

Submission in response to QCA's Draft Recommendation not to declare the coal handling service at the North Queensland Export Terminal

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Confidentiality Key:

QCA only



Category A

Category B

Category C

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1 Executive summary

- 1 This submission is made by North Queensland Export Terminal Pty Ltd (**NQXT**) in response to the Queensland Competition Authority's (**QCA**) draft recommendation dated March 2026 (**Draft Recommendation**), in which the QCA recommends that the coal handling service provided by the Terminal **not be declared** for the purposes of third party access under Part 5 of the *Queensland Competition Authority Act 1997 (QCA Act)*.
- 2 NQXT welcomes and endorses the QCA's Draft Recommendation not to declare the coal handling service at the Terminal.
- 3 NQXT supports the ultimate finding of the QCA that the QCoal Users application does not satisfy either criterion (a) or criterion (d). There is no evidence before the QCA on which it could safely concluded that declaration would promote a material increase in competition in any dependent market. NQXT also agrees that the QCA is right to recognise that substantial spare capacity at the Terminal (and throughout the proposed declaration period) means NQXT has no commercial incentive to restrict or to otherwise limit third party access. These conclusions reflect a sound application of the statutory framework to the evidence before the QCA.
- 4 Nonetheless, NQXT respectfully submits there are several aspects of the Draft Recommendation that are not soundly based on the evidence before the QCA and which should be addressed in the QCA's final recommendation. The following observations are made while recognising and supporting the ultimate conclusion of the QCA.
- 5 In particular:

- (a) **The Draft Recommendation replicates the essential approach taken to criterion (a) in the Dalrymple Bay Coal Terminal (DBCT) redeclaration decision – and in doing so, fails to sufficiently engage with evidence before the QCA that establishes the likely “world without declaration”.**

At the outset of this process, NQXT stressed the importance of the QCA acknowledging the different counterfactual exercise that was involved here compared with its redeclaration assessment of DBCT in 2019-2020. In particular, the QCA cannot safely rely upon a *hypothetical* assessment of what the world would look like in the future, absent declaration, when the status quo (for over a decade) offers the clearest and most reliable evidence of what the future would look like if the Terminal remains unregulated.

In important respects, the Draft Recommendation has nonetheless proceeded under its criterion (a) assessment to repeat the same assumptions and hypotheticals it applied in the DBCT process. In doing so, the Draft Recommendation almost entirely fails to engage with the hundreds of pages of evidence before the QCA establishing the current commercial and operational arrangements and the reasonableness of current terms of access.

This plays out across a number of areas, including:

- (i) Failing to acknowledge the evidence of [REDACTED], including those which the QCA acknowledges have a lower-cost alternative at DBCT.
- (ii) The fact that NQXT offers [REDACTED].

- (iii) Failure to acknowledge that there has been no evidence provided of any discriminatory behaviour by NQXT (or relevant complaints) to date, despite the same incentives having existed for over a decade.
 - (iv) A simplistic and flawed comparison of an assumed future DBCT Terminal Infrastructure Charge (TIC) with the access charge offered by NQXT to QCoal. This fails to recognise or reflect the real comparison made by users, which is total port-related charges (something acknowledged in the Draft Recommendation elsewhere¹, but not applied when assessing the counterfactual under criterion (a)). The QCA's own analysis suggests that the difference between DBCT and NQXT total port costs is currently █████ and this is conservative, given it does not reflect lower demurrage costs at NQXT.
 - (v) The QCA's approach also fails to have regard to the rail augmentation costs that would be required to be absorbed by Goonyella users seeking access to 8X capacity at DBCT. Evidence suggests these costs would be substantial.²
- (b) **The QCA must assess the reasonableness of the terms of the Standard Access Agreement offered to QCoal (and all other renewing users), and if they are reasonable, criterion (a) cannot be satisfied.**

The Draft Recommendation is internally inconsistent in its approach to the terms of access to be tested under criterion (a). In describing its legal task, the QCA rightly acknowledges that criterion (a) must not be satisfied if the QCA finds that existing terms of access are reasonable.³ However, the Draft Recommendation otherwise fails to engage at all with the reasonableness of the Standard Access Agreement. Instead, the QCA argued that the terms offered by NQXT were not relevant to its assessment and sought to engage in a hypothetical exercise analogous to the approach it adopted in the redeclaration process at DBCT.

- (c) **The Draft Recommendation rightly identifies the episodic nature of rivalry between coal terminals; however, the SSNIP approach the QCA then does not apply this competitive dynamic for the purpose of market definition under criterion (b).**

The Draft Recommendation rightly observes that the task of market definition involves a real-world assessment of rivalry, informed by the statutory purpose. The Draft Recommendation, again rightly, observes that competition between coal terminals is episodic and concentrated at particular points in time when users are agreeing or renewing long term agreements. This competitive dynamic reflects commercial reality.

However, the QCA's approach to applying a SSNIP test is based around a test of substitutability defined by reference to short-run switching of volumes based around current differentials in terminal pricing. The result is a market definition finding that is internally inconsistent, and in which the movement of volumes by customers at the time of contract renewal is treated as a change in the market *boundary* (rather than evidence of competitive substitutability) and in which the QCA seeks to "explain away" the decisions by approximately half the users of NQXT as "non-SSNIP related" and therefore irrelevant to market definition.

¹ Draft Recommendation, Appendix B.3.

² Aurizon Network, 2017 Network Development Plan, page 42.

³ Draft Recommendation, Appendix A.4

(d) The evidence establishes that a downstream market for ‘late-stage mining tenements’ does not exist.

The only dependent market in which the QCA has identified in which there may be any potential impact resulting from declaration is the so-called, later-stage tenements market.

However, there is no evidence of any party acquiring or trading in late-stage tenements as an intermediary or speculator. Unlike exploration tenements (relevant in the DBCT redeclaration decision), in this case there is no evidence of any distinct market for late-stage tenements in the geographic region identified by the QCA as relevant. The QCA points to only three transactions in this so-called “market” over the last 13 years.

However, none of those transactions demonstrate discrete demand for late-stage tenements. In none of them did the acquirer set out to obtain the tenement itself. Rather, the acquirer’s demand was for an economic interest in an operating mine, and tenements simply formed part of the broader bundle of assets being acquired as part of the sale, along with an interest in goodwill, intellectual property, equipment and customer contracts which underlie any business. There is no basis for treating these transactions as evidence of a separate market in which late-stage tenements are traded as a discrete product.

At the very least, if the QCA continues to press the existence of a market, the lack of any meaningful independent transactions in this market must inform the QCA’s approach to criterion (d).

(e) When applying criterion (d), the QCA must acknowledge that there is evidence of the real and substantial costs of declaration, whilst any “benefit” to competition would exist in a hypothetical market with no transactions

In the future without declaration of NQXT, [REDACTED]. By contrast, the essential nature of the Part 5 negotiate-arbitrate model is that it creates a high likelihood of periodic and costly arbitrations. This has been the experience at both NQXT ([REDACTED]) and DBCT.

A theoretical and hypothetical promotion of competition in a market which the QCA concedes is unlikely to have any transactions over the declaration period cannot reasonably be found to give rise to a positive net public benefit. This is especially the case when balanced against the material costs and risks associated with introducing declaration at NQXT.

- 6 Finally, the QCA sought further input from stakeholders in relation to the potential for any “hold up” to occur in relation to late-stage tenements, by virtue of the deregulated status of NQXT. In response to the QCA’s invitation, the absence of evidence in relation to hypothetical hold-up risk is further developed in this submission at section 6 below (and **Appendix 3**). As this evidence shows, all publicly announced mine closures, suspensions or cancellations in Queensland over the last 14 years have cited a myriad of factors other than terminal charges as the reason for closing, mothballing or not proceeding with projects. There has been no case in which such a decision has been based on terminal costs or the regulatory status of a port or terminal.
- 7 This is, of course, in addition to the clear lack of incentive that exists in this case for NQXT to prevent or delay entry by new producers – given its strong incentive to reduce the current under-utilisation of the Terminal.

2 NQXT supports the central conclusions of the QCA's Draft Recommendation

2.1 NQXT supports the ultimate recommendation of the QCA

8 NQXT supports the conclusions reached by the QCA in relation to criteria (a) and (d). The Draft Recommendation concluded that:

- criterion (a) is not satisfied because there is insufficient evidence that declaration would promote a material increase in competition in a dependent market; and
- criterion (d) is not satisfied because declaration is unlikely to generate overall gains to the community and therefore will not promote the public interest.

9 In particular, NQXT endorses six key findings which underpin the QCA's findings with respect to criteria (a) and (d) in the Draft Recommendation.

10 First, the QCA rightly accepts that there is no capacity constraint at the terminal. The QCA identifies that there is approximately [REDACTED] of uncontracted capacity at present and that surplus capacity will persist over the proposed declaration period, such that "NQXT is incentivised to enter agreements with third party users, particularly as the costs of operating the Terminal are largely fixed".⁴

11 NQXT agrees with this finding. Significant spare capacity will continue to limit any NQXT incentive to limit or restrict third party access. This is also consistent with the evidence before the QCA which demonstrates that:

- the Terminal has operated with substantial spare capacity throughout its history;⁵
- NQXT's commercial strategy [REDACTED] (as evidenced in the statements of NQXT General Manager, Mr Smith);⁶ and
- the Terminal's economics do not support any incentive to deny or restrict access to third parties including because Adani does not have the ability to utilise the excess capacity which is available for its own production. This is supported by the analysis of Incenta.⁷

12 Second, the QCA found that given the incentives created by significant spare capacity at the Terminal, any vertical integration within the Adani Group does not otherwise create a credible foreclosure incentive. The Draft Recommendation found that while NQXT might otherwise be in a position to leverage control of the Terminal to provide access on preferential terms to related entities, "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".⁸

13 NQXT's submission and the evidence of Mr Smith demonstrates that no Terminal user has ever raised an allegation of discriminatory conduct or self-preferencing.⁹ The evidence of Mr Dederer

⁴ Draft Recommendation at page 58.

⁵ Statement of Mark Smith dated 22 August 2025 at [35], [141].

⁶ See for example Supplementary Statement of Mark Smith at [73].

⁷ Incenta Report (August 2025), at [16b], [97b].

⁸ Draft Recommendation at page 41.

⁹ Statement of Mark Smith dated 22 August 2025 at [176]

confirmed that the Terminal's operational model, [REDACTED], provides limited scope for preferential treatment.¹⁰

- 14 As Incenta explained in its expert report, none of the necessary conditions for a foreclosure incentive are met:
- there is no downstream market capable of being monopolised through denial of access;
 - the benefits of denial do not exceed the loss of access revenue; and
 - NQXT cannot extract available rents through access pricing alone.¹¹
- 15 The QCA also correctly identifies that because Bravus "*faces strong competition in the coal export market*", 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*".¹² This is supported by the evidence before the QCA.
- 16 Third, the QCA found that there is insufficient evidence to form a view that declaration would promote a material increase in competition in dependent markets for the purposes of criterion (a). The QCA concluded that key dependent markets, other than the coal tenements market, "*are workably competitive now and, given their structure and characteristics, will remain workably competitive in the future irrespective of whether the service is declared*".¹³ As NQXT has submitted, the markets identified by the QCoal Users (including coal export markets, above and below rail markets, port and mining services markets) are large, competitive and supplied by global firms, such that declaration of a coal handling service at the Terminal could not realistically influence them.
- 17 The QCA's Draft Recommendation rightly approaches its task in respect of criterion (a) by applying the principle that it must be positively satisfied that access as a result of declaration "would promote a material increase in competition", being more than a trivial improvement in competitive conditions.¹⁴
- 18 Fourth, in relation to the findings made by the QCA in respect of a purported "late-stage coal tenements market", the QCA acknowledged that there have been only three transactions for later-stage coal tenements in the Newlands-Galilee catchment since 2013. These transactions appear to have occurred as part of broader mine transfers rather than as standalone acquisitions of tenements. In one case, the transaction involved a party increasing its existing interest in a tenement, which does not evidence any discrete demand for later-stage tenements.¹⁵
- 19 In any event, the QCA accepted that the current state of competition in this "market" is characterised by "*limited entry by new participants, thin trading and stalled development activity*".¹⁶ The QCA recognised that it is not evident that the regulatory status of the Terminal

¹⁰ Statement of Damien Dederer dated 25 August 2025 at section C.7.

¹¹ Incenta Report (August 2025), at [16].

¹² Draft Recommendation at page 70.

¹³ Draft Recommendation at page 41.

¹⁴ Draft Recommendation at page 85.

¹⁵ <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=356>; <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=3035>.

¹⁶ Draft Recommendation at page 74.

has impacted demand for late-stage tenements or project development intentions. In the circumstances, NQXT maintains that:

- (a) there is insufficient evidence for the QCA to safely find that a distinct and meaningful market exists for such tenements, separable from the market for coal; and
- (b) the lack of transactions is attributable to structural factors unrelated to the Terminal's regulatory status.

- 20 Fifth, the QCA correctly found that criterion (d) is not satisfied including because “*declaration is unlikely to generate overall gains to the community*”.¹⁷ The QCA accepted that it is not evident that declaration would promote investment in the Terminal given the existence of spare capacity and the lack of any incentive for NQXT to deny access. It further found that there is insufficient evidence that any reduction in compliance costs borne by users as a result of declaration would be significant. NQXT agrees that there is no public interest associated with declaration.
- 21 To the contrary, declaration in this case would impose substantial additional costs that would not exist absent declaration, including because the significant cost and distraction associated with periodic arbitrations between users and NQXT would only be a feature of the commercial environment if declaration were to occur. These costs are substantial for NQXT and industry, as demonstrated from historical experience at both NQXT and DBCT. By way of example, NQXT estimates that it incurred legal costs of approximately ██████ in the *AAPT v Lake Vermont* litigation, which concerned the TIC, the Take or Pay Component (TPC) and handling charges to apply at the 2017 renewal.¹⁸ That dispute proceeded over five years and culminated in the High Court dismissing the application by Lake Vermont and the QCoal Users for special leave to appeal from the decision of the Queensland Court of Appeal. In addition, NQXT estimates that the Adani Group incurred total costs of approximately ██████ across the FY12, FY17 and FY22 price review arbitrations.
- 22 Finally, the Draft Recommendation acknowledged that terminal charges are only one of several factors influencing the competitive environment and investment decisions, alongside coal prices, regulatory approvals, operating costs (including royalties) and financing conditions.¹⁹ As the QCA rightly recognises, “*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*”.²⁰
- 23 This finding is important. It reflects an evidence-based assessment of the weight that terminal charges bear in mining investment decisions. As set out in NQXT's initial submission and in the expert analysis of CEG, the TIC represents only a fraction of total mining costs and is immaterial to investment decisions relative to other factors, costs and uncertainties such future coal prices, State royalties, energy, labour and other costs and uncertainty and delays associated with financing, insurance and regulatory approvals for coal mines and expansions.
- 24 In response to the QCA's invitation, the absence of evidence in relation to hypothetical hold-up risk is further developed in this submission at section 6 below (and **Appendix 3**). As this evidence shows, all publicly announced mine closures, suspensions or cancellations in Queensland over the last 14 years have cited a myriad of factors other than terminal charges as

¹⁷ Draft Recommendation at page 88.

¹⁸ These proceedings are described in detail in NQXT's Submission at [262]-[264], and Statement of Mark Smith at [97(d)].

¹⁹ Draft Recommendation at page 41.

²⁰ Draft Recommendation at page 81.

the reason for the decision. No decision or accompanying industry commentary has raised or referred to terminal costs as a factor which influenced the investment decision.

New evidence which further supports the Draft Recommendation

- 25 Since NQXT provided initial submissions to the QCA in August and November 2025, several developments have occurred which further support and reinforce the QCA's ultimate conclusions in its Draft Recommendation.
- 26 These include the following matters which are outlined further in a supplementary statement of Mr Mark Smith, General Manager of NQXT, which is **Attachment A** to this submission (Mr Smith's **Supplementary Statement**):
- (a) There continues to be insufficient below-rail access to the Terminal. In May 2026, the Existing Capacity Deficit (**ECD**) on the Newlands and GAPE systems was independently reassessed and is expected to continue in FY27.²¹ Although the reassessment reflects a modest increase in expected capacity (by 1.4 mt), this is largely attributable to revised consist assumptions rather than any structural investment by Aurizon in network infrastructure or operational improvements. There is only below-rail capacity to facilitate the Terminal handling ~39.8 mt of coal, well below its nameplate capacity of 50 mtpa. As Mr Smith explains in his Statement, [REDACTED].²² The implications of the ECD are further addressed at section 3.7 of this Submission, [REDACTED].
- (b) The Terminal's ongoing capacity position remains uncertain. NQXT has [REDACTED].²³ The effect of this is that, at the date of this Submission, [REDACTED]. Mr Smith explains in his Supplementary Statement that [REDACTED].²⁴ The [REDACTED] is addressed further at section 3.2 below, and with [REDACTED] at section 4.3(a) below.
- (c) NQXT has no commercial incentive to restrict or otherwise limit third party access to the Terminal, or to preference any other entity within the Adani Group. As Mr Smith explains in his Supplementary Statement, [REDACTED].²⁵ NQXT's corporate governance arrangements and board composition further reinforce this position. On 23 December 2025, Adani

²¹ Coal Network Capacity Company, Annual Capacity Assessment 2026 prepared under Aurizon Network's Access Undertaking (UT5), available [here](#), Figure 4.

²² Supplementary Statement of Mark Smith at [9(c)] and [48].

²³ Supplementary Statement of Mark Smith at sections B.1 and B.2.

²⁴ Ibid.

²⁵ Supplementary Statement of Mark Smith at section D.

Ports and Special Economic Zone Limited (**APSEZ**), a publicly listed company on the Indian stock exchange, completed its acquisition of NQXT.²⁶ As at the date of this Submission, NQXT's Board comprises three directors:

- (i) [REDACTED];
- (ii) [REDACTED]; and
- (iii) [REDACTED].

27 [REDACTED] .²⁷ Mr Smith explains in his Supplementary Statement that [REDACTED] .²⁸

28 Mr Smith states that, in his experience over the past five years as General Manager, he is not aware of any instance in which NQXT has used its position to discriminate in access or misuse user confidential information in order to advantage another Adani Group business, nor has NQXT ever received any allegation of discrimination or self-preferencing.²⁹

2.2 However, the final recommendation must further engage with the evidence before the QCA

29 Notwithstanding support for the ultimate finding in the Draft Recommendation, NQXT submits that there are several significant areas where the QCA has failed to engage with the evidence before it.

30 This relates to evidence of:

- (a) the likely effect of declaration on the reasonableness of terms of access for the purposes of criterion (a) – i.e. the ‘counterfactual assessment’;
- (b) competitive dynamics associated with the provision of terminal services, for the purposes of market definition under criterion (b);
- (c) the existence of any downstream market for late-stage tenements for the purpose of criterion (a) and the likely effect of regulation on transactions in that market; and
- (d) the absence of any “hold up” risk associated with continuing the longstanding regulatory status quo in relation to NQXT.

31 NQXT filed several hundred pages of detailed, substantive evidence addressing each of the above. We are concerned that the QCA has failed to properly engage with this evidence, or in some cases to have regard to it at all, and this has led to draft findings that are unsafe.

²⁶ Supplementary Statement of Mark Smith at [62].

²⁷ Supplementary Statement of Mark Smith at [66] – [67].

²⁸ Supplementary Statement of Mark Smith at [70] and [73].

²⁹ Supplementary Statement of Mark Smith at [74].

3 The counterfactual analysis under criterion (a)

3.1 Counterfactual analysis

32 NQXT has never been declared. This means that the only cogent and reliable evidence of the likely future state of the world without declaration is the *status quo*. If the QCA proposes to engage in reasoning or to adopt conclusions that depend upon a future state of the world that differs materially from the status quo, it must explain why the evidence of actual commercial conduct and market outcomes over the past decade is not reflective of the likely future terms of access or conduct.

33 In a number of important respects, the QCA has adopted a hypothetical approach to the world “without declaration” along the lines of its conclusions in the DBCT redeclaration inquiry. To adopt that approach in any final recommendation, in the face of such substantial evidence of the real world circumstances that are likely to exist, would lead the QCA into error. This is where the present declaration process must proceed differently to the earlier redeclaration process and reasoning.³⁰

34 The QCA acknowledges in the Draft Recommendation in relation to the approach that must be taken to criterion (a) that:³¹

“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.”

35 The QCA’s stated understanding of criterion (a) accepts that if the current terms offered by NQXT to QCoal and other users reflect the outcome of workable competition, then criterion (a) *cannot be satisfied*. The QCA accepts therefore that it cannot engage with criterion (a) without assessing whether the terms offered already are reasonable and reflect the outcome of a workably competitive process. If it then finds those terms are reasonable, criterion (a) must not be satisfied. NQXT agrees that this is the only credible way for the QCA to proceed.

36 NQXT disagrees with the QCA’s finding in the Draft Recommendation that its assessment of criterion (a) does not require a view to be formed on the specific terms and conditions of access that would apply with and without declaration. As previously stated by the Australian Competition Tribunal (**ACT**) in *Application by New South Wales Mineral Council (No 3)* [2021] ACompT (emphasis added):

- (a) A counterfactual analysis requires a comparison “of access on reasonable terms and conditions as a result of declaration of the service and...the circumstances that would be likely to prevail with respect to access in the absence of declaration...the prevailing circumstances relating to access (in particular, **whether access is presently given and on what terms**) will be relevant to the required forward looking comparison.” (at [46]).
- (b) Important considerations in applying criterion (a) include 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.” (at [51(c)]).

³⁰ NQXT Submission at [388]-[389].

³¹ Draft Recommendation, page 113.

37 NQXT is concerned that the QCA failed to engage meaningfully with the reasonableness of [REDACTED]. To the extent the QCA did so at all, this appeared to be limited to suggesting that [REDACTED].³² Even in relation to that single issue, it is not correct to suggest that infrastructure providers in workably competitive markets typically offer [REDACTED], or that failing to do so is either unreasonable or evidence of market power. [REDACTED] is, if anything, generous by comparison to other analogous industries, such as gas transportation, energy infrastructure, port leases and other port terminals etc.³³

38 As noted in the original submission,³⁴ the terms of the Standard Access Agreement are clearly reasonable by comparison with both the regulated access agreement applicable at DBCT as well as other long term commercial agreements for use of infrastructure across different industries. This is further supported by the fact that [REDACTED]. In the absence of compelling evidence to the contrary, which has not been provided by the QCoal Users and is not otherwise identified in the Draft Recommendation, the QCA cannot legally find that criterion (a) is satisfied.

3.2 Evidence of commercially negotiated outcomes at the Terminal

39 Once proper regard is had to the terms of the Standard User Agreement, and the [REDACTED], the only reasonable finding is that the price and non-price terms offered by NQXT:

(a) are the product of workable competition; and

(b) [REDACTED].

40 The non-price terms of the Standard User Agreement [REDACTED]. Those terms were agreed between users and the Ports Corporation Queensland (PCQ) and were struck at a time when the State was developing an expansion of the Abbot Point Coal Terminal (now NQXT) and the Newlands System in order to introduce a competitive alternative to DBCT.

41 In the Draft Recommendation, the QCA finds that *"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 DBCT"*.³⁵

42 This finding fails to have regard to the fact that the terms of the Legacy User Agreements were struck in a highly contestable environment. Indeed, NQXT's General Manager, Mark Smith, gives evidence in section C.2(a) of his witness statement in relation to the X50 Expansion of the Terminal to its nameplate capacity that cost approximately \$820 million which was supported by

³² Draft Recommendation, page 68.

³³ NQXT Submission at [156], [392].

³⁴ NQXT Submission at sections 2.4 and 5.2.

³⁵ Draft Recommendation at page 33.

the Queensland Government (through PCQ) entering into a number of long term standard form take or pay agreements with the Legacy Users, including [REDACTED].³⁶

- 43 The investment in the expansion of NQXT, combined with construction of the NML, reflected strong rivalry between the terminals. The competitive threat posed by the NQXT capacity expansion was noted by DBCT at the time. Market analysis attached to the DBCT 2009 Master Plan noted that, following completion of the NML and expansion of NQXT, “Abbot Point will compete as it will be a common-user facility with an overlapping catchment area hence will compete directly for share of the contracted throughput and the users will compete against each other in the market”. The risk of “leakage” to NQXT was identified in the following terms:³⁷

Abbot Point has the highest potential impact on DBCT due to the high of overlap in catchment post construction of the GAP rail line lining the Goonyella system to Abbot Point. Currently undergoing an expansion to 25 Mtpa capacity (the X25 project), and with plans to expand to 100 Mtpa in two further stages by 2014 this may have the potential to cause catchment leakage from DBCT, should the project proceed. The operations and projects that would be more easily able to change port would be those on the ‘Goonyella North’ line and ‘Blair Athol’ branch to the west of the Mallawa sidings. The Ports Corporation of Queensland stated in 2008 that they had sufficient demand to proceed, however the information supporting this has not been made public or if the same demand still exists.

During 2008 there was some catchment leakage from the Goonyella system to Abbot Point with trains travelling via the coastal railway due to congestion at DBCT, albeit in small quantities. The GAP project will enable a direct link. The construction of the GAP rail may have the effect of ‘fast-tracking’ development of project near or adjoining the rail line, in the short to mid-term this could have an oversupply effect and potentially displace or defer some expansion or current production from existing Goonyella system producers.”

- 44 Goonyella miners had options and made a commercial choice to invest significantly in a new supply chain pathway to Abbot Point, bearing significant financial risk in doing so.³⁸ The suggestion in the Draft Recommendation that legacy users “had no choice” or that the terms of the Legacy User Agreements do not reflect reasonable terms or those of a workably competitive market therefore does not engage with the evidence. Moreover, from a policy perspective, it would be inappropriate for PCQ to impose unreasonable or monopolistic terms of access on access seekers in this context.

- 45 During this first round of contract renewals since the Legacy User Agreements, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

³⁶ Statement of Mark Smith at [23]-[24].

³⁷ Wood Mackenzie, DBCT Management Market Report (Appendix F to the DBCT Master Plan 2009), page 42 ([link here](#)).

³⁸ See for example, BHP Billiton Mitsubishi Alliance, Submission to the QCA on GAPE Reference Tariffs, 16 November 2012: “The GAPE commercial agreements were based on a commercially agreed risk allocation ... The GAPE negotiation occurred in 2009 and 2010 when the Queensland coal industry was enjoying the benefits of a global resources boom” (available online at https://www.qca.org.au/wp-content/uploads/2019/06/9668_r-bma-submissions-gape-1112.pdf).

46 The competitive constraint imposed by DBCT is more than merely theoretical. Mr Smith has given evidence that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁴⁰

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

47 This position is reinforced by the submission filed by Dalrymple Bay Infrastructure Management on 22 August 2025, which observes that (emphasis added):⁴¹

There is clear market evidence of multi-terminal usage by customers in the Goonyella System who have elected to utilise NQXT despite their greater proximity to the Port of Hay Point

*... **NQXT** has an incentive to retain Goonyella system mines as customers and is clearly in competition with **DBCT**, especially in circumstances where DBCT is contracted to capacity and NQXT has existing available capacity.*

48 The QCA's draft recommendation fails to engage with the substantial body of evidence demonstrating the competitive constraint imposed by DBCT and the commercially negotiated outcomes achieved with new and renewing users.

Glencore

49 Glencore was the foundation user of the Terminal and historically its largest user by volume.⁴²

50 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

(a) [REDACTED]
[REDACTED].⁴⁴

(b) [REDACTED]
[REDACTED]
[REDACTED].⁴⁵

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁹ Statement of Mark Smith at [114], [125], sections G and H.

⁴⁰ Statement of Mark Smith at [160(a)].

⁴¹ DBIM Submission, 22 August 2025, page 5.

⁴² Statement of Mark Smith at [105].

⁴³ Statement of Mark Smith at [106]-[107].

⁴⁴ Statement of Mark Smith at [113].

⁴⁵ Statement of Mark Smith at [108].

[REDACTED]
[REDACTED]
[REDACTED].⁴⁶

51 [REDACTED]
[REDACTED]
[REDACTED]
(for example, Glencore applied to the National Competition Council in 2015 for a recommendation that the shipping channel service at the Port of Newcastle be declared under Part IIIA of the *Competition and Consumer Act 2010* (Cth)).⁴⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Stanmore

52 Stanmore has used the Terminal since 2009 and previously contracted up to [REDACTED] under its Legacy User Agreement, which is due to expire on [REDACTED].⁴⁸

53 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁵⁰

[REDACTED]
[REDACTED]
[REDACTED]

- 54 [REDACTED]
[REDACTED] :
- (a) [REDACTED]
[REDACTED].⁵¹
 - (b) [REDACTED]
[REDACTED].⁵²
 - (c) [REDACTED]
[REDACTED].⁵³

⁴⁶ [REDACTED] : see NQXT Submission at [157], [277(c)].

⁴⁷ NQXT Submission at [114]; see National Competition Council, Application for Declaration of Shipping Channel Services at the Port of Newcastle.

⁴⁸ Statement of Mark Smith at [164].

⁴⁹ Statement of Mark Smith at [164].

⁵⁰ Statement of Mark Smith at [167].

⁵¹ Statement of Mark Smith at [168].

⁵² Statement of Mark Smith at [170(d)].

⁵³ Statement of Mark Smith at [170(e)].

55 [REDACTED]

56 [REDACTED]. The QCA cannot reasonably conclude that NQXT faces “relatively limited constraint” on its ability to exercise market power while simultaneously having before it evidence that [REDACTED].⁵⁴

57 Mr Smith provides an update in relation to [REDACTED] in section B.1 of his Supplementary Statement.

Middlemount

58 Middlemount is one of the original Legacy Users and has previously contracted [REDACTED] at the Terminal. Middlemount’s Legacy User Agreement is due to expire in [REDACTED].⁵⁵

59 [REDACTED].⁵⁶

60 [REDACTED].⁵⁸

61 [REDACTED].

62 [REDACTED].

63 [REDACTED].⁶¹

⁵⁴ Contra to Draft Recommendation at page 67.

⁵⁵ Statement of Mark Smith at [156].

⁵⁶ Statement of Mark Smith at [158].

⁵⁷ Statement of Mark Smith at [159]-[160].

⁵⁸ Statement of Mark Smith at [159].

⁵⁹ Statement of Mark Smith at [162].

⁶⁰ Supplementary Statement of Mark Smith at [15].

⁶¹ Supplementary Statement of Mark Smith at [18].

Additional evidence of negotiations

73 Mr Smith in his Supplementary Statement provides updated information regarding [REDACTED]
[REDACTED]
[REDACTED] (detailed further in section 4.3(a) below).

74 As Mr Smith describes, although the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁶⁹

3.3 The New Standard Agreement provides the baseline, and any departure will always reflect an improvement for the user

75 The QCA states in the draft recommendation that the New Standard Agreement “*may provide a useful starting point for discussing the likely terms and conditions of access without declaration*” but observes that “it is not determinative” because “there are no restrictions on these parties to make counteroffers”.⁷⁰ This appears to suggest that the QCA has found it cannot safely rely on the terms of the New Standard Agreement as reflecting whether or not the ‘baseline’ terms are likely to be reasonable in the future. This is an error.

76 If a renewing user wishes to contract on the terms of the New Standard Agreement, then NQXT must do so. In that sense, it plays the same role as a regulated access agreement – it provides the baseline from which all negotiations proceed. Any change to the standard terms must be agreed with a user and will therefore only occur if the user sees the overall outcome as an improvement. The fact that there are no restrictions on access seekers making counter-offers supports, rather than undermines, the conclusion that the standard terms are determinative of the baseline.

77 That means that the New Standard Agreement does provide the QCA with a determinative guide as to the minimum price and non-price terms that are available to renewing users, including QCoal.

78 As set out in Mr Smith’s evidence, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

79 Further, Mr Smith’s evidence is that [REDACTED]
[REDACTED]
[REDACTED].⁷¹ As outlined in Mr Smith’s Supplementary Statement, [REDACTED]
[REDACTED]

⁶⁹ Supplementary Statement of Mark Smith at section B.2.

⁷⁰ Draft Recommendation at page 64.

⁷¹ Supplementary Statement of Mark Smith at [36].

[REDACTED]
[REDACTED].⁷²

80 In terms of the “northern mines”, which the QCA considers are captive to NQXT, [REDACTED]
[REDACTED]. There is no evidence that QCoal, or any other northern mines, are or have been treated less favourably. This undermines the QCA’s conclusion on market definition (discussed at section 4 below), which – if correct – would result in NQXT proposing a different and more reasonable set of terms for those customers with a competitive alternative than the terms imposed on those renewing users which the QCA assumes (wrongly) have no alternative.

81 Any final recommendation **must** reflect and engage with this evidence of [REDACTED] (including the applicant) – and what this establishes regarding competitive constraint, market dynamics and the reasonableness of likely future contractual arrangements.

3.4 Transparency of access

82 The QCA’s Draft Recommendation refers, in the context of its assessment of non-price terms, to concerns about “*governance and transparency around the terminal regulations and cost allocation*”.⁷³ These concerns are not explained and do not acknowledge or engage with the evidence before the QCA that demonstrates that [REDACTED] that *exceeds* what is available at the regulated DBCT terminal.

83 Specifically:

(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁷⁶ NQXT understands that only the user-owned companies of DBCT Pty Ltd (the operator of DBI) are provided with detailed cost information, whereas NQXT [REDACTED].⁷⁷

(b) The New Standard Agreement also [REDACTED]
[REDACTED]
[REDACTED]

3.5 No discriminatory access

84 Mr Dederer’s evidence confirms that APO [REDACTED]
[REDACTED], unlike DBCT’s “cargo assembly” model. [REDACTED]
[REDACTED]. This

⁷² Supplementary Statement of Mark Smith at section B.2 and [48].

⁷³ Draft Recommendation, pages 67-68.

⁷⁴ Statement of Mark Smith at [62].

⁷⁵ Statement of Mark Smith at [108].

⁷⁶ Statement of Mark Smith at [181].

⁷⁷ NQXT Submission at [181].

operational difference means the scope for any preferential treatment in rail scheduling is far more limited than at DBCT.⁷⁸

85 Further, Mr Dederer provides detailed operational data demonstrating equitable treatment of all users across rail unloading, stockpile allocation, and vessel queue management. [REDACTED]

[REDACTED]
[REDACTED].⁷⁹

86 This is consistent with Mr Smith's evidence that there has been no dispute raised by users regarding the adequacy of the services provided by the Terminal, including in relation to the efficiency or non-discriminatory nature of the Terminal's operation, since APO commenced as Operator of the Terminal.⁸⁰

3.6 The comparison between the TIC at NQXT and DBCT is not relevant

87 The Draft Recommendation seeks to compare the NQXT proposed future access charge of [REDACTED] with the estimated DBCT TIC of between \$4 and \$5 per tonne in 2027-2028. The QCA refers to this as a "reference point for the assessment of overall reasonableness of the NQXT charge".⁸¹ NQXT submits that this comparison is flawed and irrelevant. The DBCT TIC, in isolation, provides no relevant information as to the reasonableness of NQXT's proposed access charges.

88 Most obviously, the QCA compares only the TIC component of the total cost to use each terminal and ignores the handling charges and other costs associated with use of the terminal. As explained in the NQXT Submission, any assessment of pricing must have regard to the total cost of use, which involves a combination of the TIC and the relevant handling charges, as well as other costs associated with demurrage.⁸² This is the real world commercial comparison that a user would make when assessing which terminal it chooses to use.

89 The Draft Recommendation, elsewhere, acknowledges the importance of looking at total port-related charges. In Appendix B.3 of the Draft Recommendation, the QCA calculates total port charges (including both the TIC and handling charges) by dividing total revenue by contracted volumes. On this basis, the QCA estimates port-related charges for 2024-2025 of [REDACTED] per tonne for NQXT and [REDACTED] per tonne for DBCT, and acknowledges that 2024-2025 estimated prices are "broadly similar across both terminals". This means, based on the QCA's own calculation, the total port costs (TIC and handling charges) are less than 10% different between DBCT and NQXT.

90 It is internally inconsistent for the QCA, on the one hand and correctly, to acknowledge that total port-related charges are broadly similar across both terminals when they are properly measured, while on the other hand seeking to draw an adverse inference about NQXT's pricing based on a comparison of only one component of those charges.

91 As set out in NQXT's Submission at paragraphs [410]-[423], this comparison is also conservative [REDACTED]

[REDACTED]
[REDACTED].⁸³

⁷⁸ Statement of Damien Dederer, section C.7.

⁷⁹ Statement of Damien Dederer at [50]-[68], Tables 1 and 2.

⁸⁰ Statement of Mark Smith at [63].

⁸¹ Draft Recommendation, page 68.

⁸² NQXT Submission at [410]-[411].

⁸³ NQXT Submission at [49], [301] and [414].

- 92 In this regard, the total cost comparison is significantly more favourable to NQXT than any isolated comparison of the TIC would suggest.
- 93 Further, as the QCA acknowledges, DBCT and NQXT are different terminals with different cost structures, contract profiles and service features. Most obviously, DBCT is a larger terminal with higher contracted volumes. Given the high fixed costs associated with operating a coal export terminal and higher contracted volumes at DBCT, it may be expected that unit costs would be lower at DBCT, all other things being equal.
- 94 Finally, the comparison undertaken between the TIC at NQXT and DBCT does not reflect the cost of incremental tonnes in the form of the socialised cost of the 8X capacity. Properly analysed, any future DBI TIC would need to include:
- (i) the socialised costs of the 8X expansion project (\$1.46 billion);
 - (ii) the cost of associated rail infrastructure enhancements that would be required for the 8X Project to proceed. This is conservatively estimated at a further \$1 billion+, based on the last available public information from Aurizon Network providing details of what would be required to service this additional capacity (based on a rollingstock configuration of 3 locomotives and 126 wagons). On this configuration, the Goonyella Network would require (at least):
 - (A) track triplication at Hatfield to Yukan; and
 - (B) a fourth loop at DBCT itself.⁸⁴
- 95 It is inconsistent for the QCA to include DBI's 8X expansion project in its assessment of future capacity (for the purpose of criterion (b)) but then not include the full (rail and track) cost of 8X capacity in its assessment of the reasonableness of the approach adopted to terminal pricing by NQXT. In a competitive market, the competitive price is typically assessed based on the cost to service the next marginal tonne.

3.7 Expansion of the Terminal and the existing capacity deficit on the Newlands System

Terminal expansion

- 96 The QCA's draft recommendation states that "NQXT said it had plans to increase the Terminal's capacity to 60 mtpa" and that NQXT's owner Adani Ports said "minor modifications" would expand to 60 mtpa and potentially 120 mtpa.⁸⁵ The QCA appears to proceed on the basis that the Terminal has "approved plans for expansion to 60 mtpa, with further increments up to 120 mtpa", and states that "the Terminal should be able to satisfy demand from a further ramp-up of the Carmichael mine well beyond 25 mtpa".⁸⁶
- 97 However, the QCA does not at all consider or acknowledge Mr Smith's explicit evidence to the QCA that [REDACTED].⁸⁷ Mr Smith's statement explains that:
- (a) the X60 Expansion [REDACTED];

⁸⁴ Aurizon Network, 2017 Network Development Plan, at page 42.

⁸⁵ Draft Recommendation, page 7.

⁸⁶ Draft Recommendation, pages 39- 40.

⁸⁷ Statement of Mark Smith at [204].

- (b) there are significant obstacles including [REDACTED], significant issues with Aurizon’s CQCN capacity [REDACTED], and that [REDACTED];
- (c) the T0 Expansion [REDACTED]; and
- (d) the T2 and T3 Expansions have not been progressed.⁸⁸

Existing capacity deficit on the Newlands System

- 98 The QCA’s draft recommendation states that “*the fact the Newlands system is currently capacity-constrained is not an enduring constraint on future development of tenements and mine expansions*” as “*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*”.⁸⁹
- 99 NQXT submits that these findings of the QCA in respect of the Newlands System constraints, to the extent they appear to only rely on a single announcement of Adani Ports in an investor presentation, do not appear to have proper regard to the evidence filed by NQXT.
- 100 In respect of the Newlands System, the evidence of Michael Crowe, the COO of Bravus, confirms that [REDACTED].
- 101 The evidence of Brendan Lane, General Manager of BRC also confirms that the Newlands System has an existing capacity deficit of approximately 9.8 mtpa, and that this deficit is expected to persist until at least FY30.⁹¹ Mr Lane also confirms that Aurizon Network has not progressed any material infrastructure investments to increase capacity on the Newlands System beyond limited signalling works.⁹² Even the Terminal’s current nameplate capacity of 50 mtpa cannot be utilised given these rail constraints.
- 102 The QCA seeks to avoid dealing directly with the existence of the ECD in its Draft Recommendation, by stating, “*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*”.⁹³
- 103 As the QCA is aware, the current deliverable capacity on the Newlands / GAPE System is only 39.8 mtpa, or less than 80% of the Terminal’s maximum capacity.⁹⁴ Over the period to 2031:
- (a) the ECD is expected to continue at current levels between FY27 to FY28; and

⁸⁸ Statement of Mark Smith at [205]-[209].

⁸⁹ Draft Recommendation, page 58.

⁹⁰ Statement of Michael Crowe at [9]-[12].

⁹¹ Statement of Brendan Lane at [34]-[36].

⁹² Statement of Brendan Lane at [34]-[37].

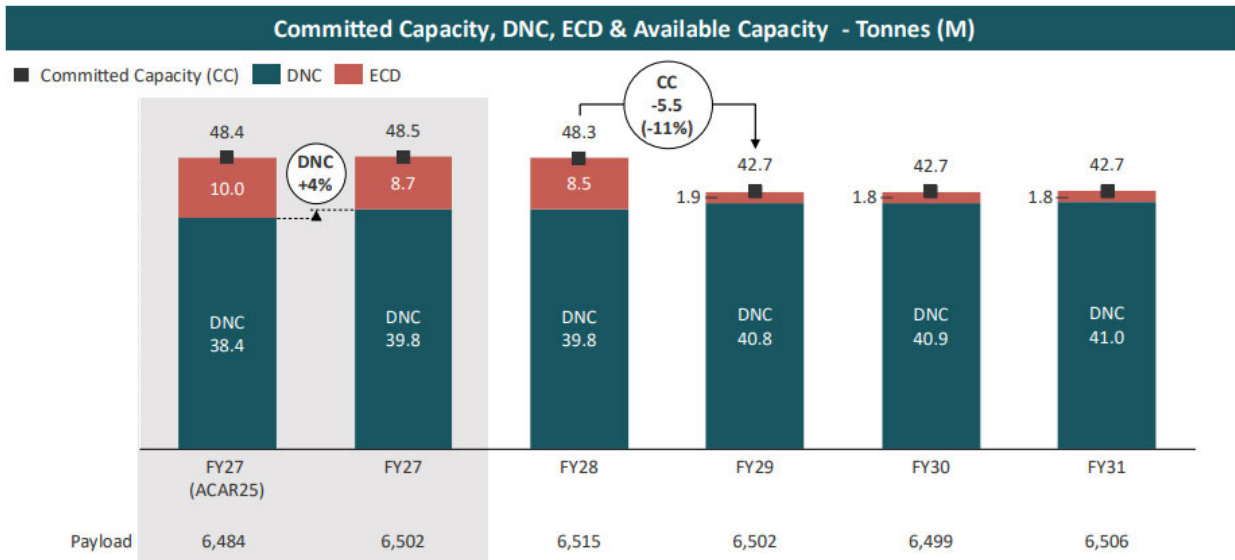
⁹³ Draft Recommendation at page 58

⁹⁴ Central QLD Coal network, Annual Capacity Assessment Report, 2026 at page 5 (2026 ACAR), available [here](#).

(b) while the ECD reduces between FY27 to FY29, this is not due to any increase in capacity, but because of an expected drop off in committed capacity due to the expiration and non-renewal of legacy contracted GAPE volume in FY28 (i.e., Rio Tinto).

104 Figure 11 from the 2026 ACAR is extracted below in Figure 1 and shows both trends.

Figure 1: Figure 11 from the 2026 ACAR Newlands and GAPE summary for FY27 to FY31 (tonnes)



105 Moreover, there is an existing queue in place in relation to the Newlands system, with demand for additional tonnes (including from Bravus). As Mr Smith describes in his Supplementary Statement, any increase in capacity (to the extent it does not come from non-renewal or relinquishment of contracts) requires incremental expansions to the system, which would be funded by users.⁹⁵

106 In practice, the regulatory framework is likely to prevent an expansion occurring because an Expanding User would be required to fund the expansion (on a full incremental cost basis), while the benefit of doing so would be shared with other existing users – i.e., by providing capacity which is already contracted to others.⁹⁶ Indeed, to the extent that expansion was likely to be undertaken by Aurizon Network in order to meet demand for additional tonnes, this would already be expected to occur and would be apparent in the capacity model. It is not.

107 To the extent that the QCA finds that the ECD is not “an enduring constraint on future development of tenements or mine expansions, as below rail capacity would likely be developed in response to customer demand”,⁹⁷ it needs to explain how this is consistent with the evidence above. NQXT respectfully submits that the QCA has no basis for finding that the below rail network is likely to be expanded in any substantial or meaningful way by Aurizon Network over the proposed term of declaration (i.e., 10-years) in a manner that would support mine expansions or utilisation of the remaining spare capacity at the Terminal, including by Bravus.

⁹⁵ Supplementary Statement of Mark Smith at [55].

⁹⁶ Supplementary Statement of Mark Smith at Section C.2.

⁹⁷ Draft Recommendation at page 58.

4 The QCA's approach to market definition for the purpose of criterion (b)

4.1 Overview

- 108 A threshold issue with the Draft Recommendation concerns the QCA's approach to defining the market in which NQXT's service is provided for the purposes of criterion (b).
- 109 The purpose of market definition as part of the criterion (b) assessment is to facilitate estimation of foreseeable demand and ultimately a determination of whether the facility is a 'natural monopoly' for servicing that foreseeable demand. In this context, the market must encompass not just demand serviced by the facility itself but also demand that is serviced by alternative facilities. If market definition is reduced to identifying only a subset of demand already serviced by the facility, the criterion (b) assessment becomes entirely circular and pointless.
- 110 The QCA's market definition incorrectly focuses on demand for NQXT's service and excludes demand for substitute services. This is most apparent in the QCA's treatment of demand from Goonyella mines. Volumes from Goonyella mines are treated as being "in the market" only insofar as they are contracted to NQXT. As soon as those volumes switch to DBCT then the QCA considers that they are no longer "in the market". This leads to the absurd conclusion that some mines are simultaneously inside and outside the market boundary or that the market boundary moves as volumes are switched (which is the essential feature of competition, sought to be identified).
- 111 Of course, the fact that volumes are switching between terminals is not evidence that market boundaries are changing. Rather, it is clear evidence of competition *within* the market. Moreover, it is a strong indication that NQXT is not a natural monopoly – natural monopolies, by definition, do not face the risk of customers switching to alternative facilities.
- 112 The QCA's approach is an attempt to reverse engineer a "market definition" that suits its earlier redeclaration outcome, without engaging with the evidence and commercial reality at the Terminal. If this reasoning were to carry through to the final recommendation, the finding would be irrational and unsafe.
- 113 NQXT reiterates its submissions that, properly framed, the market in which NQXT's services are offered is the market for coal export handling services in central Queensland and comprises, at least, the coal handling services supplied by NQXT and DBCT. This market necessarily extends to include customers in the Goonyella system at least as far south as Middlemount. Within this market, evidence shows that customers can and do readily switch between terminals and often 'multi-home' across multiple terminals to meet their overall need for coal handling services.

4.2 The QCA has recognised but then failed to apply the commercially realistic competitive dynamic between coal terminals

- 114 The QCA in the Draft Recommendation rightly identifies that competition for terminal services is episodic and based on periods of contestability when long-term and often sunk commitments are negotiated. The Draft Recommendation states, for example (emphasis added):

"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.”⁹⁸

...

*“The temporal dimension evaluates the changing nature of markets over time. The temporal dimension evaluates the changing nature of markets over time and imposes a 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.”*⁹⁹ (emphasis added)

115 NQXT agrees. This means that any assessment of competition between NQXT and DBCT for the purpose of market definition takes a number of forms:

- (a) competing for new users and volumes at the time that a mine is first developed or at the point of major expansions;
- (b) developing new capacity to attract volumes from the other, where a competitor faces constraints; and
- (c) competing to attract (or to retain) volumes at periodic contract renewal points, which historically have been every 10-years.

116 At each of these points in time, the consequence of competition between terminals is that a coal producer makes a long-term and often sunk commitment to future use of the successful terminal and rail solution. Naturally, once such decisions have been made, a coal producer will retain an operational and cost preference for the terminal they have chosen to use (at least during tenure of their contract). This does not reflect the absence of competition but is the essential outcome of a competitive process between coal terminals.

117 While the QCA acknowledged the episodic and long-term nature of competition for terminal services, its approach to testing the boundary of the market for these services did not apply this approach or engage with this evidence. Instead, the Draft Recommendation proceeds based on hypothetically testing whether a particular coal producer would move spot tonnes to an alternative terminal based on current pricing if it could do so – an entirely hypothetical approach which reflects neither commercial reality nor the QCA’s own view of the episodic nature of competition in the relevant market. The SSNIP test as applied in the Draft Recommendation is simply not fit for the purpose of market definition in this case.

118 In the supplementary CEG report dated 12 June 2026 provided in response to the Draft Recommendation (**Attachment B** to this submission), CEG make the point simply:¹⁰⁰

“The relevant economic question is not whether a mine currently uses NQXT or DBCT.... The relevant question is whether that mine would, in past, actual or foreseeable circumstances, consider the terminals as potential substitutes for each other... By focusing on realised flows rather than contestable demand, the QCA effectively treats the market share that is the outcome of competition as defining the scope of competition.”

⁹⁸ Draft Recommendation at page 33.

⁹⁹ Draft Recommendation at page 105.

¹⁰⁰ CEG Memorandum at [39]-[40].

4.3 Evidence of episodic rivalry

119 The QCA states in the Draft Recommendation that it does “not see material evidence of rivalry between the 2 ports”.¹⁰¹ This finding is misconceived and fails to engage with the substantial evidence before it.

120 Indeed, to the contrary, the QCA is in the fortunate position of having evidence before it of precisely the episodic competitive dynamics that exist between NQXT and DBCT including:

- (a) evidence of rivalry in seeking to attract volumes from a new mine;
- (b) evidence of capacity being developed by both terminals over time in order to attract miners using the other, including to respond to capacity constraints; and

(c) [REDACTED].

121 In all three respects, the evidence demonstrates a strong and sustained rivalry between the terminals and highlights the extent to which capacity and pricing decisions made at DBCT pose a strong competitive threat and constraint on NQXT.

Evidence of rivalry to attract new mines

122 Mr Smith has given extensive evidence about the bargaining position of renewing users [REDACTED].¹⁰² This has included [REDACTED].

123 There is also clear evidence of rivalry with DBCT to attract new producers who have existing capacity at DBCT or could credibly use that facility once their mines are operational given their location in the Goonyella system. Mr Smith’s evidence is that [REDACTED]:

(a) [REDACTED].¹⁰³

(b) [REDACTED].

(c) [REDACTED].

¹⁰¹ Draft Recommendation at page 33
¹⁰² Statement of Mark Smith at [114], [116] and [129].
¹⁰³ Statement of Mark Smith at [122].
¹⁰⁴ Supplementary Statement of Mark Smith at [37].
¹⁰⁵ Supplementary Statement of Mark Smith at [41] – [45].

[REDACTED]

(d) [REDACTED]

124 [REDACTED]



¹⁰⁶ See for example, Terracom ASX Announcement, 27 February 2026, page 7 ([link](#)).

¹⁰⁷ Supplementary Statement of Mark Smith at [43].

¹⁰⁸ Supplementary Statement of Mark Smith at [39] – [40].

¹⁰⁹ See for example, Whitehaven, March 2026 Quarterly Report, page 6 ([link](#)).

Evidence of capacity being developed as a competitive response to capacity constraints of the other

125 The QCA's reasoning appears to proceed on the basis that investment by a terminal in additional capacity is not an element of competitive rivalry. The basis for this view is not explained in the Draft Recommendation and is inconsistent with commercial reality and economic orthodoxy. Decisions by a firm about when and how much capacity to develop in response to a competitor form an essential feature of competition and especially in a market such as terminal services, where the availability of, and investment in, capacity is a key indicia of competition.

126 As CEG states:¹¹⁰

“Capacity constraints are not an exogenous feature of the market. They reflect investment decisions made by the terminals in light of expected competitive conditions. Both NQXT and DBCT choose capacity with regard to the volumes they expect to win from the other. The observed level of capacity at any point in time is therefore an outcome of competition, not a boundary of it.”

127 This dynamic can be seen in the history of capacity expansions at DBCT and NQXT. Following capacity expansions at DBCT in the early 2000s, a decision was made by NQXT to expand capacity to serve customers in the Goonyella who couldn't be accommodated at DBCT. It was this investment, combined with construction of the NML, that allowed NQXT to win those volumes.

128 The competitive threat posed by the NQXT capacity expansion was noted by DBCT at the time. Market analysis attached to the DBCT 2009 Master Plan noted that, following completion of the NML and expansion of NQXT, “*Abbot Point will compete as it will be a common-user facility with an overlapping catchment area hence will compete directly for share of the contracted throughput and the users will compete against each other in the market*”. The risk of “leakage” to NQXT was identified in the following terms:¹¹¹

Abbot Point has the highest potential impact on DBCT due to the high degree of overlap in catchment post construction of the GAP rail line lining the Goonyella system to Abbot Point. Currently undergoing an expansion to 25 Mtpa capacity (the X25 project), and with plans to expand to 100 Mtpa in two further stages by 2014 this may have the potential to cause catchment leakage from DBCT, should the project proceed. The operations and projects that would be more easily able to change port would be those on the ‘Goonyella North’ line and ‘Blair Athol’ branch to the west of the Mallowa sidings. The Ports Corporation of Queensland stated in 2008 that they had sufficient demand to proceed, however the information supporting this has not been made public or if the same demand still exists.

During 2008 there was some catchment leakage from the Goonyella system to Abbot Point with trains travelling via the coastal railway due to congestion at DBCT, albeit in small quantities. The GAP project will enable a direct link. The construction of the GAP rail may have the effect of ‘fast-tracking’ development of projects near or adjoining the rail line, in the short to mid-term this could have an oversupply effect and potentially displace or defer some expansion or current production from existing Goonyella system producers.”

¹¹⁰ CEG Memorandum at [23].

¹¹¹ Wood Mackenzie, DBCT Management Market Report (Appendix F to the DBCT Master Plan 2009), page 42 ([link here](#)).

Evidence of rivalry to retain volumes at contract renewal

- 129 NQXT has already provided the QCA with substantial evidence detailing [REDACTED].¹¹² The QCA appears to suggest that the behaviour of Goonyella users is of no relevance to its assessment of rivalry or market definition, because those users have volume at the Terminal for “non-SSNIP related reasons”. The QCA further states that evidence shows that they have switched to DBCT when the opportunity has arisen.¹¹³
- 130 With respect, this reasoning is circular. The QCA defines switching as irrelevant because it was not caused by a hypothetical SSNIP and then concludes there is no evidence of rivalry because no switching has occurred in response to a SSNIP. This ignores the commercial reality that competition between terminals manifests through the episodic contracting process, through the ability to shift volumes at particular points in time and [REDACTED].
- 131 The fact that customers have switched volumes between NQXT and DBCT at various points in time is clear evidence that they see the services offered by each terminal as substitutable. This evidence of switching cannot be ignored just because it does not fit within the QCA’s narrow SSNIP-based view of the reasons why customers may choose to shift volumes.
- 132 Other evidence of real and practical rivalry and constraint during the renewal process includes the following:
- (a) [REDACTED].
 - (b) [REDACTED].
- 133 The evidence of Mr Smith is that [REDACTED].¹¹⁴
- 134 Mr Smith specifically states that [REDACTED].¹¹⁵
- 135 QCA itself forecasts declining demand from Goonyella customers (from approximately [REDACTED] currently to less than [REDACTED] by 2029) as volumes shift to DBCT. If the Terminal were a natural monopoly facility, this would not and could not occur.
- 4.4 DBCT 8X Project and user queue are not proper indicators of users’ willingness to rail tonnes north**
- 136 In setting out the factual background for its approach to market definition, the QCA in the Draft Recommendation:
- (i) notes that DBCT’s existing capacity of 84.2 mtpa is fully contracted;

¹¹² See section H of the Statement of Mark Smith and section B of the Supplementary Statement of Mark Smith.

¹¹³ Draft Recommendation, at page 32.

¹¹⁴ Statement of Mark Smith at [114] and Supplementary Statement of Mark Smith at [9].

¹¹⁵ Statement of Mark Smith at [160(a)].

- (ii) refers to the “potential 8X expansion” of DBCT, which would add up to 14.9 mtpa of capacity taking DBCT’s total to 99.1 at a total estimated cost of \$1.48 billion delivered in three phases (although, as noted above, this does not include the \$1 billion+ that would be required in rail enhancements on the Goonyella System to deliver this incremental volume); and
- (iii) notes that as at November 2025, there was a queue for 29 mtpa of capacity at DBCT, with customers having signed conditional access agreements for 12.9 mtpa.¹¹⁶

137 Against this backdrop, the QCA concludes that “*despite there being 29 million tonnes in the queue for the planned 14.9 million tonne expansion at DBT (8X expansion), the mines in the queue have not secured long-term access to the Terminal, or expansion of rail capacity to do so*”¹¹⁷ and concludes that:

*“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.”*¹¹⁸

138 The implication of the QCA’s draft conclusion is that if NQXT and DBCT were competitors in the same market, Goonyella users unable to obtain capacity at DBCT would rail their volumes north to NQXT rather than sitting in the queue for DBCT. NQXT submits this is a non-sequitur.

139 The mere fact that the 8X Project is being explored, and that there is a queue for capacity at DBCT, does not tell the QCA anything about the relative tendency of those users to rail volume north to NQXT because it does not reflect the actual cost of the 8X Project (which, in addition to the \$1.48 billion cost of the expansion itself, would also require rail infrastructure modifications to accommodate 8X at a further cost of at least \$1 billion) whereas it costs a user nothing to sit in the queue for DBCT. The queue at DBCT offers a free option for customers in the event that capacity becomes available in the future. It does not reflect a meaningful commitment to use that capacity or to pay for it (given both the substantial terminal and rail costs involved).

4.5 The application of the SSNIP as proposed does not work

140 While recognising that competition between terminals is episodic and based on major capacity investment decisions, the QCA proceeds to apply an analytical tool that does not reflect these competitive dynamics.

141 The QCA’s application of the SSNIP test assumes a particular form of competition that is entirely divorced from observed competitive dynamics. The SSNIP test, as applied by the QCA, appears to assume that switching would only occur on a spot basis in response to a small but significant price change. Of course, this is not how switching between terminals actually occurs. As observed by the QCA, switching typically occurs at the time of entering into or renewing long-term contracts. Moreover, the contest between terminals for these long-term contracts is shaped by their capacity investment decisions as much as short term price differentials.

142 Moreover, the way in which the SSNIP test is applied by the QCA means that it is inapt to capture all demand in the market, *including demand for substitute services*. The QCA starts

¹¹⁶ Draft Recommendation, page 22

¹¹⁷ Draft Recommendation, page 24.

¹¹⁸ Ibid.

with the narrowest possible definition of the market (i.e. current demand for NQXT's services) and then asks whether any demand within that narrow market would switch to an alternative facility. At best, this may provide some indication of whether there are alternatives available to current NQXT users (i.e. those within the narrowest possible definition of the market). However, it says nothing about the demand for substitute services or foreseeable demand in the market more broadly.

- 143 The key difference between the market definition adopted by the QCA and that proposed by NQXT is that NQXT's market definition recognises potential demand from Goonyella customers. NQXT's approach reflects the commercial reality that Goonyella customers can and do use NQXT – while recognising that part of this demand is serviced by substitute facilities. The QCA's approach only recognises this source of demand to the extent that it is actually contracted to NQXT.
- 144 The QCA's approach, fundamentally, involves testing the willingness of *existing* NQXT users (principally the northern mines) to switch their volumes on a spot basis to DBCT. It does not address the most critical question for the criterion (b) assessment – i.e. whether and to what extent the market for NQXT's service extends *beyond* existing users and encompasses demand that is currently served by alternative facilities.
- 145 Moreover, the QCA's SSNIP analysis is incomplete and distorted by regulatory pricing decisions. The problems with this analysis include:
- (a) **SSNIP analysis appears to assume a uniform price:** to the extent that a SSNIP analysis is applied, it appears to assume that all users will be paying a uniform price. However, the reality is that different users [REDACTED] and the incremental cost of serving them (which may depend on whether a capacity expansion was required at the relevant time).
 - (b) **Assumed cost of using alternative facilities based on socialised pricing:** the cost of using expansion capacity at DBCT is based on the pricing approach determined by the QCA, rather than the incremental cost of that capacity. The QCA's pricing approach involves socialisation of expansion costs, meaning that customers utilising expansion capacity will not pay the full incremental cost of that capacity. CEG's second report demonstrates that, if a SSNIP approach was applied using cost-based prices (i.e. removing effects of socialisation), this would substantially expand the geographic scope of the market.¹¹⁹
 - (c) **SSNIP analysis is only partially applied.** The QCA's market definition is only partially the product of a SSNIP analysis. The QCA appears to apply a form of SSNIP analysis to determine that northern mines are unlikely to switch to DBCT. On this basis, the QCA refers to the northern mines as "*the natural market for the terminal*".¹²⁰ However the QCA then needs to supplement this with demand from Goonyella NQXT users, recognising that the market for NQXT's service extends beyond the "*natural market*".
- 146 The QCA's decision to supplement its SSNIP-based analysis of the "*natural market*" reflects a recognition that this analysis does not reflect market reality. The QCA correctly observes that:¹²¹

¹¹⁹ CEG Supplementary Report dated 21 October 2025, section 2.2.

¹²⁰ Draft Recommendation, page 32.

¹²¹ Draft Recommendation, page 29.

“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”.

147 While recognising the obvious problem with HoustonKemp’s analysis, the QCA adopts the wrong solution. By simply augmenting and supplementing the SSNIP-based analysis, the QCA arrives at a market definition that is nonsensical. Under the QCA’s definition of the market for NQXT’s service:

- (a) The market includes mines as far south as Middlemount but excludes mines that are significantly closer to NQXT – as shown in **Appendix 1** to this submission.
- (b) Some mines are initially in the market but then leave the market when they switch to DBCT. [REDACTED]
- (c) Some customers and their mines are simultaneously in the market (for volumes contracted to NQXT) and not in the market (for volumes contracted to DBCT). This includes, for example, [REDACTED].

148 To illustrate this point, **Appendix 1** to this submission shows the relevant Queensland mines and their relative distance to NQXT (in which order they are ranked) as well as to DBCT and the Port of Gladstone, in all cases measured by reference to rail distance diagram. Moreover, a large number of mines throughout the CQCN operate across multiple terminals including NQXT, DBCT and Gladstone (shown in the table in **Appendix 2**).

149 This data demonstrates that producers’ decision of export port is **not** a distance-driven decision. This is manifestly evident from Appendix 1, which shows that:

- (i) five mines – [REDACTED] – all ship via NQXT despite all being closer to DBCT by rail distance, and in the case of [REDACTED] also closer to the Port of Gladstone; and
- (ii) there is a group of 8 mines, all of which currently ship via DBCT, which are only marginally closer to DBCT than NQXT (less than 50km in each instance) – these mines, which are indicated by the red line in Appendix 1, are [REDACTED]
[REDACTED]
[REDACTED]

150 Based on Wood Mackenzie data, the total export production of each of these 8 mines for the period 2024 – 2029 is set out in the Table below.¹²² If [REDACTED] the volumes from these mines were to switch to NQXT, the Terminal would exceed its 50 mtpa nameplate capacity and criterion (b) would be satisfied.

¹²² [REDACTED]
[REDACTED]
[REDACTED]

separate markets. Her Honour found that this approach was “*not well-adapted to the circumstances*” and led to “*implausible*” results.¹²⁵

- 156 One of the observations made by Her Honour in *NSW Ports* is that a customer’s choice of port will be influenced by a range of factors. Moreover, port or terminal charges typically comprise a small proportion of the total supply chain cost. As a result, a narrow focus on changes in terminal charges may obscure other reasons for customer switching.¹²⁶
- 157 This is plainly the case with respect to demand for NQXT’s coal handling service. For NQXT’s customers and potential customers, port charges are a relatively small component of the total supply chain cost (as evidenced in [REDACTED] below). However, these customers may still switch between terminals for reasons other than 5-10% change in the port charge. As the market evidence clearly demonstrates, customers will generally not consider themselves ‘captive’ to one particular port.
- 158 The market for NQXT’s coal handling service therefore must include all customers and potential customers who have a willingness to pay for the service that exceeds the incremental cost of serving them. This explains why several customers from outside the “natural market”, whose use of the Terminal cannot be explained by a SSNIP test, have contracted significant volumes.
- 159 This is the only approach to defining the market that aligns with the observed commercial reality.

¹²⁵ *ACCC v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720 at [509], [570].

¹²⁶ *Ibid*, at [848].

[Redacted]

[Redacted]

4.6 Conclusion

- 160 With respect, NQXT submits that the QCA's approach to market definition in the Draft Recommendation does not properly identify the market in which NQXT's service is provided.
- 161 The task of market definition is, as French J famously observed,¹²⁷ a matter of observing economic and commercial realities. While the QCA recognises the nature of competition in the supply of terminal service (i.e., episodic and based on periodic entry into or renegotiation of long-term contracts for capacity), the QCA does not consistently apply this competitive dynamic when seeking to analyse market boundaries for the purpose of criterion (b).
- 162 This leads to a number of significant errors:
- (a) The Draft Recommendation applies a narrow and ill-fitting SSNIP test, which undertakes a hypothetical assessment of substitutability, based on the potential for switching of volumes by existing users, based on short-run terminal and rail prices. This is a wholly different substitution question to the one made by coal producers when in the market for the actual service – i.e. long-term, contracted capacity at a coal terminal.
 - (b) The Draft Recommendation then fails to make sense of the substantial evidence before the QCA in relation to the current “contestable” period during which all Legacy User Agreements are being renegotiated – and the real, commercial evidence of constraint and rivalry that are apparent. This is reinforced by additional evidence, provided with this submission, of NQXT [REDACTED].
 - (c) Because of these errors, the final conclusion that approximately half of the users of the Terminal are not in the market for terminal services is clearly irrational. The Draft Recommendation can only attempt to explain the absurdity by assuming that these users have “non-SSNIP” reasons for obtaining services from NQXT and are therefore in a different market.
- 163 The result of these compounding errors is that, instead of identifying total foreseeable demand in the market for terminal services as required by criterion (b) (including demand served by substitute facilities), the Draft Recommendation operates as a reverse-engineered justification for the market comprising only of forecast demand for NQXT's existing service from existing users. The QCA then excludes from this purported “market” demand associated with any use of substitute services by customers who also use DBCT (i.e., the QCA excludes volumes that it hypothesises will shift in the future to DBCT).
- 164 The SSNIP test, as applied in the Draft Recommendation, therefore does not test the boundaries of the market for NQXT's service or identify total foreseeable demand in that market. At best, it provides an indication of the likelihood of the extent to which the QCA hypothesises some *current* NQXT customers *might* switch some volumes to another terminal in response to a price increase, based on current, short run relative transport costs.
- 165 Put differently, a “natural cost advantage” is not the same thing as a natural monopoly. The Productivity Commission made clear that criterion (b) is intended to identify facilities that face an enduring lack of effective competition, not merely facilities that have a locational advantage for some customers. The fact that northern mines face higher rail costs to reach DBCT does not mean that NQXT is a natural monopoly. It means that NQXT has a locational advantage for

¹²⁷ *Taprobane Tours WA Pty Ltd v Singapore Airlines Limited* [1991] FCAFC 808; 33 FCR 158 at [36].

those customers, just as DBCT has a locational advantage for Goonyella customers. Both terminals serve overlapping portions of the same broader market.

166 The absurdity that results from this analysis is that a customer such as [REDACTED] would be partly in the market ([REDACTED]) but partly not (for the balance of its volumes at DBCT). This is not a coherent approach to market definition.

167 It also means that the QCA cannot accept future potential customers as in the market, despite the clear evidence of NQXT [REDACTED]. For example, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹²⁸

168 Finally, the Draft Recommendation fails to address the legal and policy consequences of its approach, which must be:

- (a) The “declared service” to which any regulation applied would necessarily be limited to the extent of the natural monopoly under criterion (b) – and the QCA could only validly apply such regulation to northern mines, which the QCA identifies are the only customers within the relevant market for the service. Any attempt to extend declaration to all users (including those that are not in the market for the relevant “northern mine terminal services”) would result in legal error.
- (b) The QCA’s approach gives rise to a wider public policy risk which is relevant to criterion (d), in that its approach, by definition, results in every terminal and other major facility in Queensland with locational cost advantages being defined as a natural monopoly. This would have profound implications for regulatory risk and infrastructure investment in Queensland.

¹²⁸ Supplementary Statement of Mark Smith at [35]-[45].

5 The QCA's approach to market definition in relation to "late-stage" tenements under criterion (a)

169 NQXT agrees with the QCA that there is no evidence that declaration would promote a material increase in competition in any relevant market, including the market for later-stage coal tenements. The limited historical and planned activity for later-stage coal tenements in the region supports the QCA's preliminary view that such a market is unlikely to be competitive in a future with or without declaration.

170 Nonetheless, NQXT makes the following observations that further reinforce and support this conclusion.

5.1 There is no evidence of a distinct 'market' for late-stage tenements separable from the market for developed and operating mines

171 The QCA is correct in observing that the current state of competition is characterised by "*limited entry by new participants, thin trading and stalled development activity*".¹²⁹

172 More than this, all the tenements within the Newlands-Galilee system identified by the QCA in Table 15 are effectively held by miners, as the "non-miners" in reality are mining companies that have yet to develop their projects (such as Hancock Coal).¹³⁰

173 There is no evidence of any party acquiring or trading in late-stage tenements as an intermediary or speculator. That is to say, unlike exploration tenements (where there is a degree of speculation), there is no evidence of any distinct market for late-stage tenements, at least in the geographic region identified by the QCA as relevant.

174 The QCA points to three transactions as supporting the existence of a separate, dependent market for late-stage coal tenements. However, none of those transactions demonstrate any discrete demand for late-stage tenements. In none of these examples did the acquirer set out to obtain the tenement itself. Rather, the acquirer's demand was for an economic interest in an operating mine, and tenements simply formed part of the broader bundle of assets being acquired as part of the sale, along with an interest in goodwill, intellectual property, equipment and customer contracts which underlie any business. There is no basis for treating these transactions as evidence of a separate market in which late-stage tenements are traded as a discrete product. To draw that conclusion would be analogous to concluding that there is a separate market for plant and equipment simply because interests in such assets are routinely transferred as part of wider business sales.

175 In particular, the QCA refers to:¹³¹

- (a) Glencore's acquisition of an additional 12.5% share in two mineral development licences for coal in the Galilee Basin in 2022 – Glencore has had an interest in these licences (including at times a 100% interest) since they were granted in 2004 and 2019.¹³² While Glencore's reasons for increasing and decreasing its interests in these licences over time is unclear, it has not traded in tenements as an independent party.

¹²⁹ Draft Recommendation, page 74.

¹³⁰ Draft Recommendation, page 72.

¹³¹ Draft Recommendation, page 47.

¹³² <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=356>; <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=3035>

- (b) QCoal's acquisition of Cliffs Australia Coal's share of the Sonoma Mine in the Newlands system in 2013 – this was in the context Cliffs Australia selling its 45% interest in the joint venture which operates the Sonoma Mine, where an economic interest in the tenements was part of the broader bundle of assets being sold (along with a wash plant and other assets).¹³³
- (c) In 2016, Glencore purchased the remaining 45% JV interest in the Newlands and Collinsville mines from Itochu and Sumitomo – as above, this was an acquisition of interests in operating mines, not the acquisition of tenements as a distinct product.¹³⁴

176 The QCA has not identified a single transaction since 2013, or at all, in which a party has acquired a late-stage tenement otherwise than as part of an acquisition of, or increase in interest in, an operating mine or where the party had an existing interest in the tenements.

5.2 Miners operate across catchments

177 NQXT also respectfully disagrees with the QCA's view that miners generally operate within a single and specific rail-port catchment. A number of large global and Australian mining companies operate across multiple basins, ports and rail-networks, often choosing to diversify their transport routes and export terminals to manage supply chain disruption risks. For example:

- Stanmore's 2025 annual report stated that it had chosen to operate in two different port and rail corridors and had secured secondary capacity in response to the logistical risk posed by third party reliance causing supply chain disruptions.¹³⁵
- Yancoal currently operates three active mines in both the Bowen and Surat Basins, with two of its mines (Yarrabee and Middlemount) utilising both the Blackwater and Goonyella rail systems to transport coal for export via WICET, DBCT and NQXT.¹³⁶ Yancoal also transports coal from Cameby Downs to the Port of Brisbane via the West Moreton Rail system.¹³⁷
- Glencore currently operates five active mines in the Bowen Basin, utilising the Newlands, Goonyella and Blackwater rail systems to transport coal to either WICET, DBCT or NQXT.¹³⁸

5.3 Conclusion

178 NQXT reiterates its previous submission that there is no evidence of a market for later-stage tenements in the Newlands-Galilee catchment, or if such a market exists, it is extremely limited and dormant.

¹³³ <https://www.clevelandcliffs.com/news/news-releases/detail/361/cliffs-natural-resources-inc-finalizes-sale-of-its-sonoma>

¹³⁴ <https://www.worldcoal.com/coal/06122016/glencore-buys-out-newlands-and-collinsville-mines/>

¹³⁵ Stanmore Resources Limited, *Annual Report 2025* (Annual Report, 2025) pg. 27 <https://stanmore.au/wp-content/uploads/2026/04/SMR-Annual-Report-2025_Digital_Single-Page.pdf>.

¹³⁶ Yancoal Australia Ltd, 'Our Sites', *Yancoal* <https://www.yancoal.com.au/our-sites/>; SYSTRA Scott Lister, *Queensland Rail West Moreton System: Review of Proposed Maintenance, Capital and Operations Expenditure — Draft Access Undertaking 2 (DAU2)* (Report, May 2019) pg. 7 <<https://www.qca.org.au/wp-content/uploads/2019/07/systra-west-moreton-apr-2019-redacted.pdf>>

¹³⁷ SYSTRA Scott Lister, *Queensland Rail West Moreton System: Review of Proposed Maintenance, Capital and Operations Expenditure — Draft Access Undertaking 2 (DAU2)* (Report, May 2019) pg. 7 <<https://www.qca.org.au/wp-content/uploads/2019/07/systra-west-moreton-apr-2019-redacted.pdf>>

¹³⁸ Glencore, 'Current Operations', *Glencore Australia*: <https://www.glencore.com.au/operations-and-projects/coal/current-operations>

179 The QCA rightly acknowledged that the limited transactions to date support NQXT's position that a commercially realistic market for later-stage coal tenements in the region does not exist.¹³⁹ No evidence has been presented to the QCA to contradict what NQXT submits is plainly the case: the regulatory status of the Terminal has no bearing on competition or investment in late-stage tenements.

¹³⁹ Draft Recommendation at page 48.

6 No evidence of hold-up risk

6.1 Overview

180 The QCA has correctly concluded that the likelihood of hold-up due to access concerns cannot be established.

181 As further developed in this Section:

- (a) Any assessment of hold-up risk must recognise that the context is fundamentally different to the 2020 redeclaration decision in respect of DBCT. NQXT has never been declared. To the extent that any late-stage tenements market is said to exist (which is contested), there has been, and is likely to be, no meaningful transactions in that market and the Terminal has persistent excess capacity which fundamentally alters the economic incentives of NQXT.
- (b) NQXT has no incentive to hold up investment – its commercial interest lies in attracting and retaining throughput to fill spare capacity, [REDACTED].
- (c) Declaration provides no meaningful regulatory certainty for investment decisions that span 30 to 50 years, given the proposed declaration period is only 10 years. To the extent that regulatory certainty is necessary to support investment, this is provided by the existence of a *right to seek declaration* (under Part 5 of the QCA Act) and that right exists independent of whether or not a decision to declare the Terminal at this time is made.
- (d) Terminal charges represent a small fraction of total mining costs and are immaterial to investment decisions relative to coal prices, royalties, financing and operational costs. Indeed, not a single public statement over the last 14 years has cited port or terminal charges as a factor influencing mine investment decisions in Queensland – producers consistently attribute such decisions to more important factors such as global coal price uncertainty, State royalties, rising operational costs, ESG/future demand considerations and financing and insurance constraints.

6.2 Hold-up risk must be assessed against the unique context of NQXT and access to the Terminal

182 As the Draft Recommendation acknowledges, access regulators have held different views about the relevance and potential impact of hold-up depending on the circumstances and that each regulator’s assessment has depended on the context.¹⁴⁰

183 This is appropriate. Hold-up risk must be assessed by reference to the context of the service, asset and market/s under assessment. Critically, the circumstances in relation to the Terminal and hold-up risk in the Newlands-Galilee basin are fundamentally different from those considered by the QCA and the Treasurer in relation to the redeclaration of the coal handling service at DBCT:

- (a) As the Minister noted in his decision, directly in relation to hold-up risk, “given **declaration already exists** the competitive nature of the market does not indicate that declaration would not promote material increase in competition”.¹⁴¹ By contrast, the coal handling service at NQXT has never been declared, so the regulatory context for the

¹⁴⁰ Draft Recommendation at page 79, Box 2.

¹⁴¹ Statement of Reasons at [4.7.51], available [here](#).

assessment of hold-up risk is manifestly different to that previously considered in the context of DBCT re-declaration.

- (b) The relevant tenements market under consideration are different to that considered in the DBCT redeclaration investigation – the QCA has correctly identified in the Draft Recommendation that *“the Newlands-Galilee tenements markets currently do not have high levels of competition, and they may not either in a future without declaration.”* The QCA goes on to observe that ***“Unlike the tenement conditions seen in the DBCT and Pilbara tenement markets, the Newlands-Galilee catchment has seen minimal activity and transactions, despite occasions of elevated coal prices.”***¹⁴² (Emphasis added).
- (c) NQXT’s incentives are different to those of DBI in relation to DBCT. Here, the QCA has rightly found that the Terminal will continue to have significant excess capacity for the period over which declaration is sought. By contrast, the QCA and Minister found that the estimate of total foreseeable demand for DBCT within the declaration period exceeded the then current capacity of DBCT (finding however that incremental expansions of DBCT to meet total foreseeable demand are “reasonably possible”).
- (d) NQXT’s incentives can be more closely compared to those of the Port of Newcastle when the NCC considered potential hold-up risk in the context of the application to revoke declaration of the shipping channel service; in the NCC’s Final Recommendation, it accepted expert evidence from NERA that *“it is important for PNO’s future coal-derived profits that it develops a reputation for not holding-up its customers”* and concluded that this will *“likely act as some level of constraint on PNO’s pricing and output decisions for the Service”*.¹⁴³

6.3 No incentive for NQXT to “hold up” investment in the coal tenements market

184 NQXT supports the QCA’s finding that NQXT is not incentivised to create conditions that lead to hold-up. To the contrary, the evidence before the QCA demonstrates that NQXT is strongly incentivised to support the development of tenements and mines in order to secure future throughput through the terminal.

185 This incentive is reflected in NQXT’s past and current conduct with respect to negotiations. As set out in section 4.3 above, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. This evidence demonstrates that [REDACTED]
[REDACTED].

186 NQXT also agrees with the QCA that, as Terminal charges are a relatively minor cost compared to other inputs, the regulatory status of the Terminal does not reflect a material factor in

¹⁴² Draft Recommendation at page 82.

¹⁴³ National Competition Council, ‘Revocation of the declaration of the shipping channel service at the Port of Newcastle’, Recommendation, 22 July 2019, page 63.

decisions regarding whether to develop or expand mine production, and any associated strategy regarding tenements.

6.4 The period over which any risk is determined must align with the declaration period and not the “life of mine”

187 The Draft Recommendation appears to conflate long-term “life of mine” certainty (which seems to assume it will be achieved if declaration is made) with a limited proposed declaration period of 10-years.

188 As acknowledged by the QCA in the Draft Determination, it will always be open for access users to seek declaration at any time if a case for declaration can be made and equally open to NQXT to seek to have any declaration revoked, at any time.¹⁴⁴ It is therefore not appropriate to consider the effect of declaration on investment decisions for a period of any longer than 10-years.

189 To the extent that any investment decisions about tenements or mine development are made over much longer periods (often 30-50 years) any individual declaration decision does not provide any degree of long term regulatory certainty. Rather, the fact that a statutory regime exists under Part 5 of the QCA Act that allows for declaration in the future, if required or justified, is the most that may be relevant and this will be the case, with or without declaration.

6.5 Terminal charges are not sufficiently material relative to other costs to influence investment decisions in the tenements market

190 NQXT strongly endorses the QCA’s finding that terminal charges represent a relatively small share of a coal producer’s total cash costs and that any inefficient component of that charge, should it exist, would be a smaller proportion again.¹⁴⁵

191 As explained in section 4.4 above and shown in Figure 3, for NQXT’s customers and potential customers port charges are a relatively small component of the total supply chain cost. Figure 3 demonstrates that mining costs and royalties/levies make up a substantial majority of total average supply chain costs, with transport costs and coal preparation costs also generally exceeding port charges. Producers must also pay overheads which, for some miners, are equal to or exceed port charges.

192 As the QCA itself identifies using different data:

- (i) *“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”* based on S&P Global Market Intelligence research;¹⁴⁶ and
- (ii) for Queensland thermal coal producers, port charges represent 8-12% of total cash costs (and for coking coal producers it is substantially lower at 5-7%).¹⁴⁷

193 In this context, where other factors like labour/production costs, royalties and energy costs are 2 to 5 times higher than port charges (depending on the mine in question), there is no world in which a small variation in port changes at the Terminal would influence investment decisions by

¹⁴⁴ Draft Recommendation at page 91.

¹⁴⁵ Draft Recommendation at page 81.

¹⁴⁶ Draft Recommendation at page 12, Figure 3.

¹⁴⁷ Draft Recommendation at page 13, Table 3.

an economically rational producer in respect of a market that (if it exists) involves long-run, 30-50 year investment horizons.

6.6 No evidence that port charges or the regulatory status of the Terminal has any effect on development or investment decisions in the coal market in Queensland (and therefore, has even less relevance to investment decisions in late-stage tenements)

194 The QCA invited submissions and evidence from market participants in relation to any potential hold-up risk arising from declaration of the Terminal.

195 NQXT submits that there is no evidence of the relevance of port charges or the regulatory status of the Terminal to investment decisions by coal producers. **Appendix 3** to this submission provides a comprehensive review of public announcements by coal producers in relation to 16 mine closures, suspensions, project abandonment and investment withdrawals in Queensland spanning from 2012 to 2025. Notably, **not a single public statement** references port or terminal charges as a reason for the decision not to continue or proceed with a mine project or investment over the last 14 years.¹⁴⁸

196 Rather, coal producers cite one or more of the following reasons, which are summarised in the chart in **Figure 4** below:

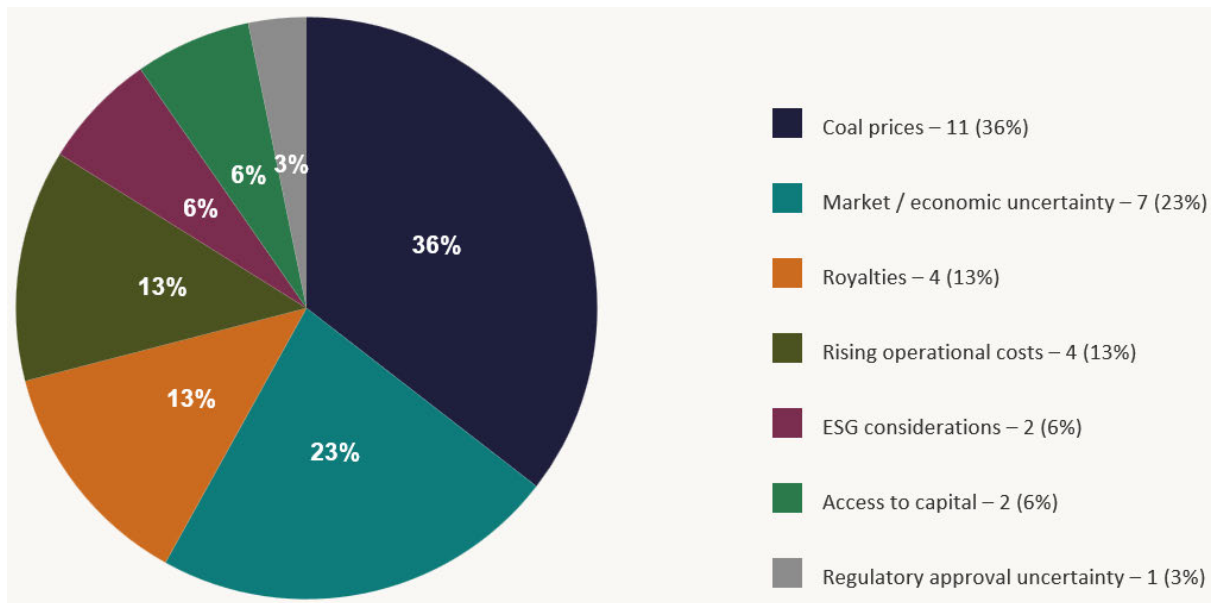
- (a) adverse coal prices (cited in relation to 11 of 16 decisions);
- (b) market and economic uncertainty (7 decisions);
- (c) Queensland State royalties and associated regulatory instability (4 decisions);
- (d) rising operational costs (4 decisions);
- (e) ESG considerations, decarbonisation pressures and stranded asset risk (2 decisions);
- (f) difficulties obtaining project financing / access to capital (2 decisions); and
- (g) regulatory approval uncertainty (1 decision).

197 This includes QCoal itself, which publicly attributed the November 2025 closure of its Cook Colliery mine to **high production costs, low coal prices** and Queensland's **royalty scheme**: *"Unfortunately Cook Colliery has been adversely affected by high production costs and low coal prices...The current royalty regime in Queensland also makes it very difficult to justify the continued operation of loss-making mines"*.¹⁴⁹

¹⁴⁸ For completeness, Cockatoo Coal Limited decided in 2015 to place the Baralaba Mine in Queensland into administration due to a range of factors, including *"contingent liabilities arising from agreements with Wiggins Island Coal Export Terminal (WICET), Aurizon and Gladstone Port Corporation (GPC)"*. NQXT does not consider this reason to be associated with hold-up arising from access to an export terminal or certainty of access. See Cockatoo Coal Limited, Interim Financial Report for the Half Year ended 31 December 2025 at p 5 (available [here](#)).

¹⁴⁹ See statement from QCoal dated 28 November 2025, <https://www.qcoal.com.au/cook-colliery-underground-mine-statement/>

Figure 4: Reasons publicly cited for Queensland coal mine closures, mine closures, suspensions, project abandonment and investment withdrawals (2012–2025)¹⁵⁰



Coal prices

- 198 Global coal price movements and uncertainty remains the dominant variable shaping Queensland producers' investment decisions.
- 199 Premium hard coking coal traded above US\$600 per tonne following Russia's invasion of Ukraine in 2022 and has since normalised, with prices having fallen approximately 30% from 2024 levels.¹⁵¹ Thermal coal has followed a similar trajectory, with the Newcastle 6,000 kcal/kg FOB benchmark declining to USD 125 per tonne in mid-2025 and prices for high-calorific value thermal coal having declined by February 2025 to levels last seen between 2017 and 2019.¹⁵²
- 200 The aggregate investment response has been a marked contraction: Queensland coal exploration spending fell to A\$145m in the first three quarters of 2025, down 22% year-on-year and marking the fifth consecutive quarterly decline.¹⁵³
- 201 As shown in Appendix 3, a number of mine closure decisions were attributed to coal prices among other factors, including QCoal's November 2025 closure of its Cook Colliery mine due to "low coal prices"¹⁵⁴ and Bowen Coking Coal's decision in late 2023 to place the Bluff mine into care and maintenance due to "softer pricing".¹⁵⁵

Rising Production Costs

- 202 Rising strip ratios are a structural challenge for Australia's coal mining industry. Analysis by the Institute for Energy Economics and Financial Analysis (**IEEFA**) found that strip ratios across

¹⁵⁰ See Appendix 2.

¹⁵¹ See Discovery Alert, "Navigating Queensland's Coal Industry Challenges in 2025" (30 September 2025, available at: <https://discoveryalert.com.au/queensland-coal-industry-challenges-2025/>)

¹⁵² See International Energy Agency (IEA), "Coal Mid-Year Update 2025", available at: <https://www.iea.org/reports/coal-mid-year-update-2025/prices>

¹⁵³ See Argus, "Queensland Coal Exploration Spending" (December 2025), available at: <https://www.argusmedia.com/en/news-and-insights/latest-market-news/2760626-australia-reduces-queensland-coal-exploration-spending>

¹⁵⁴ See QCoal's media release: <https://www.qcoal.com.au/cook-colliery-underground-mine-statement/>

¹⁵⁵ See Mining Technology, "Bowen to put Australian coal mine on care and maintenance" (September 2023), available at: <https://www.mining-technology.com/news/bowen-australian-coal-care/>

NSW coal mines have been rising by approximately 6% per year, meaning that mines are expanding in size and producers must remove increasing volumes of overburden to access the same quantity of coal.¹⁵⁶ This trend reflects the depletion of easily accessible reserves and the industry's shift toward deeper and more complex deposits.

- 203 Glencore's Valeria project in Queensland, for instance, would have required a peak workforce of over 2,000 and faced strip ratios that were expected to increase substantially over the life of the mine, undermining the project's long-term cost competitiveness.¹⁵⁷
- 204 In addition to geological challenges, Australian coal mines face rising wages, diesel costs, and equipment maintenance expenses. Diesel fuel alone represents a significant proportion of total mining costs. Prices have remained elevated since 2022 and have increased substantially since the commencement of conflict in Iran and the closure of the Strait of Hormuz in February 2026. As at March 2026, diesel accounts for approximately 20% of total operating costs for coal mines.¹⁵⁸ This is now likely to be even higher in light of current global diesel costs.
- 205 Operating costs were attributed as a contributing factor to numerous investment decisions as outlined in **Appendix 3**, including QCoal's closure of its Cook Colliery mine in late 2025,¹⁵⁹ and Bowen Coking Coal's July 2025 decision to place the Burton Coal Complex in Queensland into voluntary administration.¹⁶⁰

Increasing Royalties and Fiscal Uncertainty

- 206 In June 2022, the Queensland Government announced a new and progressive royalty regime that substantially increased the royalty rates applicable to coal producers when coal prices are elevated. The regime is now considered "the world's highest coal royalty regime",¹⁶¹ imposing effective royalty rates of up to 40% on coal prices above A\$300 per tonne, a significant increase from the previous maximum rate of 15%.
- 207 The impact on investment decisions was immediate. In December 2022, Glencore abandoned its proposed Valeria coal mine project in Queensland's Bowen Basin, a project with an estimated capital cost of \$1.3 billion.¹⁶² Glencore stated that the decision was driven by the Queensland Government's "*abrupt decisions to significantly increase coal royalties*" which "*created sovereign risk and an uncompetitive investment environment.*"¹⁶³
- 208 BHP's then-CEO Mike Henry was similarly critical of the royalty change, stating that the new regime made Queensland an uncompetitive jurisdiction for new coal investment and that BHP would redirect capital to other commodities and jurisdictions.¹⁶⁴ In September 2025, BHP announced the suspension of operations at its Saraji South coal mine in Queensland, with the

¹⁵⁶ See IEEFA, "Why Australia's coal mines are getting bigger" (November 2023), available at: <https://ieefa.org/resources/why-australias-coal-mines-are-getting-bigger>

¹⁵⁷ Ibid.

¹⁵⁸ See IEEFA, "Mining's costly diesel addiction must be a budget priority" (March 2026), available at: <https://ieefa.org/resources/minings-costly-diesel-addiction-must-be-budget-priority>

¹⁵⁹ See <https://www.qcoal.com.au/cook-colliery-underground-mine-statement/>

¹⁶⁰ See <https://announcements.asx.com.au/asxpdf/20250730/pdf/06m9j2pffb86p8.pdf>

¹⁶¹ See <https://discoveryalert.com.au/queensland-coal-industry-challenges-2025/>

¹⁶² See <https://www.mining-technology.com/news/glencore-scraps-coal/>; see also <https://www.theguardian.com/australia-news/2022/dec/08/glencore-scraps-application-for-new-coal-mine-in-queensland>.

¹⁶³ See <https://www.afr.com/companies/energy/glencore-pulls-plug-on-1-5b-thermal-coal-mine-in-ql-20221208-p5c4px>.

¹⁶⁴ See <https://discoveryalert.com.au/bhp-strategic-pressures-australian-metallurgical-coal-2025/>

loss of approximately 750 jobs, citing the burden of the state's royalty regime as a contributing factor.¹⁶⁵

- 209 Industry commentary has also singled out the royalty regime as a continuing and primary contributor to investment uncertainty. In June 2025, Coal Australia CEO Stuart Bocking stated that *"no serious investor is looking at Queensland anymore – not with this royalty structure"*.¹⁶⁶ In July 2025, Bowen Coking Coal entered administration also citing the "higher royalty rates" introduced by the Queensland Government.¹⁶⁷

Declining Global Demand Forecasts

- 210 Global demand for thermal coal is forecast to decline over the medium to long term. The International Energy Agency's (IEA) World Energy Outlook projects that coal demand will peak before 2030 under all scenarios, with the steepest declines occurring in advanced economies. In the IEA's Net Zero by 2050 scenario, unabated coal-fired power generation is virtually eliminated by 2040. Even under the IEA's Stated Policies Scenario, which assumes no new climate policies beyond those already enacted, global coal demand plateaus and then declines after 2025. China and India, Australia's two largest export markets, are both investing heavily in renewable energy and have signalled their intent to reduce coal dependence, albeit on different timelines.
- 211 For metallurgical coal, the outlook is somewhat more resilient in the near term due to the lack of commercially viable alternatives for steelmaking.

Climate Change Commitments

- 212 Major mining companies have made increasingly specific commitments to reduce their carbon footprints, including through managed decline of coal production. Glencore, the world's largest thermal coal exporter, has committed to a managed decline of its coal portfolio and cited this commitment as a factor in its decision to abandon the Valeria project, stating that the decision was *"consistent with [Glencore's] commitment to a responsibly managed decline of [its] global coal business"*.¹⁶⁸
- 213 These corporate commitments, combined with increasing pressure from shareholders, lenders, and insurers, have made it progressively more difficult to secure financing for new coal projects.

Insurance and Financing Challenges

- 214 The availability of insurance and financing for new coal projects has contracted significantly. Numerous major global insurers have adopted policies restricting underwriting for coal projects.¹⁶⁹ Similarly, many major international banks have imposed restrictions on lending to new coal mines, particularly thermal coal operations.
- 215 In Australia, this trend has been reflected in rising insurance premiums and reduced capacity for coal mining operations. Several Australian coal producers have reported difficulty obtaining adequate insurance coverage, with some resorting to self-insurance or captive arrangements to manage their risk exposure.

¹⁶⁵ See <https://www.reuters.com/world/asia-pacific/bhp-suspend-operations-cut-jobs-australian-coking-coal-mine-2025-09-17/>; see also <https://www.abc.net.au/news/2025-09-17/bhp-alliance-to-sack-750-workers-qld-mining-royalties-saraji/105782302>.

¹⁶⁶ See <https://discoveryalert.com.au/queensland-coal-industry-challenges-2025/>

¹⁶⁷ See <https://announcements.asx.com.au/asxpdf/20250730/pdf/06m9j2pffb86p8.pdf>

¹⁶⁸ See <https://www.mining-technology.com/news/glencore-scraps-coal/>

¹⁶⁹ See <https://global.insure-our-future.com/insurers-accelerated-the-shift-away-from-coal-new-study-finds/>

Regulatory and Planning Refusals

- 216 The regulatory environment for new coal mine approvals in Australia has become increasingly challenging. There are very few greenfield projects progressing through the regulatory approvals process and the combination of community opposition, legal challenges, and policy uncertainty has created a hostile environment for new coal mine development.
- 217 The difficulty of obtaining new mine approvals is compounded by the lengthy and costly nature of the approvals process itself. Environmental impact assessments, community consultation, and regulatory reviews can take five to ten years and cost hundreds of millions of dollars, with no guarantee of success.
- 218 Recent years have seen an increasing number of coal mine proposals rejected or significantly delayed by regulatory and planning bodies in Australia, or associated legal review proceedings of approvals, often on environmental or climate grounds. For example:
- (i) **Whitehaven ‘Winchester South’:** Whitehaven’s ‘Winchester South’ open cut coal mine in the Bowen Basin remains subject to Commonwealth approval and Queensland Land Court review. On 23 November 2023, the Queensland Government’s Coordinator General recommended the project to proceed, subject to conditions, following an extensive assessment process. In February 2024, the Queensland Department of Environment, Science and Innovation (**DESI**) approved the Winchester South Coal Mine Draft Environmental Authority. However, as of April 2026, the Commonwealth approval under the EPBC Act remains ongoing, and the project also remains subject to an ongoing review by the Queensland Land Court following the lodgement of objections against the Winchester South Draft Environmental Approval and Mining Lease Applications.¹⁷⁰
 - (ii) **Fox Resources exploratory licence:** In July 2025 the Queensland Government rejected an application by Fox Resources, lodged in 2019, for a coking coal mine in the Bundaberg region on agricultural and residential land. Queensland’s Attorney-General rejected the application as not in the public interest.¹⁷¹
 - (iii) **Legal challenge to Glencore Hail Creek expansion:** In May 2026, the Mackay Conservation Group launched court action in the Queensland Land Court to block Glencore’s planned expansion of its Hail Creek open-cut coal mine in Queensland, citing concerns over methane emissions and native habitat destruction.¹⁷²
 - (iv) **Rocky Hill open-cut mine:** In February 2019, the New South Wales Land and Environment Court refused development consent for the Rocky Hill open-cut coal mine near Gloucester, NSW, with extensive consideration of the climate change impacts of the proposed mine, including the downstream greenhouse gas emissions from the combustion of the extracted coal. The Rocky Hill decision was the first Australian court to reject a coal mine partly on climate grounds.¹⁷³

¹⁷⁰ See https://whitehavencoal.com.au/wp-content/uploads/2026/04/WHC_March_2026_Quarterly_Report.pdf; see also <https://whitehavencoal.com.au/our-business/our-assets/winchester-south/>

¹⁷¹ See [Final decision on Fox Coal mineral development licence application - Ministerial Media Statements](#)

¹⁷² See <https://www.argusmedia.com/en/news-and-insights/latest-market-news/2829694-australian-activists-challenge-glencore-coal-expansion>; see also <https://www.glencore.com.au/operations-and-projects/coal/current-operations/hail-creek-open-cut#environment-protection-and-biodiversity-conservation-act-referral>

¹⁷³ *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 (8 February 2019).

6.7 Conclusion

219 For the reasons set out above, the hold-up risk claimed by QCoal Users is not supported by evidence or the economic incentives facing NQXT.

220 In particular:

- (i) The assessment of hold-up risk must reflect the specific context of the Terminal, which is fundamentally different from prior assessments including DBCT – NQXT has never been declared, the Newlands-Galilee tenements market is characterised by minimal activity, and the Terminal has persistent excess capacity.
- (ii) NQXT has no incentive to hold up investment – its commercial interest lies in attracting and retaining throughput to fill spare capacity, as demonstrated by [REDACTED].
- (iii) Declaration provides no meaningful regulatory certainty for investment decisions that span 30 to 50 years, given the proposed declaration period is only 10 years. To the extent that regulatory certainty is relevant at all, this is provided by the ability to seek declaration under Part 5 of the QCA Act, which applies with or without declaration of any individual Terminal.
- (iv) NQXT charges represent a small fraction of total mining costs for users and are immaterial to 30-50 year investment decisions in relation to late stage tenements or any other aspect of coal mine planning. Not a single public statement over the last 14 years has cited port or terminal charges as a factor influencing mine investment decisions in Queensland – producers instead consistently attribute such decisions to adverse coal prices, State royalties, rising operational costs, ESG/climate change considerations and financing constraints.

7 The QCA's approach to criterion (d)

221 NQXT welcomes and supports the finding that declaration would not promote the public interest. To the contrary, declaration would be profoundly problematic for the State of Queensland, for the reasons set out below.

7.1 Impact on investment

Increased coordination and dispute costs

222 Coordination and related costs to date have principally been based on the arbitration process that stems from the Legacy User Agreements. This model has repeatedly seen NQXT and users enter into periodic disputes over a standardised TIC, and many of the complaints raised by the QCoal Users in their declaration applications relate to past TIC arbitrations. In contrast to [REDACTED] (one of its key benefits), these significant arbitration costs (which are not hypothetical with both NQXT and users historically bearing them) will be reintroduced by declaration.

223 The QCA states that 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*” and finds that it is therefore “*not satisfied that declaration would result in higher costs for NQXT*”.¹⁷⁴

224 With respect, that conclusion is difficult to reconcile with both the evidence before the QCA and the structural features of a declared regime. In particular:

- (a) Declaration would necessarily give rise to a negotiate–arbitrate framework under Part 5 of the QCA Act. That framework is inherently more formalised, procedurally intensive and dispute-prone than a purely commercial contracting environment. In particular:
 - (i) access pricing (including the TIC) would become subject to periodic review and potential revision through arbitration or an access undertaking;
 - (ii) the availability of arbitration as a standing dispute resolution mechanism creates a strong incentive for parties to test positions strategically, rather than resolve issues through commercial compromise; and
 - (iii) the experience under the Legacy User Agreements demonstrates that such disputes are not hypothetical but recurrent and resource-intensive.

As the QCA itself recognises, [REDACTED]
[REDACTED]. Those historical costs provide the most reliable indicator of the costs that are likely to arise under a future declared regime. As noted in paragraph 21 above:

- (i) NQXT estimates that it incurred legal costs of approximately [REDACTED] in the *AAPT v Lake Vermont* litigation; and
 - (ii) in relation to the last three price review arbitration processes in FY12, FY17 and FY22, NQXT estimates that the costs of the Adani Group have totalled approximately [REDACTED].
- (b) DBCT's Management submission indicates that regulatory processes applicable to the 8X expansion project are expected to add “*almost a year*” to project timelines. Such delays

¹⁷⁴ Draft Recommendation at page 95.

impose “*direct and indirect regulatory burden and costs*” and impose additional regulatory burdens that can inhibit innovation and reduce incentives to invest.¹⁷⁵ These forms of indirect cost are not acknowledged in the QCA’s analysis but are highly relevant to the assessment of criterion (d).

- 225 This can be contrasted with the future without declaration, where long term pricing is agreed up front as part of the current renewal process. There would be no further price dispute over the initial and fixed 10-year term.

No promotion of competition in any market

- 226 Finally, even if the QCA were ultimately to reach the conclusion that criterion (a) is satisfied, it would not follow that criterion (d) is also satisfied.
- 227 Criterion (d), as set out in section 76(2)(d) of the QCA Act, imposes a distinct and independent positive test: the QCA must be affirmatively satisfied that access (or increased access) to the service would promote the public interest. This is recognised by the QCA in Appendix A of the Draft Determination where it states that the QCA considers 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.*”¹⁷⁶ It is not enough to identify a theoretical promotion of competition in a dependent market – the applicant must satisfy the QCA that the community as a whole is likely to be better off as a result of declaration (including weighing a range of costs and benefits).
- 228 The only dependent market in which the QCA has identified in which there may be any potential impact resulting from declaration is the so-called, later-stage tenements market. If this market exists (which is disputed by NQXT), the QCA concedes that there have been no transactions for over a decade and that there is no evidence suggesting that this lack of activity is likely to change in the future. A theoretical and hypothetical promotion of competition in a market without any likely transactions over the declaration period cannot reasonably be found to be likely to give rise to a clear and positive public benefit. This is especially the case when balanced against the costs and risks associated with introducing declaration at NQXT, discussed above.
- 229 Finally, in relation to the QCoal User’s submission that declaration would mitigate the risk that NQXT could increase its own exports of thermal coal, and displace metallurgical coal volumes, NQXT reiterates its original submission that even if there was any risk of this occurring (which NQXT denies), declaration would not prevent this. The QCA is not permitted under the QCA Act from making a determination in response to an access dispute that prevented NQXT or Adani from utilising the Terminal to meet its own reasonably anticipated requirements.¹⁷⁷

¹⁷⁵ DBCT Management submission, page 8.

¹⁷⁶ Draft Recommendation at page 118.

¹⁷⁷ Part 5 of the QCA Act ensures that Adani can continue to utilise the Terminal to provide capacity to support its own reasonably foreseeable demand.

8 Conclusion

230 For the reasons set out in this submission, NQXT supports the QCA's Draft Recommendation that the coal handling service at the Terminal should not be declared.

Consistent with Appendix 2, mines that export through NQXT are highlighted. Red line indicates a group of 8 mines, which all ship through DBCT, where the rail distance from each mine to DBCT is less than 50km shorter than the rail distance to NQXT. Distances have been calculated using technical rail maps.



Appendix 2 – Queensland mine export Ports

Mines that export through NQXT are highlighted.

Mine Name	Current Port
Collinsville	NQXT
Northern Hub (Sonoma)	Closed
Northern Hub (Jax)	NQXT
Northern Hub (Drake)	NQXT
Sarum	Project phase
Carmichael Phase 1	NQXT
Carmichael (Underground)	NQXT
Carmichael Phase 2	NQXT
Newlands	NB: closed
Byerwen Phase 2	NQXT
Byerwen Phase 1	NQXT
Centurion	DBCT
Goonyella Riverside	DBCT
Grosvenor	DBCT
Moranbah North	DBCT
Olive Downs Complex	DBCT
Olive Downs Complex 2	DBCT
Winchester South	DBCT
Moranbah South	DBCT

Isaac Plains (Underground)	NQXT/DBCT
Isaac Plains	NQXT/DBCT
New Lenton	DBCT
Broadmeadow	DBCT
Broadmeadow East	DBCT
Burton	DBCT
Carborough Downs	DBCT
Broadlea	DBCT
Caval Ridge	DBCT
Coppabella	DBCT
Poitrel	NQXT/DBCT
Moorvale	DBCT
Moorvale (Underground)	DBCT
Millennium	DBCT
Millennium (Underground)	DBCT
South Walker Creek	DBCT
Peak Downs (Underground)	DBCT
Peak Downs	DBCT

Hail Creek	DBCT
Saraji	DBCT
Clermont	NQXT/DBCT
Blair Athol	DBCT
Lake Vermont	NQXT/DBCT/GLD
Norwich Park	DBCT
Vulcan	DBCT
Middlemount	NQXT/DBCT
German Creek East	DBCT/GLD
German Creek Southern	DBCT/GLD
German Creek Grasstree	DBCT/GLD
Lake Lindsay	DBCT/GLD
German Creek Central	DBCT/GLD
Foxleigh	DBCT/GLD
German Creek Aquila	DBCT/GLD
Daunia	DBCT

Appendix 3: Queensland coal market – public statements by industry stakeholders and reasons cited for decisions in relation to mine closures, suspensions or cancellations¹⁷⁸

Date	Mine/Project	Description of mine/project	Decision	Reasons given publicly for this decision	Link to announcement	Extracts from announcement
Announcements regarding mine closures, suspensions, reduction of operations						
2 December 2025	Cook Colliery mine	Underground mine near Blackwater, Queensland	Mine closure	Rising costs Market pressure Royalties	Cook Colliery mine closure announced (Statement from QCoal) Australia's QCoal to keep producing after mine closure (Argus) Queensland's coal royalty regime back in the spotlight after job cuts (ABC)	<p>QCoal public statement cites increased production costs and market pressures, and the current royalty regime: <i>“Unfortunately Cook Colliery has been adversely affected by high production costs and low coal prices...The current royalty scheme makes it very difficult to justify the continued operation of loss-making mines”.</i></p> <p>Queensland Resources Council (QRC) chief executive (Janette Hewson) commented on the winding back of operations by stating <i>“We have always been saying that royalties are going to hurt us as Queenslanders and now we are seeing the impacts of that”.</i></p>
18 September 2025	Queensland operations	Anglo American	Reduction of operations including	Market uncertainty Coal prices	Coal miner Anglo American confirms job	Anglo American Australia VP of people and corporate relations Ben Mansour referenced the businesses' need to

¹⁷⁸ Excludes mine closures where the end of mine life was cited as the reason.

Date	Mine/Project	Description of mine/project	Decision	Reasons given publicly for this decision	Link to announcement	Extracts from announcement
			redundancies at Anglo American's Brisbane office and in the Bowen Basin		cuts in Brisbane, Bowen Basin (ABC)	adapt to ongoing market pressures, including lower coal prices and rising costs.
17 September 2025	Saraji South coking coal mine	BHP Mitsubishi Alliance (BMA)	Mine closure Redundancies	Coal prices Royalties	BMA to pause Australia's Saraji South coking coal mine (Argus) BHP alliance to sack 750 workers blaming Queensland government mining royalties (ABC) Navigating Queensland's Coal Industry Challenges in 2025 Coal miner Anglo American confirms job cuts in Brisbane, Bowen Basin (ABC)	<p>BMA president (Adam Lancey) stated the industry was at a crisis point, making the mine closure a necessary decision in the face of the combined impact of the Queensland government's unsustainable coal royalties and market conditions.</p> <p>The company's board: "<i>challenging environment for the coal industry in Queensland from higher costs, lower global coal prices and higher royalty rates</i>".</p> <p>BMA described the job cuts as necessary due to the "combined impact of the Queensland government's unsustainable coal royalties and market conditions".</p> <p>MineLife senior resource analyst Gavin Wendt said BMA's decision was not "a shock" because the Queensland government's royalties scheme was "one</p>

Date	Mine/Project	Description of mine/project	Decision	Reasons given publicly for this decision	Link to announcement	Extracts from announcement
						of the biggest issues facing the coal industry".
30 July 2025	Burton Coal Complex	Open-cut metallurgical coal mine, Bowen Basin. Operated by Bowen Coking Coal Ltd.	Placed into voluntary administration	Rising operational Costs Increased royalties	ASX Announcement: Bown Coking Coal Ltd (ASX : BCB) – Company Update and appointment of Voluntary Administrators (30 July 2025)	"The Board's decision also reflects the current challenging environment for the coal industry in Queensland from higher costs, lower global coal prices and higher royalty rates introduced by the Queensland government in 2022 – Daryl Edwards, Chief Executive Officer, Gareth Quinn, Investor relations."
May 2024	Broadmeadow East Mine	Opencut coal mine - Bowen Coking Coal	Placed into care and maintenance	Rising operational costs	Bowen Coking Coal Limited – Interim Financial Report – 31 December 2024	"Broadmeadow East Mine was placed into care and maintenance in May 2024 due to the costs associated with relocating a powerline that traverses the mining lease." (Directors Report)
Late 2023	Bluff PCI coal mine – Bowen Coking Coal	Open cut mine	Placed into care and maintenance	Coal prices Higher operating costs	Bowen to put Australian coal mine on care and maintenance	"Bowen is taking prudent and responsible action to weather softer pricing, tighter labour markets, and increasing input and operational costs for Bluff Mine." (Bowen CEO Mark Ruston)
5 May 2023	China Stone Coal Project	Proposed coal mine south-west of	Government authorisation cancelled	ESG Considerations	Queensland coal projects cancelled over failure to provide	"If companies aren't willing to show how they will protect nature, then I'm willing to cancel their projects — and that's

Date	Mine/Project	Description of mine/project	Decision	Reasons given publicly for this decision	Link to announcement	Extracts from announcement
		Mackay, Queensland			environmental impact information	<i>exactly what I've done (Tanya Plibersek)"</i>
8 December 2022	Valeria project	Proposed open-cut metallurgical and thermal coal mine, Central Queensland	Glencore removed support for proposal	Global uncertainty ESG Considerations Royalties	Glencore withdrawal from Valeria coal mine project (ABC) Glencore ditches plans for \$1.3bn Australian coal mine (Reuters) 2600 coal jobs crushed: Mining giant scraps \$1.5bn Valeria project (QRC comment via Andrew Willcox MP website article)	<p>Global uncertainty and ESG: <i>"The decision has been made in the current context of increased global uncertainty and is consistent with Glencore's commitment to a responsibly managed decline of our global coal business and our ambition of being a net zero total emissions business by 2050."</i> (Glencore representative).</p> <p>State royalty increase: Reuters reports Glencore's reasoning from withdrawing was driven partially by "a hike in state royalties that damaged investor confidence". Further, a Glencore spokesperson said, <i>"Abrupt decisions like the Queensland super royalty hike have damaged investor confidence, increased uncertainty and raised a red flag with key trading partners"</i>.</p> <p>Global decarbonisation: Reuters article also cited the speed of global decarbonisation and project finance becoming harder to find for greenfield coal mines.</p>

Date	Mine/Project	Description of mine/project	Decision	Reasons given publicly for this decision	Link to announcement	Extracts from announcement
						<p><u>Queensland Resource Council (QRC) statements</u></p> <p>Regulatory instability: QRC CEO stated that “Companies take into account a broad range of factors when considering multi-decade, large-scale investments in projects like this, and regulatory stability is one of those factors”. He added “major mining companies such as BHP, Peabody and Glencore are rethinking their investment plans for Queensland”.</p>
20 January 2021	South32 – Eagle Downs Metallurgical Coal Project	Proposed underground project in Bowen Basin, Queensland	Abandoned project	Price of coal	<p>Australia's South32 mulls Eagle Downs stake sale after halting development</p> <p>South32 turns its back on Eagle Downs coal project</p>	<p>“Expected returns (from the project) do not currently support the allocation of capital” Statement from Company</p>
29 October 2020	Bluff PCI project – Carabella Resources Pty Ltd	Open cut coal mine	Placed into care and maintenance	Coal prices Economic uncertainty	<p>Carabella Resources Bluff mine to move into care and maintenance (MACA Market Announcement)</p>	<p>“In conjunction with our client, Carabella, MACA have agreed to place the mine into care and maintenance while the coal price remains below economic levels and uncertainty remains regarding Chinese Government policy relating to Australian Metallurgical coal imports”</p>

Date	Mine/Project	Description of mine/project	Decision	Reasons given publicly for this decision	Link to announcement	Extracts from announcement
						(CEO & Managing Director of Mining and Civil Australia Limited (MACA))
November 2015	Cockatoo Coal – Baralaba Mine (and North Surat projects)	Open-cut PCI coal mine, Bowen Basin, Queensland; also held North Surat thermal coal projects (Collingwood, Taroom, Woori) in the Surat Basin	Proponent entered voluntary administration; Baralaba placed into care and maintenance; North Surat projects sold to New Hope and subsequently cancelled by Coordinator-General (June 2015)	Coal price Market uncertainty Access to capital	Cockatoo Coal ASX Annual Report FY2016 (PDF) Administrators halt Baralaba coal operations	<i>"The key factors which lead to the appointment of voluntary administrators are summarised as follows: The declining price of coal; The contingent liabilities arising from agreements with Wiggins Island Coal Export Terminal (WICET), Aurizon and Gladstone Port Corporation (GPC); The lack of permits to expand production; The withdrawal of ANZ's facility; Difficulty raising additional capital with the Companies' existing capital structure and cost base."</i> (Cockatoo Coal ASX filing, FY2016 Annual Report)
22 September 2014	Springsure Creek coal mine project	Proposed underground longwall thermal coal mine, Queensland	Abandoned project	Price of coal Access to capital Regulatory approval uncertainty	ABC News	<i>"Unfortunately, progress has been impacted by delayed approval of the Springsure Creek mining lease and the deepening cyclical decline in seaborne thermal coal prices, which together have further exacerbated delays in investor interest and participation."</i>

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21 May 2014	Glencore – Newlands Northern Underground	Metallurgical coal mine (part of Newlands Complex)	Mine closure	Low coal prices	Glencore to shut Australian Newlands underground coal mine in 2015	<i>“Glencore Plc will close its Newlands underground coal mine in Australia in late 2015, opting not to extend the life of the mine amid a slump in coal prices, the Swiss-based mining and commodities group said...” (Reuters)</i>
9 December 2013	Wilkie Creek Mine	Open cut mine run by Peabody Energy	Mine closure	Coal price fluctuations	Coal mine closure disappointing: QRC Peabody closes Wilkie Creek	<i>“The announcement is a sad blow for the region but also indicative of the challenging outlook for the thermal coal industry in particular... It’s no secret that a number of mines in Queensland and New South Wales are walking a financial tightrope as a result of subdued global demand, inherently high production costs and a stubbornly high exchange rate.” (QRC CEO Michael Roche)</i>
September 2012	Gregory Open Cut	BHP Mitsubishi Alliance	Mine closure	Coal price fluctuations Market uncertainty	BHP shuts Queensland coal mine as prices slide BHP BILLITON PRODUCTION REPORT FOR THE QUARTER ENDED 30 SEPTEMBER 2012	<i>“BMA says Gregory’s open-cut operations are no longer profitable given falling coal prices, rising costs and the high Australian dollar.” (ABC News)</i>

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June 2012	Norwich Park	Metallurgical mine run by BHP Mitsubishi Alliance (BMA)	Mine closure	Coal price fluctuations Market uncertainty	BMA to permanently close Norwich Park coal mine	"...the impact of last year's floods, combined with lower coal prices and higher costs, has resulted in an operation that is not currently viable." (BMA chief Stephen Dumble)
General industry announcements						
March 2026	Queensland market (in general)	BHP	Withdrawal of investment	Royalties Increased production costs Coal prices	Mining giant BHP snubs Queensland while praising rival states for investment (Courier Mail) BHP says its coal mines can no longer compete for capital (Bloomberg)	BHP Chairman Ross McEwan: "We probably won't go to Queensland. When you're making no money with an operation in an area like Queensland, because the royalties just spoiled your business, you don't invest... Our process right now is zero investment in Queensland."
30 September 2025	Queensland market (in general)	Coal Australia Industry statement	Announcement of overall market decline	Royalty structure	Navigating Queensland's Coal Industry Challenges in 2025	In June 2025, Mr. Bocking stated the Queensland government had "declared war" on the coal industry with what the organisation labelled "the world's greatest coal royalty regime." He added "no serious investor is looking at Queensland anymore – not with this royalty structure".

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15 July 2025	Queensland market (in general)	Queensland Resources Council (QRC) Media Release	Announcement on overall market decline	Royalties	710 billion reasons Queensland needs a strong coal industry	<p>Media release and industry report detailing “<i>what is at stake if investment confidence continues to decline</i>”.</p> <p>QRC chief executive Janette Hewson stated the industry report is more evidence of why it is important for governments to deliver policies promoting Queensland as a place to invest, including a fair and balanced royalty system: <i>The recent budget indicates the new Government is adopting what it states as ‘bad policy’ even against its own determination on progressive royalties</i>”</p>
2025	Queensland market (in general)	Whitehaven	Risks in investment in Queensland	Royalties ESG considerations Coal prices Market uncertainty	Australia reduces Queensland coal exploration spending (Argus) Whitehaven Annual Report (2025)	<p>In Whitehaven’s annual report (at pg. 27-28), it identified the following factors as relevant to their investment decisions: “<i>royalties (“risk of future adverse changes to either royalty regime which may negatively impact... viability of current operations”), climate change and ESG policy, approvals difficulty (“ever increasing difficulty and legal challenges”), carbon offset costs (Safeguard Mechanism), supply chain risks, and coal price and demand uncertainty</i>”</p>