one market (whether or not in Australia) other than the market for the service.

In assessing criterion (a), we must identify another market (which may be referred to as a dependent market) in which competition may be affected and confirm that it is separate from the market for the service. There may be more than one dependent market for consideration.

In identifying relevant dependent markets for the purposes of criterion (a), it will be necessary to define the boundaries of the dependent markets to assess the impact of declaration on competitive conditions in those markets. This is done in a similar way to how the market for the service is defined – namely, by defining the markets in terms of their product/service, geographic and functional dimensions (see Chapter 2).[367]

In considering whether a dependent market is separate (from the market for the service), a key question is whether the services provided in each market *must* be provided by the same economic entity in order to be economically feasible, or whether they *may* be provided separately (whether or not they are provided separately in a particular case). If it is not economically feasible to provide them separately, the services will not be in functionally separate markets.[368]

Meaning of 'would'

In *NSW Minerals Council,* the Australian Competition Tribunal stated:

> 142 Consistently with the approach adopted in both Port of Newcastle and Pacific National, the Tribunal considers that the word "would" in criterion (a) should be construed in accordance with its ordinary meaning. In a civil administrative context, the word requires the decision maker to be satisfied that, if the service is declared and access given on reasonable terms and conditions, a material increase in competition will be promoted by that access.
>
> 143 In the present matter, though, the Tribunal considers that the same ultimate conclusion on criterion (a) must be reached whether the word "would" is interpreted as the conditional tense of the verb "will" (which, in a civil

criterion (a) assessment involves an assessment of the competitive conditions in a real-life industry (para 3.25). Where a dependent market is already workably or effectively competitive, improved access is unlikely to promote a material increase in competition and an application for declaration of a service that seeks to add to competition in such a dependent market is therefore unlikely to satisfy criterion (a). [footnotes omitted]

[367] However, it may not be necessary to fully define the scope of the dependent market(s) in all cases. For example, we did not form a definitive view on the geographic scope of the above-rail haulage market in the review of the Aurizon Network service, as our conclusion on criterion (a) did not depend on this (QCA, *Aurizon Network declaration review*, final recommendation, March 2020, p 24). Similarly, in its assessment of the Port of Newcastle revocation application, the NCC considered that it was not necessary to precisely determine the geographic scope of the tenements market, given its view that if declaration did not promote a material increase in competition where a narrow geographic view of the market is applied, it is even less likely that declaration would promote a material increase in competition in a more broadly defined geographic market (NCC, *Revocation of the declaration of the shipping channel services at the Port of Newcastle*, recommendation, July 2019, pp 119–20, para 7.304).

[368] See NCC, *Declaration of Services, A guide to declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth),* version 6, April 2018, p 32, para 3.21. See also *Re Services Sydney Pty Limited* [2005] ACompT 7 at [117]–[118].

administrative context, requires the Tribunal to be satisfied on the balance of probabilities) or is interpreted as including a "significant finite probability" that is less than 50%.[369]

In *DBCT v the Treasurer,* DBI considered that 'would' signifies a strong causal nexus – that is, a consequence that is extremely likely or near certain to occur. However, Davis J stated:

> DBCTM's submission that the word "would" signifies a strong causal nexus between the making of the declaration and the promotion of a material increase in competition must be considered in the context that the judgment to be made by the Minister is as to a future matter. He is judging how declaration will affect the relevant market. It cannot be that the provision empowers the Minister to only declare the service where a particular result is certain.[370]

It therefore seems that courts and regulators are likely to treat 'would' as expressing a conditional but confidently predicted outcome. That is, what will or can be expected to occur if the condition is satisfied. We consider 'would' does not mean certainly but connotes a firmer, more expectant conclusion than likely.

Meaning of 'promote a material increase'

The words 'material increase' were first introduced into criterion (a) by the *Motor Accident Insurance and Other Legislation Amendment Act 2010* (Qld). The explanatory notes to that amending Act state that the purpose of the amendment to s 76 of the QCA Act is to:

> amend section 76(2)(a) to clarify that access (or increased access) to the service should be expected to promote a material increase in competition in order for this criterion to be satisfied. This will prevent the declaration of services where only a trivial increase in competition is expected to result ...[371]

In *Sydney Airport,* the Australian Competition Tribunal stated (regarding the access regime under Part IIIA of the CCA):

> In Sydney International Airport the Tribunal considered the meaning of "promoting competition" at [106]–[107], 40,775, as follows:
>
> "The Tribunal does not consider that the notion of 'promoting' competition in s 44H(4)(a) requires it to be satisfied that there would be an advance in competition in the sense that competition would be increased. Rather, the Tribunal considers that the notion of 'promoting' competition in s 44H(4)(a) involves the idea of creating the conditions or environment for improving competition from what it would be otherwise. That is to say, the opportunities and environment for competition given declaration, will be better than they would be without declaration.
>
> We have reached this conclusion having had regard, in particular, to the two stage process of the Pt IIIA access regime. The purpose of an access declaration is to unlock a bottleneck so that competition can be promoted in a market other than the market for the service. The emphasis is on 'access', which leads us to the view that s 44H(4)(a) is concerned with the fostering of competition, that is to say it is concerned with the removal of barriers to entry which inhibit the opportunity for competition in the relevant downstream market. It is in this sense that the Tribunal considers that the promotion of competition involves a consideration that if the

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[369] *Application by New South Wales Minerals Council* (No 3) [2021] ACompT 4 at [142]–[143], decision.
[370] *DBCT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning (Qld)* [2021] QSC 335 at [114].
[371] Explanatory notes, *Motor Accident Insurance and Other Legislation Amendment Act 2010* (Qld), p 16.

> conditions or environment for improving competition are enhanced, then there is a likelihood of increased competition that is not trivial."[372]

In *DBCT v Treasurer*, Davis J said:

> The emphasis in s 76(1)(a) is not upon materially increasing competition, but "promoting" a material increase in competition. It concerns the creation of a commercial environment which "is expected to promote a material increase in competition".[373]

The NCC described the relevant test in the following terms:

> The promotion of a material increase in competition involves an improvement in the opportunities and environment for competition such that competitive outcomes are materially more likely to occur.[374]

This is also consistent with the Australian Competition Tribunal's approach in *Duke EGP*, which referred to the Tribunal's decision in *Sydney International Airport:*

> It is in this sense that the notion of promotion of competition involves a consideration that if the conditions or environment for improving competition are enhanced, then there is a likelihood of increased competition that is not trivial. We agree.[375]

We broadly endorsed the above approach to criterion (a) in our 2020 review of the declarations of Queensland Rail, Aurizon Network and DBT, recognising that the test to be applied requires promotion of a 'material increase' in competition.[376]

What does 'material' mean in practice?

In *New South Wales Minerals Council*, the Australian Competition Tribunal observed that a material increase in competition is promoted if the conditions, opportunities or environment for competition are improved in more than a trivial way.[377]

A trivial increase in competition would therefore not qualify as 'material'. The term 'material' is also distinct from 'substantial'.[378] The Australian Government, in its response to the Productivity Commission's 2001 inquiry report on the national access regime (which in turn informed the 2010 amendments to the QCA Act), preferred the use of 'material', rather than the term 'substantial', which the Productivity Commission preferred:

> The Government considers that, in this context, the term 'substantial' may exclude situations where a small supplier is prevented from gaining access to nationally significant infrastructure. The government therefore will include the word 'material' to ensure access declarations are only sought where the increases in competition are not trivial.[379]

Promoting a material increase in competition is not necessarily equivalent to promoting the greatest number of competitors in the market, as strong competition may exist between a few firms. Rather, it

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[372] Re Virgin Blue Airlines Pty Limited [2005] ACompT 5 at [146].
[373] *DBCT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning (Qld)* [2021] QSC 335 at [129]
[374] NCC, *Declaration of Services, A guide to declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth*), version 6, April 2018, p 32, para 3.23.
[375] *Duke EGP* [2001] ACompT 2 at [75].
[376] QCA, *Declaration reviews*, final recommendation, March 2020, p 21.
[377] *Application by New South Wales Minerals Council* (No 3) [2021] ACompT4 at [51(b)].
[378] QCA, *Declaration reviews*, final recommendation, March 2020, pp 21–22.
[379] P Costello, *Government response to Productivity Commission report on the review of the national access regime*, Australian Government, 20 February 2004, p 7.

involves the possibility that efficient entry and efficient participation by firms would be promoted in a future with declaration, compared to a future without declaration. A transfer of rents between the entity providing the service for which declaration is sought and other entities in the supply chain is also not in itself necessarily sufficient to demonstrate a material impact on competition.[380]

A.5 Criterion (c): State significance

The statutory provision

This provision, referred to as 'criterion (c)', is set out in s 76(2)(c):

> that the facility for the service is significant, having regard to its size or its importance to the Queensland economy

Purpose of criterion (c)

The purpose of criterion (c) to is ensure that a service can only be declared if it is provided by an infrastructure facility that is significant.[381]

Approach to criterion (c)

Criterion (c) requires significance to be determined having regard to the facility's size or importance to the Queensland economy. This requires us to consider:

- the size of the facility – relevant factors may include the physical and geographic dimensions of the facility, the physical capacity of the facility, and the throughput of goods and services using the facility; and
- the importance of the facility to the Queensland economy – relevant factors may include reference to its contribution to exports, employment and gross state product (GSP).

A.6 Criterion (d): Promote the public interest

The statutory provision

This provision, referred to as 'criterion (d)', is set out in s 76(2)(d):

> that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest

Section 76(5) further states:

> In considering the access criterion mentioned in subsection (2)(d), the authority and the Minister must have regard to the following matters –
>
> (a) if the facility for the service extends outside Queensland –
>
>> (i) whether access to the service provided outside Queensland by means of the facility is regulated by another jurisdiction; and

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[380] That said, there may be cases where a transfer of rents can have a material impact on competition – for example, if it has an impact on a firm's competitiveness or investment incentives that is sufficient to materially impact competition in the dependent market. For instance, we noted in our 2020 recommendation on the Queensland Rail service that the presence of the risk of hold-up means that socially optimal investments will not proceed, or there will be an underinvestment (QCA, *Queensland Rail declaration review*, final recommendation, 2020, p 88).

[381] Explanatory Notes, Motor Accident Insurance and Other Legislation Amendment Bill 2010 (Qld) at 16.

(ii) the desirability of consistency in regulating access to the service;

(b) the effect that declaring the service would have on investment in—

(i) facilities;

(ii) and markets that depend on access to the service;

(c) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared;

(d) any other matter the authority or Minister considers relevant.

Purpose of criterion (d)

The purpose of criterion (d) is that we must be satisfied that declaration is likely to generate overall gains to the community. It requires satisfaction of a positive test (i.e. the requisite access 'would promote the public interest').[382]

Previously, the equivalent of criterion (d) was worded as a negative test (i.e. 'that access (or increased access) to the service would not be contrary to the public interest') in both Part 5 and Part IIIA of the CCA.

Following the High Court's judgement in the *Pilbara* matter,[383] which considered the application of the access criteria, including criterion (d) when it was worded as a negative test, the Productivity Commission undertook a review of the National Access Regime. It recommended that the purpose of the public interest test should be to require that the community as a whole is likely to be better off as a result of declaration.[384] That is, the public interest test should be a positive, not a negative, test.

Amendments were subsequently made to the public interest test in both Part IIIA of the CCA and Part 5 of the QCA Act (the latter made through the *Queensland Competition Authority Amendment Act 2018* (Qld)).

We consider that criterion (d) accepts the results of the application of the other criteria, but goes on to require consideration of whether the requisite access as a result of declaration would promote the public interest.

While the amendments to criterion (d) raise the hurdle for it to be satisfied, we do not consider it necessary to undertake a quantitative cost-benefit analysis to determine whether it is satisfied. Both the Tribunal in the Pilbara matter[385] and the Productivity Commission in considering criterion (d) as a positive test[386] reached similar views. We are also of the view that the matters that can be considered as part of criterion (d) remain very broad.

Effect on investment

Section 76(5)(b) requires us to have regard to the effect that declaring the service would have on investment in facilities and markets that depend on access to the service.

Our view is the term 'facilities' encompasses not only consideration of investment in the facility that provides the service (the subject of review), but any other facility in which investment may be

382 Explanatory Memorandum, Competition and Consumer Amendment (Competition Policy Review) Bill 2017 (Cth) at [12.37].
383 *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal and Ors* (2012) 246 CLR 379.
384 Productivity Commission, *National Access Regime*, inquiry report no. 66, 25 October 2013, p 176.
385 *In the matter of Fortescue Metals Group Limited* [2010] ACompT 2 at [1169].
386 Productivity Commission, *National Access Regime*, inquiry report no. 66, October 2013, p 177.

affected by the declaration. We do not consider that it is necessary to confine our consideration to the effect on investment in the facility for the service (see s 76(5)(d) of the QCA Act).

Administrative and compliance costs

Section 76(5)(c) requires us to have regard to the administrative and compliance costs that would be incurred by the provider of the service if the service were declared.

The administrative and compliance costs could include, for example, the regulatory costs of submitting and complying with access undertakings, negotiating access and arbitrating access disputes.

Any other matter

Section 76(5)(d) requires us to have regard to 'any other matter' which we consider relevant. We consider this could include matters listed in the repealed s 76(3) or any other matter we consider relevant.

Appendix B: Cost estimation

In this appendix we provide our assumptions and workings for our cost estimates for mines to rail to either DBT or the Terminal, presented in section 2.5.1 of the report.

B.1 Below-rail charges

Estimating below-rail charges over the proposed declaration period for mines to rail to either the Terminal or DBT is a difficult exercise. Given that the proposed declaration period is 10 years, there is the potential for significant changes in below-rail costs. This is particularly true for mines that use the Newlands and GAPE reference tariffs given that:

- [redacted]
- Aurizon Network has signalled its intention to consolidate the Newlands and GAPE reference tariffs into a single tariff from 2028–29 onwards in its Draft Statement of Access Pricing Intent for Newlands and GAPE Systems.[387]

Given the uncertainty regarding volumes using the GAPE and the potential consolidation of the GAPE and Newlands systems, we have decided to base our below-rail costs estimates, where possible using approved below-rail reference tariffs for 2025–26. While we acknowledge that these cost estimates are unlikely to hold over the length of the proposed declaration period, they remain our best estimate of costs based on current circumstances.

Table 16 shows the 2025–26 approved reference tariffs for the Newlands, GAPE and Goonyella systems.

Table 16: Aurizon Network's approved below-rail tariffs for 2025–26

	AT1 ($/'000 gtk)[a]	AT2 ($/train path)[b]	AT3 ($/'000 ntk)[c]	AT4 ($/net tonnes)[d]
Newlands	2.12	362.95	8.04	1.12
GAPE	1.71	15,464.32	1.39	3.41
Goonyella	0.76	1,716.99	8.69	1.79

a AT1 charges are levied per thousand gross tonne kilometres railed.
b AT2 charges are levied per train path.
c AT3 charges are levied per thousand net tonne kilometres railed.
d AT4 charges are levied on each net tonne railed.
Source: QCA, Annual review of reference tariffs, 2025–26, p 7.

Table 17 shows the reference tariffs we have used to estimate the below-rail cost for each mine to rail to either the Terminal or DBT.

[387] QCoal, sub 17, p 82.

Table 17: Reference tariffs used to construct below-rail cost estimates for selected mines

Mine	Reference tariffs used for haul to the Terminal	Reference tariffs used for haul to DBT
Collinsville	Newlands	Newlands, GAPE, Goonyella*
QCoal Northern Hub	Newlands	Newlands, GAPE, Goonyella*
Carmichael	Newlands	Newlands, GAPE, Goonyella*
Byerwen	GAPE	Gape, Goonyella*
Centurion	GAPE	Goonyella

* Mine locations and destinations for which Aurizon Network's access undertaking does not contemplate the appropriate reference tariff or reference tariffs that would apply.

We note that for certain mine locations, there are no approved reference tariffs to rail to DBT. For these locations we have had to estimate the reference tariffs that would apply making various assumptions. To do so, we have had regard to Aurizon Network's undertaking and the clauses relating to the calculations for cross-system train services. To calculate reference tariffs for cross-system train services the undertaking refers to origin and destination systems. However, as identified in Table 17, for mines operating in the Newlands system, trains would need to pass through 3 different systems to arrive at DBT. Therefore, in these circumstances, we have assumed that the cross-system tariff would apply the relevant gtk and ntk share from all 3 systems to determine AT1 and AT3 charges.

Additionally, we note that for the calculation of cross-system train services, the AT2 charge that applies is the AT2 charge in the destination system unless the origin system is an identified capacity constrained corridor. These capacity-constrained corridors are listed as:

- Coppabella and the Hay Point Junction
- Newlands and Abbot Point
- Burngrove and the Port of Gladstone.

Relevantly, the undertaking does not list the GAPE as a capacity-constrained corridor, despite the system historically reporting an existing capacity deficit. However, it could be that the drafting in the undertaking does not include the GAPE as a capacity-constrained corridor because traffic going through the GAPE has been unidirectional to date and that any train railing to the Terminal through the GAPE is not regarded as a cross-system service, and therefore only the GAPE tariff applies. Given that the undertaking would need to change in any case to facilitate a northern mine railing to DBT, we consider for the purpose of this task that it is reasonable to apply the AT2 charge for the GAPE system in estimating cross-system tariffs for northern mines railing to DBT, noting that the GAPE is currently capacity constrained. This means that our estimated AT2 charges for cross-system trains originating from a northern mine will include the AT2 charge for each system that these trains pass through.

Table 18 includes our estimates of the below-rail costs for each mine to rail to either the Terminal or DBT on a per tonne basis, applying the reference tariffs identified in Table 17 and our interpretation of the cross-system train service clauses discussed above.

Table 18: Estimated below-rail costs for selected mines to rail to the Terminal or DBT

Mine	Cost to rail to the Terminal ($/t)	Cost to rail to DBT ($/t)
Collinsville	2.41	9.50
QCoal Northern Hub	2.44	9.39
Carmichael	3.11	8.67
Byerwen	8.73	10.76
Centurion	8.85	4.27

Note: 1. To generate comparable estimates, we have assumed that trains using the Goonyella system are diesel trains. 2. Although not directly discussed, the AT4 charge that applies for a cross-system train service is the AT4 charge in the origin system.

B.2 Above-rail charges

Estimating above-rail charges involves significant difficulty given that above-rail charges are not publicly available. In our 2020 declaration review, we used information supplied by Aurizon Operations in a 2017 submission regarding the average total above-rail and below-rail costs for mines in the Goonyella system. Since this review, we have not been made aware of any more recent information on which to base our above-rail cost estimates. As a result, we have continued to use our above-rail estimate of the Goonyella system from the 2020 declaration review (escalated by CPI) as the basis for above-rail charges as part of this review.

Our above-rail estimate for the Goonyella system ($4.21 per tonne) as part of the 2020 declaration review was formed by deducting average below-rail costs ($2.10 per tonne) from combined above- and below-rail average costs in the Goonyella system ($6.32 per tonne).[388] To estimate above-rail costs in other systems in the DBT declaration review, we scaled our estimate of the costs in the Goonyella system by 2 factors:

- distance factor – we assumed that approximately 50% of above-rail charges were likely to be variable in nature and these variable costs were directly related to distance travelled. For more distant hauls, we applied an adjustment factor that would increase our estimate of the above-rail cost for that haul
- payload factor – given that the volume of coal hauled on a reference train in each system is different, we adjusted our above-rail cost estimate to reflect this. For instance, if the reference train payload in a different system is 50% less, we assumed that the above-rail charges in that system were 50% more expensive.

For this draft recommendation, we have elected to continue to apply the payload adjustment factor but will not apply a distance adjustment factor to estimate above-rail charges in other systems. Even though we recognise that there is a positive relationship between above-rail costs and distance travelled, we have not applied the distance adjustment factor because:

- we do not have a robust basis for what the actual fixed/variable split is and how above-rail costs change with distance
- the $6.32 per tonne total haulage cost estimate provided by Aurizon Network is based on an average rail cost in the Goonyella system.[389] However, we do not know what haul distance this

[388] QCA, *Part C: DBT declaration review*, final recommendation, March 2020, p 254.
[389] Aurizon Network, *2017 Electric Traction Draft Amending Access Undertaking*, submission to the QCA, November 2017, p 12.

estimate corresponds to. This is important, because to apply a distance adjustment we would need to assess our estimate of the haul length for each mine relative to our base estimate variable cost for an average Goonyella haul.

The consequence of not including a distance adjustment factor is that we are only able to produce systemwide estimates for above-rail costs. This has the effect of producing above-rail cost estimates that will understate the cost of railing to a given port from a more distant mine location.

Table 19 shows the approved payload for each relevant coal system, the resulting adjustment factor and our above-rail cost estimate.

Table 19: Estimated above-rail costs

System	Goonyella	GAPE	Newlands
Train payload	10,236	6,800	6,864
Adjustment factor	1	1.51	1.49
Above-rail estimate (2017–18 dollars)	\$4.21/t	\$6.34/t	\$6.28/t
Above-rail estimate (2025–26 dollars)	\$5.62/t	\$8.45/t	\$8.37/t

Source: Aurizon Network access undertaking and QCA estimates.

B.3 Port-related charges

To estimate port-related charges, we have taken the 2024–25 full year financial revenue results from the Terminal and DBT and divided these values by contracted volumes over the period. The derived port-related charges have then been escalated to 2025–26 figures.

For the 2024–25 financial year, NQXT reported revenue of \$346 million and had contracted volumes of 40 million tonnes, resulting in estimated total port charges of \$8.71 per tonne.[390] Escalated to 2025–26 values, this results in estimated port charges of \$9.08 per tonne.[391]

For the 2024–25 financial year, DBT reported revenue from customers of \$668 million and had contracted volumes of 84.2 million tonnes, resulting in estimated total port charges of \$7.94 per tonne.[392] Escalated to 2025–26 values, this results in estimated port charges of \$8.27 per tonne.

[390] North Queensland Export Terminal Holdings Pty Ltd, *Consolidated Financial Report for the Year ended 31 March 2025*, p 6.
[391] These port cost estimates for NQXT and DBT will not account for charges that users will have to pay for harbour, tonnage and security dues. These fees are paid to NQBP and not to NQXT and DBT. However, we estimate these charges are relatively minor (approximately \$0.50–\$0.70 per tonne) and will be relatively similar between ports.
[392] Dalrymple Bay Infrastructure, *2024 Full Year Results,* pp 2-3; *2025 Half Year Results,* p 3.

B.4 Total cost to rail from selected mines to the Terminal or DBT

Table 20 shows estimates of the total cost for mines to rail to the Terminal or DBT, where the total costs are the combined value of below-rail costs, above-rail costs and port charges.

Table 20: Estimated total cost for selected mines to rail to the Terminal or DBT

Mine	Cost to rail to the Terminal ($/t)	Cost to rail to DBT ($/t)
Collinsville	19.86	26.22
QCoal Northern Hub	19.90	26.11
Carmichael	20.56	25.40
Byerwen	26.26	27.48
Centurion	26.38	18.16

Source: QCA estimates.

As indicated in section B.2, these estimates of total costs are based on estimates of current prices – changes in below-rail costs during the undertaking period will have an impact on the estimate of the relative cost to rail to each port. To the extent that future changes to the GAPE reference tariff reduce the difference in rail costs between Goonyella and GAPE, this may be offset by our approach to above-rail costs (which we have not scaled with distance travelled), noting that any mine using GAPE will necessarily have a longer haul than if it were just using Goonyella or Newlands.

Appendix C: Tenements analysis

C.1 Mining lease holders

Table 21 shows that all of the ML holders in the Newlands-Galilee system are NQXT terminal (Terminal) users.

Table 21: Newlands and Galilee mining leases granted

Owner	Number of mining leases	Area under mining lease in region (hectares)	Hectares covered by total mining lease (%)
Adani*	3	41,149	38%
Glencore*	25	41,392	38%
QCoal*	12	26,460	24%
Total	**40**	**109,001**	**100%**
Terminal user area coverage			**100%**

An asterisk (*) indicates a current Terminal user.

C.2 Mining lease applications

Table 22 shows that only 1 of the 7 proponents that has applied for a ML is a current Terminal user (i.e. QCoal). QCoal's ML application covers around 4% of the total area under ML application.

Table 22: Newlands and Galilee mining lease applications

Owner	Number of mining lease applications	Area under mining lease application in region (hectares)	Hectares covered by mining lease applications (%)
AMCI	1	2,505	1%
GVK	2	69,803	29%
MacMines	1	20,068	8%
QCoal*	5	9,757	4%
Vitrinite	1	596	<1%
Waratah	1	142,100	58%
Total	**11**	**244,829**	**100%**
Terminal user area coverage			**4%**

An asterisk (*) indicates a current Terminal user.
Note: MacMines' China Stone Coal Project is listed as lapsed by the Queensland Government. See Queensland Government, *Projects discontinued or on hold*, coordinatorgeneral.qld.gov.au, updated 25 November 2025, accessed 8 January 2026.

C.3 MDL holders

Table 23 shows that 3 of the 6 MDL holders are current Terminal users. Just 39% of area under a MDL is held by Terminal users. The remaining MDL holders do not use the Terminal.

Table 23: Newlands and Galilee mineral development licences

Owner	Number of mineral development licences	Area under mineral development licence (hectares)	Hectares covered by mineral development licence (%)
Glencore*	1	18,230	15%
GVK	2	65,213	54%
MacMines	1	2,040	2%
Peabody*	1	6,380	5%
QCoal*	2	22,401	18%
Waratah	1	7,592	6%
Total	**8**	**121,856**	**100%**
Terminal user area coverage			**39%**

An asterisk (*) indicates a current Terminal user.
Note: 1. Middlemount mine, which is a joint venture between Peabody Energy and Yancoal Australia, is an NQXT user. 2. Due to rounding, the sum of percentages may differ from the total.

C.4 EPCs

Table 24 shows that of the 11 EPC holders, 2 are current users of the Terminal. Just 14% of the area covered by EPCs is held by Terminal users. Adani does not hold EPCs.

Table 24: Newlands and Galilee exploration permits for coal granted

Owner	Number of EPCs	Area under EPCs (sub-blocks)	Area covered by EPCs (%)
ActiveX Canning	1	31	1%
AMCI	2	149	5%
AustChina Holdings	2	188	7%
Blackwood	3	204	7%
Glencore*	6	181	6%
GVK	1	90	3%
MacMines	2	123	4%
QCoal*	5	209	7%
Resolve	2	51	2%

Owner	Number of EPCs	Area under EPCs (sub-blocks)	Area covered by EPCs (%)
Vitrinite	1	4	<1%
Waratah	10	1,608	57%
Total	**35**	**2,838**	**100%**
Terminal user area coverage			**14%**

An asterisk (*) indicates a current Terminal user.
Note:1. The EPC area is reported as sub-blocks rather than hectares. One sub-block equals approximately 2.8 square kilometres. 2. Due to rounding, the sum of percentages may differ from the total.

Appendix D: List of submissions

We received the following submissions during our investigation of the application for declaration of NQXT. The submission numbers below are used in this draft recommendation for referencing purposes. The submissions are available on the QCA website unless otherwise indicated.[393]

Name	Number	Description	Date
Request for declaration			
QCoal Users	1	Request to recommend declaration of a service	13 June 2025
	2	HoustonKemp – Expert report – criterion (a)	13 June 2025
	3	HoustonKemp – Expert report – criteria (b) to (d)	13 June 2025
Initial submissions			
Aurizon Network	11	Submission on the declaration request	28 August 2025
DBI	4	Submission on the declaration request	22 August 2025
NQXT	5	Submission on the declaration request	26 August 2025
	6	Annexure A: Expert report – CEG – criterion (b)	26 August 2025
	7	Annexure B: Expert report – Incenta – criterion (a)	26 August 2025
	8	Annexure C: Statement – Mark Smith, NQXT	26 August 2025
	9	Annexure D: Statement – Damien Dederer, APO	26 August 2025
	10	Annexure E: Statement – Brendan Lane, Bowen Rail	26 August 2025
Further submissions			
DBI	12	Submission on initial submissions	7 October 2025
Goonyella Coal Producers	13	Submission on initial submissions	21 October 2025
NQXT	14	Submission on initial submissions	21 October 2025
	15	CEG – Supplementary report: North Queensland Export Terminal	21 October 2025
QCoal Users	16	Submission on initial submissions	21 October 2025
	17	Statement – David Moore, QCoal	21 October 2025
	18	Houston Kemp – Further expert report – proposed declaration of NQXT	21 October 2025
Late submission			
NQXT	19	Response to QCoal further submission	9 November 2025
	20	Annexure B: CEG reply report	9 November 2025

[393] Stakeholders also provided additional information to support their positions, including in response to queries from us.

Glossary

APB	Abbot Point Bulkcoal
APO	Abbot Point Operations
APSEZ	Adani Ports and Special Economic Zone Pty Ltd
BMA	BHP Mitsubishi Alliance
BRC	Bowen Rail Company
CCA	Consumer and Competition Act 2010 (Cth)
CQCN	Central Queensland Coal Network
CRN	Carmichael Rail Network
CUA	capacity user agreement
DBT	Dalrymple Bay Terminal
DIM	Dalrymple Infrastructure Management
GAPE	Goonyella to Abbot Point Expansion
HPCT	Hay Point Coal Terminal
JORC	Joint Ore Reserves Committee (the JORC code is an Australasian standard for reporting exploration results and mineral resources and reserves)
NQBP	North Queensland Bulk Ports Corporation Ltd
NQXT	North Queensland Export Terminal, also NQXT Pty Ltd, depending on the context
OMC	operating and maintenance contract
QRC	Queensland Resources Council
SSNIP	small but significant non-transitory increase in price
TIC	terminal infrastructure charge
WICET	Wiggins Island Coal Export Terminal

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