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Economists

# Review of QCA draft recommendation on declaration of the coal handling service at NQXT

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A report for Arnold Bloch Leibler

**Confidential** version

12 June 2026

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## Executive summary

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1. I have prepared this report at the request of Arnold Bloch Leibler (ABL) on behalf of QCoal Pty Ltd and Byerwen Coal Pty Ltd (together, the QCoal Users). Its context is the Queensland Competition Authority's (QCA's) draft recommendation not to declare for third party access the coal handling service (the service) supplied at North Queensland Export Terminal (NQXT or the terminal).
2. My report principally responds to three specific questions on which ABL seeks my opinion, ie:
  - a. the methodology by which the QCA estimated total foreseeable demand in respect of mines that comprise its definition of the market for the coal handling service provided at NQXT;
  - b. the QCA's consideration of declaration criterion (a) including its assessment of whether access, or increased access, to the service on reasonable terms and conditions as a result of declaration would promote a material increase in competition in any dependent market; and
  - c. the QCA's consideration of declaration criterion (d).

### Total foreseeable demand

3. Total foreseeable demand in respect of mines that comprise the QCA's definition of the market for the coal handling service provided at NQXT is an important step not only for the QCA's draft decision on criterion (b) but also for the QCA's subsequent assessment of criterion (a). For the latter, the proposed force of the QCA's finding that the Adani Group has an overriding incentive to maximise throughput by third parties at NQXT<sup>1</sup> is influenced by the extent of uncontracted capacity at NQXT, which is a function of total foreseeable demand.
4. I have been provided with an updated forecast from Wood Mackenzie that reflects an elevated initial production forecast in relation to the Carmichael mine – by far the largest user of the terminal – prior to a further ramp-up to █████ mtpa during the latter half of the proposed declaration period.<sup>2</sup> In my opinion, the revised Wood Mackenzie forecast of Carmichael mine production is the most appropriate for adoption in this context, because:
  - a. it is consistent with the decision rules the QCA adopts in its recommendation in the declaration review of DBT; and
  - b. it addresses the QCA's noted reasoning for not adopting the then Wood Mackenzie forecast in its draft recommendation.
5. An estimate of total foreseeable demand for capacity at NQXT requires a forecast of mine production to be adjusted upward to account for terminal users contracting for capacity at a higher level to account for year-to-year variations in mine production. In the process of developing its draft recommendation, the QCA applied the same assumption it used for the same task in its declaration review of DBT.<sup>3</sup>
6. In my opinion, it would be preferable to have considered the underlying circumstances at NQXT during the declaration period. Updated data for 2024-25 suggests that throughput at NQXT was equal to approximately 85 per cent of contracted capacity. Accordingly, in my opinion a throughput assumption

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<sup>1</sup> In section 4 of my report, I also explain the basis for my opinion that not only are there substantial economic considerations that cast significant doubt on the existence of any incentive for NQXT to maximise third party access to uncontracted capacity but also that primary evidence as to Adani Group's observed conduct is inconsistent with the presence of any such incentive.

<sup>2</sup> Wood Mackenzie, Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 3.

<sup>3</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 34.

equal to a more conservative 85 per cent of contracted capacity is more appropriate than the 90 per cent figure adopted in the QCA's draft recommendation.

7. Drawing these considerations together, although there may exist some level of uncontracted capacity at NQXT within the proposed declaration period, this does not persist throughout the entirety of the period. Further, there is no uncontracted capacity expected to return in the period beyond the proposed declaration. This has important implications for the perspectives formed by existing and potential third party users of NQXT, which I draw out in responding to the QCA's considerations in relation to criterion (a).

### QCA's draft recommendation on criterion (a)

8. The most pertinent elements of the QCA's draft recommendation that criterion (a) is not satisfied present as being that:
  - a. NQXT has the ability to harm third party users by exercising its monopoly power so as to maximise the profitability of the Adani Group;
  - b. facilitating third party access to NQXT will promote the profitability of the Adani Group and this overriding incentive can be expected to govern NQXT's conduct in relation to third parties seeking access to uncontracted terminal capacity during the declaration period;
  - c. primary evidence is required to reach a conclusion that decisions in dependent markets are influenced by the risks that apply to access to NQXT; and
  - d. declaration will not promote a material increase in competition in dependent markets because either:
    - i. they are currently workably competitive and will remain so irrespective of whether the service is declared; or
    - ii. for the later-stage tenements markets, conduct that deters third party access to uncontracted capacity at NQXT would be contrary to the Adani Group's profit maximising incentive
9. My assessment of the QCA's criterion (a) analysis reflects the emphasis given by the QCA to its finding as to the existence of an overriding incentive for the Adani Group to facilitate third party access to NQXT.

### Contended throughput incentive

10. In my opinion, the QCA's assessment has overlooked the real option value associated with NQXT retaining the ability to access future uncontracted capacity and/or to frustrate access to already contracted capacity in the process of self-preferencing its related parties.
11. The value to the Adani Group of the ready ability to increase its own future access to NQXT reflects that:
  - a. the return on exporting coal is likely to outweigh significantly the incremental return of providing third party access to NQXT; and
  - b. the inherently cyclical nature of the coal market and the returns attainable from increasing its own access during periods of elevated coal prices.
12. By overlooking this real option value, the QCA has materially overestimated the strength of the 'throughput incentive' that substantially underpins its draft recommendation.

13. Further, the existence of an overriding incentive to maximise terminal throughput by making uncontracted capacity available to users is inconsistent with primary evidence as to Adani's own actions. These sources of primary evidence include:
  - a. NQXT's conduct when the Sonoma mine sought to extend and then negotiate further access, including NQXT seeking to acquire sensitive commercial information in relation to rail access rights and financial circumstances;
  - b. NQXT's conduct in relation to third parties seeking to renew legacy contracts, eg, the concurrent raising of the price and significant reduction in the quality of access, including as relates to certainty over terms of access;
  - c. [REDACTED]; and
  - d. NQXT's view of the market for tenements, which suggests it is unlikely to be guided by any consideration of how best to support further development of the tenements market.
14. In my opinion, the substance of these actions by NQXT amount to primary evidence that is inconsistent with the actions of a party that is contended to have an overriding incentive to maximise throughput at NQXT.
15. Rather, a more readily explicable basis for rationalising NQXT's current conduct is its recognition of and actions to preserve the option value for it to self-preference its own use of the terminal, either through the use of uncontracted capacity or the ability to frustrate or further degrade the quality of access for third party users.
16. A range of further considerations reinforce that the supposed overriding incentive of NQXT to maximise throughput at the terminal and thereby access to uncontracted capacity by third parties is oversimplistic, with these reinforcing considerations being:
  - a. the cost and implications of handling third party metallurgical coal at NQXT in conjunction with Adani-sourced thermal coal;
  - b. idiosyncratic characteristics of global coal markets that demonstrate it is too simplistic to assume that increased throughput by third parties has a positive overall effect on Adani Group profit, even where it does not supplant capacity that would otherwise be used by the Adani Group;
  - c. the effect of increased throughput by third parties on ad hoc capacity on the Newlands system that is required to facilitate the Adani Group's stated plans to increase production to 16 mtpa, and beyond; and
  - d. the potential benefits to the Adani Group of adjusting its tenement holdings so as to secure an overall, lower cost portfolio of tenements, as well as to restrict access and returns for third party tenement holders so as to decrease the value and price of tenements that can be acquired by the Adani Group.
17. In my opinion, the analysis I present in section 4 of my report demonstrates that the Adani Group's conduct is not, and will not in the future, be guided by an overriding incentive to maximise throughput by third parties. Accordingly, it cannot be assumed that the outworking of NQXT's unconstrained ability to pursue its objective of maximising Adani Group profit will have no effect on the quantity of coal contracted or shipped by third parties at NQXT.

18. Rather, in my opinion the assessment of the effect of declaration on competition in dependent markets should proceed on the basis that, absent declaration, third parties can expect to ship coal at NQXT only to the extent that capacity is not required by the Adani Group.

#### Implications for later stage tenements markets

19. In the market for later-stage tenements, the promotion of competition in the market derives from the opportunities and environment for competition in the eyes of a rational buyer of tenements. Accordingly, it is the perception of a rational buyer of tenements, incumbent or prospective, that informs the effect of declaration on competition in the market for later-stage tenements.
20. These perspectives will reflect that harm is not limited to circumstances in which the Adani Group purposefully seeks to disadvantage or injure its competitors. For example, harm can transpire – and may be more likely to arise – as an outworking of NQXT self-preferencing its related parties in the pursuance of maximising Adani Group profitability.
21. In my opinion, it is difficult to see how any rational buyer of later-stage tenements could not be significantly concerned by the unconstrained ability and incentive for NQXT concurrently:
  - a. to extract future rents from mining activities; and
  - b. to provide uncertain and low quality access that enables NQXT to self-preference its related parties.
22. The QCA recognises these outcomes as likely consequences of a decision not to declare the coal handling service provided at NQXT. It is intuitive that such risks would materially decrease the value placed on later-stage tenements by third parties. In my opinion, this reduction in the value of later-stage tenements would be likely to reduce entry, investment and activity in the market for later-stage tenements, with the consequence of materially reducing rivalry and, therefore, competition. The reduction in the value of tenements to third party buyers will also reduce their ability to compete against the Adani Group in acquiring later-stage tenements.
23. Accordingly, in my opinion criterion (a) is satisfied in respect of the coal handling service provided at NQXT.
24. In reaching a contrary conclusion, the QCA's substantive analysis as to the effects of declaration on the tenements market presents as being founded on an assumption that there is no material scope for an incremental increase in investment and/or entry in the market for later-stage tenements. Absent such an assumption, it is difficult to see how NQXT extracting rent and providing low quality access could not significantly deter activity and reduce competition in the market for later-stage tenements.
25. I also explain that the QCA's assessment of protections against hold-up does not appropriately consider the implications of incentives contrary to that of maximising throughput by third parties. The QCA considers that while higher terminal charges 'could reduce the expected net present value of tenements, which may narrow the pool of participants willing to bid', it expects the reduction and narrowing would be minor.<sup>4</sup> In my opinion the likely narrowing of participants willing to bid for later stage tenements cannot safely be presumed to be minor and that hold-up does form a material risk such that declaration would significantly mitigate or eliminate this risk.
26. By way of further context to the conclusion that I draw above in relation to criterion (a), an assessment of whether declaration of the service provided at NQXT will improve the opportunities and environment for competition in the market for later-stage tenements necessarily requires a conjectural assessment.

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<sup>4</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

27. By its nature, 'primary evidence' of investment in dependent markets not occurring because of risks that apply to NQXT involves actions that have never taken place, eg, a decision by a prospective buyer of later-stage tenements not to enter the market. It is therefore unsurprising that there is a lack of primary evidence of the type sought by the QCA. Accordingly, in my opinion, the absence of 'primary evidence' should not preclude a conclusion that declaration is likely to promote a material increase in competition in a dependent market.

## Other dependent markets

28. The QCA's assessment of the effect of declaration on competition in dependent markets is shaped by its view that declaration will not promote competition in markets that are already workably competitive. It forms the view that both thermal and metallurgical coal exports markets and coal haulage markets are workably competitive and can be expected to remain workably competitive irrespective of declaration.<sup>5</sup>
29. In my opinion, even if a market is workably competitive, as a matter of principle declaration may still be capable of promoting a material increase in competition such that a workably competitive market can become more competitive.
30. Competition is a matter of degree that exists on a spectrum.<sup>6</sup> As a matter of principle, a material increase in competition may take place from any initial position on that spectrum. It follows that the promotion of a material increase in competition may also take place from any position on that spectrum. Further, the present position in relation to NQXT includes a history of contract-based or quasi-regulation of the terms by which third parties access the terminal, but with the fundamental properties of these arrangements the subject of significant change going forward.
31. Accordingly, consistent with the findings presented in my earlier, criterion (a) report, in my opinion declaration of the coal haulage service at NQXT would promote a material increase in competition:
- a. in global markets for metallurgical coal exports, by increasing supply and thereby placing downward pressure on prices;
  - b. in the market(s) for coal haulage services covering the Galilee and Newlands systems (and possibly wider), because NQXT could adjust the operation of the terminal and its interface with rail operations in such a manner as to affect other parts of the rail supply chain; and
  - c. in the market for secondary trading of below-rail services for the Newlands system, on account of NQXT's strong incentive to self-preference related parties, thereby foreclosing rivals in that market.

<sup>5</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 43-44.

<sup>6</sup> See, for example: Jehle, G and Reny, P, *Advanced microeconomic theory*, Third edition, Pearson, 2011, p 170, which explains that 'Perfect competition occupies one polar extreme on a spectrum of possible market structures ranging from the 'more' to the 'less' competitive. Pure monopoly, the least competitive market structure imaginable, is at the opposite extreme.' Consistent with the existence of such a spectrum, Motta explains that in 'real world industries...we should expect every firm to have *some degree* of market power.' Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, pp 115-116.

# 1. Introduction

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32. I have been asked to prepare this report by Arnold Bloch Leibler (ABL) on behalf of QCoal Pty Ltd and Byerwen Coal Pty Ltd (together, the QCoal Users).
33. Its context is the Queensland Competition Authority's (QCA's) draft recommendation in relation to a request by the QCoal Users to declare for third party access the coal handling service (the service) supplied at North Queensland Export Terminal (NQXT or the terminal).
34. Attached to the QCoal Users' request for declaration of the coal handling services were two expert reports prepared by me that set out the basis for my conclusion that the coal handling service supplied at NQXT satisfies the four criteria of section 76(2) of the *Queensland Competition Authority Act 1997* (QCA Act).<sup>7</sup> Subsequently, I prepared a further report responding to lay evidence and expert reports submitted by NQXT.<sup>8</sup> This report should be read in conjunction with each of those earlier reports.
35. In March 2026, the QCA published a draft recommendation not to declare the service,<sup>9</sup> concluding in respect of each of the declaration criteria that:
  - a. it could not form a view as to whether declaration would promote a material increase in competition in a dependent market, such that it could not conclude that criterion (a) is satisfied for the purposes of its draft recommendation;<sup>10</sup>
  - b. the terminal 'is clearly the least cost way to meet total foreseeable demand compared to any 2 or more facilities' if no expansion were required, and 'is likely to remain the least cost option' if expansion were required, such that it could conclude that criterion (b) is satisfied for the purposes of its draft recommendation;<sup>11</sup>
  - c. the terminal's physical size and capacity and its contribution to Queensland's coal exports, royalties and employment imply that it could conclude that criterion (c) is satisfied for the purposes of its draft recommendation;<sup>12</sup> and
  - d. declaration would be unlikely to positively affect investment in the terminal, the rail network and haulage facilities or other dependent markets, such that its preliminary view was that criterion (d) is not satisfied.<sup>13</sup>
36. ABL has asked me to review and comment on the QCA's draft recommendation and to identify those elements with which I disagree and explain the reasons for my disagreement. ABL has also asked for my opinion, in particular:<sup>14</sup>
  - a. on the methodology by which the QCA estimated total foreseeable demand in respect of mines that comprise its definition of the market for the coal handling service provided at NQXT;

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<sup>7</sup> Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criterion (a)?*, 13 June 2025; and Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025.

<sup>8</sup> Houston, G, *Further expert report re proposed declaration of NQXT*, 21 October 2025.

<sup>9</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026.

<sup>10</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 85.

<sup>11</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 40.

<sup>12</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 87.

<sup>13</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 98.

<sup>14</sup> ABL, *Instructions – Access Declaration North Queensland Export Terminal Facility*, 12 June 2026.

- b. on the QCA's consideration of criterion (a) of section 76(2) of the QCA Act, including its assessment of whether access, or increased access, to the service on reasonable terms and conditions as a result of declaration would promote a material increase in competition in any dependent market; and
  - c. on the QCA's consideration of criterion (d) in section 76(2) of the QCA Act.
37. I attach a copy of ABL's letter of instructions at Annexure A.
38. ABL has also requested that in preparing my report I comply with the duties and requirements of an expert for court proceedings as set out in rules 429F of the *Uniform Civil Procedure Rules 1999 (QLD)* (UCPR), as if those duties and requirements applied to these instructions. Consistent with those requirements, including the Code of conduct for experts attached at Schedule 1C of the UCPR (Experts' code of conduct), I confirm that:
- a. I have read and agree to be bound by the Code of conduct for experts to the extent it imposes duties and obligations relevant to my role as an expert assisting the QCA;
  - b. the factual matters stated in my report are, as far as I know, true;
  - c. I have made all inquiries considered appropriate; and
  - d. that I understand my duty to the QCA and have complied with that duty.
39. Details of my relevant training, education and experience, along with my curriculum vitae, are set out in each of my 13 July 2025 reports<sup>15</sup> that accompanied the QCoal Users' application to the QCA.
40. I have organised my report in broad sequence according to the three elements of the QCA's draft recommendation with which I disagree, ie:
- a. in section 2, I comment on the QCA's approach to assessing foreseeable demand in respect of the mines that comprise its definition of the market for the coal handling service provided at NQXT;
  - b. in section 3, I summarise those elements of the QCA's assessment that are most pertinent to its draft finding that criterion (a) is not satisfied;
  - c. in section 4, I examine the contention underpinning much of the QCA's reasoning for its draft recommendation that criterion (a) is not satisfied, being that NQXT has an overriding incentive to maximise throughput by third party users at the terminal, and set out the reasons for my conclusion that:
    - i. not only are there substantial economic considerations that cast significant doubt on the existence of such an incentive; but also
    - ii. primary evidence as to Adani Group's observed conduct is inconsistent with the presence of any such incentive;
  - d. in section 5, I discuss the effect of declaration on competition in the market for later-stage tenements, given the significant doubt applying in relation to the QCA's contended, overriding incentive for NQXT to maximise throughput at the terminal;
  - e. in section 6, I discuss the effect of declaration on competition in other dependent markets; and
  - f. in section 7, I comment on the QCA's assessment that criterion (d) is not satisfied.

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<sup>15</sup> See footnote 7.

41. I do not comment on the QCA's assessment of criterion (c), because I agree with the QCA, NQXT and QCoal Users that criterion (c) is satisfied.<sup>16</sup>

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<sup>16</sup> See also: Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, section 5.

## 2. Total foreseeable demand

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42. In this section I respond to ABL's request to provide my opinion on:<sup>17</sup>
- ...the methodology by which the QCA estimated total foreseeable demand in respect of mines that comprise its definition of the market for the coal handling service provided at NQXT.
43. Estimation of total foreseeable demand in the market for the coal handling service provided at NQXT is an important step in the assessment that underpins the QCA's draft decision on criterion (b).
44. However, total foreseeable demand also significantly shapes the QCA's subsequent assessment of criterion (a). This arises from its implications for the extent of uncontracted capacity at NQXT and so the proposed force of the QCA's view that the Adani Group has an incentive to maximise throughput by third parties at NQXT.<sup>18</sup>
45. The significance of the QCA's findings as to incentives for the Adani Group to facilitate third party access to uncontracted capacity derives from the QCA's view that this is the primary consideration that will guide NQXT's conduct during the declaration period.
46. I address the considerations underpinning the QCA's draft decision on criterion (a) in section 3 of my report and provide my assessment of this incentive and its implications for dependent markets in sections 4 and 5, respectively. In the remainder of this section, I comment on the methodology by which the QCA estimates total foreseeable demand in its assessment of criterion (b).
47. Specifically, I provide my opinion on:
- a. the derivation of forecast production at the Adani Group's Carmichael mine;
  - b. the upwards adjustment that the QCA applies to forecast production at each mine to estimate forecast demand for capacity at NQXT; and
  - c. total foreseeable demand in the market for the coal handling service provided at NQXT.

### 2.1 Forecast production at the Carmichael mine

48. The largest user – by a significant margin – of NQXT both now and during the declaration period is the Adani Group's Carmichael mine.
49. The independent forecasters relied upon by the QCA, being Wood MacKenzie and AME, forecast in 2025 that production at the Carmichael mine will be equal to [REDACTED] and [REDACTED] million tonnes per annum (mtpa) towards the end of the declaration period.<sup>19</sup> However, these two experts forecast different time profiles of production at the Carmichael mine, as illustrated in [REDACTED]
50. Notwithstanding the close similarity in AME and Wood Mackenzie's forecast production towards the end of the declaration period, the QCA adopts a materially lower base case production forecast for the Carmichael mine over the entire declaration period. It does so on account of differences in AME and Wood Mackenzie forecasts *at the start* of the declaration period.

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<sup>17</sup> ABL, *Instructions – Access Declaration North Queensland Export Terminal Facility*, 12 June 2026, para 5(d).

<sup>18</sup> In section 4 of my report, I also explain the basis for my opinion that not only are there substantial economic considerations that cast significant doubt on the existence of any incentive for NQXT to maximise third party access to uncontracted capacity but also that primary evidence as to Adani Group's observed conduct is inconsistent with the presence of any such incentive.

<sup>19</sup> See: QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 36 and Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, appendix A2.3.

51. The QCA explains that:<sup>20</sup>

[REDACTED]

52. The QCA also explains that: <sup>21</sup>

[REDACTED]

53. The QCA does not explain why its upper bound forecast reflects the lower of the two candidate production forecasts, rather than [REDACTED].<sup>22</sup>

54. The element of forecast production that is most consequential for an assessment of criterion (b) is the maximum level expected to be attained during the declaration period. It is the maximum level of foreseeable demand that informs the cost of meeting demand at the facility, either through existing capacity or a more costly capacity expansion.

55. In my opinion, it would be preferable for the QCA not to have adopted a base case demand forecast that overlooks the close alignment between AME and Wood Mackenzie in relation to the maximum level of production during the declaration period, as occurs towards the end of the declaration period, on account of differences in those forecasts at the start of the declaration period.

56. Further, it would be preferable for the QCA not to have given weight to inevitable differences between near term production announcements by a mine and long term forecasts by independent coal market experts, as the basis for deriving a long term forecast based on near-term production announcements.

57. Rather, in my opinion the QCA's base case production forecast for the Carmichael mine and its assessment of criterion (b) should reflect the coal production forecasts produced by AME and/or Wood Mackenzie.

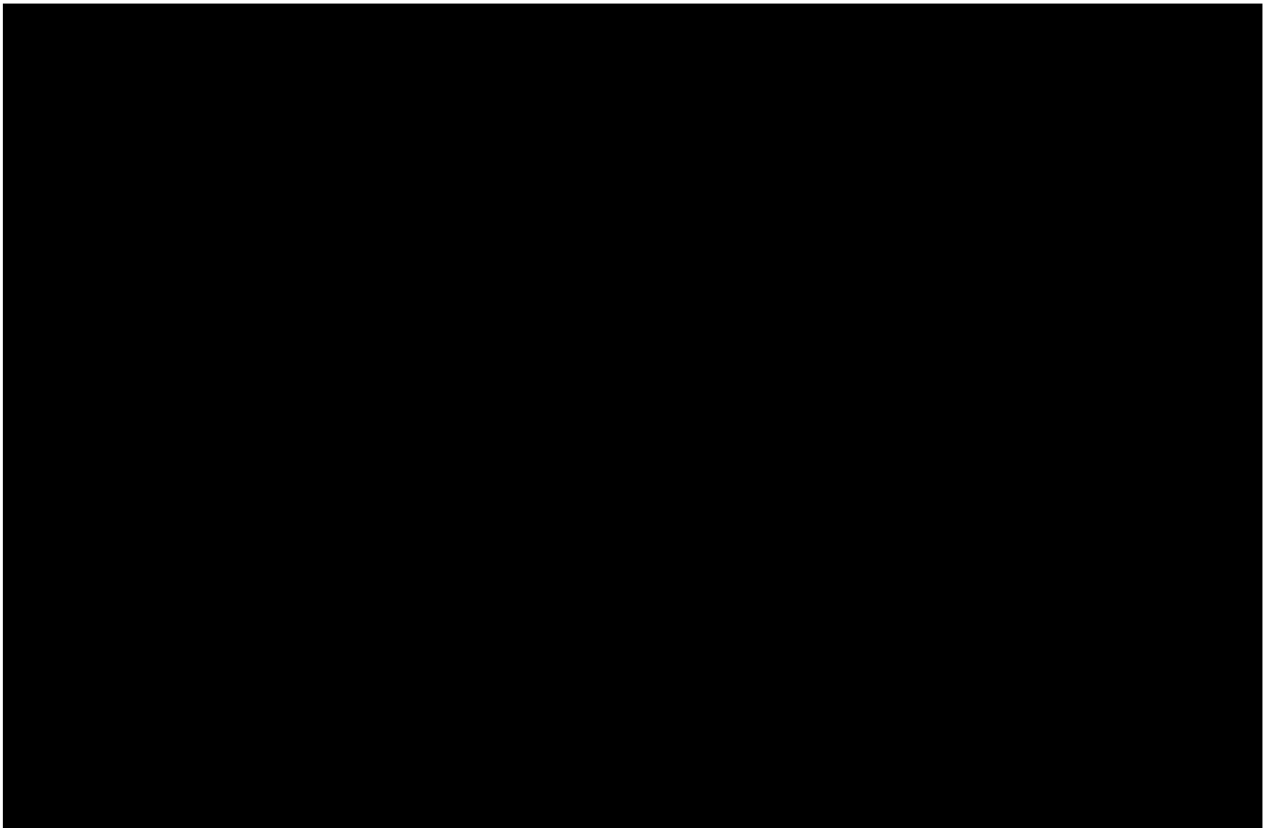
58. In my criterion (b) report I explain the basis for my opinion that the production forecast produced by AME is most consistent with the decision rules adopted by the QCA in its declaration review of Dalrymple Bay Terminal (DBT).

59. Subsequent to preparing my criterion (b) report, I have received a revised forecast from Wood Mackenzie of throughput at NQXT for the Carmichael mine, which I present in [REDACTED]

<sup>20</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 36.

<sup>21</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 36.

<sup>22</sup> See: Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, appendix A2.3.



Source: AME and Wood Mackenzie; HoustonKemp analysis.

60. The revised forecast from Wood Mackenzie reflects an elevated initial production forecast, prior to a further ramp-up to [REDACTED] mtpa during the [REDACTED]  
[REDACTED]  
[REDACTED]
61. In my opinion, the revised forecast from Wood Mackenzie is the most appropriate for adoption in this context, because:
- a. it is consistent with the decision rules the QCA adopts in its recommendation in the declaration review of DBT;<sup>26</sup> and
  - b. it addresses the QCA's noted reasoning for not adopting the then Wood Mackenzie forecast in its draft recommendation.
62. Specifically, the most recent public information regarding the Carmichael mine's expansion to produce 16 mtpa broadly aligns with Wood Mackenzie's revised forecast of [REDACTED] mtpa during the first half of the

<sup>23</sup> Wood Mackenzie, Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 3.

<sup>24</sup> Wood Mackenzie, Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 9.

<sup>25</sup> Wood Mackenzie, Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 9.

<sup>26</sup> Following the revised forecast from Wood Mackenzie and more recent publicly available information on production at the Carmichael mine, I conclude that Wood Mackenzie's revised forecast is consistent with the QCA's decision rules. See: Bravus Mining and Resources, *Bravus Mining and Resources commits to major investment to increase mine production in central Queensland*, 19 August 2025, available at: <https://www.bravusmining.com.au/bravus-mining-and-resources-commits-to-major-investment-to-increase-mine-production-in-central-queensland/>, accessed: 12 June 2026.

proposed declaration period followed by a gradual ramping-up of production in the second half of the proposed declaration period.<sup>27</sup>

63. Wood Mackenzie's revised forecast reflects its 'demand-led base case modelling rather than the project's stated physical expansion potential.'<sup>28</sup> In reference to its forecast of the Carmichael mine, Wood Mackenzie notes that:<sup>29</sup>

...Bravus has previously increased production beyond levels indicated by market demand. This was possible because the project was largely self-funded, meaning Bravus was less dependent on third-party financiers and did not need to satisfy external investment hurdles to the same extent as a conventionally financed project.

64. The uncertainty of the Carmichael mine's future production is also evident by reference to the possible timing of the anticipated underground stage, for which Wood Mackenzie's base case assumes a possible startup around 2040 but notes it could start earlier if market demand were to support this.<sup>30</sup>
65. This uncertainty in relation to the future production of the Carmichael mine has important implications for the perceptions of third party access seekers at NQXT, which I discuss in section 5.2.
66. In relation to the likely impact of Carmichael's future production on NQXT's capacity, Wood Mackenzie notes that:<sup>31</sup>

Following full ramp up of the underground operation, Bravus would account for 11 Mt of the 50 Mt capacity (22%) at NQXT once it reaches capacity in 2044, displacing almost all other producer export capacity.

67. This reinforces that NQXT will continue to be capacity constrained immediately following the proposed declaration period and beyond. Additionally, in considering the practical restrictions on actual terminal capacity, Wood Mackenzie states that:<sup>32</sup>

NQXT is potentially unconstrained until 2037, before a sharp increase in utilisation in 2038 and 2039 as Carmichael is assumed to expand from 10 Mt in 2036 to 15 Mt in 2038. Under this production profile, total terminal throughput approaches 47 to 48 Mtpa, close to NQXT's nominal capacity of 50 Mtpa. While this remains below the stated nameplate capacity, it is likely to exceed a reasonable working capacity threshold for a multi-user coal terminal once maintenance allowances, unplanned outage risk, vessel scheduling, berth occupancy, stockyard capacity, product segregation and cargo assembly requirements are taken into account.

At this level of utilisation, the issue is not whether the terminal can technically load 50 Mtpa in ideal conditions. The more relevant question is whether it can do so reliably while preserving operational flexibility. As throughput approaches the high 40 Mtpa range, NQXT would have less spare capacity to absorb maintenance shutdowns, weather delays, rail disruption, vessel bunching or short-term changes in cargo sequencing. This increases the risk of queuing, demurrage, stockyard congestion and shipment slippage. It also reduces the terminal's ability to accommodate additional Galilee Basin volumes without either displacing existing users, accepting lower service reliability, or developing further terminal capacity.

<sup>27</sup> See: Bravus Mining and Resources, *Bravus Mining and Resources commits to major investment to increase mine production in central Queensland*, 19 August 2025, available at: <https://www.bravusmining.com.au/bravus-mining-and-resources-commits-to-major-investment-to-increase-mine-production-in-central-queensland/>, accessed: 12 June 2026 and Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 3.

<sup>28</sup> Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 9.

<sup>29</sup> Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 9.

<sup>30</sup> Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 9.

<sup>31</sup> Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 5.

<sup>32</sup> Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 10.

## 2.2 Translation of coal production to demand for terminal capacity

68. In estimating total foreseeable demand at NQXT, the QCA adjusted upwards its forecast of mine production to account for its view that terminal users:<sup>33</sup>

...will contract at a level higher than forecast mine production to allow for some buffer as year-to-year mine production can vary.

69. The QCA applied an upwards adjustment to forecast production by applying the assumption it used for the same task in its declaration review of DBT.<sup>34</sup> That assumption was based on limited data available to the QCA at that time on the difference between throughput and contracted capacity at DBT in a single year. Accordingly, the QCA acknowledged its assumption as being:<sup>35</sup>

...arbitrary, as an average over the longer term is likely to yield a different result.

70. The QCA does not offer an explanation for the adoption of this historical, DBT-specific assumption for the purpose of its assessment of QCoal's application in relation to NQXT.
71. In my opinion, it would be preferable for the QCA to have considered the underlying circumstances at NQXT during the declaration period rather than to have applied an assumption for translating coal production into demand for terminal capacity that turns on a single, historical year observation relating to a different terminal.
72. I explained in my criterion (b) report that:<sup>36</sup>

As a matter of principle, an assumption informed by reference to historical observations should draw upon data in those years that are most likely to reflect the circumstances that are expected to prevail in the declaration period.

Since the Carmichael mine is forecast to account for just under two thirds of terminal throughput over the forecast period, in my opinion a historical evaluation period should comprise years in which throughput and contracted capacity reflect the contribution of the Carmichael mine.

73. Reflecting this principle, in my criterion (b) report I estimated the extent of 'over-contracting' by reference to observed throughput and estimated contracted capacity at NQXT in the two most recent years, being those years in which the throughput and contracted capacity at NQXT reflect the contribution of the Carmichael mine.
74. My estimation of contracted capacity at NQXT, based on information published by S&P Global, reflected that data on actual contracted capacity was not available to me. However, I would not expect such data limitations to apply in relation to the QCA's assessment of QCoal's application for declaration.
75. In my criterion (b) report I estimated that throughput at NQXT would be equal to 84 per cent of contracted capacity at NQXT during the declaration period, based on the extent of 'over-contracting' by reference to available data from 2022-23 and 2023-24.<sup>37</sup> When updated for 2024-25 data, throughput at NQXT was equal to approximately 85 per cent of contracted capacity. I obtain this

<sup>33</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 34, footnote 104. See also: QCA, *Final recommendation Part C: DBCT declaration review*, 2020, p 50.

<sup>34</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 34.

<sup>35</sup> QCA, *Final recommendation Part C: DBCT declaration review*, 2020, p 50.

<sup>36</sup> Houston, G, Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, paras 194-195.

<sup>37</sup> Houston, G, Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criteria (b) to (d)?*, 13 June 2025, paras 200-201.

estimate for 2024-25 by reference to an assumption of current contracted capacity of 40 mtpa<sup>38</sup> and actual terminal throughput of approximately 34 mtpa.<sup>39</sup>

76. Given the more pertinent nature of these data, derived from observed throughput and an assumption as to contracted capacity at NQXT and assessed over historical years that are most likely to be representative of the declaration period, in my opinion a throughput assumption equal to 85 per cent of contracted capacity is more appropriate than the 90 per cent figure adopted by the QCA in its draft recommendation. Accordingly, it would be more appropriate for the QCA to adjust its forecast of production upwards, by reference to this more conservative assumption for the utilisation of contracted capacity.

## 2.3 Estimation of total foreseeable demand

77. In updating the estimation of total foreseeable demand for NQXT, I adopt the QCA's estimates in its draft recommendation with two key changes informed by my discussion in sections 2.1 and 2.2, ie:
- the adoption of Wood Mackenzie's revised forecast for the Carmichael mine; and
  - the adoption of my estimate of over-contracting at NQXT to translate forecast throughput to foreseeable demand for contracted capacity.<sup>40</sup>
78. I present the revised estimates of total foreseeable demand in table 2.1.

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Source: QCA, *North Queensland Export Terminal declaration review, Draft recommendation, March 2026, pp 34-39* and Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 3*; HoustonKemp analysis.

79. The updated total foreseeable demand for NQXT indicates that NQXT is forecast to become more capacity constrained near the end of the proposed declaration period; specifically, in 2035-36 and 2036-37. This is made clearer when addressed alongside the fact that, according to Wood Mackenzie:<sup>41</sup>

...85% to 95% of stated nameplate capacity is reasonable for dependable annual throughput. The lower end of this range is more appropriate for multi-user terminals operating under complex cargo assembly and product segregation requirements. It is therefore probable that as throughput approaches 43 Mtpa at NQXT, constraints may emerge in the form of tighter maintenance scheduling, reduced contingency for unplanned outages, greater berth and vessel scheduling

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<sup>38</sup> North Queensland Export Terminal, *APSEZ completes acquisition of NQXT Australia*, 24 December 2025, available at: <https://www.nqxt.com.au/apsez-completes-acquisition-of-nqxt-australia/>, accessed: 9 June 2026.

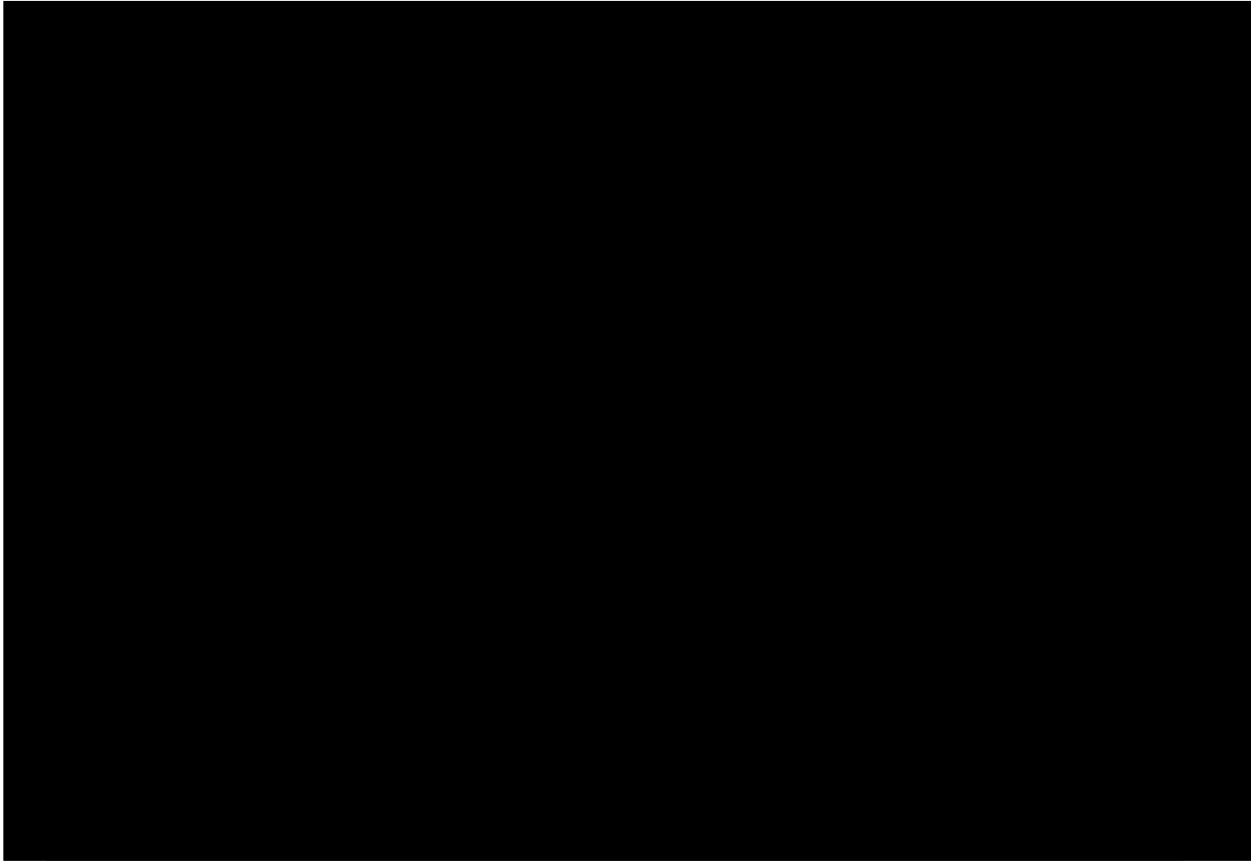
<sup>39</sup> North Queensland Bulk Ports Corporation, *Throughputs – Abbot Point*, available at: <https://nqbp.com.au/trade/throughputs>, accessed 9 June 2026.

<sup>40</sup> Since I am not privy to the individual forecasts of demand from the Goonyella mines, I do not make any adjustments based on an updated over-contracting percentage and instead take the QCA's forecasts as given.

<sup>41</sup> Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 4*.

pressure, increased stockyard congestion and less flexibility in assembling discrete coal products for shipment.

80. Further, the observed trend of increasing foreseeable demand at NQXT expands beyond the proposed declaration period, with the expected expansion of the Carmichael mine and Byerwen Phase 2. Specifically, Wood Mackenzie's forecast of throughput at NQXT and the associated foreseeable demand of contracted capacity highlight the anticipated capacity constraint at NQXT (see figure 2.2).



Source: Wood Mackenzie, *Competition Declaration – North Queensland Export Terminal Facility*, June 2026, p 3; HoustonKemp analysis.

81. Although there may exist some level of uncontracted capacity at NQXT within the proposed declaration period, this does not persist throughout the entirety of the period. Further, any uncontracted capacity is not expected to return in the period beyond the proposed declaration. This has important implications for the perspectives formed by existing and potential third party users of NQXT, which I discuss in section 4.
82. I note for completeness that this revised forecast of total foreseeable demand neither changes my opinion nor the QCA's draft recommendation that criterion (b) is satisfied.



### 3. QCA's draft recommendation on criterion (a)

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83. In this section I summarise the essential elements of the QCA's draft finding that criterion (a) is not satisfied, ie, access to the service on reasonable terms and conditions as a result of declaration would not promote a material increase in competition in dependent markets.
84. I organise my summary around those elements of the QCA's assessment that are most pertinent to its conclusion, ie, I describe its view that:
- a. NQXT has the ability to harm third party users by exercising its monopoly power so as to maximise the profitability of the Adani Group;
  - b. facilitating third party access to NQXT will promote the profitability of the Adani Group and this overriding incentive can be expected to govern NQXT's conduct in relation to third parties seeking access to uncontracted terminal capacity during the declaration period;
  - c. primary evidence is required to reach a conclusion that decisions in dependent markets are influenced by the risks that apply to access to NQXT; and
  - d. declaration will not promote a material increase in competition in dependent markets because either:
    - i. they are currently workably competitive and will remain so irrespective of whether the service is declared; or
    - ii. for the later-stage tenements markets, conduct that deters third party access to uncontracted capacity at NQXT would be contrary to the Adani Group's profit maximising incentive.

#### 3.1 Ability to harm third party terminal users

85. The QCA recognises that the bottleneck nature and vertical integration of NQXT within the Adani Group's supply chain poses risks for competition. It observes that:<sup>42</sup>

The vertical integration of NQXT with other entities in the coal supply chain has the potential to present competition risks in dependent markets due to NQXT's position as the operator of bottleneck infrastructure that sets terms and conditions of access, both from a commercial and operational perspective.

86. The QCA identifies that these risks arise from the potential for a vertically integrated services provider to:<sup>43</sup>

...use its market power to deny access or disadvantage rivals that compete in dependent markets by restricting access to suppress competition and increase profits in those markets, through self-preferencing — including in terms of access or price in the market for the service. In these scenarios, the service provider may forego profits related to delivery of the service, with a view to increasing profits across the broader group by increasing the profits of a related entity.

87. The QCA finds that the primary purpose of NQXT is to maximise the Adani Group's profits, primarily through the sale of coal in overseas markets.<sup>44</sup>

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<sup>42</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

<sup>43</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 55.

<sup>44</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 55.

88. Accordingly, the QCA concludes that:<sup>45</sup>

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

89. The QCA further concludes that there are no material constraints on the Adani Group's ability to act on this incentive by exercising its market power, on account of:

a. the absence of close competitive constraints, ie, the QCA observes that:<sup>46</sup>

...DBT (or other terminals) are not close economic substitutes for the service provided at the Terminal by NQXT... Competition from other coal export terminals therefore does not effectively constrain NQXT's ability to exercise market power.

b. the limited countervailing market power of current and potential third party terminal users, which places them 'at a disadvantage in the negotiation process';<sup>47</sup>

c. the apparent limited constraint imposed by the threat of regulation, which it observes is reflected in NQXT not offering any effective and binding access policy or framework for third party access;<sup>48</sup> and

d. the absence of any other obligations on NQXT to provide access to third parties.<sup>49</sup>

90. The QCA observes that, by consequence of NQXT's market power, the absence of constraints on its market power and its primary objective to maximise the profits of the Adani Group, NQXT could deny or restrict third party access by:<sup>50</sup>

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

91. The QCA further concludes that there are:<sup>51</sup>

...several possible ways that vertical integration may influence NQXT's conduct, including:

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

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

<sup>45</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

<sup>46</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 59-60.

<sup>47</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 60-61 and 65.

<sup>48</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 61-62.

<sup>49</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 64.

<sup>50</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

<sup>51</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 59.

### 3.2 Incentive to harm third party terminal users

92. Notwithstanding the QCA's conclusion that NQXT has the ability to harm third party terminal users through the pursuance of the Adani Group's profit maximising objective, the QCA concludes that the promotion of third party access to NQXT is consistent with the Adani Group's profit maximising objective.<sup>52</sup>
93. The QCA derives its conclusion that promoting third party access to NQXT will maximise the Adani Group's profit on the basis that:<sup>53</sup>
- a. there will be surplus capacity at the terminal throughout the declaration period;<sup>54</sup> and
  - b. higher volumes/throughput at NQXT generate higher revenue for NQXT, while terminal operating costs are largely fixed.
94. The QCA refers to this as NQXT's 'throughput incentive'. I understand from the positive implications for third party access inferred by the QCA that this incentive relates specifically to maximising the use of uncontracted capacity by third party terminal users.
95. Drawing these considerations together, the QCA concludes that:<sup>55</sup>

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

96. This conclusion has significant implications for the QCA's assessment of the effect of increased access on competition in dependent markets, since it would be contrary to the Adani Group's profit maximising objective for NQXT to take any action that would compromise the take-up of uncontracted capacity by third parties.

### 3.3 Role of primary evidence

97. In its discussion of NQXT's incentives and the effect of declaration on competition in dependent markets, the QCA frequently cites the absence of 'primary evidence' as the basis for its finding as to why it is not apparent that either a particular risk is material or does not act to curb NQXT's 'throughput incentive'.
98. By way of example, the QCA makes the following in-principle observation in relation to NQXT's likely incentives:<sup>56</sup>

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

This could occur by NQXT:

<sup>52</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 76.

<sup>53</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 58 and 76.

<sup>54</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 39.

<sup>55</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 70.

<sup>56</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

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

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

99. Notwithstanding, the QCA concludes that it is 'unlikely that NQXT would have an incentive to outright refuse or significantly restrict access over the proposed declaration period'<sup>57</sup> for two key reasons:

a. there is no capacity constraint at NQXT; and

We understand that there is approximately 10 mtpa of uncontracted capacity at present. Our assessment is that surplus capacity will persist at the Terminal for the proposed declaration period (Chapter 2). Therefore, **NQXT is incentivised to enter agreements with third party users, particularly as the costs of operating the Terminal are largely fixed.**<sup>58</sup> [footnotes omitted and emphasis added]

Accordingly, NQXT does not face incentives to refuse access to third party access seekers (unless [its] related party would receive a sufficient benefit in a dependent market to offset the associated loss of revenue for NQXT). **NQXT's renewal process and the conduct of certain renewing users would seem to support this view.**<sup>59</sup> [footnotes omitted and emphasis added]

b. existing capacity constraint on the Newlands system.

To the extent that below-rail capacity constraints in the Newlands system persist during the proposed declaration period, this may in fact be a disincentive for NQXT to provide access to third parties at the Terminal. In such circumstances, the exit of third party users would free up Newlands system capacity, which would then be available to service Bravus' additional expected demand. However, we note that the existing rail capacity deficit has not prevented NQXT from entering into new agreements with some renewing users to date.<sup>60</sup>

**It is therefore not evident that this presents a material risk to third parties continuing to have access to the service.**<sup>61</sup> [emphasis added]

100. In its discussion of the likely risk of hold-up, the QCA concludes that:<sup>62</sup>

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

<sup>57</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

<sup>58</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 58.

<sup>59</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 58.

<sup>60</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 59.

<sup>61</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 59.

<sup>62</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 84.

101. I note that the QCA then subsequently states that:<sup>63</sup>

Even if hold-up was affecting investment decisions, it is not clear that declaration would promote a material increase in competition sufficient to satisfy criterion (a).

### 3.4 Dependent markets

102. The focus of the QCA's assessment of the effect of declaration on competition in dependent markets is shaped by its view that:

- a. declaration will not promote competition in markets that are already workably competitive; and
- b. with the exception of the tenements market, all dependent markets are presently workably competitive.

103. Specifically, the QCA states that:

- a. thermal and metallurgical coal export markets, below-rail markets and coal haulage markets are workably competitive, and can be expected to remain so irrespective of declaration;<sup>64</sup>
- b. port and mining services markets are derivative of coal export or coal tenement activity, with declaration unlikely to promote competition in those markets if competition is unaffected in the associated primary market;<sup>65</sup> and
- c. there is insufficient information to assess whether there is a dependent secondary capacity trading market, and if so, whether declaration would promote a material increase in competition in that market.<sup>66</sup>

104. However, the QCA does observe that:<sup>67</sup>

...the market for later-stage coal tenements may not be workably competitive and shows limited evidence of rivalry and competition...

105. The QCA defines the market for later-stage coal tenements as comprising the supply and acquisition of coal tenements within the Newlands-Galilee catchment,<sup>68</sup> which reflects its view that:<sup>69</sup>

...given the uncertainty of access [to NQXT] on reasonable terms and conditions, buyers from outside of the region [Newlands-Galilee catchment] are unlikely to substitute to tenements in the catchment if prices for coal tenements fell...

106. This finding from the QCA, that the market for later-stage coal tenements is defined in part on the uncertainty of access to NQXT, has important implications which I discuss in section 5.

107. The QCA further explains that:<sup>70</sup>

Potential buyers of development stage coal tenements who do not already have access to infrastructure are less likely to consider Newlands-Galilee catchment tenements as substitutes for other systems. Buyers outside of the region would be sufficiently certain of access to export

<sup>63</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 85.

<sup>64</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 43-44.

<sup>65</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 45.

<sup>66</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 45.

<sup>67</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 41.

<sup>68</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 54.

<sup>69</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 54.

<sup>70</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 52.

facilities in other regions on reasonable terms, but less certain in relation to access on reasonable terms at the Terminal.

108. Consistent with the QCA's view that buyers of tenements are unlikely to enter the market for tenements due to uncertain access to NQXT on reasonable terms, the QCA observes that:<sup>71</sup>

The current state of competition in the Newlands–Galilee catchment is characterised by limited entry by new participants, thin trading and stalled development activity.

...our initial view is that there is limited evidence of genuine rivalry between firms and potential entrants in the tenements market and in a future without declaration, we consider this environment likely to continue.

109. Against this backdrop of uncertain access to NQXT on reasonable terms and a lack of activity in the tenements market, the QCA acknowledges that:<sup>72</sup>

...there is a theoretical prospect (as yet unsupported by evidence) that the environment for competition has been affected by uncertainty of terms and conditions of Terminal access.

110. Consistent with its observation that, absent declaration, NQXT is likely to test the limits of terminal users' willingness to pay, the QCA also highlights that:<sup>73</sup>

...in a future without declaration, the prospect of higher Terminal charges could reduce the expected net present value of tenements, which may narrow the pool of participants willing to bid. However, we expect that the reduction in tenement values, and the narrowing of market participants would be minor.

111. The basis on which the QCA formed the view that the resulting reduction in the value of tenements and narrowing of market participants would be minor is unclear. Nevertheless, QCA does consider whether, absent declaration, uncertainty as to access to NQXT on reasonable terms would be likely to discourage or deter investment and participation in the tenements market. The QCA refers to this as the potential for 'hold-up'.

112. The QCA's assessment of the potential for uncertainty as to access to NQXT on reasonable terms to deter activity in the tenements draws heavily on its finding as to NQXT's 'throughput incentive'. For example, the QCA states that:

Without certainty of access, tenement investors may not be willing to undertake any transactions, which could reduce competition within the coal tenements market. However, while NQXT may extract additional rents in a future without declaration, given spare capacity at the Terminal and NQXT's incentives to maximise throughput, we do not consider NQXT is incentivised to increase prices or include terms to the extent that such actions would restrict tenement market development.<sup>74</sup>

...If NQXT were to raise access charges to levels that dampen tenement development and exports, it could undermine the Adani Group's long-term profitability.<sup>75</sup>

...NQXT's commercial incentives are aligned toward securing additional contracted capacity, which limits the likelihood of charges being set in a way that would materially distort upstream investment.<sup>76</sup>

<sup>71</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 74.

<sup>72</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

<sup>73</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

<sup>74</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 80.

<sup>75</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 80.

<sup>76</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

113. The QCA also observes that:

- a. terminal charges are small relative to other costs, such that higher terminal charges could only give rise to a minor narrowing of coal tenement market participants;<sup>77</sup> and
- b. access certainty and hold-up risk are among many factors that an investor would consider.<sup>78</sup>

114. In the absence of primary evidence of uncertainty as to access to NQXT influencing the decisions of current or potential participants in the tenements market, the QCA therefore concludes that:<sup>79</sup>

While it is possible that hold-up could affect investment decision making in the coal tenements market, we do not have sufficient evidence to suggest that hold-up risk is a relevant consideration for participants or that specific projects in the Newlands–Galilee catchment have been abandoned, deferred or delayed as a result of a real or perceived risk of hold-up.

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<sup>77</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

<sup>78</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 84.

<sup>79</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 85.

## 4. Contended throughput incentive

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115. In this section I examine the QCA's contention that is critical to much of the reasoning underpinning its draft recommendation that criterion (a) is not satisfied, being that NQXT has an overriding incentive to maximise third party access to uncontracted capacity at the terminal.
116. My assessment focuses on three principal considerations that call into question the QCA's finding as to such an overriding incentive, ie:
- a. the QCA's overlooking of the real option value associated with NQXT retaining the ability to access future uncontracted capacity and/or to frustrate access to already contracted capacity;
  - b. that primary evidence as to NQXT and the Adani Group's observed conduct is inconsistent with the QCA's supposition as to the nature of its overriding incentive to maximise throughput; and
  - c. that other considerations also reinforce that the supposed overriding incentive of NQXT to maximise throughput at the terminal and thereby access to uncontracted capacity by third parties is oversimplistic.

### 4.1 Real option value

117. In my opinion, the QCA's assessment overlooks the real option value associated with NQXT retaining the ability to access future uncontracted capacity and/or to frustrate access to already contracted capacity. By consequence, the analysis underpinning the QCA's draft recommendation materially overestimates the strength of the 'throughput incentive' that substantially underpins its draft recommendation.
118. In the sections that follow I describe:
- a. the implicit 'real option' associated with spare capacity and the considerations that drive the value of that real option;
  - b. that the return on exporting coal is likely to outweigh significantly the incremental return of providing third party access to NQXT; and
  - c. the coal market dynamics that amplify the value of firm access to NQXT for third party users and flexibility to increase access for the Adani Group.

#### 4.1.1 Value of flexibility

119. The profit of the Adani Group will be enhanced by an ability to increase coal sales by:
- a. increasing the quantity of production at the Carmichael mine, generally; and/or
  - b. by increasing the Carmichael mine production during periods of elevated coal prices.
120. However, the ability to increase coal sales over either a short or sustained period requires access to coal transport infrastructure. In the circumstances of the Adani Group, its ability to increase the use of NQXT arises from:
- a. the existence of uncontracted capacity that can be taken up by its related parties as and when required; and/or

- b. in relation to already-contracted capacity, the downgrading of the quality of access (eg, scheduling, stockpile allocation and quality of coal handling by coal type<sup>80</sup>) in a manner that enables the Adani Group to self-preference related parties at times when such capacity is most valuable, eg, by frustrating third party access.
121. Accordingly, the future availability of uncontracted capacity, as well as the ability to downgrade the quality of already-contracted access for third parties, provides the Adani Group with a degree of coal production flexibility that is intrinsically valuable. These possibilities amount to the existence of valuable 'real options' available to the Adani Group.
122. I explain below the profit-enhancing nature of this real option value by reference to:
- a. the magnitude of the returns on coal market exports by the Adani Group, as compared with the returns available from the provision of terminal access; and
  - b. the ability to take advantage of profit opportunities arising by reference to the cyclical and volatile nature of the coal market.
123. I note also that a further form of 'real option value' would arise from NQXT providing shorter term or ad hoc access to third parties, since it would provide NQXT flexibility to enhance its extraction of rents, through varying future access charges in line with the market price of coal.

#### 4.1.2 Return on coal exports

124. Adani's incentive to provide terminal access to third parties necessarily reflects two competing considerations, ie:
- a. the return available from the potential for the Adani Group to increase its own use of the terminal; versus
  - b. the return from providing third party access to uncontracted capacity.
125. In my opinion the returns available from selling additional coal, particularly during periods of elevated coal prices, are likely to outweigh significantly the incremental return of providing third party access to NQXT.
126. By way of indication as to the potential returns available from the sale of coal in the 2025 financial year:
- a. New Hope Group reported an underlying margin of \$64 per tonne;<sup>81</sup>
  - b. Stanmore reported a free on board cash cost of \$88 per tonne in United States dollars and an average sale price of \$133 per tonne in United States dollars,<sup>82</sup> which indicates a return up to \$45 per tonne in United States dollars; and
  - c. Whitehaven reported an average price of \$215 per tonne across its New South Wales and Queensland operations, coupled with unit costs of \$139 per tonne and average royalties of \$25 per tonne,<sup>83</sup> which indicates a return equal to \$51 per tonne.
127. The indicative returns cited above reflect coal market conditions in the 2025 financial year, in which the market price of coal (and so likely returns) was not materially elevated in comparison to some

<sup>80</sup> I discuss these forms of downgraded quality of access in section 5.2.2

<sup>81</sup> New Hope Group, *FY25 Full Year Results*, Presentation, 16 September 2025, p 11.

<sup>82</sup> Stanmore, *2025 Full Year Financial Results – Investor Presentation*, 23 February 2026, p 6.

<sup>83</sup> Whitehaven, *Full Year Results FY25*, Presentation, 21 August 2025, p 20.

historical years, as illustrated in Figure 4.1. Notwithstanding, these results are supportive of the return on the sale of coal being materially higher than the access charge proposed by NQXT.

128. The primacy and profit-enhancing nature of Adani selling its own coal was similarly recognised by the QCA in its finding that NQXT's primary purpose is to maximise Adani group profit by enabling the export of the Adani Group's coal. For example, the QCA states that:<sup>84</sup>

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

129. In my opinion, the likely higher returns available from the potential to increase the sale of its own coal, relative to the return from providing third party access to NQXT, casts significant doubt on the QCA's draft finding that NQXT has an overriding incentive to maximise third party access to uncontracted capacity.

130. By way of example, the QCA states simply in its draft recommendation that:<sup>85</sup>

... NQXT has an incentive to contract with customers in order to earn additional revenue, reduce its average costs of operating the Terminal and maximise profitability.

#### 4.1.3 Coal market dynamics

131. The coal market is inherently cyclical in nature, with a long history of market prices that shift rapidly – by tens or hundreds of dollars – in response to changes in demand and supply conditions. Even within these cycles, the market price of coal is significantly volatile.

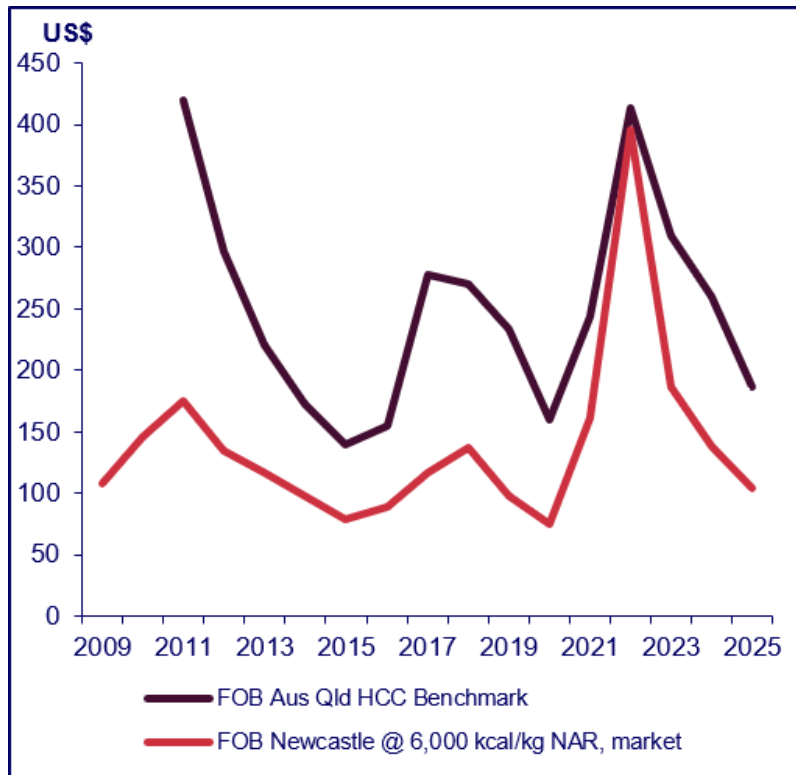
132. These dynamics are illustrated in figure 4.1.

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<sup>84</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 55.

<sup>85</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 57.

Figure 4.1: Market price of thermal coal and metallurgical coal



Source: Wood Mackenzie, Competition Declaration – North Queensland Export Terminal Facility, June 2026, p 6.

133. It follows from the cyclical and volatile nature of the coal market that returns can be influenced significantly by high quality access to coal transport infrastructure during periods of elevated coal prices.

## 4.2 Inconsistent with primary evidence as to Adani's actions

134. In this section I describe how the existence of an overriding incentive to maximise terminal throughput by making uncontracted capacity available to users is inconsistent with primary evidence as to Adani's own actions.

135. The Adani Group's present day actions, circumstances and views are inconsistent with the QCA's in principle finding as to its incentives. Such actions, circumstances and views include that:

- a. the Adani Group's approach to addressing QCoal's request to extend the Sonoma mine's existing contract is inconsistent with the QCA's contended incentives to facilitate third party access to uncontracted capacity at NQXT;
- b. the Adani Group's engagement with prospective third parties are inconsistent with the QCA's contended incentives to facilitate third party access to uncontracted capacity at NQXT; and
- c. the Adani Group maintains substantial coal reserves at the Carmichael mine, which are sufficient to ensure the long-term viability of NQXT;
- d. the Adani Group's present views of the tenements market are not consistent with those of a firm that seeks to rely on the future development of new and existing tenements to derive sustained throughput.

136. By way of contrast, I explain in section 5.3.1 that the QCA draws conclusions that are conducive to its view that NQXT is guided by an incentive to maximise throughput from third party users by reference to limited or unclear evidence.

#### 4.2.1 Sonoma contract

137. On 16 December 2021 QCoal applied to NQXT to extend the Sonoma mine's existing contract for ten years from its then expiry date on 1 December 2024.<sup>86</sup>
138. In January 2022 NQXT rejected this request on the basis that it fell outside the period for requesting additional term that was stipulated in Sonoma's contract, which had elapsed 16 days prior on 30 November 2021.<sup>87</sup>
139. QCoal and NQXT then exchanged a series of letters over the subsequent months that culminated in a request by NQXT for Sonoma to provide its financial statements, information on its supply chain access rights and to provide a bank guarantee for an amount equal to the value of all charges applicable to the Sonoma mine in the next 12 months.
140. NQXT's conduct is not consistent with an overriding incentive to maximise throughput but, rather, is more consistent with the real option value that I describe in section 4.1.
141. NQXT's request that Sonoma provide commercially sensitive information in relation to rail access rights and financial circumstances – to a vertically integrated, competing provider with a commercial interest in acquiring more rail access and an unchecked ability to raise the price of access – as a condition to negotiating further access is an example of the risks associated with NQXT's vertical integration.
142. For instance, NQXT's request for financial statements would assist it to extract rents from Sonoma, as discussed below and acknowledged by the QCA, by calibrating the access charge to align with Sonoma's maximum willingness to pay.
143. NQXT's conduct presents as a constructive dismissal of Sonoma's stated objective of obtaining additional, uncontracted terminal capacity.
144. In my opinion, the substance of this interaction amounts to primary evidence that is inconsistent with the actions of a party that is contended to have an overriding incentive to maximise throughput at NQXT.

#### 4.2.2 Engagement with third parties

145. If NQXT's conduct was principally guided by an unambiguous incentive of Adani Group to maximise the use of uncontracted capacity at NQXT, it would be reasonable to observe actions consistent with that end.
146. In contrast, it is difficult to reconcile the existence of such an incentive with NQXT's contemporary actions, eg, its concurrent raising of the price and significant reduction in the quality of access, including as relates to certainty over terms of access.<sup>88</sup>
147. Rather, in my opinion a more readily explicable basis for rationalising NQXT's current conduct is its recognition of and actions to preserve the option value for it to self-preference its own use of the

<sup>86</sup> QCoal, letter entitled 'Sonoma Mine Management Pty Ltd – Standard Abbott Point User Agreement (Coal)-Additional Term', 16 December 2021, p 1.

<sup>87</sup> NQXT, letter entitled 'Sonoma Mine Management Pty Ltd – Request for Additional Term', 14 January 2022, p 1.

<sup>88</sup> QCoal, *Request to recommend declaration of a service – Declaration of a service sought for the coal handling services at the North Queensland Export Terminal facility at Abbot Point*, 13 June 2025, pp 9-10.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

151. The absence of responses from NQXT [REDACTED] is not consistent with the QCA's contention that 'NQXT would have an incentive to renew contracts and to mitigate any uncertainty for the tenement holder ex ante'.<sup>91</sup>

152. Further, NQXT and the Adani Group's historical conduct, even under the protections for third parties established under the legacy contracts, are not consistent with an overriding incentive to maximise throughput. One such example is the Adani Group's conduct in 2016 in relation to the tonnes formerly contracted to Rio Tinto and the novation of those tonnes to a related party of the Adani Group.<sup>92</sup> These circumstances illustrate the risks for third parties when their best interests inevitably do not align with the objective of maximising Adani Group profit, and demonstrate the inconsistency between that objective and maximising third party throughput.

<sup>89</sup> QCoal, *Request to recommend declaration of a service – Declaration of a service sought for the coal handling services at the North Queensland Export Terminal facility at Abbot Point*, 13 June 2025, para 54.

<sup>90</sup> NQXT, letter entitled '*North Queensland Export Terminal Pty Ltd (NQXT) and QCoal Pty Ltd (QCoal) – Additional Term commencing 1 July 2027*', 28 February 2025, p 5.

<sup>91</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 81.

<sup>92</sup> QCoal, *Request to recommend declaration of a Service – Declaration of a service sought for the coal handling services at the North Queensland Export Terminal Facility at Abbot Point*, 13 June 2025, p 6.

#### 4.2.3

153.

154. If NQXT was guided by an incentive to maximise throughput of the strength proposed by the QCA, it would be reasonable to expect similarly strong efforts by NQXT to encourage [REDACTED]. For example, it would be reasonable to expect NQXT to reduce [REDACTED] ccess charges to the extent necessary to make the total supply chain cost of accessing NQXT cheaper than that [REDACTED] next best alternative terminal.

155. I am not aware of any evidence that such efforts have been made by NQXT.

156. Unless the total supply chain cost of [REDACTED] accessing NQXT, exclusive of terminal access charges, is more than the total supply chain cost of accessing [REDACTED] next best alternative terminal, [REDACTED] suggests that NQXT may not be guided by an incentive to maximise third party throughput.

#### 4.2.4 Tenements market

157. The QCA's assessment that NQXT has an incentive to support further development of the tenements market does not sit easily with the sentiments expressed by NQXT itself.

158. NQXT submitted that the definition of the tenements market set out in my criterion (a) report is not 'commercially realistic',<sup>94</sup> and highlighted challenges to the existence of such a market deriving from long term structural changes in the global coal market, approvals for new and expanded coal mines and, for coal in the Gallilee basin in particular, development and transportation costs.<sup>95</sup>

159. Noticeably absent from NQXT's rationalisation of its submission is the effect of prevailing uncertainty as to the availability of access to NQXT on reasonable terms.

160. Nevertheless, these statements indicate that NQXT is unlikely to be guided by any consideration of how best to support further development of the tenements market, which the QCA contends will maximise the Adani Group's profit.

### 4.3 Reinforcing considerations

161. In the material below, I discuss three other considerations that also suggest the QCA's contended overriding incentive of NQXT to maximise throughput at the terminal and thereby access to uncontracted capacity by third parties is oversimplistic.

#### 4.3.1 Cost and complications of metallurgical coal

162. NQXT submitted to the QCA that metallurgical coal is 'stickier' than thermal coal, [REDACTED]

<sup>93</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 38.

<sup>94</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, para 440.

<sup>95</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, paras 437-438.

<sup>96</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure D: *statement of Damien Dederer, APO*, 25 August 2025, paras 55-56.

163. NQXT further submitted that it employs additional processes to manage these issues<sup>97</sup> and that:<sup>98</sup>

[REDACTED]

164. The Adani Group's Carmichael mine produces only thermal coal, whereas in FY25 metallurgical coal accounted for 49 per cent of saleable coal production by third party mines that use NQXT.<sup>99</sup>

165. It follows from these circumstances that increasing throughput of metallurgical coal produced by third parties is likely to degrade terminal efficiency at NQXT. Accordingly, it is far from straightforward that simply maximising throughput at NQXT will maximise Adani Group profits.

#### 4.3.2 Cost structure and the market price of coal

166. In most workably competitive markets, the cost of supply is not dramatically different across suppliers.<sup>100</sup> This means that no individual or small group of suppliers can give effect to a material change in market price by reducing their supply, since any such actions would be replaced by production from a supplier with similar marginal cost.

167. Natural resources markets – and the global coal export market in particular – stand in contrast to these typical circumstances, since suppliers can and do have materially different costs of production.

168. This idiosyncratic characteristic of most globally traded markets for natural resources arises from the inevitable differences in natural endowment that influence the cost of production. Such differences typically arise by consequence of the varying accessibility of naturally occurring coal resources and their proximity or otherwise to coal transport infrastructure, but can also arise from differences in legislative and regulatory frameworks, including the extent of payments and environmental requirements.

169. Consistent with these enduring differences in the cost of supply across different natural resource producers, the market price is generally set by reference to the marginal cost of producers that have significantly higher costs of production than infra-marginal producers, particularly those at the low cost end of the supply curve.

170. It follows that changes in the quantity supplied by low-cost resource producers can result in changes in price that are much larger than would be expected to arise in workably competitive markets that do not involve the extraction of natural resources. The magnitude of such price changes are dependent on the price elasticity of demand and supply proximate to their point of intersection, ie, where the market price is determined.

<sup>97</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure D: *statement of Damien Dederer*, APO, 25 August 2025, para 57.

<sup>98</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure D: *statement of Damien Dederer*, APO, 25 August 2025, para 58.

<sup>99</sup> Saleable metallurgical coal production by relevant third party mines (ie, excluding Carmichael) was 18.1 million tonnes while saleable thermal coal production was 19.2 million tonnes in 2024-25. On these data, metallurgical coal accounting for approximately 49 per cent of total coal production by third party users of NQXT. See: QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 11.

<sup>100</sup> This empirical observation follows from the perfect competition condition that every firm has the same cost structure.

Box 4.1: Price elasticity of supply and demand for coal

A recent paper prepared by economists at the International Monetary Fund (IMF) estimated that both the demand and supply of coal – as measured at the market clearing prices and quantities – are relatively price inelastic across a range of time horizons, as summarised in Table A below.<sup>101</sup>

Table A. IMF estimates of coal price elasticities

Variable	Horizon 0	Horizon 1	Horizon 2	Horizon 3	Horizon 4	Horizon 5
Demand	-0.223	-0.239	-0.185	-0.262	-0.419	-0.489
Supply	0.421	0.235	0.253	0.251	0.300	0.218

Source: Bogmans, C, Pescatori, A, Petrella, I, Prifti, E and Stuermer, M, *The power of prices: how fast do commodity markets adjust to shocks?* IMF working paper WP/24/77, 2024, table 2, p 24. Note: Horizon of 'n' can be interpreted as measuring elasticity over an 'n+1' year period. The results presented are the authors' preferred instrumental variables (IV) method; the data source used to estimate coal price elasticities was the IEA's energy balances database.

A similar conclusion was drawn in an earlier literature review by the National Bureau of Economic Research, as summarised in Table B.<sup>102</sup>

Table B. NBER collected estimates of coal price elasticities

Variable	Short-run	Long-run
Demand	-0.3 to -0.7	-
Supply	0.0565	0.11

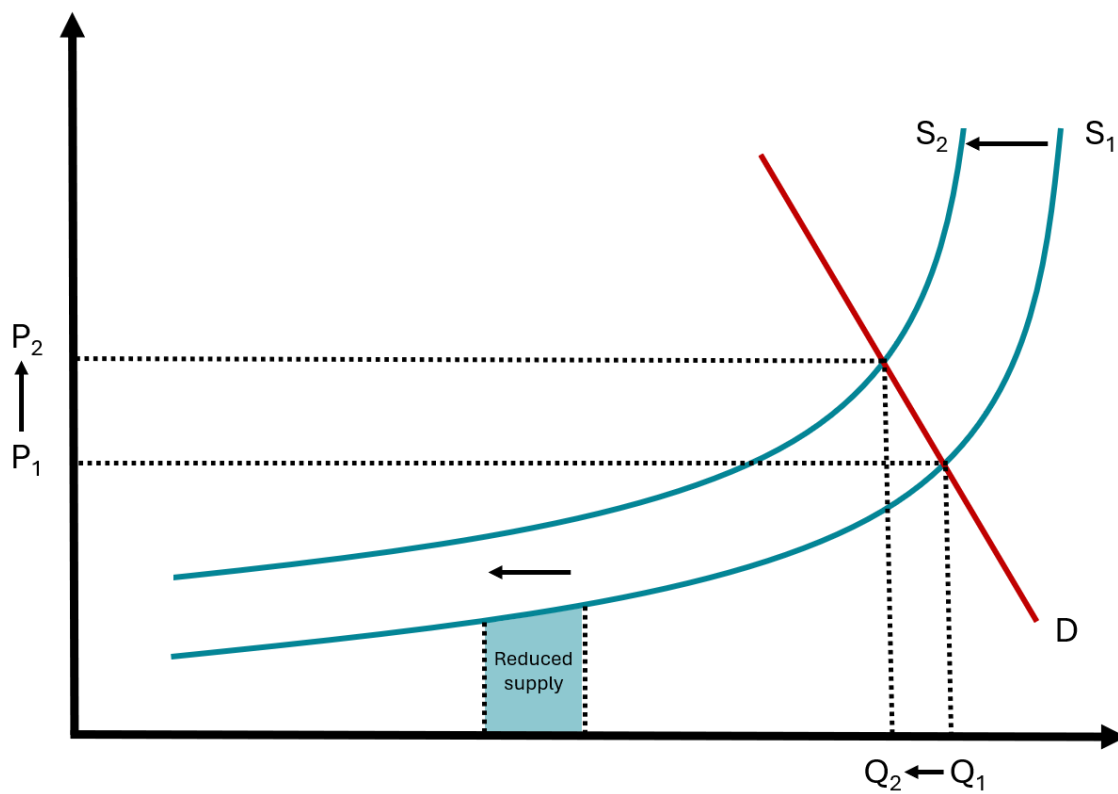
Source: Fally, T and Sayre, J, *Commodity trade matters*, NBER working paper 24965, 2018, appendix D, pp 10-12.

- 171. It follows from the relative inelasticity of demand and supply for coal at the point where the market clears that the market price is likely to be substantially influenced by changes in the quantity supplied by low cost producers of coal, such as those located in the Bowen Basin.
- 172. At 4.2 I present a stylised example – albeit reflecting slopes for both the demand and supply curves that are broadly consistent with the values indicated from the research I cite above – that shows how a relatively modest reduction in supply from a low cost supplier in a global coal market would shift the supply curve from S<sub>1</sub> to S<sub>2</sub> and increase the market price from P<sub>1</sub> to P<sub>2</sub>.

<sup>101</sup> Bogmans, C, Pescatori, A, Petrella, I, Prifti, E and Stuermer, M, *The power of prices: how fast do commodity markets adjust to shocks?* IMF working paper WP/24/77, 2024, tables 1 and 2, pp 23-24.

<sup>102</sup> Fally, T and Sayre, J, *Commodity trade matters*, NBER working paper 24965, 2018.

Figure 4.2: Illustrative effect of reduced output from a low cost supplier



Source: HoustonKemp analysis.

173. Reductions in supply of thermal coal from low cost, third party users of NQXT can be expected to result in a higher market price than would otherwise be the case. Conversely, increased supply by such third party users of NQXT can only be expected to lower the market price.
174. Wood Mackenzie highlighted several examples in which disruptions to supply contributed to changes in the market price for coal, ie:<sup>103</sup>
  - a. the 2010-11 Queensland floods and Cyclone Yasi, which caused heavy flooding across Queensland and affected mine production, rail haulage and port logistics;
  - b. Cyclone Debbie in March 2017, which caused disruption to the Goonyella rail system; and
  - c. persistent La Niña rainfall in 2021-22, which caused flooded mining pits and rail disruptions combined with labour constraints from COVID-19.
175. These supply disruptions combined with other relevant contextual factors influencing the coal market, exhibit how changes in the supply of coal can shift the global market price of coal.
176. In my opinion, these market dynamics mean that it is not appropriate for the QCA to assume that the Adani Group has an overriding incentive to increase access to uncontracted capacity at NQXT and thereby coal exports from third party terminal users. Rather, the prospect of increased output by third party users of NQXT placing downward pressure on the market price for thermal coal sold by Adani

<sup>103</sup> Wood Mackenzie, Competition Declaration – North Queensland Export Terminal Facility, June 2026, pp 6-7.

implies that increased terminal throughput may be contrary to the Adani Group's objective of seeking to maximise its profits.

177. For completeness, I note that these circumstances arise exclusively from the vertically integrated nature of NQXT and the resulting ability for the Adani Group to influence the quantity and timing of rivals' supply, such that there it can induce a favourable shift in the price of coal with no adverse effect on its quantity.
178. In contrast, this incentive does not apply for a coal producer that operates on a standalone basis, since a non vertically integrated producer would be subject to the usual financial tension as between:
- a. the upwards effect on price from holding back its production; and
  - b. the lower quantity sold, to which a more favourable price would apply.
179. By consequence of these intrinsic attributes of resources markets, I disagree with the observations of the QCA:
- a. that if NQXT were to limit third party throughput at the terminal, this would not materially affect global coal prices or competitive conditions, because coal exported through NQXT contributes less than five per cent of global metallurgical coal exports and less than two per cent of global thermal coal exports – such an observation can only be presumptively valid in markets where all producers have more or less the same cost structure;<sup>104</sup> and
  - b. that:<sup>105</sup>

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

*Should NQXT restrict access at the Terminal, it would not lower the cost of producing Carmichael coal, nor would it change global demand or lift the price of coal.*
180. The above observations of the QCA are at odds with the supply conditions that underpin global coal markets, so that:
- a. although it is true that restricting access at NQXT would not *lower the cost* of producing Carmichael coal, changes in the *cost* of coal supplied by low cost, inframarginal producers are not an economically relevant consideration because those producers' costs do not determine the market price;
  - b. although it is also true that restricting access at NQXT would not alter *global demand* for coal, the inelastic nature of both supply and demand conditions at the point where the market clears does mean that changes in the quantity supplied by low cost producers will alter the market clearing price of coal; and
  - c. in contrast to the QCA's supposition, even modest restrictions in the quantity of coal supplied by low cost Queensland (including Galilee Basin) producers can be expected to lift the *global price* of coal.

<sup>104</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 43.

<sup>105</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 44.

#### 4.3.3 Newlands system capacity

181. In this section I highlight that maximising third party throughput at NQXT will reduce the availability of ad hoc capacity on the Newlands rail system, which is a critical element of the supply chain infrastructure required by the Adani group to increase production at its Carmichael mine.
182. Mr Lane, General Manager of the Bowen Rail Company (BRC) and the Carmichael Rail Network (CRN), explained that:<sup>106</sup>

... [redacted]  
[redacted]. Bravus currently holds an Access Agreement with Aurizon Network for approximately [redacted] of access rights on the Newlands System for the period until [redacted].

As the ECD [expected capacity deficit] is forecast to remain in the Newlands System until at least FY30, [redacted]  
[redacted]

...I am aware that Bravus is planning to increase production from the Carmichael Mine up to around 16 mtpa. [redacted]  
[redacted]. However, [redacted]  
[redacted] As I explain above [redacted]  
[redacted]

183. Any increase in third party throughput at NQXT reduces the availability of capacity on the Newlands rail system and will therefore have direct, negative consequences for the Adani Group's plan to export more coal from its Carmichael mine.
184. Accordingly, on this consideration alone, it is overly simplistic to assume that NQXT has an overriding incentive to maximise third party throughput at the terminal.
185. Rather, the Adani Group's long term profits will likely be promoted by increasing the availability of ad hoc or firm capacity on the Newlands system, such as would be achieved by:
- not encouraging new sources of demand for capacity at NQXT;
  - frustrating terminal access under existing contracts, through leveraging the unfavourable terms of access provided for therein, when the effect on the Newlands system is to increase ad hoc capacity for use by related parties; and/or
  - foreclosing third party users entirely.
186. Consistent with this dimension of the incentives applying in relation to NQXT, the QCA similarly observes that:<sup>107</sup>

To the extent that below-rail capacity constraints in the Newlands system persist during the proposed declaration period, this may in fact be a disincentive for NQXT to provide access to third parties at the Terminal. In such circumstances, the exit of third party users would free up Newlands system capacity, which would then be available to service Bravus' additional expected demand.

187. However, by this assessment the QCA refers only to the most extreme outcome of the Adani Group's incentive to increase its access to the Newlands system, ie, the exit of third parties. The QCA appears not to consider the first two consequences for the Adani Group's actions that I note at paragraph 185

<sup>106</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure E: *statement of Mr Lane, Bowen Rail*, 22 August 2025, paras 39 and 41.

<sup>107</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 58.

above, ie, refraining from encouraging new sources of demand and frustrating access under existing third party contracts.

188. Further, the QCA goes on to conclude that the fact of NQXT renewing contracts with some users indicates that the Adani Group's appetite for additional capacity on the Newlands system is not a material risk for third parties.
189. In my opinion, the striking of renewed contracts with substantially degraded terms of access does not establish the absence of risk for third parties. Although the Adani Group may face an incentive to contract some of NQXT's additional capacity (the amount beyond Carmichael's current foreseeable demand), it does not follow that this is necessarily true for all additional capacity, or that it will not frustrate access under those contracts in the future when it is advantageous to do so.

#### 4.3.4 Incentive to acquire tenements

190. The QCA states that:<sup>108</sup>

...the Adani Group is unlikely to require further tenements to maximise supply chain throughput at current capacity. The existence of substantial reserves reduces the risk of active foreclosure of the tenements market by the Adani Group and diminishes concerns about a dominant player suppressing the market through tenement accumulation.

191. Although the Adani Group does hold substantial coal reserves, in my opinion the QCA overlooks the significant capital cost associated with expanding the Carmichael mine,<sup>109</sup> as well as the corresponding risks. This includes the costs associated with expanding the mine itself as well as the costs associated with expanding the Carmichael rail network (CRN).
192. The time, cost and risk associated with expanding the Carmichael mine and below-rail infrastructure raises the prospect that it may be more profitable for the Adani Group to acquire in-catchment, later-stage coal tenements, including operating mines, as opposed to expanding the Carmichael mine. Such potential is reinforced by the fact that competition in the market for later stage tenements is affected by both the certainty of access at NQXT and that the Adani Group is the only market participant with absolute certainty of access.
193. Further, the existing capacity constraint on the Newlands system (see section 4.3.3) gives rise to additional complexities with expanding the Carmichael mine, since below-rail infrastructure in the Newlands system would also need to be expanded. In addition to the potential cost advantages from acquiring later stage tenements, the Adani Group would also benefit through obtaining the below-rail capacity on the Newlands system of any operating mine, ie, a later stage tenement.
194. In addition to the potential cost advantages from acquiring such later stage tenements, this incentive is likely to be strengthened by the potential to acquire a mine – including an operating mine – that produces coal that is more valuable than that produced at Carmichael, ie, either metallurgical coal or higher-grade thermal coal.
195. To ensure that the Adani Group can realise the full potential of the option value associated with uncontracted capacity, it also has an incentive to ensure that it can readily vary its own coal production. In light of the complexities associated with expanding the Carmichael mine to which I refer above, in order to secure maximum flexibility in terms of its production capability such that it can realise the real option value of uncontracted capacity during periods of higher coal prices, the Adani Group may well seek to acquire operating mines, ie, later-stage coal tenements.

<sup>108</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 75.

<sup>109</sup> Crowe, M, *Statement in response to declaration request: North Queensland Export Terminal (NQXT) Declaration request from QCoal Pty Ltd and Byerwen Coal Pty Ltd (QCoal Users)*, 27 August 2025, para 12.

196. To summarise, by its observation that ‘the Adani Group is unlikely to require further tenements to maximise supply chain throughput at current capacity’,<sup>110</sup> the QCA has:
- a. given too much weight to an assessment of Adani’s incentives that is confined by its present portfolio of tenements, ie, the Carmichael mine; and
  - b. given no consideration to an assessment of Adani Group’s incentives that would allow it to maximise the profits it may derive from activities within the northern region mining area by, say, adjusting its tenement holdings – including operating mines – with the purpose of securing an overall, lower cost portfolio of tenements.
197. From the perspective of the Adani Group, with its established presence in the northern region mining area, the QCA’s assessment of Adani’s incentives would be assisted by application of a broader profit maximising presumption that Adani will seek to obtain further tenements if its existing tenement holding is sub-optimal.
198. Further, NQXT’s ability to extract rent and restrict access would decrease the value and price of later-stage tenements and thereby assist the Adani Group in acquiring such tenements, which is again illustrative of incentives that are inconsistent with maximising third party throughput.

#### 4.4 Conclusion

199. In my opinion, the QCA has overlooked the real option value associated with NQXT retaining the ability to access future uncontracted capacity and/or to frustrate access to already contracted capacity in the process of self-preferencing its related parties.
200. The value to the Adani Group of the ready ability to increase its own future access to NQXT reflects that:
- a. the return on exporting coal is likely to outweigh significantly the incremental return of providing third party access to NQXT; and
  - b. the inherently cyclical nature of the coal market and the returns attainable from increasing its own access during periods of elevated coal prices.
201. By overlooking this real option value, the QCA has materially overestimated the strength of the ‘throughput incentive’ that substantially underpins its draft recommendation.
202. Further, the existence of an overriding incentive to maximise terminal throughput by making uncontracted capacity available to users is inconsistent with primary evidence as to Adani’s own actions. These sources of primary evidence include:
- a. NQXT’s conduct when the Sonoma mine sought to extend and then negotiate further access, including NQXT seeking to acquire sensitive commercial information in relation to rail access rights and financial circumstances;
  - b. NQXT’s conduct in relation to third parties seeking to renew legacy contracts, eg, the concurrent raising of the price and significant reduction in the quality of access, including as relates to certainty over terms of access;
  - c. [REDACTED]; and

<sup>110</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 75.

- d. NQXT's view of the market for tenements, which suggests it is unlikely to be guided by any consideration of how best to support further development of the tenements market.
203. In my opinion, the substance of these actions by NQXT amount to primary evidence that is inconsistent with the actions of a party that is contended to have an overriding incentive to maximise throughput at NQXT.
204. Rather, a more readily explicable basis for rationalising NQXT's current conduct is its recognition of and actions to preserve the option value for it to self-preference its own use of the terminal, either through the use of uncontracted capacity or the ability to frustrate or further degrade the quality of access for third party users.
205. A range of further considerations reinforce that the supposed overriding incentive of NQXT to maximise throughput at the terminal and thereby access to uncontracted capacity by third parties is oversimplistic, with these reinforcing considerations being:
- a. the cost and implications of handling third party metallurgical coal at NQXT in conjunction with Adani-sourced thermal coal;
  - b. idiosyncratic characteristics of global coal markets that demonstrate it is too simplistic to assume that increased throughput by third parties has a positive overall effect on Adani Group profit, even where it does not supplant capacity that would otherwise be used by the Adani Group;
  - c. the effect of increased throughput by third parties on ad hoc capacity on the Newlands system that is required to facilitate the Adani Group's stated plans to increase production to 16 mtpa, and beyond; and
  - d. the potential benefits to the Adani Group of adjusting its tenement holdings so as to secure an overall, lower cost portfolio of tenements, as well as to restrict access and returns for third party tenement holders so as to decrease the value and price of tenements that can be acquired by the Adani Group.
206. In my opinion, the analysis presented in this section demonstrates that the Adani Group's conduct is not, and will not in the future, be guided by an overriding incentive to maximise throughput by third parties.
207. Accordingly, it cannot be assumed that the outworking of NQXT's unconstrained ability to pursue its objective of maximising Adani Group profit will have no effect on the quantity of coal contracted or shipped by third parties at NQXT.
208. Rather, in my opinion the assessment of the effect of declaration on competition in dependent markets should proceed on the basis that, absent declaration, third parties can expect to ship coal at NQXT only to the extent that capacity is not required by the Adani Group.

## 5. Implications for later-stage tenements markets

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209. In this section, I discuss the implications of the significant doubt applying in relation to the QCA's contended overriding incentive for NQXT to maximise throughput at the terminal, for the effect of declaration on dependent market competition. I have organised this material by reference to three considerations:
- a. that the appropriate emphasis is on the improvement in opportunities and environment for competition, such that a material increase in competitive outcomes is more likely;
  - b. the importance of the perspective of tenement buyers in making the dependent market competition assessment; and
  - c. the QCA's view that it cannot reach a decision to declare NQXT without evidence of decisions in dependent markets being influenced by the risks that apply to access to NQXT.

### 5.1 Opportunities and environment for competition

210. Competition is a dynamic process of rivalry, whereby firms seek to maximise profits by offering price-product-service packages to customers that are more attractive than their rivals, while minimising their costs.
211. Consistent with comments by the Treasurer, an assessment of criterion (a):<sup>111</sup>
- ...involves consideration of whether there is an improvement in the opportunities and environment for competition, such that competitive outcomes are materially more likely to occur in a future with declaration compared to a future without declaration.
212. An assessment as to whether declaration will improve the opportunities and environment for competition therefore requires careful consideration of how all participants compete in the relevant market.
213. In the market for later-stage tenements, this includes competition between buyers, where the intensity of competition reflects their perceptions of the value and risks associated with acquiring tenements.
214. An assessment of whether declaration of the service provided at NQXT will improve the opportunities and environment for competition in the market for later-stage tenements therefore requires:
- a. a necessarily conjectural assessment that is inevitably characterised by a paucity of primary evidence as to decisions that, by their nature, are predisposed to courses of action that did not proceed, eg, a decision by a prospective buyer not to enter the market; and
  - b. consideration of whether a rational buyer of tenements would perceive the value and risk of later-stage tenements to be materially improved by declaration.

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<sup>111</sup> Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, para 4.7.16.

## 5.2 Perspective of a rational buyer of later-stage tenements

215. In the market for later-stage tenements, the promotion of competition in the market derives from the opportunities and environment for competition in the eyes of a rational buyer of tenements.
216. Accordingly, it is the perception of a rational buyer of tenements, incumbent or prospective, that will inform the effect of declaration on competition in the market for later-stage tenements.
217. Buyers' perceptions will reflect that harm is not limited to circumstances in which the Adani Group purposefully seeks to disadvantage or injure its competitors. For example, harm can transpire – and could be more likely to arise – as an outworking of NQXT self-preferencing its related parties in the pursuance of maximising Adani Group profitability.
218. The perceptions of buyers can manifest in the form of the expected value of tenements, which reflect their perception of the potential future returns available and the degree of risk that applies to those returns.
219. This was acknowledged by the QCA, which explained that:<sup>112</sup>

...in a future without declaration, the prospect of higher Terminal charges could reduce the expected net present value of tenements, which may narrow the pool of participants willing to bid.

220. The QCA also acknowledged that the transfer of any future returns (or rents) away from parties in dependent markets:<sup>113</sup>

...can have a material impact on competition — for example, if it has an impact on a firm's competitiveness or investment incentives that is sufficient to materially impact competition in the dependent market.

221. In the decision to declare DBT, the Treasurer similarly noted that a \$3 per tonne price differential would reduce the value placed on tenements by potential users of DBT – being buyers of tenements – which would make it difficult for efficient potential DBT users to acquire tenements.<sup>114</sup>

### 5.2.1 Extraction of returns

222. I agree with the QCA that NQXT has the ability to harm third party terminal users and, more specifically, that its unconstrained ability to raise the price of access means that:<sup>115</sup>

...NQXT is likely to test the limit of users' ability to pay over time.

223. In my opinion, this alone will materially reduce the present value of later-stage tenements in the eyes of rational third party buyers.
224. Although the QCA observes that the price offered to renewing users may be regarded as an upper bound estimate of the access charge,<sup>116</sup> in my opinion the access charge demanded by NQXT in a future without declaration is likely to be higher still, including shortly after any decision by the QCA not to declare NQXT.

<sup>112</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

<sup>113</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 117, footnote 380.

<sup>114</sup> Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, para 4.7.20.

<sup>115</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 70.

<sup>116</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

225. The likelihood of a further increase in price is consistent with the QCA's observation, albeit as relevant to new access seekers, that it would be open to NQXT to offer different prices in the future:<sup>117</sup>

...subject only to the economic constraints that would apply at that time (i.e. the willingness of parties to reach commercial agreement).

### 5.2.2 Certainty and quality of access

226. In addition to NQXT testing the limit of third party users' willingness to pay through higher access charges, the terms of access under NQXT's proposed new agreements reduce the certainty and quality of access under existing contracts. I explain below that this is likely to reduce further buyers' perception of the value of later-stage tenements.

227. The terminal regulations govern the core functions of terminal operation, [REDACTED].<sup>118</sup> It follows that they would typically operate as a key constraint on the operation of the terminal preferencing one or other party, eg, by [REDACTED].

228. [REDACTED]. In my opinion, this casts significant doubt on the quality of access that will ultimately be realised by third users at NQXT, including as it relates to certainty of access.

229. The QCA similarly observed that:<sup>119</sup>

...in a future without declaration, Terminal users are likely to obtain access on less favourable terms and face a greater prospect that economic rents are transferred to NQXT. We also found that the renewal provision in NQXT's new standard agreement introduces additional risk and uncertainty regarding the continuity and terms of access over the life of a mining investment, relative to a future with declaration.

230. The effect of uncertain and low quality access on expected returns and risk for buyers of tenements is likely to reflect that:

- a. harm to third parties can be an incidental outworking of NQXT self-preferencing its related parties in the pursuance of maximising Adani Group profitability; and
- b. Adani's incentive to self-preference related parties will be highest during the same time periods in which access is most valuable and consequential to third parties, ie, when coal prices are elevated.

231. In my opinion, these risks are likely to reduce materially the present value of later-stage tenements in the eyes of buyers, even in circumstances where contracted capacity is available.

232. The QCA similarly observed that:

Without certainty of access, tenement investors may not be willing to undertake any transactions, which could reduce competition within the coal tenements market.<sup>120</sup>

<sup>117</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 66, footnote 218.

<sup>118</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure D: *statement of Damien Dederer, APO*, 25 August 2025, para 27.

<sup>119</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 80.

<sup>120</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 80.

...changes in terms and conditions and the certainty of any terms of access may influence whether hurdle rates for investment are satisfied and whether that investment may be held up.<sup>121</sup>

233. In my opinion, the ability and incentive for NQXT to self-preference related parties, to the detriment of current and/or prospective third party terminal users, would materially influence buyer's perceptions of the value of later-stage tenements and so whether to invest.
234. The QCA also cites risks around access to NQXT as the basis for limiting the geographic scope of its preferred tenements market definition to the northern mines. However, the QCA does not then draw the conclusion that declaration would reduce such risks and, as such, would increase rivalry between buyers.

### 5.2.3 Conclusion

235. In my opinion, it is difficult to see how any rational buyer of later-stage tenements could not be significantly concerned by the unconstrained ability and incentive for NQXT concurrently to extract future rents from mining activities, while providing uncertain and low quality access that enables NQXT to self-preference its related parties.
236. It is intuitive that these risks would materially decrease the value placed on later-stage tenements by third parties. In my opinion, this reduction in the value of later-stage tenements would be likely to reduce entry, investment and activity in the market for later-stage tenements, with the consequence of materially reducing rivalry and, therefore, competition.
237. Such reduction in the value of later-stage tenements contributes to a reduction in competition for tenements, with the lack of certainty over access for third parties hindering potential third party purchasers of tenements in their ability to compete with the Adani Group in acquiring tenements.

## 5.3 Relevance of primary evidence

238. In this section I address the QCA's view that it cannot reach a decision to declare NQXT without evidence of decisions in dependent markets being influenced by the risks that apply to access to NQXT.
239. I explain in section 3 that the QCA concludes that NQXT has an unconstrained ability to operate NQXT in a manner that maximises the Adani Group's profit. The QCA further concludes that the interests of third party users are protected only by the conclusion it draws as to the nature of NQXT's conduct that will maximise the Adani Group's profit, ie, maximising throughput from third parties.
240. In this context, the QCA states that it cannot reach a conclusion that declaration would materially promote competition in the market for later-stage tenements without primary evidence that risks at NQXT are influencing decisions in that market to the extent that it impedes activity and 'alters' the competitive landscape. Outcomes in which the risks that apply to access to monopoly infrastructure have the effect of preventing investment in dependent markets is referred to by the QCA as 'hold up'.
241. For example, the QCA states that:<sup>122</sup>

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

<sup>121</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 76-77.

<sup>122</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 84.

242. An assessment of whether declaration of the service provided at NQXT will improve the opportunities and environment for competition in the market for later-stage tenements necessarily requires a conjectural assessment.
243. Further, by its nature 'primary evidence' of investment in dependent markets not occurring because of risks that apply to NQXT involves actions that have never taken place, eg, a decision by a prospective buyer of later-stage tenements not to enter the market. It is therefore unsurprising that there exists a paucity of primary evidence of the type sought by the QCA.
244. In my opinion, the absence of 'primary evidence' should not preclude a conclusion that declaration is likely to promote a material increase in competition in a dependent market.

### 5.3.1 Primary evidence relied upon by the QCA

245. The QCA draws several observations that are conducive to its view that NQXT is guided by an incentive to maximise throughput from third party users by reference to limited or unclear evidence.
246. For example, the QCA relies on the renewal of *some* existing users' contracts as evidence of its finding that 'NQXT does not face incentives to refuse access to third party access seekers'.<sup>123</sup>
247. In its consideration of whether contracting could mitigate 'hold-up' risk, the QCA states:<sup>124</sup>

...we also note that it is open for tenement holders to negotiate alternative terms and that NQXT would have an incentive to renew contracts and to mitigate any uncertainty for the tenement holder ex ante. This is because **NQXT has an incentive to promote the development of tenements, or to encourage the continued operation of mines, that rely on NQXT as this will provide promote [sic] Terminal throughput.** [emphasis added]

248. However, the postulation of an incentive for NQXT to renew contracts and mitigate uncertainty for tenement holders does not appear to align with primary evidence.
249. Further, in section 4.2 I identify primary evidence that suggests NQXT's conduct is not guided by an incentive to maximise throughput by third parties, including by promoting the development of tenements.
250. In discussing natural protections to hold-up, the QCA also notes that:<sup>125</sup>
- ...there may be some countervailing incentive for monopolies to unilaterally 'solve' hold-up to avoid stranding their assets. In particular, given the spare capacity at the Terminal that is likely to persist over the proposed declaration period, it is not evident that NQXT would be motivated to engage in conduct that may give rise to hold-up.
251. In contrast, in my opinion the significant coal reserves at the Carmichael mine substantially limit or eliminate NQXT's asset stranding risk,<sup>126</sup> while the real option value of uncontracted terminal capacity and a range of other economic considerations that I explain in section 4 apply so as to counteract any incentive to increase third party access to NQXT.
252. In my opinion, the existence of primary evidence in support of the direct linkage between an incentive to maximise throughput and the attempt to maximise the Adani Group's profit is also not readily

<sup>123</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 58.

<sup>124</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 81.

<sup>125</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 80.

<sup>126</sup>

[REDACTED]. See: NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd's application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure E: *statement of Mr Lane, Bowen Rail*, 22 August 2025, Annexure BL3, p 6.

apparent. I discuss other substantive incentives facing NQXT that run contrary to the primacy given by the QCA to maximising throughput, in section 4.

253. Further, I explain in section 5.2 that it is reasonable to conclude that a rational buyer of later-stage tenements would be significantly concerned by the unconstrained ability and incentive for NQXT concurrently to extract future rents from mining activities, while providing uncertain and low quality access that enables NQXT to self-preference its related parties.
254. These perceptions by buyers are consistent with the risks that apply to access at NQXT having the effect of preventing investment in the market for later-stage tenements, ie, the 'hold up' referred to by the QCA.

## 5.4 Scope for increased activity in the tenements market

255. It is helpful to organise the QCA's assessment by reference to two fundamental questions, ie:
- a. is there scope for additional entry and investment in the later-stage tenements market from both potential entrants and incumbents, ie, later-stage tenement holders including operating mines; and
  - b. absent declaration, will NQXT's incentive to offer low quality access and/or to frustrate high quality access and to extract rents from terminal users materially reduce buyers' perceptions as to the value of tenements?
256. In my opinion, these two questions appear to be conflated in the draft recommendation, which contemplates the effect of declaration on the later-stage tenements market by reference to an implied assumption that there is no scope for an incremental increase in activity in that market.
257. By contrast, if the QCA was to form the view that there is scope for additional activity in the later-stage tenements market, its draft recommendation is difficult to reconcile with the QCA's observations:
- a. that NQXT is likely to test the limits of terminal users' willingness to pay by increasing terminal charges and extracting rents;<sup>127</sup>
  - b. that this could reduce the expected net present value of tenements and reduce the number of participants in the market;<sup>128</sup>
  - c. that the potential for discriminatory conduct absent declaration increases risk and uncertainty for third parties, in comparison to Adani Group companies;<sup>129</sup>
  - d. as to the potential for lower quality access to NQXT absent declaration and that NQXT can impose 'discriminatory contract terms or operational decisions that seek to optimise commercial or operational outcomes for related entities of NQXT';<sup>130</sup>
  - e. that absent declaration third parties have no recourse to independent arbitration to enable access on reasonable terms;<sup>131</sup> and

<sup>127</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 70.

<sup>128</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82

<sup>129</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 59.

<sup>130</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 57 and 65 (quotation).

<sup>131</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 65.

- f. that currently new buyers from outside the region are unlikely to enter the market due to uncertainty as to access to NQXT.<sup>132</sup>

258. In my opinion, the QCA's substantive analysis as to the effects of declaration on the tenements market is founded on an assumption that there is no material scope for an incremental increase in investment and/or entry in the market for later-stage tenements.
259. Absent such an assumption, it is difficult to see how NQXT extracting rent and providing low quality access would not significantly deter activity in the market for later-stage tenements.

#### 5.4.1 Relevant QCA observations

260. The extent to which the QCA engages with the potential for future activity in the tenements market, and the basis for its view, appears confined to its related observations that:<sup>133</sup>

...there is limited evidence of genuine rivalry between firms and potential entrants in the tenements market and in a future without declaration, we consider this environment likely to continue.

...while low activity in the tenements market, of itself, does not equate to weak competition, we consider it supportive of our analysis of a future with and without declaration.

261. It is not clear on what basis the QCA formed its view that the lack of activity in the later-stage tenements market is likely to continue in a future without declaration. However, in drawing this conclusion the QCA appears not to have considered:
- a. the ongoing effect on the later-stage tenements market of the risks that currently apply to future access to NQXT; and
  - b. the effect of declaration on alleviating those risks and stimulating additional entry, activity and investment in the later-stage tenements market.

## 5.5 Conclusion

262. In the market for later-stage tenements, the promotion of competition in the market derives from the opportunities and environment for competition in the eyes of a rational buyer of tenements. Accordingly, it is the perception of a rational buyer of tenements, incumbent or prospective, that informs the effect of declaration on competition in the market for later-stage tenements.
263. These perspectives will reflect that harm is not limited to circumstances in which the Adani Group purposefully seeks to disadvantage or injure its competitors. For example, harm can transpire – and may be more likely to arise – as an outworking of NQXT self-preferencing its related parties in the pursuance of maximising Adani Group profitability.
264. In my opinion, it is difficult to see how any rational buyer of later-stage tenements could not be significantly concerned by the unconstrained ability and incentive for NQXT concurrently:
- a. to extract future rents from mining activities; and
  - b. to provide uncertain and low quality access that enables NQXT to self-preference its related parties.
265. The QCA recognises these outcomes as likely consequences of a decision not to declare the coal handling service provided at NQXT.

<sup>132</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 52 and 54.

<sup>133</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 74.

266. It is intuitive that these risks would materially decrease the value placed on later-stage tenements by third parties. In my opinion, this reduction in the value of later-stage tenements would be likely to reduce entry, investment and activity in the market for later-stage tenements, with the consequence of materially reducing rivalry and, therefore, competition. The reduction in the value of tenements to third party buyers also reduces their ability to compete against the Adani Group in acquiring later-stage tenements.
267. Accordingly, in my opinion criterion (a) is therefore satisfied in respect of the coal handling service provided at NQXT. In reaching a contrary conclusion, the QCA's substantive analysis as to the effects of declaration on the tenements market presents as being founded on an assumption that there is no material scope for an incremental increase in investment and/or entry in the market for later-stage tenements. Absent such an assumption, it is difficult to see how NQXT extracting rent and providing low quality access could not significantly deter activity and reduce competition in the market for later-stage tenements.
268. I explain in section 5.3.1 that the QCA's assessment of protections against hold-up does not appropriately consider the implications of incentives contrary to that of maximising throughput by third parties (which I discuss in section 4). The QCA considers that while higher terminal charges 'could reduce the expected net present value of tenements, which may narrow the pool of participants willing to bid', it expects the reduction and narrowing would be minor.<sup>134</sup> In my opinion the likely narrowing of participants willing to bid for later stage tenements cannot safely be presumed to be minor and that hold-up does form a material risk such that declaration would significantly mitigate or eliminate.
269. By way of further context to the conclusion that I draw above in relation to criterion (a), I explain in section 5.2 that an assessment of whether declaration of the service provided at NQXT will improve the opportunities and environment for competition in the market for later-stage tenements necessarily requires a conjectural assessment.
270. By its nature, 'primary evidence' of investment in dependent markets not occurring because of risks that apply to NQXT involves actions that have never taken place, eg, a decision by a prospective buyer of later-stage tenements not to enter the market. It is therefore unsurprising that there is a lack of primary evidence of the type sought by the QCA.
271. In my opinion, the absence of 'primary evidence' should therefore not preclude a conclusion that declaration is likely to promote a material increase in competition in a dependent market.

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<sup>134</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 82.

## 6. Other dependent markets

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272. I explain in section 3.4 that the QCA's assessment of the effect of declaration on competition in dependent markets is shaped by its view that declaration will not promote competition in markets that are already workably competitive.
273. The QCA forms the view that both thermal and metallurgical coal exports markets and coal haulage markets are workably competitive and can be expected to remain workably competitive irrespective of declaration.<sup>135</sup>
274. In my opinion, even if a market is workably competitive, as a matter of principle declaration may still be capable of promoting a material increase in competition such that a workably competitive market can become more competitive.
275. Competition is a matter of degree that exists on a spectrum.<sup>136</sup> As a matter of principle, a material increase in competition may take place from any initial position on that spectrum. It follows that the promotion of a material increase in competition may also take place from any position on that spectrum. Further, the present position in relation to NQXT includes a history of contract-based or quasi-regulation of the terms by which third parties access the terminal, but with the fundamental properties of these arrangements the subject of significant change going forward.
276. Taking that context, in this section I address the QCA's preliminary conclusions on the coal export markets, coal haulage market and secondary capacity trading markets.

### 6.1 Coal export markets

277. In assessing the effect of declaration on the level of competition in coal export markets, the QCA states that:<sup>137</sup>

...both the thermal and metallurgical coal export markets are workably competitive and any restriction of access at the Terminal is unlikely to materially impact competition in these markets... Because the Terminal accounts for a small share of global supply, limiting throughput at the Terminal would not materially affect world prices or change the competitive conditions in these markets.

278. In my opinion the QCA's assessment is over-simplistic. The coal market dynamics that I describe in sections 4.1.3 and 4.3.2 illustrate how reductions in supply from low cost producers can influence competitive price outcomes in a workably competitive market. In particular, I explain that a restriction in the supply of low-cost coal to the global market will therefore exert upwards pressure on the market price, reflecting the reduction in rivalry from any such low cost producer.
279. In the preceding sections I set out a range of reasons for which NQXT would understandably seek to self-preference its related parties at NQXT in the pursuance of maximising Adani Group profit, to the detriment of current or potential third party users.

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<sup>135</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, pp 43-44.

<sup>136</sup> See, for example: Jehle, G and Reny, P, *Advanced microeconomic theory*, Third edition, Pearson, 2011, p 170, which explains that 'Perfect competition occupies one polar extreme on a spectrum of possible market structures ranging from the 'more' to the 'less' competitive. Pure monopoly, the least competitive market structure imaginable, is at the opposite extreme.' Consistent with the existence of such a spectrum, Motta explains that in 'real world industries...we should expect every firm to have some degree of market power.' Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, pp 115-116.

<sup>137</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 43.

280. The adverse consequences on the market for metallurgical coal would reflect that:
- around five per cent of world trade in metallurgical coal is transported through NQXT;<sup>138</sup> and
  - that metallurgical coal is supplied by low-cost producers, which would amplify the effects of a reduction in supply on the market price of metallurgical coal.

281. Consistent with the analysis and conclusion that I present in my criterion (a) report, in my opinion:<sup>139</sup>

Declaration of NQXT, and the access on reasonable terms for exporters of metallurgical coal that it would imply, would therefore promote an increase in competition in global markets for metallurgical coal exports, by increasing supply and thereby placing downward pressure on prices.

## 6.2 Coal haulage markets

282. In assessing the effects of declaration on competition in the coal haulage market, the QCA states that:<sup>140</sup>

...below-rail and coal haulage markets operate in a workably competitive manner and it is not evident that this would change in any future without declaration given the rail access policies in place... In the coal haulage market, multiple established operators (such as Pacific National and Aurizon Operations) are active, and we have no identified evidence of preferential treatment at the Terminal for NQXT's related parties.

Furthermore, we have no evidence that BRC intends to compete with coal haulage operators over the proposed declaration period... As such, we do not consider that declaration would promote a material increase in competition in either the below-rail or coal haulage markets.

283. However, the QCA also explains in its draft recommendation that:<sup>141</sup>

NQXT has an ability to favour its related parties in dependent markets through its access terms and operational arrangements.

284. For the reasons I have already described, it is economically incorrect to assume that there is no scope for declaration to have a material influence on competition in workably competitive markets.
285. Further, the absence of historical evidence of preferential treatment at NQXT, during which access was governed by very different user agreements, does shed light on the likelihood of preferential treatment in the future. Indeed, the low quality of access provided [REDACTED] suggests that there is much greater scope for preferential treatment.
286. Further still, it is the *potential* for preferential treatment, combined with Adani's incentives to understandably self-preference its related parties, that is likely to shape current and potential future perspectives of terminal users.
287. I note also that the incentive for the Adani Group to acquire operating mines that I explain at section 4.3.4 establishes a greater likelihood of Bravus in the future competing with other operators of above-rail services.

<sup>138</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 43.

<sup>139</sup> Houston, G, *Expert report of Greg Houston – does NQXT's coal handling service satisfy criterion (a)?*, 13 June 2025, para 263.

<sup>140</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 44.

<sup>141</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 70.

288. It follows from these reasons that, consistent with the analysis and conclusion that I present in my criterion (a) report, in my opinion:<sup>142</sup>

...the vertically integrated relationship between NQXT and BRC means that it would have an incentive to implement terminal regulations in a way that would – unlike DBT – ‘...unfairly favour a particular party’. In other words, NQXT could adjust the operation of the terminal, and particularly its interface with rail operations, in such a manner as to affect other parts of the rail supply chain, with alternative coal haulage providers consequently less able to compete to provide those services.

This ability would be greatly reduced with declaration, because the provisions relating to the terminal regulations would be included in the relevant access framework, and the QCA would have the role of determining objections about NQXT’s approval or rejection of amendments proposed by the operator – which is also an Adani Group entity.

Declaration of NQXT, and the equality of access on reasonable terms for coal hauled by third-party haulage providers that it would imply, would therefore promote an increase in competition in the market(s) for coal haulage services covering the Galilee and Newlands systems (and possibly wider).

### 6.3 Secondary capacity trading markets

289. In addressing the secondary capacity trading market the QCA states:<sup>143</sup>

We accept that short-term capacity transfers could form a secondary market, but there is insufficient information on actual or potential trades to assess whether it is a relevant dependent market or whether declaration would promote a material increase in competition.

290. I explain in my criterion (a) report that in my opinion the consideration of whether third party users could continue to trade capacity directly with one another absent declaration is relevant to the assessment of the likely effects of declaring NQXT.<sup>144</sup>

291. In the absence of information regarding actual and potential transactions between third party users for short-term terminal capacity, it proves difficult to assess whether declaration would promote a material increase in competition in this market. In my opinion it would be appropriate for the QCA to use its statutory power to obtain the relevant information required in order to undertake a complete assessment of the secondary terminal capacity trading market.

292. Another secondary capacity trading market that has been identified following submissions from NQXT and the QCA’s draft recommendation is that of short-term below-rail capacity on the Newlands system. As users of above-rail and therefore below-rail capacity on the Newlands system are dependent on access at NQXT, the secondary trading of below-rail capacity is dependent on NQXT.

293. The existence of this secondary below-rail capacity trading market is supported by the fact that the Adani Group currently relies on secondary capacity on the Newlands system. Mr Lane, general manager of BRC and CRN, states:<sup>145</sup>

Bravus currently holds an Access Agreement with Aurizon Network for approximately [REDACTED] of access rights on the Newlands System for the period until [REDACTED].

I am aware that Bravus is planning to increase production from the Carmichael Mine up to around 16 mtpa [REDACTED].

<sup>142</sup> Houston, G, *Expert report of Greg Houston – does NQXT’s coal handling service satisfy criterion (a)?*, 13 June 2025, paras 290-292.

<sup>143</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 45.

<sup>144</sup> Houston, G, *Expert report of Greg Houston – does NQXT’s coal handling service satisfy criterion (a)?*, 13 June 2025, paras 299-300.

<sup>145</sup> NQXT, *Submission in response to QCoal Pty Ltd and Byerwen Coal Pty Ltd’s application for a recommendation to declare the coal handling service at the North Queensland Export Terminal*, 26 August 2025, annexure E: *statement of Mr Lane, Bowen Rail*, 22 August 2025, paras 39 and 41.



294. Due to the vertical nature of NQXT and the related parties of the Adani Group, Bravus is the only user of above-rail and therefore below-rail capacity on the Newlands system with guaranteed access to NQXT. In line with this observation, the QCA identifies that:<sup>146</sup>

To the extent that below-rail capacity constraints in the Newlands system persist during the proposed declaration period, this may in fact be a disincentive for NQXT to provide access to third parties at the Terminal.

295. The ability for users to engage in the secondary trading of below-rail capacity is dependent on stockpile and berthing priorities at NQXT which is controlled by the Adani Group.

296. The existing capacity constraint on the Newlands system together with the Adani Group's clear requirement for ad hoc below-rail capacity create a strong incentive for NQXT to self-preference related parties, thereby foreclosing rivals in the secondary below-rail capacity trading market in order to maximise the Adani Group's profit. This incentive will only strengthen as the Carmichael mine increases production to 16 mtpa.<sup>147</sup>

297. In my opinion, declaration of NQXT and the equality of access on reasonable terms that it would imply, would therefore promote a material increase in competition in the market for secondary trading of below-rail services for the Newlands system.

<sup>146</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p.58.

<sup>147</sup> Bravus Mining and Resources, *Bravus Mining and Resources commits to major investment to increase mine production in central Queensland*, 19 August 2025, available at: <https://www.bravusmining.com.au/bravus-mining-and-resources-commits-to-major-investment-to-increase-mine-production-in-central-queensland/>, accessed: 12 June 2026.

## 7. Promoting the public interest and criterion (d)

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298. In this section I set out my response to ABL's request to:<sup>148</sup>

...provide my opinion on the QCA's consideration of criterion (d)

299. The QCA explains in its draft recommendation that:<sup>149</sup>

Having weighed all of the costs and benefits, our preliminary view is that declaration is unlikely to generate overall gains to the community. As such, we are not satisfied that access (or increased access) to the service provided by the Terminal, on reasonable terms and conditions, as a result of declaration, would promote the public interest.

300. In undertaking an assessment of criterion (d), the QCA is required to have regard to the effect that declaration would have on investment in markets that depend on access to NQXT.<sup>150</sup>

301. In respect of this requirement, the QCA sets out its opinion that:<sup>151</sup>

the impact of declaration on investment in dependent markets depends, in part, on the extent to which declaration would impact competition in those markets... the more competition is promoted in a dependent market, the greater the likely positive impact on investment.

302. I agree with the QCA that declaration is likely to have a greater positive effect on investment in a dependent market – and so, promote the public interest to a greater extent – if competition is promoted more vigorously in that dependent market.

303. However, the QCA ultimately concludes that:<sup>152</sup>

...declaration of the service would not promote a material increase in competition in dependent markets. As such, it is not evident that declaration would therefore also promote an increase in investment in the relevant dependent markets.

304. In sections 5 and 6, I explain my opinion that declaration is likely to promote a material increase in competition in multiple markets that depend on access to NQXT. Accordingly, in my opinion declaration is likely to encourage investment in those markets and thereby promote the public interest.

305. I therefore disagree with the QCA's conclusion that criterion (d) is not satisfied in respect of the coal handling service at NQXT.

306. I note that the reasoning underpinning the QCA's draft recommendation regarding criterion (d)<sup>153</sup> implies that the QCA must also reach the conclusion that criterion (d) is satisfied if it is presented with sufficient evidence to conclude that criterion (a) is satisfied.

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<sup>148</sup> ABL, *Instructions – Access Declaration North Queensland Export Terminal Facility*, 12 June 2026, para 5(e).

<sup>149</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 98.

<sup>150</sup> Queensland Competition Authority Act 1997, s 76(5) and QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 88.

<sup>151</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 93.

<sup>152</sup> QCA, *North Queensland Export Terminal declaration review*, Draft recommendation, March 2026, p 93.

<sup>153</sup> As quoted at paragraph 301 of this report.

# Annexure A – Letter of instruction

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Ryan Taylor  
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Max Griffin  
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Molly Scott  
Johnny Sorras  
Tamsen Kempster  
Eileen Liu  
Julia Heyward  
Noah Lipsht

12 June 2026

**By Email**  
**Confidential & privileged communication**

Greg Houston  
Partner  
HoustonKemp  
40/161 Castlereagh Street  
Sydney NSW 2000

Your Ref

File No. 021922839

**Contact**  
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Dear Mr Houston

## Instructions – Access Declaration North Queensland Export Terminal Facility

- 1 As you know we act for QCoal Pty Limited and Byerwen Coal Pty Limited, together the QCoal Users, in relation to their application to have the coal handling services at the North Queensland Export Terminal declared for third party access under the *Queensland Competition Authority Act 1997* (Qld) (**the Application**)
- 2 We refer to:
  - (a) your prior reports submitted to the Queensland Competition Authority (**QCA**) in support of the application, dated 13 June 2025 and 21 October 2025; and
  - (b) the QCA's draft recommendation in respect of the Application published on 26 March 2026 (**Draft Recommendation**).

## Instructions

- 3 We instruct you to prepare a report for the purpose of assisting the QCA in its assessment of whether to recommend that the Service be declared.
- 4 Your duty is to assist the QCA and not the QCoal Users in preparing your report.
- 5 Your instructions are to express your independent opinion, within the confines of your expertise as an economist, on the Draft Recommendation and, in particular:
  - (a) to review and comment on the Draft Recommendation;
  - (b) to identify those elements of the Draft Recommendation with which you disagree and explain the reasons for your disagreement;
  - (c) to provide your opinion on the methodology by which the QCA estimated total foreseeable demand in respect of mines that comprise its definition of the market for the coal handling service provided at NQXT;
  - (d) to provide your opinion on the QCA's consideration of criterion (a) of section 76(2) of the Act, including its assessment of whether access, or increased

access, to the Service on reasonable terms and conditions as a result of declaration would promote a material increase in competition in any dependent market;

- (e) to provide your opinion on the QCA's consideration of criterion (d) in section 76(2) of the Act.

### **Documents Provided**

- 6 We have provided you with the following documents and materials:
- (a) the Draft Recommendation;
  - (b) your earlier reports referred to in paragraph 2(a) above, and the materials we provided to you in respect of those reports;
  - (c) materials and submissions lodged in connection with the Application, including submissions and evidence lodged by NQXT;
  - (d) correspondence between QCoal and NQXT concerning access to the Terminal, including correspondence concerning the Sonoma mine; and
  - (e) a report from Wood Mackenzie dated 12 June 2026.

### **Expert independence**

- 7 Although your report is not being prepared for use in court proceedings, we request that in undertaking this engagement you comply with the duties and requirements of an expert for court proceedings as set out in rules 429F to 429H of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), as if those duties and requirements applied to these instructions. A copy of rules 429F to 429H and Schedule 1C of the UCPR (**Experts' Code of Conduct**) is enclosed with these instructions.
- 8 Those duties provide that your obligation to act independently in assisting the QCA overrides any other obligations that you may have to any party or to any person who is liable for your fees and expenses.
- 9 Consistent with these requirements, we request that your report include written confirmation that:
- (a) you have read, and agree to be bound by, the Experts' Code of Conduct to the extent that it imposes duties and obligations on you relevant to your role as an expert in your assistance of the QCA;
  - (b) the factual matters stated in the report are, as far as you know, true;
  - (c) you have made all inquiries considered appropriate;
  - (d) the opinions stated in the report are genuinely held by you;
  - (e) the report contains references to all matters you consider significant; and
  - (f) you understand your duty to the QCA and you have complied with that duty.
- 10 In addition, please enclose or include in your report the following:
- (a) your curriculum vitae and any other relevant training, education and experience;

- (b) a statement of the questions you have been asked to consider as set out in this letter;
  - (c) the factual premise or premises upon which your report proceeds; and
  - (d) the documents and other materials which you have been provided with and instructed to consider in the preparation of your report.
- 11 Please let us know if you have any questions or if you require any further information at this stage.

Yours sincerely

**Arnold Bloch Leibler**

A handwritten signature in black ink, appearing to read 'Stephen Lloyd', written in a cursive style.

**Stephen Lloyd**  
**Partner**

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## Uniform Civil Procedure Rules 1999

Reprint current from 13 September 2024 to date (accessed 3 June 2025 at 12:44)

[Chapter 11](#) > [Part 5](#) > [Division 4](#) > Section 429F

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### 429F Duty of expert

- (1) The expert has a duty to assist the court.
- (2) The expert—
  - (a) is not an advocate for a party to the proceeding; and
  - (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert must comply with the requirements under the code of conduct.
- (4) However, subrule (3) does not limit any provision of this part.
- (5) The expert's duties under this rule override any obligation the expert may have to—
  - (a) any party to the proceeding; or
  - (b) any person who is liable for the expert's fees or expenses.

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## Uniform Civil Procedure Rules 1999

Reprint current from 13 September 2024 to date (accessed 3 June 2025 at 11:59)

[Chapter 11](#) > [Part 5](#) > [Division 4](#) > Section 429H

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### 429H Requirements for report

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The report must include the following information—
  - (a) the expert's qualifications;
  - (b) all material facts, whether written or oral, on which the report is based;
  - (c) the expert's reasons for each opinion expressed in the report;
  - (d) references to any literature or other material relied on by the expert to prepare the report;
  - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
    - (i) a description of what was done; and
    - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
    - (iii) the name and qualifications of any other person involved; and
    - (iv) the result;
  - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
  - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
  - (h) a summary of the conclusions reached by the expert;
  - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

*Examples of reasons why an expert may believe an opinion is not a concluded opinion—*

- insufficient research
- insufficient data

- (4) The expert must confirm in the report that—

- (a) the expert has read, and agrees to be bound by, the code of conduct; and
- (b) the factual matters stated in the report are, as far as the expert knows, true; and
- (c) the expert has made all inquiries considered appropriate; and
- (d) the opinions stated in the report are genuinely held by the expert; and
- (e) the report contains reference to all matters the expert considers significant; and
- (f) the expert understands the expert's duty to the court and has complied with the duty.

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# Uniform Civil Procedure Rules 1999

Reprint current from 13 September 2024 to date (accessed 3 June 2025 at 11:59)

Schedule 1C

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## Schedule 1C Code of conduct for experts

rule 425, definition *code of conduct*

### Part 1 Preliminary

#### 1 Purpose of code

- (1) The purpose of this code of conduct is—
  - (a) to state an expert's obligations under the following provisions of chapter 11, part 5—
    - (i) rule 429A;
    - (ii) rule 429B(1), (2), (5) and (6);
    - (iii) rule 429F;
    - (iv) rule 429H;
    - (v) rule 429K(1) and (2); and
  - (b) otherwise to state an expert's obligations in relation to an order made, or a direction given, by the court.
- (2) In this code of conduct, the information included in square brackets after a rule heading is a reference to the comparable rule under chapter 11, part 5.
- (3) The brackets and information do not form part of these rules.

#### 2 Application of code

- (1) This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a proceeding.

*Note*—

Rule 429F requires the expert to comply with the requirements under this code of conduct.

- (2) In a provision of this code of conduct that refers to a direction given under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, a reference to a joint report is a reference to a report about the conference that states—
  - (a) the matters, if any, on which the experts agree; and
  - (b) the matters, if any, on which the experts disagree and the reasons for any disagreement.

### Part 2 Duty to comply with orders and directions

#### 3 Duty to comply with court's orders and directions

- (1) An expert must comply with an order made, or a direction given, by the court.

- (2) Without limiting subrule (1), if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, the experts must hold the conference, and prepare the joint report, in compliance with the direction.

## **Part 3                      Experts' conferences and joint reports**

### **4      Application of part**

This part applies if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report.

### **5      Experts' conference and joint report [r 429A]**

- (1) In holding the conference and preparing the joint report, the experts—
  - (a) must exercise independent judgement; and
  - (b) must endeavour to reach an agreement on any matter on which they disagree; and
  - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
- (2) Unless the court directs otherwise, the experts must—
  - (a) hold the conference in the absence of the parties or their agents; and
  - (b) prepare the joint report without reference to, or instructions from, the parties or their agents.
- (3) The experts must give the joint report to the parties—
  - (a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or
  - (b) otherwise—as soon as practicable after the conference has concluded.
- (4) This rule is subject to rule 6.

### **6      Permitted communications between experts and parties [r 429B(1), (2), (5) and (6)]**

- (1) Any of the experts may, in writing—
  - (a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or
  - (b) inform the parties of any matter adversely affecting the proper and timely conduct or conclusion of the conference or preparation of the joint report.
- (2) A communication mentioned in subrule (1) must—
  - (a) be made jointly to all of the parties; and
  - (b) state—
    - (i) whether or not all of the experts agree on the terms of the communication; and
    - (ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.
- (3) The experts must, within 2 business days after a request is made under rule 429B(4), give a progress report about the progress of the conference or the joint report.
- (4) The progress report must state—

- (a) whether or not all of the experts agree on the terms of the report; and
- (b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

## **Part 4 Giving of evidence by experts and related matters**

### **7 Duty of expert [r 429F]**

- (1) The expert has a duty to assist the court.
- (2) The expert—
  - (a) is not an advocate for a party to the proceeding; and
  - (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert's duties under this rule override any obligation the expert may have to—
  - (a) any party to the proceeding; or
  - (b) any person who is liable for the expert's fees or expenses.

### **8 Requirements for report [r 429H]**

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The report must include the following information—
  - (a) the expert's qualifications;
  - (b) all material facts, whether written or oral, on which the report is based;
  - (c) the expert's reasons for each opinion expressed in the report;
  - (d) references to any literature or other material relied on by the expert to prepare the report;
  - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
    - (i) a description of what was done; and
    - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
    - (iii) the name and qualifications of any other person involved; and
    - (iv) the result;
  - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
  - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
  - (h) a summary of the conclusions reached by the expert;
  - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's

belief.

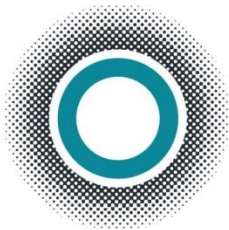
*Examples of reasons why an expert may believe an opinion is not a concluded opinion—*

- insufficient research
- insufficient data

- (4) The expert must confirm in the report that—
- (a) the expert has read, and agrees to be bound by, the code of conduct; and
  - (b) the factual matters stated in the report are, as far as the expert knows, true; and
  - (c) the expert has made all inquiries considered appropriate; and
  - (d) the opinions stated in the report are genuinely held by the expert; and
  - (e) the report contains reference to all matters the expert considers significant; and
  - (f) the expert understands the expert's duty to the court and has complied with the duty.

## **9 Supplementary report following change of opinion [r 429K(1) and (2)]**

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion in a report prepared by the expert under chapter 11, part 5 (an *earlier report*).
- (2) Unless the expert knows the proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to—
  - (a) if the expert is a court-appointed expert—the registrar; or
  - (b) otherwise—the party who appointed the expert.



# HOUSTONKEMP

Economists

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